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MAINE RULES OF SMALL CLAIMS PROCEDURE

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RULE 1. SCOPE OF RULES

These rules govern the procedure in all small claims actions in the District Court and on appeal in the Superior Court. They shall be construed to secure the just, speedy, and inexpensive determination of every action in a simple and informal way.

RULE 2. COMMENCEMENT OF PROCEEDINGS

(a) Commencement by Filing; Fee. A small claims action is commenced by filing a statement of claim with the court on a form to be provided by the court and by payment to the clerk of a filing fee specified in the Court Fee Schedule.

(b) Waiver of Fees. The plaintiff may file an in forma pauperis application for waiver of the filing and service fees. If the court finds that the plaintiff does not have sufficient funds to pay such fee or fees, it shall order waiver thereof.

RULE 3. PLEADINGS

(a) Statement of Claim. The statement of claim shall contain (1) a short and plain statement of facts showing that the plaintiff is entitled to relief and (2) a request for judgment for the relief which the plaintiff seeks.

(b) Defenses. The defendant is not required to file a responsive pleading but may file such a pleading at any time up to the time of hearing. If no responsive pleading is filed, all facts in the statement of claim shall be taken as denied and any matter in defense may be offered at the hearing. Any responsive pleading may admit certain facts and deny others and may set forth defenses such as fraud, payment, or release in short and plain terms.

(c) Construction of Pleadings; Amendment. The statement of claim and any responsive pleading filed shall be so construed as to do substantial justice and may be amended at any time by order of court to conform to the evidence.

(d) Joinder of Claims. So long as the total amount claimed, exclusive of interest and costs, does not exceed the statutory amount a plaintiff may join in a single statement of claim one or more separate small claims against defendant.

(e) Joinder of Parties. Persons may join as plaintiffs or be joined as defendants in one small claims action if the claims asserted by or against each arise out of the same transaction, occurrence, or series of transactions or

occurrences and if any question of law or fact common to all of these persons will arise in the action.

RULE 4. SERVICE OF STATEMENT OF CLAIM; NOTICE OF HEARING

(a) Service by Plaintiff: Methods of Service. A plaintiff who files 3 or more small claims actions in a calendar month shall make service of the statement of claim on each defendant by any of the following methods:

(1) By mailing a copy of the statement of claim, first class, postage prepaid, to the person to be served, together with two acknowledgment forms provided by the court and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this paragraph is received by the sender within 20 days after the date of mailing, service may be made by another method provided herein. Service by this method is complete when the acknowledgment is signed by the defendant, provided that acknowledgment is returned to the sender.

(2) By mailing a copy of the statement of claim, first class, postage prepaid, registered or certified, restricted delivery, return receipt requested, to the person to be served. Service by this method is complete when the registered or certified mail is delivered and the receipt is signed by the person to be served, provided that the receipt is returned to the sender.

(3) By service of the statement of claim upon the person to be served by the sheriff or deputy or other person authorized by law or specially appointed by the court to serve process.

(4) By service by alternate means pursuant to M.R. Civ. P. 4(g), only upon motion and a showing that service cannot with due diligence be made by another prescribed method.

(b) Service by Clerk. For up to 2 cases per calendar month, a plaintiff shall have the option of either making service of the statement of claim on a defendant as provided in subdivision (a) of this rule or requesting the clerk to arrange for service as set forth below. A plaintiff who requests that the clerk arrange for service shall

(1) provide the service address for the defendant;

(2) file with the statement of claim an affidavit stating that, including the claim being filed, the plaintiff has filed fewer than 3 small claims actions statewide during that calendar month; and

(3) pay to the clerk a fee specified in the Court Fee Schedule for each defendant joined and to be served in the action. Service by the clerk shall be by the method described in subdivision (a)(1). If service cannot be completed by the method described in subdivision (a)(1), the clerk shall return the statement of claim and any related paperwork to the plaintiff, who must complete service by the method described in subdivision (a)(2) or (a)(3), or, with approval of the court, by the method described in subdivision (a)(4).

(4) If the court has approved a plaintiff's request to have service costs paid by the court pursuant to M.R. Civ. P. 91(c), the plaintiff can request that the clerk arrange for service by the method described in subdivision (a)(1) or (3) as provided by the court's order on the plaintiff's fee waiver request.

(c) Service on Individual Defendant. If the defendant is an individual and if service is made by the method described in subdivision (a)(1) or (a)(2), the defendant shall sign the acknowledgment or return receipt. If service is made by the method described in subdivision (a)(3) it shall be upon the defendant in hand or by leaving a copy of the statement of claim at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. If service is made by alternate means, it shall be completed as ordered by the court.

(d) Service on Corporate Defendant. If the defendant is a corporation, service may be made by any of the methods in subdivision (a) upon any officer, director or general agent, or if no such officer or agent be found, to any person in the actual employment of the corporation or to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, or in any manner permitted in M.R. Civ. P. 4(d)(9). The acknowledgment, return receipt or other return of service, or in lieu thereof, an affidavit by the plaintiff, must indicate the capacity of the person served. If service is to be arranged by the clerk, the plaintiff must provide the clerk with the name and address of the person to be served.

(e) Return of Service. If service is arranged by the plaintiff, the plaintiff must file with the clerk the return of service, which shall consist of

(1) the signed acknowledgment if the method described in subdivision (a)(1) is used;

(2) the signed return receipt if the method described in subdivision (a)(2) is used;

(3) the return of service signed by the sheriff, deputy or other authorized server if the method described in subdivision (a)(3) is used; or

(4) an affidavit demonstrating that publication or compliance with the court's order has occurred, in compliance with the requirements of M.R. Civ. P. 4(g)(3) if the method described in subdivision (a)(4) is used.

The return of service must be filed with the court within 20 days of the date of service.

(f) Notice of Hearing. Notice of hearing date and time shall be mailed to the plaintiff and defendant by the clerk at the addresses provided on the statement of claim unless the clerk is notified by the party of a different address.

(g) Time of Notice. The notice of hearing must be mailed to the parties not less than 10 days prior to the date of the hearing.

RULE 5. SETTLEMENT AND MEDIATION

At the time set for hearing, the court may require the parties to meet in order to attempt to settle their dispute. Mediation shall be conducted pursuant to the process established by Rule 92(c) of the Maine Rules of Civil Procedure. Every settlement resulting from mediation shall be submitted for court approval, and the court shall give its approval to every reasonable settlement. An approved settlement shall have the force and effect of a judgment and may not be appealed. If mediation efforts fail or mediation proves inappropriate, or if the mediated settlement is unreasonable, the court shall hear the matter without undue delay.

RULE 6. HEARING

(a) Recording. Any hearing for which one of the parties has requested a recording shall be recorded as provided in Rule 76H of the Maine Rules of Civil Procedure. The request for recording may be made at the time of the hearing.

(b) Evidence. The rules of evidence, other than those with respect to privileges, shall not apply. The court may receive any oral or documentary evidence, not privileged, but may exclude any irrelevant, immaterial, or unduly repetitious evidence. The court shall assist in developing all relevant facts. The hearing shall be conducted in a manner designed to provide the parties with full opportunity to present their claims and defenses.

(c) Consolidation; Separate Hearings.

(1) *Consolidation.* When small claims actions involving a common question of law or fact are pending either in the same division or different divisions, the court may order a joint hearing of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(2) *Separate Hearings.* The court in furtherance of convenience or to avoid prejudice may order a separate hearing of any small claim or of any separate issue, or of any number of claims or issues.

(3) *Convenience and Justice.* In making any order under this rule, the court shall give due regard to the convenience of parties and witnesses and the interests of justice.

RULE 7. CONTINUANCES

Continuances, while not favored, may be granted by the court at any time for good cause.

RULE 8. JUDGMENT; COSTS

(a) Scope; Installments. A judgment may provide monetary relief or equitable relief limited to orders to return, reform, refund, repair, or rescind. The court may order payment of a monetary judgment in installments if both parties are present at the hearing.

(b) Judgment Upon Failure to Appear or Prosecute. If the plaintiff fails to appear at the hearing or take other steps required by these rules prior to hearing, the court may order entry of a judgment of dismissal with or without prejudice. If the defendant fails to appear at the hearing, the court may order entry of judgment by default for the relief claimed by the plaintiff in the statement of claim. In either case, the court shall review the claim prior to ordering entry of judgment.

(c) Judgment After Hearing. Upon completion of the hearing, the court shall promptly enter judgment for the prevailing party for the relief to which that party is entitled, even if that party has not demanded such relief.

(d) Costs. If the plaintiff prevails, the plaintiff shall be awarded costs of service, if service was made by methods authorized in Rule 4(a)(2) or (3), and filing in addition to the amount of damages awarded unless the court otherwise directs.

(e) Entry of Judgment. Notation of a judgment on the docket constitutes the entry of the judgment, and the judgment is not effective before such entry.

(f) Notice of Judgment. The clerk shall provide a copy of the notice of judgment to the plaintiff and the defendant either in hand or by ordinary mail. The notice of judgment shall contain:

- (1) The name of the prevailing party;
- (2) The time allowed for appeal;
- (3) The amount of judgment and costs;
- (4) Other court-ordered action; and

(5) A statement that if the judgment is not satisfied, a disclosure hearing may be held at the request of the plaintiff.

Failure of the clerk to send copies as herein provided does not affect the time to appeal or relieve, or authorize the court to relieve, a party for failure to appeal within the time allowed, except as permitted in Rule 11(a).

RULE 9. RELIEF FROM JUDGMENT

On the written request of a party setting forth reasons showing good cause, the court may, with or without hearing, correct, or relieve a party from, the effect of a judgment in accordance with Rule 60 of the Maine Rules of Civil Procedure.

RULE 10. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

Rule 62 of the Maine Rules of Civil Procedure applies to small claims actions under these rules, so far as applicable.

RULE 11. APPEAL

(a) Appeal. An aggrieved party may appeal from a judgment of the District Court in a small claims action to the Superior Court in the county in which the division of the District Court entering judgment is located. The time within which an appeal may be taken shall be 30 days from the entry of the judgment appealed from, except that upon a showing of excusable neglect the court may extend the time for filing the notice of appeal for up to 30 days from the expiration of the original time set by this rule. If a timely notice of appeal is filed by one party, any other party may appeal any issue in the action by filing a notice of appeal within 14 days of the date on which the first notice of appeal was filed.

(b) Notice of Appeal; Fee; Entry. The appeal shall be taken by filing a notice of appeal with the clerk on a form provided by the court. The clerk shall notify other parties as provided in Rule 2(a)(5) of the Maine Rules of Appellate Procedure. With the notice of appeal the appellant shall pay to the clerk of the District Court the Superior Court entry fee and the costs of forwarding to the Superior Court the record on appeal specified in subdivision

(d) of this rule. The clerk shall enter the appeal promptly in the Superior Court.

(c) Dismissal on Stipulation. An appeal may be dismissed by stipulation filed with the clerk, or, after entry in the Superior Court, with the clerk of the Superior Court.

(d) Appeal on Questions of Law or by Jury Trial De Novo; Record; Transcript.

(1) An appeal by a plaintiff shall be on questions of law only and shall be determined by the Superior Court without jury on the record on appeal prepared as provided in paragraph (3) of this subdivision.

(2) An appeal by a defendant may be on questions of law only or, on any issue so triable of right, by jury trial de novo at the election of the defendant. A defendant who seeks a jury trial de novo shall briefly state the grounds of the appeal and demand a jury trial in writing on the notice of appeal and shall file with the notice an affidavit or affidavits meeting the requirements of Rule 56(e) of the Maine Rules of Civil Procedure, 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 de novo. When jury trial has not been demanded, the appeal shall be determined by the Superior Court as provided for plaintiffs' appeals in paragraph (1) of this subdivision. When jury trial is demanded, the record on appeal shall be prepared as provided in paragraph (4) of this subdivision, and the action shall be tried to a jury by the Superior Court in accordance with Rule 80L of the Maine Rules of Civil Procedure.

(3) Rule 76F of the Maine Rules of Civil Procedure applies to the preparation and transmission to the Superior Court of the record on appeal in small claims actions when jury trial de novo has not been demanded.

(4) When jury trial de novo has been demanded, the record on appeal shall consist of the statement of claim, any responsive pleading filed, the return receipt or other return of service upon the defendant, any documentary evidence or other exhibit received at the hearing, certified copies of all docket entries, a copy of the notice of judgment prepared as

required by Rule 8(f), any other portions of the District Court record designated by either party as necessary for review of any independent question of law presented, and a copy of the notice of appeal and defendant's affidavit or affidavits filed or required in paragraph (2) of this subdivision. The record on appeal prepared in accordance with this paragraph shall be filed in and acknowledged by the Superior Court, and may be corrected or modified, as provided in Rules 76F(a) and (b) of the Maine Rules of Civil Procedure.

(5) Rule 76H(d) of the Maine Rules of Civil Procedure applies to the ordering, preparation and filing of the transcript on appeal where jury trial de novo has not been demanded.

(e) Briefs and Oral Arguments. Rule 76G of the Maine Rules of Civil Procedure applies to the filing of briefs and the time of oral argument on appeal when jury trial de novo has not been perfected.

(f) Judgment on Appeal. The Superior Court may enter a judgment reversing or affirming, in whole or in part, the judgment appealed from and shall thereupon remand the case to the District Court from which it originated for entry of the appropriate judgment, or for any further proceedings.

RULE 12. DISCLOSURE

(a) Notice of Disclosure Hearing. If the judgment debt is not paid within 30 days of the date of the entry of the judgment, a judgment creditor may disclose a judgment debtor by payment of the filing fee specified in the Court Fee Schedule and filing with the clerk either

(1) a notice of disclosure hearing with a return of service if service is to be completed by the judgment creditor in accordance with subdivision (b); or

(2) a written request for disclosure hearing or if service is to be arranged by the clerk in accordance with subdivision (c).

(b) Service by Judgment Creditor. A judgment creditor who has filed 3 or more small claims actions in a calendar month shall make service of the notice of disclosure hearing on the judgment debtor as provided in Rule 4(a)(1),(2), or (3), and the return of service must be filed as provided in Rule

4(e) except that it must be filed no later than 2 days prior to the hearing. The judgment creditor must obtain a hearing date and time from the clerk, and the notice of disclosure hearing shall contain that date and time.

(c) Service by Clerk. A judgment creditor who has filed fewer than 3 small claims actions in a calendar month shall have the option of making service of the notice of disclosure hearing on the judgment debtor as provided in Rule 4(a)(1), (2), or (3), or of making a written request to the clerk to arrange for service, as set forth below. A judgment creditor who requests that the clerk arrange for service shall

(1) provide the service address for the defendant;

(2) file an affidavit stating that the judgment creditor has filed fewer than 3 small claims actions statewide during that calendar month; and

(3) pay to the clerk a fee specified in the Court Fee Schedule. Service by the clerk shall be by the method described in Rule 4(a)(1). If service cannot be completed by that method, the clerk shall deliver the notice of disclosure hearing to the judgment creditor so that the judgment creditor may arrange for service by Rule 4(a)(3) except that such service may be made in hand only.

(4) If the court has approved a judgment creditor's request to have service costs paid by the court pursuant to M.R. Civ. P. 91(c), the judgment creditor can request that the clerk arrange for service by the method described in M.R.S.C.P. Rule 4(a)(1) or (a)(3) as provided by the court's order on the judgment creditor's fee waiver request.

(d) Time of Notice. The notice of disclosure hearing must be served upon the judgment debtor not less than 7 days prior to the disclosure hearing.

(e) Disclosure Proceedings. Disclosure proceedings shall comply with the requirements of 14 M.R.S. § 3120 et seq., except that the subpoena and execution requirement of those sections shall be met by the notice of disclosure hearing described above.

(f) Enforcement of Judgments in Other Actions. Nothing herein shall prohibit or prevent a judgment creditor from obtaining an execution and from proceeding to enforce a judgment in the same manner as in other actions.

RULE 13. JURISDICTION AND VENUE UNAFFECTED

These rules shall not be construed to extend or limit the jurisdiction of the District Court or the venue of actions therein.

RULE 14. DEFINITIONS

(a) Governing Rule. Rule 83 of the Maine Rules of Civil Procedure applies to small claims actions.

(b) Incorporation of Amendments. Whenever any of the Maine Rules of Civil Procedure is incorporated by reference, any amendment thereof, whether prior or subsequent hereto, shall be incorporated herein, unless the order promulgating any subsequent amendment expressly states the contrary.

RULE 15. PROCEDURE WHEN NONE IS PRESCRIBED

When no procedure is specifically prescribed by these rules, the court shall proceed in a manner consistent with analogous provisions of the Maine Rules of Civil Procedure, or if those rules make no analogous provision, in any lawful manner not inconsistent with the Constitution of the State of Maine or any applicable statute or rule of court, bearing in mind the purpose of the Small Claims Court Act to provide "a simple, speedy and informal court procedure for the resolution of small claims."

RULE 16. REPRESENTATION

(a) By Attorney. A party may be represented by an attorney in a small claims action.

(b) Corporation, Partnership, Sole Proprietorship, Governmental Entity. In a small claims action, a corporation, partnership, sole proprietorship, or governmental entity may be represented by an officer or employee even though not an attorney.

RULE 17. TITLE

These rules may be known and cited as the Maine Rules of Small Claims Procedure.

RULE 18. EFFECTIVE DATE

(a) Effective Date of Original Rules. These rules will take effect on November 1, 1982. They govern all proceedings and actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible but would work injustice, in which event the former procedure applies.

(b) Effective Date of Amendments. Amendments to these rules will take effect on the day specified in the order adopting them. They govern all proceedings in actions brought after they take effect, and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when they take effect would not be feasible or would work injustice, in which event the former procedure applies.