RULE 91. PROCEEDINGS FOR WAIVER OF PAYMENT OF FEES OR COSTS

(a) (1) Application. Any person who intends to (i) bring a civil action under these rules, (ii) file any motion requiring service under Rule 4, or (iii) file any motion requiring payment of any fee, may, without fee, file an application in the court in which such action or motion is to be brought, or such motion is to be filed asking for leave to proceed without payment of fees or costs. The reference to "motion" shall include jury requests or any other filing that requires payment of a fee in the trial court.

(2) Affidavit. The application shall be accompanied by an affidavit of the plaintiff or moving party stating (i) the person's monthly income and necessary monthly expenses; (ii) that the person possesses no other source from which filing or service fees may reasonably be paid; (iii) if the person is receiving poverty-based public assistance income identify the government program and the nature and the duration of the assistance; and (iv) that the action is brought, or the motion is filed, in good faith. The affidavit shall be kept separate from the other papers in the case and kept confidential. The affidavit may be disclosed to any party to the action, but shall not be available for public inspection, except by order of the court.

(3) Presumption of Inability to Pay. There shall be a presumption that a moving party is without sufficient funds to pay required fees or costs if the moving party's affidavit states that the person's income is derived from poverty-based public assistance programs.

(b) Waiver of Complaint Filing Fee. An application for waiver of the filing fee shall be filed with the complaint. The action shall thereupon be entered upon the docket. If the court finds that the action is not frivolous and has been brought in good faith, and if the plaintiff is without sufficient funds to pay the filing fee, it shall order that the fee be waived. If the court denies the application, the action shall be dismissed without prejudice, unless within seven days after the denial the plaintiff pays the fee to the clerk.

(c) Payment of Service Costs. An application for payment of service costs shall be filed with the complaint or motion. If the court finds that the action is brought, or the motion filed, in good faith and that the plaintiff or moving party is without sufficient funds to pay all or part of the costs incurred in making service of process, it shall order all or such part of those costs to be paid as an administrative expense of the Superior Court or the District Court as the case may be. The court

shall pay cost for service of process only after the party seeking such payments certifies that it has attempted to accomplish service by agreement or by means that do not require payment of costs except for postage, and those efforts have not been successful in completing service.

(d) Waiver of Motion Filing Fee. An application for waiver of a motion filing fee shall be filed with the motion unless an application for waiver of payment of fees or costs has previously been granted to the moving party. The motion shall thereupon be accepted for filing and entered upon the docket. If the court finds that (i) the motion is not frivolous and has been brought in good faith, and (ii) the moving party is without sufficient funds to pay the motion filing fee, it shall order that the fee be waived. If the court denies the application, the motion shall be dismissed without prejudice, unless within seven days after the denial the moving party pays the fee to the clerk.

(e) Costs; Reimbursement. If the plaintiff or moving party prevails, any service costs paid under subdivision (c) of this rule may be taxed as costs against the opposing party in favor of the State, if the court finds that party is able to pay those costs. Before accepting a complaint or motion for filing with the fee waived or disbursing funds for service costs, the clerk shall cause the plaintiff or moving party to sign an agreement to repay the court for any fees or costs that have been waived or paid, if at any time during the pendency of the action the party becomes or is discovered to be financially able to repay those funds. The State Court Administrator is authorized to proceed by execution or action to recover for the appropriate court account all fees or costs which any party becomes liable to pay or reimburse under this subdivision, if such payment or reimbursement is not made voluntarily upon demand.

(f)(1) Appeal. A party seeking to appeal to the Superior Court or the Law Court may file or renew an application for leave to proceed without payment of fees or costs as provided in subdivision (a) of this rule. Subject to the requirements of subdivision (f)(2), if the court from which the appeal is taken finds that the appeal is brought in good faith and is not frivolous and that the applicant is without sufficient funds to pay all or part of the costs of filing the appeal, it shall order all or part of those costs to be waived. The court may enter such orders limiting the record on appeal as it deems appropriate. The provisions of subdivision (e) of this rule apply to proceedings under this subdivision.

(f)(2) Transcript or electronic recording. If the court (i) waives all or part of the costs of taking the appeal pursuant to subdivision (f)(1), and (ii) finds that a

transcript or recording of all or a portion of any recorded hearing is necessary to support the appeal, the court shall ensure that a record of the hearing is made part of the record on appeal pursuant to M.R. App. P. 5 as follows:

(A) In a child protection proceeding, involuntary commitment proceeding, proceeding for the appointment of a guardian or termination of a guardianship for a minor, adoption, or proceeding to terminate parental rights as part of an adoption proceeding, the court shall order that a paper transcript be prepared at state expense;

(B) In any other proceeding, the court shall not pay for a paper transcript.

(i) If the proceeding was recorded electronically, the court may order that a copy of the recording of the hearing be provided at state expense in lieu of a transcript, or may direct the parties to prepare and submit for the court's approval a statement of the evidence in lieu of a transcript.

(ii) If the hearing was recorded by a court reporter, the court shall direct the parties to prepare and submit for the court's approval a statement of the evidence in lieu of a transcript. If the parties cannot agree on a statement of the evidence to submit for court approval, the appellant shall serve a proposed statement on the appellee within 21 days after entry of judgment or 14 days after the filing of the notice of appeal, whichever occurs first. The appellee may file and serve objections or propose amendments thereto within 7 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the court for settlement and approval and, as settled and approved, shall be included in the record on appeal.

Advisory Note - July 2016

The language added reflects the expanded jurisdiction granted to the District Courts pursuant to Public Law 2015, chapter 460, "An Act To Ensure a Continuing Home Court for Cases Involving Children," enacted by the 127th Maine Legislature, which became effective on July 29, 2016. Pursuant to that legislative act, the District Court now has jurisdiction over adoption, guardianship, and name change petitions involving minor children when there is a pending proceeding involving the child in the District Court (such as a divorce, child protection, or paternity matter). This change adds adoptions and terminations of guardianships of minors to the list of case types in which courts are required to provide paper transcripts at State expense to indigent litigants.

Advisory Committee's Note
July 1, 2010

M.R. Civ. P. 91(f)(1) is amended to clarify that when fees relating to an appeal are waived, the waiver of fees for a transcript or electronic recording of a hearing are limited as provided in Rule 91(f)(2). The words "From District or Superior Court" are removed from the title to avoid any confusion when the rule is applied in Probate Court proceedings pursuant to M.R. Prob. P. 91.

M.R. Civ. P. 91(f)(2) is amended to (1) clarify that the subdivision applies only if the court has waived fees on appeal, and (2) clarify the procedures for providing a record on appeal of any hearing in the trial court. There are several changes from former Rule 91(f)(2).

First, the rule clarifies that a paper transcript or copy of the electronic recording is provided at state expense only if the court has waived fees for the appeal pursuant to subdivision (f)(1).

Second, the rule changes the citation to the Maine Rules of Appellate Procedure from Rule 6 to Rule 5. Rule 5 of the Maine Rules of Appellate Procedure describes the contents of the record on appeal, including the transcript or statement in lieu of a transcript. Rule 6 merely provides the time in which a transcript must be filed.

Third, the rule lists in paragraph (A) those proceedings in which a paper transcript may be provided at state expense when the appellant qualifies for a waiver pursuant to Rule 91. The old rule authorized a transcript at state expense only in child protection proceedings. The new rule adds involuntary commitment proceedings, proceedings for the appointment of a guardian of a minor, and termination of parental rights proceedings that are part of adoption proceedings. The added proceedings, like child protection proceedings, require a transcript because they involve issues regarding fundamental rights to personal liberty, or to the care, custody and control of a minor.

Fourth, the rule expressly prohibits courts from ordering a paper transcript in any proceeding other than the proceedings listed in paragraph (A).

Fifth, in proceedings when a paper transcript is not provided at state expense, the rule permits, but does not require, the trial court to order that a copy

of the electronic recording be provided in lieu of a paper transcript where the hearing was electronically recorded. The former rule required the filing of the electronic recording. As an alternative, the rule permits the trial court to order the parties to prepare and submit to it for approval a statement of the evidence in lieu of a transcript. The process for preparation of this statement would be similar to that authorized by M.R. App. P. 5(d) for those circumstances when no transcript can be prepared. As with M.R. App. P. 5(d), the statement in lieu of a transcript, even if prepared by agreement, must be submitted to and approved by the trial court.

Sixth, the words "official court reporter" were replaced with "court reporter" to cover appeals from Probate Court where private court reporters are used. See M.R. Prob. P. 91.

Advisory Committee's Notes
August 1, 2009

The amendment makes several changes to Rule 91:

First, it removes the Latinism "In Forma Pauperis" from the Rule and makes other editing changes to make the Rule easier to read and understand.

Second, it adds a provision that the financial affidavit be kept confidential and separate from the case file. The affidavit could be viewed by any other party, but otherwise would be available only by court order.

Third, it adds provisions to clarify that motion fees, jury fees and other court filing fees that may be imposed during litigation may be waived.

Fourth, it requires that before service costs are ordered to be paid, the applicant demonstrate that low cost or no costs options for service have been attempted without success.

Fifth, it eliminates the reference in current subdivision (e) to waiver of costs for removal of cases from District Court, as the removal fee was eliminated at the time that identical filing fees were adopted for District Court and Superior Court actions.

Advisory Committee's Notes
January 1, 2006

Practice and implementation of M.R. Civ. P. 91(f) has indicated the need for clarification regarding the court's obligation to pay for a transcript once an appellant is found qualified for a waiver of costs pursuant to the rule. Some courts have taken the view that the reference to the term "record" in the rule refers to the clerk's record as described in M.R. App. P. 6(b) or the 21-day record formerly addressed in M.R. Civ. P. 74A(a) (abrogated, December 31, 2001). This record included any transcripts in the file, but did not include transcripts that had to be prepared by court reporters or the electronic recording division. Other courts construed the term "record" to include transcripts of hearings that had to be prepared. At one point, funds were sought from the Legislature to pay the additional costs of transcripts for civil appeals that were not constitutionally required but were requested by individuals filing appeals who asserted they could not afford to pay for a transcript to support their appeal. Funds for that purpose were not appropriated.

This amendment to the rules clarifies that when the court finds an individual qualified for a waiver of costs for appeal, this finding does not also commit the court to pay for a transcript of any hearing for which a transcript has not been prepared. In addition, the amendments to the rule describe alternatives available in lieu of court payment for preparation of a transcript. When the hearing that is subject to the appeal was electronically recorded and the court finds that: (1) the appellant financially qualifies for a waiver of costs; (2) the appeal is brought in good faith and is not frivolous; and (3) all or a portion of the transcript of the hearing is necessary to support the appeal, then a copy of the recording of the hearing will be filed with the Law Court as part of the record in lieu of a paper transcript. Depending upon the available hearing recording equipment, the electronic recording may be by cassette tape, CD, or DVD. Parties may obtain copies of the recording themselves as presently provided under M.R. Civ. P. 76H(e) and Administrative Order JB-05-14.

In cases where the proceedings were recorded by an official court reporter, there is no capacity to get a copy of an electronic recording, as there is no official electronic recording of the proceedings. Because the court system does not have

available funds to pay for transcripts in such circumstances, no transcripts can be provided. However, where the court finds that (1) an appellant is financially qualified for waiver of costs of appeal, and (2) the appeal is brought in good faith and is not frivolous, the parties are directed to prepare a statement in lieu of the record in accordance with M.R. App. P. 5(f) which shall then be presented to the Court in accordance with Rule 5(f) and, if approved, forwarded as the record in lieu of a transcript. A statement would have to be prepared and considered pursuant to M.R. App. P. 5(f) only if the available record was insufficient, because of a lack of a transcript, to present the issues for consideration on appeal.

These amendments leave unchanged the trial court's authority under Rule 91(f) to enter such orders limiting the record on appeal, as it deems appropriate.

Advisory Committee's Notes
May 1, 2000

The language of subdivisions (a) and (b) is revised to incorporate the presumption of in forma pauperis status for persons receiving poverty-based public assistance as set forth in the Administrative Order of March 1, 1995.

Advisory Committee's Notes
June 2, 1997

Rule 91 (b) is amended to incorporate the more objective test for facial merit provided in subdivision (f) and to clarify that no different standard is intended in the determination to waive fees for initial filing or for appeals.

Advisory Committee's Notes
March 1, 1994

Rule 91(f) is added to provide a procedure for the allowance of *in forma pauperis* appeals in both the District and Superior courts. The party seeking to appeal *in forma pauperis* is to file an application in the lower court containing the same information concerning financial status required by Rule 91(a) for leave to bring a civil action *in forma pauperis*. Thus, the application must be accompanied by an affidavit setting forth the party's income and expenses, the absence of any other resources from which the costs of the appeal may be paid, and the party's representation that the appeal is taken in good faith.

The application is to be granted if the court from which the appeal is to be taken finds that the appellant is proceeding in good faith, that the appeal is not frivolous, and that the appellant lacks sufficient funds. The rule thus abandons the standard that the Law Court established in *Melder v. Carreiro*, 541 A.2d 1293 (Me. 1988), under which in all cases except those involving a "fundamental right" an appellant seeking to proceed *in forma pauperis* must establish a reasonable likelihood of success on the appeal. While this standard might have the effect of limiting appeals in certain areas where *pro se* representation is common, the *Melder* rule in effect allows the judge who has decided the case on the merits to determine the question of the likelihood that the decision will be overturned. The requirement in Rule 91(f) that the appeal not be frivolous, which is similar to the language of Rule 76(f) allowing the award of expenses against a party in a frivolous appeal in the Law Court, should be adequate to deter unwarranted *in forma pauperis* applications.

Once the appropriate finding has been made, the court may use a number of methods to limit the costs of the appeal. In the first instance, the court need only order "limiting" the record as a further means of reducing costs. This step might involve asking the appellant to identify the specific issues being appealed, providing only a partial transcript, using findings of fact to narrow the issues, or using the provisions of Rule 74(d) for limiting the record to an agreed statement of the parties. *See also* Rule 76F(d).

Advisory Committee's Notes
1984

Rule 91 is added to provide generally for *in forma pauperis* proceedings in civil actions under the rules. This extension of the right to proceed *in forma pauperis* formerly provided for divorce and separate support and custody actions under Rules 80(l) and 80G(h) is deemed necessary because of the substantial increase in filing fees made by the April 1, 1983, amendments to Rule 54A and D.C.C.R. 54A.

Rule 91(a) is taken from present Rule 80(l)(1), with the addition of language making clear that that rule also applies to motions requiring service under Rule 4. *See*, *e.g.*, Rule 80(j).

Rules 91(b) and (c) are taken from present Rule 80(l)(2) and (3), with the addition of a requirement that the court find that the action is brought in good faith. This provision is necessary to prevent abuse of the rule and unnecessary resort to

the reimbursement provisions set forth in Rule 91(d). To eliminate doubt as to the time of entry, subdivision (b) makes clear that the action is to be treated as entered as of the filing, subject to dismissal without prejudice if the application is denied. Under subdivision (c), an application for costs of serving the complaint must be filed with the complaint. Thus, all in forma pauperis actions must be commenced by filing rather than by service. *See* Rule 3.

Rule 91(d) is taken from Vermont Rule of Civil Procedure 80(l)(3). It provides for recovery of any disbursements for entry or service against a non-indigent opponent if the plaintiff or moving party prevails. The court should assess the opponent's financial status in the same manner as an applicant's status is assessed upon granting leave to proceed *in forma pauperis*. The rule also provides for reimbursement by the plaintiff or moving party of any fees or costs waived or paid if his financial condition changes during the pendency of the action. Again, the court should apply the same standard in determining financial ability. The rule makes clear that the court Administrator may recover for the court all sums for which any party becomes liable under its provisions.