Last reviewed and edited October 10, 2014
Includes amendments effective November 1, 2014

XII. GENERAL PROVISIONS

RULE 81. APPLICABILITY OF RULES

(a) To What Proceedings Fully Applicable. These rules apply to all proceedings in suits of a civil nature in the District Court, in the Superior Court, or before a single justice of the Supreme Judicial Court, with the exceptions set forth in subdivision (b) of this rule. They apply to civil proceedings in the Superior Court on removal or appeal from the District Court. A civil action under these rules is appropriate whether the suit is cognizable at law or in equity and irrespective of any statutory provisions as to the form of action.

(b) Limited Applicability.

(1) *Superior Court.* These rules do not alter the practice prescribed by the statutes of the State of Maine or the Maine Rules of Criminal Procedure or the Maine Bar Rules for beginning and conducting the following proceedings in the Superior Court or before a single justice of the Supreme Judicial Court:

(A) Proceedings for post-conviction relief in criminal actions or under the writ of habeas corpus.

(B) [Reserved]

(C) Proceedings governed by the Maine Bar Rules.

(D) Applications for naturalization, judicial declarations of citizenship, or any other ex parte proceeding.

(E) Applications by any governmental agency, department, board, commission, or officer to enforce a subpoena, to compel the production of documents, or to require answer to pertinent questions.

(F) Proceedings with respect to contested elections for county or municipal office.

In respects not specifically covered by statute or other court rules, the practice in these proceedings shall follow the course of the common law, but shall otherwise conform to these rules, except that depositions shall be taken or interrogatories served only by order of the court on motion for cause shown.

Review by the Law Court, to the extent that review of any such proceeding is available, shall be by appeal or report in accordance with these rules, except that any such review in proceedings with respect to contested elections for county or municipal office shall conform to the procedure specified by statute therefor.

(2) *District Court.* These rules do not apply to the beginning and conducting of the following actions and proceedings in the District Court:

(A) Actions under the statutory small claims procedure except as incorporated expressly or by analogy in the Maine Rules of Small Claims Procedure.

(B) Ex parte proceedings.

(C) [Abrogated.]

(D) Proceedings for commitment, recommitment, or admission to a progressive treatment program of persons mentally ill.

(E) [Reserved]

(F) Proceedings in the Juvenile Court.

Review by the Superior Court in all these proceedings and actions, except proceedings in the Juvenile Court, shall be by appeal in accordance with these rules except as modified for actions under the statutory small claims procedure by the Maine Rules of Small Claims Procedure.

(c) Scire Facias and Certain Extraordinary Writs Abolished. The writs of scire facias, mandamus, prohibition, certiorari, and quo warranto are abolished. Review of any action or failure or refusal to act by a governmental agency, including any department, board, commission, or officer, shall be in accordance with procedure prescribed by Rule 80B. Any other relief heretofore available by any of such writs may be obtained by appropriate action or motion under the practice prescribed by these rules. In any proceedings for such review or relief in

which an order that an agency or other party do or refrain from doing an act is sought, all provisions of these rules applicable to injunctions shall apply.

(d) Other Writs Abolished. Writs of waste, dower, partition and account are abolished. In any action for relief or damages because of waste, or for dower, partition or account, the practice and procedure, including the summons, shall be as in other civil actions.

(e) Terminology in Statutes. In applying these rules to any proceeding to which they are applicable, the terminology of any statute which is also applicable, where inconsistent with that in these rules or inappropriate under these rules, shall be taken to mean the device or procedure proper under these rules.

(f) When Procedure Is Not Specifically Prescribed. When no procedure is specifically prescribed, the court shall proceed in any lawful manner not inconsistent with the Constitution of the State of Maine, these rules or any applicable statutes.

Advisory Note – October 2014

Rule 81(b)(2)(D) is amended to simplify its language.

Advisory Note – June 2014

Subdivision (b)(2)(D) is amended to include, among the District Court proceedings to which these Rules do not apply, proceedings for admission to a progressive treatment program for persons with mental illness. *See* 34-B M.R.S. § 3873-A.

Advisory Committee's Notes
May 1, 2000

The amendments to this rule are designed to modernize its language. The Bar Rules now govern proceedings for disciplinary action against of attorneys, and accordingly they are referenced in Rule 81. There is no longer an action to replevy a person, and the amendment eliminates the reference in subdivision (b)(1)(A). Paternity actions (what were once called "bastardy" cases), and Interstate Support Enforcement actions (no longer called "URESA", as former subdivision (b)(2)(E) provided) are now subject to the regular provisions of the Maine Rules of Civil Procedure with appropriate adjustment for specific statutory requirements.

Advisory Committee's Note
November 15, 1976

This amendment is adopted simultaneously with the promulgation of new Rule 80G, covering separate support and custody actions. The amendment eliminates the exception from the rules of all support actions except those under the Uniform Reciprocal Enforcement of Support Act, 19 M.R.S.A. §§ 331-420. See Advisory Committee's Note to Rule 80G.

Advisory Committee's Note
December 31, 1967

Rule 81(a) is amended to reflect the completion of the transition to the District Court system from the former municipal courts and trial justices. The District Court Civil Rules themselves contain certain limitations on the proceedings in the Superior Court on removal or appeal from the District Court. For example, an appeal to the Superior Court is on questions of law only. See Me.D.C.C.R. 73(a). Thus, the applicability of the Rules of Civil Procedure to such proceedings appealed or removed from the District Court is in those respects modified by the District Court Civil Rules.

The amendment of Rules 81(b) and (c) eliminates the extraordinary writs of *mandamus, prohibition, certiorari*, and *quo warranto* as separate procedural devices. An accompanying statutory change repeals 14 M.R.S.A. §§ 5351-5354, 5401-5402, and 5451-5454, which provided special procedures for certiorari, quo warranto, and mandamus. 1967 Pub.Laws, Chap. 441, Sec. 7. These steps do not alter the substantive law pertaining to the writs or make any change in the kinds of relief available in situations where they have been appropriate, any more than the merger of law and equity altered the substantive rules of equity. Relief in the nature of that previously available by extraordinary writ may now be had in a civil action under the rules, with the special provisions of Rule 80B for review of governmental action. A 1967 amendment to 14 M.R.S.A. § 5301, continuing the Supreme Judicial and Superior Courts' jurisdiction "in proceedings . . . in the nature of *prohibition, . . . mandamus, quo warranto*, and *certiorari*," is intended to make this clear. 1967 Pub.Laws, Chap. 441, Sec. 6.*

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* [Field, McKusick & Wroth note: "As enacted the statute reads 'proceedings in . . . prohibition . . . .'" 2 Field, McKusick & Wroth, *Maine Civil Practice* at 327 (2d ed. 1970)].

The proposed amendment of Rule 81(c) is comparable in form to Federal Rule 81(b), which abolishes *scire facias* and *mandamus* as procedural devices without affecting the substantive relief available. See 7 Moore, *Federal Practice,* par. 81.07. The change in the Maine rule is deemed necessary because of an ambiguity in the present practice demonstrated in *Young v. Johnson*, 161 Me, 64, 207 A.2d 392 (1965), and *First Mfrs. Nat. Bank v. Johnson*, 161 Me. 369, 212 A.2d 840 (1965). At present, review of "administrative action" which was previously available by extraordinary writ is to be had under Rule 80B, but the extraordinary writs, with their individual statutory procedure, may still be used for review of action other than "administrative." See Field and McKusick, *Maine Civil Practice* §§, 81.2, 81.4-81.8. Doubt as to what is "administrative action" has led to procedural confusion and delay, as well as to confusion about the scope of review of particular kinds of action. See Note, 18 *Maine L.Rev.* 187-190 (1966); Field and McKusick, *Maine Civil Practice* § 80B.1 (Supp.1967). The amendment, with related changes in Rules 80B and 81(b), eliminates the possibility of such confusion by making all review of "governmental" action or inaction, whether statutory or nonstatutory, available under Rule 80B, while extraordinary relief against nongovernmental action or inaction is to be had in an ordinary civil action under the rules. See Advisory Committee's Note to Rule 80B.

The principal procedural features of the extraordinary writ statutes will remain available in substance whether extraordinary relief is now sought in a civil action under the rules or in a proceeding under Rule 80B, to which most provisions of the Rules of Civil Procedure are applicable. Thus, the provision of 14 M.R.S.A. § 5352 that on *certiorari*, "the court may quash or affirm such proceedings, or enter such judgment as the court below should have rendered, or may make such order, judgment or decree in the premises as law and justice may require," is encompassed in the general provision of Rule 54(c) that "every judgment shall grant the relief to which the party in whose favor it is rendered is entitled." The *certiorari* provision covering costs (14 M.R.S.A. § 5353) does not differ materially from those applicable to civil actions generally, which will henceforth control.

See 14 M.R.S.A. §§ 1501, 1509. The six-year statute of limitations on certiorari proceedings (14 M.R.S.A. § 5354) will no longer apply, but is in any event superseded already in cases of administrative review by the 30-day limit on Rule 80B proceedings which governs virtually every case included in the former certiorari practice. See Field and McKusick, *Maine Civil Practice* §§ 80B.3, 81.7. A special provision of the *quo warranto* statute, 14 M.R.S.A. § 5402, dealing with parties, has been embodied in an amendment to Rule 17(a).

As for *mandamus*, there will be one salutary change from present practice. It has been held that on appeal the record must be in such shape that, if the Law Court finds for the petitioner, a peremptory writ may issue without further hearing at the trial level. 14 M.R.S.A. §§ 5451, 5452; *Dorcourt Co. v. Great Northern Paper Co.*, 146 Me. 344, 81 A.2d 662 (1951); Field and McKusick, *Maine Civil Practice* § 81.5. As a result, some Superior Court judges have felt that they should not dismiss a petition on a preliminary question of law without holding a full hearing of all issues. While in practice the Law Court has not adhered to any such stultifying rule (*see, e. g., Hourihan v. Mahoney*, 160 Me. 260, 203 A.2d 278 (1964)), the problem will not exist under the amendment, because such matters will be decided on motion under Rule 12 or Rule 56 and a dismissal will be an appealable final judgment.

Other statutory *mandamus* procedures will be available in essence under the Civil Rules. Provisions of 14 M.R.S.A. §§ 5453 and 5454 for citation and substitution of third-parties are adequately covered by Rules 14 and 25.

14 M.R.S.A. § 5452 provided a 5-day appeal period in *mandamus* proceedings and an expedited hearing before the Law Court on written argument only. The substance of these provisions remains available after the rules amendments. To consider first the 5-day limit on appeals, that statutory provision principally benefits the plaintiff who has won below and wants to obtain the relief sought before events make his claim moot. If the plaintiff has lost, however, he does not need the short limit because he can appeal as soon as necessary to protect his rights. Moreover, in the latter case, the defendant has no valid interest in finality that would justify cutting off the plaintiff's right any more than in an ordinary civil action. The only beneficial effect of the present statute—finality for the victorious plaintiff—is achieved by the provision added to Rule 81(c) that the judgment of the trial court should be treated as an injunction, which in a merged legal system it really is. Then Rule 62(a) would make it effective at once "unless otherwise ordered by the court." Thus, if the plaintiff wins, he may have his relief immediately unless a defendant moves for a stay. Presumably, the court would grant a stay only on a good-faith representation by the defendant that he intended to file an appeal within such time as not to harm the plaintiff. Compare Field and McKusick, *Maine Civil Practice*, § 62.2. If the plaintiff loses, however, the automatic 30-day period of Rules 62(a) and 73(a) would apply, with the further protections of Rule 62(d) if he does choose to appeal.

The other appeal problems to be dealt with are those involving the provisions of 14 M.R.S.A. § 5452 for prompt certification of the record by the trial judge to the Law Court and for submission of the case to the Law Court on written arguments for immediate consideration and decision. It is clear that such measures are not needed in all *mandamus* cases and might indeed be undesirable in a case where there was no urgency of time involved and the questions before the court were difficult or important. The power given the Court by the revised Rule 76A(c) to suspend the appellate rules would certainly allow the adoption of the expeditious procedure of 14 M.R.S.A. § 5452 on motion in an appropriate case. See the Advisory Committee's Note to Rule 76A(b).

With the claim treated as one for an injunction, Rule 65 and other present procedural law on injunctions will serve as a basic procedural framework for other phases of an action for relief heretofore available in mandamus. If there is no urgency, the procedure should be that followed in an ordinary civil action. Where there is need for speed, however, as in a proceeding to compel production of a list of stockholders, the plaintiff in his complaint could ask for an order (comparable to a temporary restraining order) that the clerk of the corporation produce the list or appear at a date certain to show cause why he should not. The hearing held pursuant to this order would be equivalent to the hearing on an application for a preliminary injunction. If necessary to prevent the plaintiff's claim from becoming moot, the court could order the hearing consolidated with the trial on the merits under Rule 65(b) (2). The final disposition in any case would be a judgment either denying the relief or granting a permanent mandatory injunction ordering the clerk to produce the list. The Law Court has recognized the propriety of a mandatory injunction ordering an act to be done, but preliminary mandatory relief is ordinarily not granted and would presumably be inappropriate in these circumstances. See Field and McKusick, *Maine Civil Practice* § 65.2 n. 4; Whitehouse, *Equity Practice* 729-731 (1915); *Proprietors of Maine Wharf v. Proprietors of Custom House Wharf,* 85 Me. 175, 27 A. 93 (1892); *Tracy v. Le Blanc*, 89 Me. 304, 36 A. 399 (1896). The seldom-used writ of *prohibition* should receive the same treatment. The final sentence of the revised Rule 81(c) applies to *prohibition* as well as *mandamus*.

Explanation of Amendments
(Sept. 21, 1963; Nov. 1, 1966)

Rule 81(b) (1) was amended effective September 21, 1963, in connection with the Rules in Proceedings for Post-Conviction Relief which also became effective on that date. Those Rules were in turn superseded effective December 1,

1965, by the Maine Rules of Criminal Procedure of which Rule 35(b) relates to post-conviction relief. Accordingly, Rule 81(b) was subsequently further changed to refer to the Maine Rules of Criminal Procedure rather than to Rules in Proceedings for Post-Conviction Relief.

Reporter's Notes
December 1, 1959

Rule 81(a) emphasizes the scope of full applicability of these rules. They apply to all original proceedings of a civil nature in the Superior Court with the exceptions set forth in Rule 81(b), including proceedings to review administrative action. They also apply to appeals to the Superior Court as the Supreme Court of Probate and appeals and removals from municipal courts and trial justices * in civil actions. In such appeals and removals there is no requirement of further pleading in the Superior Court, except when the defendant removes before answer. In such case the defendant is required to file his answer forthwith in the Superior Court. See Municipal Court Civil Rule 27(b). Furthermore, under Rule 13(j) any action which would be a compulsory counterclaim under Rule 13(a) will be barred unless asserted as a counterclaim by amendment after appeal or removal. Also, an equitable defense, which is not permissible in the lower court for jurisdictional reasons, may be asserted by amendment to the answer.

The last sentence of Rule 81(a) makes it clear that any reference in a statute to a particular common law form of action is to be disregarded. There are a very large number of references to actions of "debt", "assumpsit", "on the case", and the like scattered through the statutes. In any such case, a civil action under these rules is of course appropriate. The same is true when a statute gives a remedy by a bill in equity. These changes in terminology were made in 1959 Laws, c. 317, in statutes being changed for other reasons, but there seemed to be no pressing reason thus to amend a statute otherwise unaffected.

Rule 81(b) enumerates the proceedings to which these rules have only limited applicability. The intention is to preserve existing procedures for beginning and conducting such actions, whether such procedures are covered by statute or follow the course of the common law. These procedures have worked so satisfactorily that there appears to be no need to conform them to these rules. On the other hand, a uniform method of review by the Law Court seems appropriate. Accordingly, Rules 72 to 76A, inclusive, apply to all of these proceedings, with the few exceptions noted below. Moreover, there are numerous other rules which can be uniformly applied without upsetting familiar patterns. These include Rules 4(d)

(e) and (h), 5, 6, 7(b), 10, 11, 15, 24, 25, 43, 45, 46, 59 and 60. The foregoing enumeration is not necessarily complete. The decision to give these rules this limited applicability made it possible to repeal many procedural statutes which would otherwise have had to be retained solely to cover these special proceedings.

The proceedings to which the rules have only limited applicability and the reasons therefor are as follows:

(1) Proceedings under the extraordinary writs are excluded from general coverage because they differ so greatly from the ordinary civil actions for which the rules are primarily designed. Some of them, notably *habeas corpus*, symbolize traditional rights of citizens. While the substance of these rights would of course be preserved in any event, there is value in preserving the symbol as well. The scope of *mandamus* and *certiorari* is cut down somewhat by the exclusion of the extraordinary writs as a means of reviewing administrative action.

(2) Proceedings in bastardy cases are civil in nature. *Easton v. Eaton,* 112 Me. 106, 90 A. 977 (1914). Hence they would be covered by these rules if special provision to the contrary were not made. The procedure set forth in R.S.1954, Chap. 166, Secs. 23-34 [19 M.R.S.A. §§ 251-262, repealed in 1967] is satisfactory and should not be disrupted.**

(3) Procedure in proceedings to compel the support of a minor child or children under R.S.1954, Chap. 166, Sec. 43 [now 19 M.R.S.A. § 301] also is well defined by statute. An additional reason for retaining the present procedure is that the probate courts have concurrent jurisdiction in these matters. The rules enabling act does not give power to make rules for the probate court, and it would not be desirable to have different procedures for the same type of action.

(4) Disciplinary proceedings against attorneys are satisfactorily covered by R.S.1954, Chap. 105, Secs. 15-21 [now 4 M.R.S.A. §§ 851-857].

(5) The exclusion of naturalization cases, judicial declarations of citizenship and other ex parte proceedings seems sensible since they do not fit into the pattern of the rules. An example of an excluded ex parte proceeding is found in R.S.1954, Chap. 36, Sec. 56 [now 30 M.R.S.A. § 4153], where the Superior Court is empowered to appoint commissioners to locate lands reserved for public use.

(6) Applications to the Superior Court to aid administrative bodies in making their subpoena powers effective are excluded because they are summary proceedings unlike ordinary adversary litigation.

(7) Contested election cases are excluded because of their special nature and because the detailed procedure of R.S. 1954, Chap. 5, Secs. 84-86 [Repealed, 1961 Laws, c. 360, § 18; see 21 M.R.S.A. § 1212; 30 M.R.S.A. § 2252] seems satisfactory.

Review by the Law Court is to be in accordance with these rules in all proceedings enumerated in this subdivision except mandamus, proceedings for the removal of an attorney, and cases of contested elections for county office. Each of the excepted proceedings has its special statutory procedure for review by the Law Court, with shortened time limits and provision for written argument only. Since time is of the essence in these cases, it would not be desirable to make Rules 72 to 76A apply.

Rule 81(c) abolishes the writ of *scire facias* in favor of appropriate action on motion under these rules. It is taken from Federal Rule 81(b).

Rule 81(d) abolishes other ancient writs and provides that relief hitherto available thereunder shall be by action in accordance with these rules.

Rule 81(e) is to cover the many instances where statutes couched in terms rendered obsolete by these rules have not yet been amended.

Rule 81(f) gives the court a little leeway in situations not expressly provided for in the rules. It may occasionally serve a useful purpose.