

RULE 107. ORDERS BEFORE JUDGMENT

(a) Motions for orders before judgment. At any time before judgment in any action under this chapter in which the court has personal jurisdiction over the parties, the court may order the following:

(1) parental rights and responsibilities for any minor children, including health insurance and child support;

(2) appointment and payment of a guardian ad litem;

(3) participation in a parental education program (at the request of either party, or on the court's own motion);

(4) genetic or other testing;

(5) psychological or other evaluations;

(6) investigation by the Department of Health and Human Services pursuant to 19-A M.R.S. § 905;

(7) possession of owned or rented real and personal property pending the final judgment;

(8) payment of debts and obligations;

(9) sale of any property of the parties, along with the disposition of the proceeds;

(10) interim spousal support;

(11) a job search;

(12) payment by either party to the other or to the party's attorney of sufficient money for costs and counsel fees for the defense or prosecution of any action or any motion under this chapter. Execution for counsel fees shall not issue until after entry of final judgment;

(13) prohibition of either party from imposing any restraint on the personal liberty of the other;

(14) enforcement of compliance with the court's orders by appropriate process as the court can order in other actions; and

(15) dissolution or modification of a preliminary injunction or an attachment or trustee process.

No orders before judgment may be entered without notice to the parties or upon motion. The motion shall be accompanied by a draft order granting the relief requested.

In any action under this chapter in which the court lacks personal jurisdiction over the defendant, the court may at any time before judgment, and governed by the same notice provisions, enter any of the foregoing orders that it deems proper that do not involve the payment of, or the allocation of responsibility for the payment of, money.

(b) Hearings on Motions for Interim Orders/Orders before Judgment. All motions for interim orders or orders before judgment must include a list of witnesses, an estimate of time needed for the presentation of evidence, and a draft order specifying the relief being requested. After review of the motion and any opposition filed, the court may:

(1) Schedule a hearing of no longer than three hours; or

(2) Require the parties to engage in mediation before setting a hearing in those cases where mediation can be mandated, unless the requested interim hearing is for child support only.

(c) Expedited Hearings. A party, or a guardian ad litem, may request that a hearing on a motion be expedited. The request must be filed on the court-approved Request for Expedited Hearing form. Such requests shall be in the form of a motion for expedited hearing and shall demonstrate extraordinary circumstances in the particular case that justify an expedited hearing. The request for an expedited hearing shall be considered in light of all relevant factors, including:

(1) the court's ability to provide time for expedited hearing, and the effect on other cases awaiting hearing;

(2) the likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the best interest or financial support of a child or the parental rights of a party;

(3) the likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the health or financial standing of a party;

(4) the likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the court's ability to render a full and fair decision on any issue present in the case;

(5) any unreasonable delay on the part of the moving party in filing the motion;

(6) any conduct on the part of either party impairing a fair and just resolution of the issues.

The moving party must determine and report to the court whether any other party objects to the requested relief and the motion for expedited hearing. The motion shall contain a notice stating the time for a response to the motion. Responses to a motion for expedited hearing shall be filed in writing within 7 days of the notice of the motion.

The court may rule on a motion for expedited hearing without actual notice to other parties if the moving party has made a reasonable and good faith effort to notify the other parties or if delay would defeat the purposes of the motion. No ruling granting substantive relief shall be made without notice and opportunity to be heard.

All expedited hearings shall be limited to no more than three hours.

Advisory Note - July 2016

Changing "prior to" to "before" throughout these rules reflects the Judicial Branch's preference for avoiding "legalese" in its rules and forms. The change from "may" to "shall" in Rule 107(a) is intended to assist the

parties and the court in understanding precisely what relief is being requested. The additional language in Rule 107(a)(3) clarifies that the court may refer the parties to parent education classes on its own initiative. The language added in Rule 107(a)(4) clarifies that a court may order genetic testing, e.g., to determine parentage.

The new limitation on the time allowed for interim hearings, provided for in new Rule 107(b), reflects a suggestion contained in the June 2014 Family Division Task Force Report (“FDTF 2014 report”). Rule 107(b) imposes requirements on parties requesting interim or expedited hearings to provide witness lists, hearing time estimates, and proposed orders. It also limits the duration of any interim hearing to three hours and allows a magistrate to hear an interim proceeding without requiring the parties to first mediate their dispute, even in those cases where mediation is required. See Rule 92(b)(2). These changes, which should allow the parties and the court to better manage these proceedings and focus on which issues need immediate resolution, were recommended in the FDTF 2014 report.

Former Rule 107(b) is renumbered as Rule 107(c), and a reference to a court-approved Request for Expedited Hearing form is added. Adding the financial support of a child as a factor to be considered in Rule 107(c)(2) reflects a determination that providing for a child’s best interest may require one parent to support another.

Advisory Notes June 2008

Rule 107 is based on Rule 80(d) and 19-A M.R.S. §§ 105 and 904 relating to preliminary matters. It would also implement the recommendation of the Family Division Task Force to establish a procedure to seek an expedited hearing. It follows 80(d) with appropriate adjustments to fit it into the context of the Family Division Rules. The list of actions the court may take, as stated in 80(d), is separated out into individually numbered subparagraphs and some new categories of actions are added that reflect current practice and provide consistency with Rule 110A(b)(1) which is derived from FAM DIV III.A.1. The rule clarifies an uncertain issue as to whether the court has authority to order the sale of property pending a divorce as well as order the disposition of the proceeds. The new rule adds provision for appointment and payment of a guardian ad litem, as presently found in Rule 80(e).

This rule does not change the current practice before the magistrates that permits an oral motion for an order prior to judgment. The sentence requiring the filing a child support affidavit when child support is an issue is deleted because that language is provided by Rule 108.

Rule 107 deletes the language found in Rule 80(d) that provided for a hearing 7 days after a party had notice of a motion. It was deleted because no substantive standard existed for considering that motion, and the procedure was seldom used. The rule substitutes a requirement for a written response within 7 days of notice of the motion, leaving scheduling of any hearing to the court. The rule also outlines criteria to grant a request for an expedited hearing if the circumstances of the case warrant immediate court intervention.