RULE 80D. FORCIBLE ENTRY AND DETAINER

(a) Applicability to Forcible Entry and Detainer. These rules, so far as applicable, shall govern the procedure in forcible entry and detainer actions in the District Court and on appeal to the Superior Court and the Law Court, except as otherwise provided in this rule or by statute.

(b) Summons. The summons in forcible entry and detainer actions shall

(1) bear the signature or facsimile signature of the judge or the clerk;

(2) contain the name and address of the court and the names of the parties;

(3) be directed to the defendant;

(4) state the day when the action is returnable, which shall be not fewer than 14 days from the date of service of the summons; and

(5) notify the defendant that in case of defendant's failure to appear and state a defense on the return day, judgment by default will be rendered against the defendant for possession of the premises.

(c) Judicial Branch Information Sheet and Mediation. In residential forcible entry and detainer actions, the plaintiff must serve the Judicial Branch information sheet and request for mediation form with both the notice of termination of the tenancy, if any, and the forcible entry and detainer summons and complaint. Either party may request mediation, using the form or otherwise.

(d) Complaint. The complaint for forcible entry and detainer shall be filed no later than 3 days before the date of the hearing. For good cause shown, the court may hear a case filed after the deadline. When the complaint pertains to a residential tenancy, the following materials must be included with the complaint filed pursuant to this rule:

(1) A copy of any written lease or written rental agreement between the parties; and

(2) A copy of any notice of termination of tenancy delivered to the defendant (and any attachments thereto).

Any failure to provide the required attachments at the time of filing of the initial complaint may be grounds for a continuance but not for dismissal.

(e) Defendant's Pleading. If the defendant claims title in defendant's name or in the name of another person under whom the defendant claims the premises, the defendant shall assert such claim by answer filed on or before the return day, and further proceedings in the actions shall be as provided by law. Otherwise the defendant may appear and defend without filing a responsive pleading.

(f) Hearing.

(1) *Legal Assistance.* If the court has been advised that an attorney is available to assist unrepresented tenants in forcible entry and detainer actions on the day of hearings, the presiding judge shall announce the availability of the attorney(s) at the call of the docket. Failure of the court to do so is not, however, grounds for dismissal of the action or to set aside or appeal any judgment entered against the tenant.

(2) *Hearing Date.* All forcible entry and detainer actions shall be in order for trial on the return day.

(3) *Mediation.* At the time set for hearing, the court may refer the parties to mediation pursuant to the process established by Rule 92(f) of these rules. Every settlement resulting from mediation shall be presented to the court in writing for approval as a court order, and the court shall approve reasonable settlements. An approved settlement shall have the force and effect of a judgment and may not be appealed. If no mediator is available, or if mediation efforts fail or mediation proves inappropriate, the court shall hear the matter without undue delay.

(g) Appeal.

(1) *Appeal on Questions of Law.* Either party may appeal to the Superior Court and the Law Court on questions of law as in other civil actions.

(2) *Appeal by Jury Trial De Novo.*

(A) Notice of Appeal and Demand for Jury Trial. Either party may appeal to the Superior Court by jury trial de novo on any issue so triable of right by filing a notice of appeal as provided in Rule 76D. A party who seeks a jury trial de novo shall include in the notice of appeal a written demand for jury trial and shall file with the notice an affidavit or affidavits meeting the requirements of Rule 56(e) and setting forth specific facts showing that there is a genuine issue of material fact as to which there is a right to trial by jury. Failure to make demand for jury trial with accompanying affidavit or affidavits constitutes a waiver of the right to jury trial, and the appeal shall be on questions of law only, as provided in paragraph (1) of this subdivision.

(B) Preparation and Transmission of the Record. The record on appeal shall be prepared in accordance with Rule 76F. The clerk of the division shall transmit the record to the Superior Court within five days of the filing of the notice of appeal, without waiting for a transcript. The clerk of the Superior Court shall docket the appeal on receipt of the record thus transmitted. If a transcript is subsequently received by the clerk of the District Court, it shall be transmitted to the Superior Court immediately and shall be incorporated in the record on appeal by the clerk of the Superior Court.

(3) *Same: Determination on Affidavits.* The appellee may, within ten days after the mailing of the clerk's notice of the docketing of the appeal in the Superior Court, file a counter affidavit or affidavits meeting the requirements of Rule 56(e), together with a brief statement of the grounds of any cross appeal for which notice was timely filed. The court may upon its own motion, or the motion of either party, order that the transcript or relevant portions thereof be incorporated in the record on appeal prior to the court's review of the affidavits and record under this paragraph. The court shall review the affidavits of both parties and the record on appeal, including any transcript or portions thereof ordered to be incorporated as provided in this paragraph, and shall determine

whether the appellant's affidavits are adequate and, if so, whether there is a genuine issue of material fact as to which there is a right to trial by jury.

(4) *Same: Genuine Issue of Fact: Further Pretrial Proceedings; Assignment for Trial.* If the court finds that the appellant has shown in light of the affidavits and the whole record, including any transcript or portions thereof ordered to be incorporated as provided in paragraph (3) of this subdivision, that there is a genuine issue of material fact as to which there is a right to trial by jury, it shall either direct the clerk immediately to place the action upon a jury trial list maintained in accordance with Rule 40 or shall order the parties to file pretrial memoranda containing specified information or to appear for a conference or to file memoranda and appear for a conference. After review of the pretrial memoranda or at the conclusion of the conference, the court shall direct the clerk to place the action upon a jury trial list. Scheduling of actions for trial shall be at the direction of the court, as provided in Rule 40.

If either party intends to offer witnesses or exhibits not offered at the trial in the District Court, that party shall file a list of the names and addresses of such witnesses and a brief description of such exhibits within 10 days after notification that the action has been placed upon a jury trial list or, if pretrial memoranda or a pretrial conference have been ordered, at the time set by the court for such memoranda or conference. The opposing party may file a similar list and description in reply within 10 days, or as ordered by the court. No witness or exhibit may be offered in the Superior Court unless it was offered in the District Court or appears on a list filed in accordance with this paragraph.

(5) *Same: No Genuine Issue of Fact: Disposition.* If the court finds that the appellant has not shown in light of all the affidavits and the whole record that there is a genuine issue of material fact as to which there is a right to trial by jury, it shall enter judgment dismissing the appeal; provided that, if either party has raised an independent question of law in the notice of appeal, the court shall review the record pertaining to it. If the court finds that a properly raised question of law is material to a legal claim or defense, the appeal shall proceed as provided for appeals on questions of law in paragraph (1) of this subdivision.

(6) *Same: Jury Trial.* An action placed upon a jury trial list shall be tried by jury. If the appellant withdraws the demand for jury trial in a writing

filed with the clerk before the date on which the jury is to be empanelled, or if the court upon its own initiative at any time finds that no right to trial by jury of any issue exists under the Constitution or statutes of the State of Maine, the appeal shall be dismissed or proceed on a material question of law, as provided in paragraph (5) of this subdivision.

(7) *Same: Rules Inapplicable.* Rules 16, 26-37, 39, 42 and 56 do not apply to jury trials de novo in the Superior Court under this rule.

(h) No Joinder of Other Actions. Forcible entry and detainer actions shall not be joined with any other action, nor shall a defendant in such action file any counterclaim.

(i) Venue. An action for forcible entry and detainer shall be brought in the division in which the property is located.

(j) Removal. There shall be no removal of forcible entry and detainer actions, except as provided by statute.

(k) Issue of Writ of Possession; Stay. A writ of possession shall issue, upon request and payment of the applicable fee, within the time provided by statute after entry of judgment therefore, provided that

(1) If defendant within the time provided by statute makes a timely motion pursuant to any of the rules enumerated in Rule 76D as terminating the running of the time for appeal, the issuance of the writ shall be stayed until five days after entry of an order disposing of the motion;

(2) On motion of defendant filed in the Superior Court within the time provided by statute, or any extension thereof under paragraph (1) of this subdivision, the Superior Court may grant a stay for the full time for appeal, or any extension thereof, allowed under Rule 76D, if the Superior Court finds that defendant's grounds of appeal present a genuine issue of material fact or law;

(3) If defendant files a timely notice of appeal under Rule 76D, issuance of the writ shall be stayed until a stay pending appeal is granted or denied in the Superior Court as provided in paragraph (4) of this subdivision;

(4) When the appeal is docketed in the Superior Court, that court may stay the issuance of the writ pending disposition of the appeal on conditions as provided in 14 M.R.S.A. § 6008.

A copy of a writ of possession issued pursuant to this subdivision (k) shall be retained by the clerk for examination by any interested person.

(l) Stays Upon Appeal to the Law Court. If an aggrieved party appeals from a judgment of the Superior Court in accordance with Rule 76D, an order of the Superior Court staying the writ of possession, together with any conditions imposed pursuant to 14 M.R.S.A. § 6008, shall remain in effect until final disposition of the appeal in the Law Court. Either party may move in the Superior Court during the pendency of the appeal for modification or amendment of the order as provided in 14 M.R.S.A. § 6008. Nothing in this rule limits the power of the Law Court during the pendency of the appeal to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

Advisory Note – February 2024

Subdivision (b) is amended to use subdivision numbers (1) through (5) and to require in subdivision (b)(4) that the day when the action is returnable be not fewer than 14, rather than 7, days from the date of service of the summons. Subdivision (b) is also amended to eliminate the provision that the summons notify the defendant about how to appear if the return day is a holiday. This is to align the rule with current court practice of scheduling return days and to avoid having defendants appear in court on days other than scheduled return days.

A new subdivision (c) is added in light of statutory requirements of service of the Judicial Branch information sheet and request for mediation form in a residential forcible entry and detainer action. This form must be served with *both* (a) service of any notice of termination of the tenancy and (b) service of the summons and complaint. *See* P.L. 2023, ch. 379, § 1 (to be codified at 14 M.R.S. § 6001(7)); 14 M.R.S. § 6004(2). This subdivision also authorizes either party to request mediation.

Former subdivision (c) is amended to become subdivision (d), and to require that the complaint be filed no later than three days—rather than one

day—before the date of the hearing, to include a provision authorizing a court to hear a case filed after the deadline for good cause shown, and to specify the materials that must be included with the complaint when it pertains to a residential tenancy.

Former subdivision (d) is amended to become subdivision (e) and to add necessary language to make the first sentence grammatically correct.

Former subdivision (e) is amended to become subdivision (f), and the heading is amended to apply to more than the "Time of Hearing." Subdivision (f) incorporates a new subdivision (1) based on the Legislature's enactment of P.L. 2023, ch. 379, § 2 (to be codified at 14 M.R.S. § 6004(3)) requiring judges to announce the availability of legal services prior to the commencement of proceedings when the court is advised that counsel is available. Former subdivisions (e)(1) and (2) are amended to become subdivisions (f)(2) and (3).

Former subdivisions (f) through (i) are amended to become subdivisions (g) through (j), and subdivision (g) is amended to clarify a cross-reference to M.R. Civ. P. 40.

Former subdivision (j) is amended to become subdivision (k) and to require a request and payment of the applicable fee to obtain a writ of possession. The language in the final paragraph is amended for clarity.

Former subdivision (k) is amended to become subdivision (l).

Advisory Note
December 2007

This amendment to Rule 80D(e), along with the adoption of Rule 92(f), implements the program for available mediation in forcible entry and detainer matters authorized by the Legislature, enacting 14 M.R.S. § 6004-A in P.L. 2007, chap. 246, effective January 1, 2008. The mediation offered in these matters is intended to be similar to the mediation presently offered in Small Claims matters. Mediation should not be a cause for delay of hearings in FED matters.

Advisory Notes
2004

Subdivision (j)(2) is amended to clarify that defendants who move for a stay pending appeal of a forcible entry and detainer judgment must do so in the Superior Court.

Advisory Committee's Notes
December 4, 2001

A new subdivision (c) is added to require that the complaint for forcible entry and detainer be filed at least one day before the hearing to ensure that the complaint is received, docketed, and available to the court at the hearing. Former subdivision (c) is redesignated (d). Subdivision (d) had been abrogated earlier, thus requiring no further redesignations in the rule.

Advisory Committee's Notes
May 1, 1999

Rule 80D is amended in subdivisions (a) and (j) to conform the rule to changes in the governing statute, 14 M.R.S.A. § 6001, *et seq.* (Supp. 1998). The amendments make clear that the statute governs the procedure where the statute is explicit, such as the time period for issuing a writ of possession set forth in 14 M.R.S.A. § 6005.

Advisory Committee's Notes
February 15, 1996

Rule 80D is amended for conformity with the amendment of 14 M.R.S.A. § 6008 by P.L. 1995, ch. 448, § 2. The statute was amended to address problems that had arisen in appeals of forcible entry and detainer actions caused by delays in transcript production and by stays on appeal to the Superior Court. The amended rule also provides for stays on appeal to the Law Court in FED actions.

Rule 80D(a) is amended to make clear what was already the case, that appeals from the Superior Court to the Law Court in FED actions are governed by Rule 72-76B and other applicable provisions of the Rules of Civil Procedure,

except as those rules may be modified by this rule. *See, e.g.*, Rule 80D(k), added by simultaneous amendment.

Rule 80D(d) is abrogated. Since Rules 80D(f)(2)-(7) were added in 1990 to provide for appeal by jury trial de novo, virtually all FED actions have been tried in the District Court in the first instance.

Rule 80D(f)(1) is amended, consistent with the simultaneous amendment of Rule 80D(a), to make clear that decisions on questions of law may be appealed from the Superior Court to the Law Court.

Rule 80D(f)(2) has been divided into subparagraphs (A) and (B). What is now subparagraph (A) has been amended to make clear that the notice of appeal is that provided by Rule 76D for other District Court appeals, with the additional material necessary to claim and establish the right to jury trial. Subparagraph (B) is intended to implement 14 M.R.S.A. § 6008(2), enacted by P.L. 1995, ch. 448, § 2. Within five days after the notice of appeal is filed, the District Court clerk is to transmit to the Superior Court all components of the record except the transcript, unless the transcript is already in hand. Pursuant to Rule 76F(a), these components are "[t]he original papers and exhibits filed in the District Court and a certified copy of the docket entries." The Superior Court clerk is to docket the appeal upon receipt of the record. If a transcript has been ordered and is subsequently received, the District Court clerk is to send it immediately to the Superior Court, where it becomes part of the record. This provision applies whether the transcript is to be used pursuant to court order for determination of the jury trial question as provided in amended Rule 80D(f)(3) or has been ordered by a party for another purpose, such as to support an appeal on an independent and material question of law pursuant to Rule 80D(f)(5) or (6).

Under Rule 80D(f)(3) as amended, the determination whether there is a genuine and material issue for jury trial is ordinarily made only on the parties' affidavits and counter affidavits and the record initially transmitted pursuant to paragraph (2). This determination may be delayed for consideration of the transcript only if the court, on its own or a party's motion, so orders. A transcript subject to such an order is to be ordered and paid for by the parties as provided in Rule 76H(2)(B). The rule is not intended to prevent a party from ordering a transcript for another purpose.

Rules 80D(f)(4) and (j)(4) are amended for consistency with the amendments of Rules 80D(f)(2) and (3).

Under new Rule 80D(k), on appeal to the Law Court any stay of the writ of possession granted by the Superior Court pursuant to Rule 80D(j)(4) and 14 M.R.S.A. § 6008(2), as enacted by P.L. 1995, ch. 448, § 2, remains in force, as do any conditions imposed pursuant to the statute. A motion to modify or amend the conditions pursuant to 14 M.R.S.A. § 6008(2)(A), (3), (5), pending the Law Court appeal must be made to the Superior Court. The final sentence of the rule, recognizing the inherent power of the Law Court to protect the integrity of proceedings before it, is similar to Rule 62(g).

Advisory Committee's Notes
1990

Rule 80D is amended to provide a procedure for the right to jury trial de novo on appeal to the Superior Court in forcible entry and detainer actions recognized by the Law Court in *North Sch. Congregate Hous. v. Merrithew,* 558 A.2d 1189 (Me. 1989), and to clarify the rules pertaining to stay of the writ of possession after judgment in such actions. The amendments implement 14 M.R.S.A. § 6008 as amended by P.L. 1989, ch. 377 (effective June 20, 1989).

Rule 80D(a) is amended to make clear that the Rules of Civil Procedure generally apply to forcible entry and detainer actions not only in the District Court but on appeal in the Superior Court, unless they are obviously inapplicable to such proceedings or conflict with the provisions of Rule 80D. Such conflict exists if Rule 80D prescribes a procedure contrary to that provided for other actions under the Rules. In addition, Rule 80D(f)(7), added by these amendments, expressly declares that certain of the Rules are inapplicable to jury trial de novo on appeal in forcible entry and detainer actions.

The amendments of Rule 80D(f) clarify the situation regarding appeals and provide a procedure for appeals by jury trial de novo. New paragraph (1) has the effect of extending the appeal period for forcible entry and detainer actions from the five days previously provided by subdivision (f) to the ten days allowed in other District Court civil actions under Rule 76D and 14 M.R.S.A. § 1901. The recognizance requirement is eliminated pursuant to the 1989 amendment of 14 M.R.S.A. § 6008, supra. The provisions of Rule 76D extending

the time for appeal in certain situation are now also applicable to forcible entry and detainer actions, and other Civil Rules provisions pertaining to District Court appeals also apply. Such uniformity is consistent with the language of 14 M.R.S.A. § 6008 as amended. The need for "prompt execution" recognized in the 1962 Committee Note to former M.D.C. Civ. R. 80D is satisfied by the retention in M.R. Civ. P. 80D(j) of the provision for automatic issuance of the writ of possession five days after entry of judgment, subject to stay in appropriate circumstances.

Rules 80D(2)-(7) effectuate the right to jury trial de novo on appeal recognized in *North School* and 14 M.R.S.A. § 6008 as amended. The amendments create a procedure similar to that provided for appeals with jury trial de novo where it is matter of right in small claims actions. *See* M.R.S.C.P. 11(d), M.R. Civ. P. 80L. Amended Rule 80D incorporates the basic procedure for an appeal from the District Court except as modified. If either party seeks a jury trial de novo on appeal, the notice of appeal must include a written jury demand and must be accompanied by an affidavit or affidavits in a form appropriate under Rule 56(e), specifically showing that there is a genuine issue of material fact as to which the appellant is entitled to a jury trial. Failure to make a timely demand leaves the appeal to be carried forward on questions of law only under paragraph (1).

Under paragraph (2), preparation and transmission of the record and any necessary portions of the transcript on an appeal with jury trial de novo are identical to the comparable steps in an appeal on questions of law. Paragraph (3) provides that after notice of the docketing of the appeal, the appellee may file affidavits and thereby invoke what is in effect an automatic summary judgment review by the court. In this procedure, the court not only determines whether there is a genuine issue of fact for trial, but whether it is an issue as to which there is a right to trial by jury. This paragraph and paragraphs (4), (5), and (6) are virtually identical to Rule 80L(c)(1)-(4). In summary, if there is an issue of fact appropriate for trial by jury, the action is expedited through a simplified procedure that may involve pretrial memoranda and pretrial conference if the court feels that these steps are warranted. If the court finds that there is no genuine issue of fact triable by jury, it is to dismiss the action unless there is an independent question of law also raised on the appeal. In such case, or if the appellant withdraws the jury demand before the jury is empanelled, the court may review any such issue of law as in other District Court civil appeals. *See, generally*, Advisory Committee's Note to Rule 80L.

In other respects, provisions of the Maine Rules of Civil Procedure and the Maine Rules of Evidence governing trials, as well as those governing appeals from the District Court, apply by virtue of Rule 80D(a), with the exception of the Rules enumerated in new Rule 80D(f)(7). Rule 16 is expressly made inapplicable, because new Rule 80D(f)(4) provides a simplified pretrial procedure. Rules 26-37 are inapplicable, because the first trial in the District Court has already provided one discovery opportunity, and access to the full discovery procedures of the Civil Rules would unduly delay what is intended to be a simplified procedure. Rule 39 is inapplicable, because the only trial of the facts permitted in the Superior Court under these amendments is a trial to a jury. Rule 42 is inapplicable consistent with the provision of Rule 80D(g) and (h), prohibiting joinder and setting the venue of forcible entry and detainer actions in the district where the property is located. Rule 56 is declared inapplicable, because new Rule 80D(f)(3) establishes what is in effect a summary judgment procedure.

Rule 80D(j) is amended to clarify the situation with regard to stay of issuance of the writ of possession in forcible entry and detainer actions. Experience in the District Court under the existing rule, as well as the new situation created by the simultaneous amendments to Rule 80D(f) concerning appeal by jury trial de novo, make such clarification necessary. Rule 62(a) continues to be silent concerning stay of a writ of possession. Writs of possession in real actions in the Superior Court continue to be governed by Rules 62(a) and 80A and 14 M.R.S.A. § 6704.

Under new Rule 80D(j)(l) the writ is automatically stayed if defendant makes a motion for findings or amendment of findings under Rule 52 or for amendment of the judgment or a new trial under Rule 59. As Rule 76D recognizes, a party cannot intelligently determine whether to take an appeal until the disposition of such motions. The right to appeal is essentially nullified if dispossession can occur under the writ before the appeal can be perfected. Paragraph (2) permits a stay for the full appeal period permitted under Rule 76D upon a finding that the appeal presents genuine issues. Paragraph (3) provides an automatic stay of the time for filing a notice of appeal until the question of whether to stay the writ pending disposition of the appeal is decided in the Superior Court as provided in 14 M.R.S.A. § 6008, incorporated in new Rule 80D(j)(4). These provisions, too, are intended to prevent execution of the writ of possession from making the right to appeal meaningless.

Note that issuance of the writ of possession may also be precluded by Plaintiff's failure to rebut the presumption of retaliation established by 14 M.R.S.A. § 6001(3).