

Important Developments in Maine Family Law

A View from the Bench and the Bar

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Hilton Garden Inn, Freeport

CLE Credits: 6.0



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A MAINE STATE BAR ASSOCIATION



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Schedule and Faculty

8:00 REGISTRATION

9:00 DISCOVERY ISSUES & FINANCIAL STATEMENTS

A discussion of discovery for family law cases, including financial statements, interrogatories, requests for production, depositions, and requests for admissions, as well as sanctions. How do you get what you want—and what to do when you don't.

Alicia M. Cushing, Esq., Lavoie Law, Portland

Catherine C. Miller, Esq., Miller Law & Mediation LLC, Portland

10:00 BREAK

10:15 ADR & MEDIATION

Maine has a strong public policy favoring the use of alternative dispute resolution in divorce and other family law cases. Various ADR processes now exist, including mediation, reference, arbitration, judicial settlement conferences, and collaborative law. Each process is distinct and has its own set of laws, rules, and standards. This presentation will provide an overview of those processes.

Heather T. Whiting, Esq., Mittel Asen LLC, Portland

11:15 CHILD SUPPORT CALCULATIONS IN OUR NEW WORLD

The Maine Parentage Act provides for three parents on a birth record, *de facto* parents with parental rights and responsibilities, and holding-out parents. There are limitations on the time in which a person may challenge parentage. This presentation will share how the assistant attorney generals and child support enforcement agents are calculating child support for these new families. There will also be a discussion of challenges to parentage.

Debby L. Willis, Esq., Office of the Attorney General, Augusta

12:15 LUNCH (INCLUDED)

Afternoon Panel Discussion: Schedule and Faculty

1:00 A VIEW FROM THE BENCH ON THE MAINE PARENTAGE ACT AND THE HOME COURT

Deputy Chief Judge Susan Oram, Maine District Court, Lewiston

2:00 JURISDICTION AND VENUE IN ADOPTIONS AND MINOR GUARDIANSHIPS: HOME COURT AND BEYOND

Over the past two years, the Maine Legislature has enacted important changes to the jurisdiction and venue statutes for adoption and minor guardianship cases. This presentation will provide an overview of the new provisions and describe the scenarios in which they may have an effect.

Professor Deirdre M. Smith, University of Maine School of Law, Portland

3:00 BREAK

3:15 THE “NEW” GAL RULES AND BEST PRACTICES

Dana E. Prescott, Esq., Prescott Jamieson Murphy Law Group LLC, Saco

4:15 ADJOURN

Alicia M. Cushing, Esq.

Attorney Cushing is a partner of the law firm LAVOIE LAW in Portland, Maine, where she concentrates her practice in all areas of family law. Alicia graduated from the University of Southern Maine in 2004 and from the University of Maine School of Law in 2007. She has been a rostered Guardian ad litem since 2007. Alicia is a member of the Cumberland Bar Association, the York Bar Association, the Maine State Bar Association, and the Edward Gignoux Inns of Court. Alicia is a member of the Family Law Section of the Maine Bar Association, where she currently serves as section chairperson. In 2015, Alicia joined the Kids First Center as a facilitator for the Kids First Program, a four-hour workshop for parents designed to help address problems and reduce the negative effects of separation and divorce on children.

Catherine C. Miller, Esq.

Attorney Miller is the founder of Miller Law & Mediation, LLC. She is a member of the Maine and New Hampshire State Bar Associations. She has more than 18 years of experience practicing law and over 15 years practicing family law exclusively. Over the past fifteen years, Catherine has continued her study of issues pertaining to children and families, taxes, finances, alternative dispute resolution, mediation and conflict management. She is a Certified Mediator, has trained in the Collaborative Law model, and is a rostered Guardian ad Litem. She served as Maine State Bar Association Family Law Section (Chair – 2006 – 2008), (Vice Chair -2005 – 2006), (Secretary -2004-2005), and Kids First Center Board of Directors (2006-2015). Catherine is a graduate of Le Moyne College B.A. (1993) and the University of Maine School of Law, (J.D. 1997). She is admitted to practice in Maine and New Hampshire, and in the U.S. District Courts for Maine and New Hampshire.

Honorable Susan E. Oram

Judge Oram is with the Maine District Court in Lewiston.

Dana E. Prescott, Esq.

Attorney Prescott holds an MSW from Boston College and a PhD from Simmons College in social work and has been licensed to practice law in federal and state courts in Maine and Massachusetts since 1983. He is a trial lawyer with extensive ADR experience and is a partner at Prescott, Jamieson, & Murphy, Law Group, LLC, Saco, Maine, a member of NOFSW, a Fellow and Board Member of the International Academy of Family Lawyers, a Fellow of the American Academy of Matrimonial Lawyers, and has served on various boards and committees related to policy, court rules, training and education programs, and legislation. He is a rostered and active court-appointed guardian ad litem and currently serves as Chair of the Maine GAL Review Board. Mr. Prescott has published and presented extensively on court systems, forensic and expert roles, as well as ethics and evidence-informed practices for family lawyers, judges, social workers, guardians ad litem, and other professional groups. He serves as an adjunct faculty member in the MSW programs at Simmons College and Boston College teaching policy and advocacy courses.

Professor Deirdre M. Smith

Professor Smith is Professor of Law and Director of the Cumberland Legal Aid Clinic at the University of Maine School of Law, where she teaches Evidence and supervises student attorneys in the Law School's clinical legal education program. Her most recent scholarly research has focused on minor guardianship, child protection, and adoption laws. She is a member of the MSBA's Family Law Section and served on the Maine Family Law Advisory Commission's Working Group on the Maine Probate Code. She is a graduate of the University of Pennsylvania and the University of Maine School of Law.

Heather T. Whiting, Esq.

Attorney Whiting is an attorney at MittelAsen, LLC, where she focuses her practice on divorce, parental rights and responsibilities, mediation, and estate planning. She is a rostered Guardian ad litem and also represents clients in probate court, handling guardianships, adoptions, and the administration of estates. Heather began her legal career as a corporate lawyer, working for large firms in Washington, DC and Portland. She is a past Chair of the Family Law Section of the Maine State Bar Association and a member of the Maine Collaborative Law Alliance. She is a graduate of the American University Washington College of Law in Washington, DC.

Debby L. Willis, Esq.

Attorney Willis is an assistant attorney general and Chief of the Child Support Division in Office of the Attorney General. She has undergraduate degrees from Campbell University, earned while serving in the US Army, a law degree from North Carolina Central University and a LL.M. in tax law from Boston University. Debby practiced international transactional work in the Middle East for 8 ½ years before returning to her home state. She has devoted the last 21 years to public service and family law, concentrating on child support.

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DISCOVERY ISSUES & FINANCIAL STATEMENTS

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MAINE FINANCIAL STATEMENTS and DISCOVERY

Submitted by:

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Financial Statement Authority

Under Maine Rules of Civil Procedure, Rule 108(c) and (d)(1)(3), parties must file a financial statement in a divorce and/or judicial separation action if there is any dispute as to property, spousal support, or counsel fees. Specifically, the Rule states:

- (c) Financial Statements. In any divorce or judicial separation action in which there is a dispute about either a division of property or an award of spousal support or counsel fees, the parties shall exchange and file a financial statement showing the assets, liabilities, and current income and expenses of both parties and indicating separately all marital and non-marital property. **The financial statement shall be filed within 21 days of the Family Division Scheduling Order or before mediation, whichever is earlier.**

...

- (d)(3) Any financial statement or child support affidavit filed shall be kept separate from other papers in the case and shall not be available for public inspection, but shall be **available, as necessary, to the court, the attorneys whose appearances are entered in the case, the parties to the case, their expert witnesses, and public agencies charged with responsibility for the collection of support.**

The failure to file a timely financial statement, as required by the Rules, could result in an order of sanctions by the Court as set forth in M.R.Civ.P 37(b)(2).

Discovery Authority

Maine Rules of Civil Procedure, Rules 26 through 37 and Rule 112, provide for the process by which parties may obtain information during the course of litigation – thus avoiding trial by ambush. Rule 26 specifically provides:

- (a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

- (b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:
- (1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

When to File a Financial Statement

The Maine Rules of Court requires the financial statement to be filed within 21 days of the Family Division Scheduling Order or before mediation, whichever is earlier. A statement should be filed in any case when property is in dispute.

In cases in which there is no dispute as to real estate, personal property, spousal support, or attorney's fees, the parties are not required to file a financial statement. Instead, parties may submit a *Certificate in Lieu of the Financial Statement* to the Court.

Financial statements also must be updated prior to hearing or trial pursuant to the case's pretrial order.

Preparing a Financial Statement:

Pursuant to Maine Rules of Civil Procedure, Rule 108(d)(2), each financial statement is a sworn statement. The affiant (the client) is attesting to the truth and accuracy of its content. Upon completion, the client signs the form under the following language:

This Financial Statement is complete and is based on my personal knowledge, information, and belief, and to the extent it is based on information, I believe such information to be true.

A client should be provided a blank financial statement at the initial consultation and be given specific instructions as to the information that will be necessary to properly complete the financial statement. The client will need time to gather the information and complete a draft.

Not all spouses have similar financial information. Many marriages have a "bookkeeper" of the relationship. Some clients are able to recite accounts, account balances, and even account numbers easily. Others are unaware of retirement accounts, balances on mortgage, or bank accounts.

A financial statement may need to be revised or updated during the course of the litigation. A general practice, labeling the first financial statement as a “preliminary financial statement” sets the stage that the better quality of information or detail may be discovered and supplemented at a later date.

Part II of the financial statement is a summary of all assets and debts. The assets and debts need to be a) identified; b) valued; and c) classified as either “marital” versus “non-marital” interest.

Part III of the financial statement includes a budget to evaluate income and expenses. While this is only required in cases in which spousal support is an issue, an attorney should recommend that this section be completed in all cases to evaluate the affordability of the current or proposed living arrangements.

The attorney should review the budget carefully to evaluate reasonableness. An overstated or an understated budget can be problematic.

Valuing Property

Under Maine Law, Title 19-A, Section 953, marital property owned by either spouse shall be divided based upon an equitable distribution. The statute defines marital property, as well as the general presumptions that guide the Court in dividing marital property.

Each asset and debt must have a specific valued assigned to each. The failure to declare values will result in the Court’s assigning of values in order to make a just division of marital property as outlined by Section 953.

The values of property captured on a financial statement should be at the time the financial statement is completed, not a future date or based upon any contingencies. Macdonald v. Macdonald, 532 A.2d. 1046 (Me. 1987), *aff’d on rehearing*, 559 A.2d. 780 (Me. 1989). The value of an asset should not be adjusted based upon a contingency that may or will occur in the near future. For example, a real estate commission on a house to be sold in the future should not be deducted from the value of the asset unless the settlement or judgment will order that the sale be accomplished.

Not all assets can be straightforward to value. A few tips when valuing:

1. Real Estate - Under Maine law, property owners are competent to testify as to the fair market value of their property. In the event opposing party offers a different valuation based upon an expert opinion, the Court will have to independently review the evidence presented and establish an independent valuation of the property.

A real estate appraisal conducted by a certified real estate appraiser may be necessary. A previously completed appraisal beyond six months may be deemed outdated.

If there is a pre-marital interest to real estate, evidence as to the value of the real estate and equity as of the date of marriage will be necessary. Additionally, consideration must be given as to whether the value of the property appreciated due to marital effort (improvements and pay down of mortgage) and/or market forces.

2. Motor Vehicles - The current Kelley Blue Book value is traditionally accepted for current motor vehicle value. Kelley Blue Book values for virtually all motor vehicles can be found at <http://www.kbb.com>.
3. Bank Accounts and Retirement Accounts - Retirement accounts are generally held in the name of one party. Often, there is a non-marital component to the retirement account. Counsel should inquire whether the client has a copy of the retirement statement from the date of the marriage to sustain his/her burden of proof.

The type of retirement account and the plan name should be clearly identified so that it can be properly identified in a judgment or settlement agreement. Counsel should consider whether the retirement account is a qualified account (such as 401(k)) or a non-qualified account (such as an IRA).

4. Life and Disability Insurance - While not all insurance policies have a cash value or are considered as an asset, the existence of life insurance and disability policy is useful future stability of a spouse and can secure child support and spousal support.

There are two main types of life insurance policies: term and whole life insurance. Term life insurance vests when the insured becomes deceased, but does not have a cash value. Term insurance also has an ongoing monthly or yearly premium payment. Whole life insurance, on the other hand, is generally purchased as an asset in a lump sum or over time and has a "cash surrender value" which can be borrowed against or redeemed.

5. Business Interests - The current value of a business is not easily determined and may require an expert valuation. There are three approaches to value any business or business interest: (1) the asset approach; (2) the income approach; and (3) the market approach. A valuation must also distinguish personal goodwill from enterprise goodwill. Personal goodwill is based upon the earning capacity of the spouse resulting from his or her reputation, knowledge, and skill. Enterprise goodwill, on the other hand, is based upon the intangible factors, including reputation, customers, marketability, employees, etc. Professional goodwill is not a divisible asset (but could be useful in considering income for support). Enterprise goodwill, on the other hand, can be valued and treated as a marital asset for the purposes of an equitable division.

6. **Debts** - It is important to disclose all debts, as well as the name of the debtor. A credit report can verify any missing information or uncertainty. Spouses routinely obtain credit in the other person's name. A divorce judgment should carefully allocate debt in a way to protect the spouse for whom the debt is held. In the event the collateral is being set aside to one party, the loan will often have to be rewritten or refinanced to release the other party from legal liability.

Disclosing Income

A financial statement must disclose all sources of income (i.e., employment wages, contract work, interest, bonuses, unemployment, stock options, disability, worker's comp, retirement income, etc.) must be disclosed.

When to Initiate Discovery

In any family matter, a party may obtain discovery on financial issues. In cases where financial statements are required under Rule 108(c), discovery may be initiated only after the parties have filed and exchanged the financial statements. If the exchange does not occur, the party who has filed a financial statement may serve discovery after the time period has expired as provided in Rule 108(c).

Financial statements can have a major impact on the scope of discovery requests. For example, a complete financial statement identifies areas where more information is necessary. It also enables the tailoring of requests to be case-objective specific - which is both helpful as a practitioner and cost effective for the client.

On other issues, including parental rights and responsibilities, discovery may be served only by order of the court for good cause shown.

Depositions

Depositions in a family matter are governed by Family Division Rule 112(c) and Maine Rules of Civil Procedure 27(A)(4), 30-32. Practically, and generally, depositions are used in four ways: to perpetuate testimony; to obtain and develop information from an expert; to obtain specific information by the use of a deposition subpoena; and to allow the attorney to form a subjective impression about a witness and how that witness might be received by a finder of fact. Although there may be a strategic or tactical reason for taking a deposition very early in the pretrial discovery process (e.g., when it is expected that a witness might not be available within the jurisdiction or there are health issues), depositions generally occur after interrogatories have been answered. Except in the rare occasion when there might be a court order to the contrary, depositions are not filed with the court, but are exchanged between or among the parties.

Requests for Admissions

Although not commonly used in family law cases, requests for admissions can be very useful to narrow issues in dispute in preparation for a trial. M.R.C.P. Rule 36 governs requests for admissions regarding relevant facts and genuineness of documents and signatures. The opposing party's response to requests for admissions is due within thirty days. Unlike

interrogatories or document requests, requests for admissions are filed with the court. If no response to the request is filed with the court within thirty days, then the requests shall be deemed admitted.

Sanctions

Maine Rules of Civil Procedure 26(g) governs discovery motions. If counsel has a discovery dispute, they must first enter in good-faith efforts to resolve it. Failing resolution, the moving party shall request a hearing from the court and in a letter succinctly describe the nature of the impasse and the relief requested. The court will then decide the issue or schedule a conference and issue an order thereafter.

Sanctions for failure to comply with a discovery request and subsequent order are governed by Maine Rules of Civil Procedure Rule 37. While there are moderately different sanctions that may be applied depending on the nature of the discovery request, generally the sanctions will involve imposition of attorney's fees, a finding of contempt, an order prohibiting the offending party from introducing evidence, and allowing the facts to be established pursuant to the claim of the party obtaining the responses. 37(b)(1) governs failure to respond to a question at a deposition after being court ordered to do so.

Protective Orders and Motions to Seal

Protective orders are governed by Maine Rules of Civil Procedure 26(c). An individual, whether or not a party, from whom discovery is sought may ask the court to issue an order curtailing the scope of the discovery request. The Rule lists 10 discrete but unrestricted types of orders the court may issue for good cause to protect are individual from annoyance, embarrassment, oppression, undue burden, or expense.

A party's financial statement is filed under seal pursuant to Maine Rules of Civil Procedure 108(d)(3). Rule 26(c)(6) and (8) allow the court to seal deposition transcriptions and documents or information. The court can also order that any hearings occur in a setting limiting attendance by anyone other than parties or witnesses.

Supplementation of Responses

Pursuant to Rule 26(e), a party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to information acquired, except as follows: the party is under a duty seasonably to supplement his response with respect to a question concerning the identity and location of persons having knowledge of discoverable matters and the identity of each person expected to be called as an expert witness at trial. A party is also under a duty to amend a prior response if the party knows the response was incorrect when made or he knows the response though correct when made is no longer true.

Practical Tips

- The final product must be true and accurate, as well as complete.
- It is the attorney's responsibility to perform his or her due diligence in order to ensure that the information is accurate and reliable. The attorney's role is to support the client in identifying his/her assets and debts, gathering back-up documentation, and accurately capturing financial information. A careful review and analysis of information reported by the client is necessary before signing and filing
- The client may often refer to outside documents and statements, such as bank documents, mortgage statements, retirement account statements, deeds, etc. in preparing the financial statement. A client should return the statement in draft along with the supporting documentation used to complete the draft financial statement. Any incomplete information can be easily obtained and verification can be offered to opposing counsel should any questions arise.
- Attorneys preparing financial statements should air on the side of inclusive, rather than exclusive. While the actual forms are limited in space, the electronic version can be expanded upon to include additional detail. Financial statements lacking adequate detail generally result in the opposing party serving discovery requests, which are burdensome and time consuming to prepare and respond.
- Discrepancies in the financial statements of the opposing party should be examined closely. At times, the discrepancy may be an accounting error; other times it could be more significant. It is recommended that the discrepancy is discussed with opposing counsel as soon as it is found. If counsel is unable to offer a plausible explanation, more detailed discovery may be needed.
- Even though a financial statement is sworn to be true and notarized, the client may need to revise previously filed financial statements. A general practice, labeling the first financial statement as a "preliminary financial statement" sets the stage that the better quality of information or detail may be discovered and supplemented at a later date. Whereas divorce litigation may continue upward of 12 months, information does frequently change and require updates. If a later-filed financial affidavit differs from an earlier one, it is important to explain the differences. The client should be prepared to explain the changes or discrepancy at hearing.
- A Guardian *ad litem* can obtain past medical and mental health records of a party or a child and can order current mental health evaluations and psychological work-ups. Because a discussion of these records will be used in the Guardian's written report, the need for the request of non-financial discovery is mitigated when the case involves the services of a Guardian ad litem.

ADR & MEDIATION

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Alternative Dispute Resolution

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MEDIATION

Getting There:

1. 19-A M.R.S. § 251 (general)
2. M.R. Civ. P. 92(b) (family matters)
3. 19-A M.R.S. § 851 (judicial separation)
4. 19-A M.R.S. § 1804 (grandparent rights)
5. Pursuant to Settlement Agreement/contract

(Kinter v. Nichols, 1999 ME 11, 722 A.2d 1274

Note: 19-A M.R.S. § 4010(5) (PFA prohibition) and
waiver 19-A M.R.S. § 251(2)

MEDIATION, cont'd



TYPES:

1. Court mediation

- CADRES 4 M.R.S. § 18-B
- M.R. Civ. P. 92(b)(5): fee, 2 sessions, good faith requirement, participation by phone
- Bad faith conduct 19-A M.R.S. § 251(4)
- But practical problem with proof M.R. Evid. 408(b)
- Motion Day Mediation

MEDIATION, cont'd



2. Private Mediation

- Resolution in a relaxed setting with a mediator of choice on own schedules
- May take place during or outside of business hours, with or without attorneys, and may be held in series of very short blocks of time or over the course of one or more days.
- More expensive but can result in cost savings
- Co-mediation an option but not common practice

MEDIATION, cont'd



3. Community Mediation

- Free or sliding-scale rates
- Opportunity Alliance

www.opportunityalliance.org

- 1-2 volunteer mediators work with parties and nonparties

MEDIATION, cont'd



Rules to Consider

- 19-A M.R.S. § 2004(1)(A), (B) child support modifications; must exchange affidavits and documents
- M.R. Civ. P. 108 requires parties to file and exchange financial statements “within 21 days of the Family Division Scheduling Order or before mediation, whichever is earlier,” and was adopted specifically to address the disfavored practice of parties waiting until mediation to exchange the statements

MEDIATION, cont'd



- **M.R. Evid. 408(a)**

Settlement Discussions. Evidence of furnishing or offering or promising to furnish, or accepting or offering or promising to accept, a valuable consideration in compromise or attempting to compromise a claim is not admissible to prove liability for, invalidity of, or amount of the claim or any other claim. Evidence of conduct or statements made in compromise negotiations or in mediation is also not admissible on any substantive issue in dispute between the parties or to impeach a witness through a prior inconsistent statement or contradiction.

- **M.R. Evid. 408(b)**

Evidence of conduct or statements by any party or mediator at a mediation session undertaken to comply with any statute, court rule, or administrative agency rule or in which the parties have been referred to mediation by a court, administrative agency, or arbitrator or in which the parties and mediator have agreed in writing or electronically to mediate with an expectation of confidentiality, is not admissible for any purpose other than to prove fraud, duress, or other cause to invalidate the mediation result in the proceeding with respect to which the mediation was held or in any other proceeding between the parties to the mediation that involves the subject matter of the mediation.

MEDIATION, cont'd



- **M.R. Evid. 514**

All memoranda and other work product, including files, reports, interviews, case summaries, and notes, prepared by a mediator shall be confidential and not subject to disclosure in any subsequent judicial or administrative proceeding involving any of the parties to any mediation in which the materials are generated; nor shall a mediator be compelled to testify in any subsequent judicial or administrative proceeding concerning a mediation or to any communication made between him or her and any participant in the mediation process in the course of, or relating to the subject matter of, any mediation. *Note exceptions

MEDIATION, cont'd

THE MEDIATOR

- Role
- Selection – Private
- Selection – Court M.R. Civ. P. 92(b)(5)(D)
- Standards:
 - * CADRES Div. of Admin. Offices of the Court
 - * Rule 2.4 (Lawyer Serving as Third-Party Neutral) of the Maine Rules of Professional Conduct
 - * Maine Association of Mediators (MAM)

MEDIATION, cont'd

ROLE OF COUNSEL

- Prepare, prepare, prepare
- Collect and review data prior to mediation
- Prepare your client
- Private mediation: pre-mediation telephone conference or e-mail

MEDIATION, cont'd



AT MEDIATION

- Process: Caucus, Pigeon
- Settlement: Attorney Duties to communicate with their client about the mediation process, settlement provisions, and the implications of any proposed agreements at mediation. *See generally* M.R. Prof. C. 1.1, 1.3, 1.4.
- Mediation Agreements:
 - *Full authority not partial
(*McGee v. Cartoon Network, Inc.*, 383 Fed. Appx. 12, 14 (1st Cir. July 8, 2010))
 - *Court review and approval
(*Dewhurst v. Dewhurst*, 2010 ME 99, ¶ 6, 5 A.3d 23 (citing 19-A M.R.S. § 251))

REFERENCES



THE PROCESS

- 19-A M.R.S. §252 gives the court the authority to appoint referees “in any proceeding for paternity, divorce, judicial separation or modification of existing judgments.”
- Rule 53(a) governs appointment and compensation of the Referee
 - *“Referee” includes a master and an auditor
 - * Compensation to be allowed to a referee shall be fixed by the court
 - * Referee shall not retain the report as security for compensation, but referee is entitled to a writ of execution against the delinquent party

REFERENCES, cont'd



- By agreement; the exception not the rule
M.R. Civ. P. 53(b)(2)
- Order of appointment may limit powers of Referee
M.R. Civ. P. 53(c)
- Judge approves the Report of Referee to finalize divorce
- Referee acts as judge: prehearing matters, discovery, interim issues, final hearing
- Advantages: more relaxed, private, not court oversight of scheduling

REFERENCES, cont'd



REFEREE'S REPORT

- Referee drafts a report with findings of fact and conclusions of law, and sends draft to the attorneys for the purposes of receiving their suggestions. M.R. Civ. P. 53(e)(4).
- Referee files the report with the court with exhibits and transcript if recorded. M.R. Civ. P. 53(e)(1).
- Court may adopt, modify, or reject report in whole or in part. M.R. Civ. P. 54(e)(2). The court may also hold a hearing and receive further evidence, which may result in an order to recommit the case to reference with instructions. M.R. Civ. P. 54(e)(2).

REFERENCES, cont'd



- A party may move to amend the referee's report within five days after notice of filing of the report. M.R. Civ. P. 53(e)(5). Thereafter, the referee must file a supplemental report. The parties have ten days to object to the supplemental report.
- References at the District Court level are typically final. The Law Court has made it clear that parties cannot bypass objections with the trial court and seek appeal to the Law Court. *See Gorman v. Gorman*, 2010 ME 123A, ¶ 8, 10 A.3d 703.

ARBITRATION



- In Maine, divorcing parties may be compelled into submitting some or all of the matters between them to arbitration (Maine Uniform Arbitration Act 14 M.R.S. §§ 5927–5949)
- In practice, parties generally use the well-established reference process
- Parties have say in process (i.e., number of decision makers, matters to be heard, which rules of evidence apply, and other procedural matters)
- The role of the arbitrator is one of decision maker not negotiator. At end a final and binding award/decision is made

ARBITRATION, cont'd



STANDARDS GOVERNING ARBITRATOR

- be a lawyer for at least eight years (including at least the last three in the State of Maine) and have substantial recent experience in the subject matter of the type of case to be referred, or
- have at least eight years of substantial recent experience (including at least the last three in the State of Maine) in the subject matter of the type of case to be referred, or
- be a member of an arbitration panel of the American Arbitration Association (AAA) or an equivalent organization for the type of case to be referred

ARBITRATION, cont'd



- Arbitration hearing is performed like traditional trial. The attorney may call witnesses, present evidence, and put on the client's case subject to the arbitration agreement.
- Enforceability issues to be noted. Agreements to arbitrate issues such as spousal support, child custody, and child support may not be valid or enforceable. *See 14 M.R.S. § 5927; 9 U.S.C. § 2.*
- However, presumption favoring finality for all other issues subject to arbitration

JUDICIAL SETTLEMENT CONFERENCES



- No fixed procedure or statute mandating that magistrates or judges conduct their conferences pursuant to any established protocol
- Settlement conference judges have no trial authority with regard to determining the outcome; they assist the parties in assessing their positions with the goal of reaching settlement
- Judge has authority to mandate the presence of all necessary parties and exercise his or her discretion to require the participation of additional parties that may be necessary for resolution of the case. *See M.R. Civ. P. 16B.*

Judicial Settlement Conferences (cont'd)



- JSC may be carried out in one plenary session, in separate caucus rooms, with parties, attorneys, or with the assistance of a guardian ad litem or other professionals
- If case settles, the resolution will often be placed on the record. If no settlement, judges will differ on whether they offer an opinion or predict the outcome of a case
- Maine Code of Judicial Conduct has a specific provision allowing a judge to hold a settlement conference directly prior to, or at any point prior to, a scheduled hearing, and still hear the case in the event that the parties fail to settle. *M. Code Jud. C. I(3)(B)(7)(d).*

Judicial Settlement Conferences (cont'd)



ATTORNEY ROLE AND CONSIDERATIONS

- Consider “theory of case” to present at outset
- Prepare financial statements, child support affidavits, and proposed child support orders prior to JSC. Also helpful is a draft position statement or proposed order
- Beware of pitfall: Pursuant to M.R. Evid. 408(a), offers and statements made during settlement discussions are generally not admissible at trial. However, the information set forth in a settlement conference has been heard by the judge. Judge cannot unlearn the information that has been disclosed during the settlement conference

Collaborative Divorce



- Team approach to resolution. The professionals may include lawyers, a neutral financial specialist, and a mental health professional as a “coach.” If desired in cases involving children, a child specialist may be retained as well
- No collaborative statute in Maine. However, an ethics opinion issued on March 6, 2014 approved the use of collaborative law in family law matters with appropriate precautions
- Opinion No. 208, Practice of Collaborative Law in Family Matters (Professional Ethics Commission Mar. 6, 2014), *available at* http://www.mebaroverseers.org/attorney_services

Collaborative Divorce (cont'd)



PARTICIPANTS

- Attorneys
- Financial Consultant
- Mental Health Coach
- Child Specialist, if applicable

PROCEDURE

- Participation Agreement
- Information gathering
- 6-way meeting (again if no resolution)
- Draft and execution of divorce documents

Collaborative Divorce (cont'd)



ATTORNEY ROLE AND CONSIDERATIONS

- Not effective for high conflict cases
- Cuts down on attorney role in discovery process
- Disadvantage for clients: If collaborative process fails, they will have to retain new attorneys and begin the process anew in court
- Another disadvantage: Cost. Parties are paying all professionals involved as opposed to 2 attorneys
- Attorneys do not earn as much and cede control to others

Case Law Re: Mediation and Mediated Settlement Agreements

Kinter v. Nichols, 1999 ME 11, 722 A.2d 1274 (enforcing provision in settlement agreement requiring parties to submit disputes about children to mediation before filing a post-judgment motion; noting that even the “extraordinary cause” waiver set forth in 19-A M.R.S.A. § 251(2)(B) was insufficient to undo a contractual requirement to which the parties agreed to be bound).

Dewhurst v. Dewhurst, 2010 ME 99, ¶ 5, 5 A.3d 23, 24 (holding that “[a] settlement agreement in a family matter is distinguishable from contracts in general [] because of the public interest in guaranteeing that such agreements are fairly made and consistent with public policy”) (citing *Coe v. Coe*, 145 Me. 71, 74, 71 A.2d 514, 515 (1950)).

Nadeau v. Nadeau, 2008 ME 147, ¶ 27, 957 A.2d 108 (Law Court has definitively instructed that good faith participation in mediation does not require parties to sit in the same room with one another; shuttle or pigeon mediation is acceptable).

McGee v. Cartoon Network, Inc., 383 Fed. Appx. 12,14 (1st Cir. July 8, 2010) (the fact that a client and his attorney may have discussed and agreed upon one of the material terms of a preliminary settlement offer is not sufficient to establish that the client authorized the attorney to enter a final settlement agreement where other material terms had not been agreed upon).

Ault v. Pakulski, 520 A.2d 703, 705 (Me.1987) (holding that agreements in principle are generally considered “agreements to agree” and are distinguished from enforceable agreements).

Perkins v. Philbrick, 443 A.2d 73 (Me.1982); *Michaud v. Michaud*, 932 F.2d 77, 80 (1st Cir. 1991)(citing *Garabedian v. Allstates Eng. Co.*, 811 F.2d 802, 803 (3d Cir. 1987). Standing for proposition that mere authority arising from employment does not give an attorney authority to settle a case on behalf of a client without the client’s informed consent at mediation or elsewhere.

Bennett v. Bennett, 587 A.2d 463, 464 (Me. 1991); *Dewhurst*, 2010 ME 99 ¶ 8, 5 A.3d 23. (party cannot be forced to sign an agreement that was allegedly reached in mediation, but not executed at that time).

Page v. Page, 671 A.2d 956, 957 (Me. 1996) (enforcing an unexecuted settlement agreement where the parties had memorialized the fact of and their consent to the agreement on the record with the court).

Fidelity & Guar. Ins. Co. v. Star Equip. Corp., 541 F.3d 1, 5-6 (1st Cir. 2008) (where a hand-written agreement contemplates execution of a more formal agreement, the court may still enforce the hand-written agreement).

Hamilton v. Hamilton, 2009 ME 83 ¶ 21, 976 A.2d 924 (holding that a party cannot waive a right to child support arrearage where it is held by DHHS).

Cloutier v. Cloutier, 2003 ME 4, 814 A.2d 979 (holding that the trial court properly set aside the parties’ pretrial agreement that their marital residence would be sold and the profits divided because the result would be manifestly unjust).

Webb v. Webb, 2005 ME 91, ¶¶ 8-9, 878 A.2d 522 (approving the trial court's use of its discretion to modify a mediated agreement when it added a provision regarding health insurance for the parties' minor children to a divorce judgment).

CHILD SUPPORT CALCULATIONS IN OUR NEW WORLD

Debby L. Willis , Esq.
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Materials

Debby Willis
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Chief, Child Support Division
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1. 128th Maine Legislature – First Regular Session 2017 – various child support and family law related legislation
2. Some recent child support cases – prepared by AAG Jennifer Googins Huston
3. Rulemaking by the Division of Support Enforcement and Recovery – amendment to Chapter 13 of the Maine Child Support Enforcement Manual – regarding incarcerated obligors
4. PowerPoint Presentation – Maine Parentage Act – one year later
5. Order for genetic testing of a child over 2 – challenge by the legal father
6. Draft pleading for a child born of a marriage when the husband is not the father
7. Child support worksheets
8. Acknowledgement of Paternity (AOP), Denial of Parentage (DOP) and Rescission/Removal of Acknowledgment or Denial of Paternity

128th Maine Legislature – First Regular Session 2017
Bills tracked by the Child Support Division of the Office of the Attorney General
AAG Debby Willis

LD 81 – An Act Regarding the Payment of Back Child Support – removed the presumption that a child support order has been paid after 20 years. Enacted and signed by the Governor (copy included).

LD 83 – An Act Regarding Changing the Designation of a Parent on the Birth Record of an Adult – provides a process to amend a birth record to add a genetic parent. Enacted and signed by the Governor (copy included).

LD 170 – An Act to Allow and Recognize a Legal Name Change upon Marriage – this bill would allow a person who is getting married to change that person's name by indicating the new name on the marriage application. Passed in the House but carried over to next Session by the Senate. Apparently the current practice of changing a name upon marriage is not provided for in the law.

LD 147 – An Act to Amend the Maine Parentage Act – this bill would have prohibited obligating a de facto parent to pay child support to another parent if the de facto parent became a de facto parent due to the unwillingness or inability of the other parent to provide care for the child. This bill failed.

LD 193 – An Act to Protect Individual Retirement Accounts from Creditor Collection – the current exemption from collection of an IRA was \$15,000. They are now exempt to the extent those funds are in a fund or account that is exempt from taxation by the IRS. This exemption does not apply to collection to satisfy child support or spousal support obligations. Enacted and signed by the Governor (copy included).

LD 364 – An Act to Make Technical Changes to the Laws Governing Child Support (submitted by the Office of the Attorney General) – removes the references children under the age of twelve and twelve and over as the child support table now has one age category. Enacted and signed by the Governor (copy included).

LD 472 – An Act Regarding Parental Rights – would have amended the law to stipulate parents have a fundamental right to make decisions regarding their children and prevent courts from limiting those fundamental rights unless there was a compelling state interest and narrowly tailored to serve that interest through the least restrictive means possible. Failed.

LD 645 – An Act to Amend the Penalties for Failure to Pay Child Support – would have removed the suspension of a driver's license for failure to pay child support. Failed.

LD 916 – An Act to Modify the Term and Withholding Limitations for Spousal Support – would have repealed general support, limited the amount of support to no more than 30% of the obligor's income, limited the term of support to 4 years, limited the amount of a withholding

order to no more than 30% of the obligor's income and no more than 35% if there are arrears and would have required the parties to annually submit financial affidavits to the court. Failed.

LD 241 – An Act to Encourage Child Support Accountability – would have created a new section in the Probate Code – child support debt as lien against an inheritance. DHHS would have been required to create a registry of child support debtors. The personal representative would have been required to search this registry before distributing assets. The bill also would have required DHHS to create a program to allow child support obligors to engage in at least 30 hours of work per week and give the obligor a credit against unpaid child support. Failed.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SEVENTEEN

—
S.P. 30 - L.D. 81

An Act Regarding the Payment of Back Child Support

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 14 MRSA §864 is amended to read:

§864. Presumption of payment after 20 years

Every judgment and decree of any court of record of the United States, or of any state, or justice of the peace in this State ~~shall be~~ is presumed to be paid and satisfied at the end of 20 years after any duty or obligations accrued by virtue of such judgment or decree, except for a child support order. For the purposes of this section, "child support order" means a judgment, decree or order, whether temporary, final or subject to modification, issued by a court or an administrative agency of competent jurisdiction for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, that provides for monetary support, health care, arrearages or reimbursement and may include related costs and fees, interest and penalties, income withholding, attorney's fees and other relief.

STATE OF MAINE
—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SEVENTEEN

—
S.P. 32 - L.D. 83

**An Act Regarding Changing the Designation of a Parent on the Birth
Certificate of an Adult**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §2705, sub-§6, as enacted by PL 2003, c. 585, §1, is amended to read:

6. Amendment of birth certificate of adult. Amendment of a birth certificate of ~~birth~~ of a person 18 years of age or older born in this State for the purpose of identifying a biological parent who was not known or listed at the time of birth is governed by section ~~2767~~ 2767-A.

Sec. 2. 22 MRSA §2767, as enacted by PL 2003, c. 585, §2, is repealed.

Sec. 3. 22 MRSA §2767-A is enacted to read:

§2767-A. Amendment of birth certificate of adult

1. Amendment of birth certificate. The State Registrar of Vital Statistics shall amend the birth certificate of a person 18 years of age or older born in this State for the purpose of identifying a genetic parent who was not known or listed at the time of birth when the state registrar has received the following:

A. A signed, notarized request from the subject of the birth certificate that the birth certificate be amended;

B. Either the written, notarized consent of the genetic parent to be named on the amended birth certificate or a certified copy of the death certificate of the genetic parent to be named on the amended birth certificate; and

C. Evidence of genetic parentage based on testing of deoxyribonucleic acid, DNA, that includes:

(1) A notarized report of the results of the DNA testing; and

(2) Notarized documentation of the chain of custody of the blood and tissue samples examined in the testing.

The testing must be of a type generally acknowledged as reliable by accreditation bodies designated by the federal Secretary of Health and Human Services, and it must be performed by a laboratory approved by an accreditation body designated by the federal Secretary of Health and Human Services.

2. Effect. If the request submitted pursuant to subsection 1 does not contain the written, notarized consent of the genetic parent to be named on the amended birth certificate, amendment of the birth certificate pursuant to this section does not affect the rights of inheritance and descent. A birth certificate amended without the written, notarized consent of the genetic parent to be named on the amended birth certificate must contain the following words in a conspicuous place: "This birth certificate has been amended to identify a genetic parent not known or listed at the time of birth. This amendment does not affect the rights of inheritance or descent of the subject of the birth certificate."

STATE OF MAINE

—————
 IN THE YEAR OF OUR LORD
 TWO THOUSAND AND SEVENTEEN

—————
 H.P. 149 - L.D. 193

An Act To Protect Retirement Accounts from Creditor Collection

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 14 MRSA §4422, sub-§13, ¶D, as amended by PL 2001, c. 306, §3, is further amended to read:

D. Alimony, support or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor; or

Sec. 2. 14 MRSA §4422, sub-§13, ¶E, as amended by PL 2001, c. 306, §4, is further amended to read:

E. A payment or account under a stock bonus, pension, profitsharing, annuity or similar plan or contract on account of illness, disability, death, age or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless:

- (1) The plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose;
- (2) The payment is on account of age or length of service; and
- (3) The plan or contract does not qualify under the United States Internal Revenue Code of ~~1954~~ 1986, Section 401(a), 403(a), 403(b), 408 or 409; ~~or~~.

Sec. 3. 14 MRSA §4422, sub-§13, ¶F, as enacted by PL 2001, c. 306, §5, is repealed.

Sec. 4. 14 MRSA §4422, sub-§13-A is enacted to read:

13-A. Retirement funds. Retirement funds to the extent those funds are in a fund or account that is exempt from taxation under the United States Internal Revenue Code of 1986, Section 401, 403, 408, 408A, 414, 457 or 501(a), up to an aggregate value of \$1,000,000. This subsection does not exempt:

A. Amounts contributed to the account or fund within 120 days before:

(1) The debtor files for bankruptcy if this exemption is being applied in a federal bankruptcy proceeding; or

(2) If this exemption is being applied in a proceeding other than a federal bankruptcy proceeding or for child support or spousal support covered by paragraph B, the earlier of the entry of judgment or other ruling against the debtor or the issuance of the levy, attachment, garnishment or other execution or order against which this exemption is being applied; or

B. Amounts in the account or fund necessary to satisfy child support or spousal support obligations.

STATE OF MAINE

 IN THE YEAR OF OUR LORD

TWO THOUSAND AND SEVENTEEN

 H.P. 270 - L.D. 364
An Act To Make Technical Changes to the Laws Governing Child Support**Be it enacted by the People of the State of Maine as follows:**

Sec. 1. 19-A MRSA §1653, sub-§13, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is repealed.

Sec. 2. 19-A MRSA §2001, sub-§1, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

1. Basic support entitlement. "Basic support entitlement" means the sum derived from the child support table appropriate to the age of for each child and the parties' gross income.

Sec. 3. 19-A MRSA §2001, sub-§11, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is repealed.

Sec. 4. 19-A MRSA §2006, sub-§1, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

1. Determination of basic support entitlement. After the court or hearing officer determines the annual gross income of both parties, the 2 incomes must be added together to provide a combined annual gross income and applied to the child support table to determine the basic support entitlement for each child.

~~When there is a child within each age category, the~~ The court or hearing officer shall refer to the table and locate the figure in the left-hand column that is closest to the parents' combined annual gross income. ~~In each age category the~~ The court or hearing officer shall determine the dollar figure for the total number of children for whom support is being determined; and multiply the dollar figure ~~in each age category~~ by the number of children ~~in that category and add the 2 products.~~ The resulting dollar amount represents the basic support entitlement.

Sec. 5. 19-A MRSA §2006, sub-§6, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is repealed.

Sec. 6. 19-A MRSA §2006, sub-§7, ¶C, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

C. The amount of the basic weekly support entitlement attributable to each child ~~under 12 years of age~~, as indicated per child per week on the child support table;

Sec. 7. 19-A MRSA §2006, sub-§7, ¶D, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is repealed.

Sec. 8. 19-A MRSA §2006, sub-§8, ¶D, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is repealed.

Sec. 9. 19-A MRSA §2006, sub-§8, ¶E, as amended by PL 2005, c. 352, §4, is further amended to read:

E. If ~~each child for whom~~ a parental support obligation is being established for more than one child and a child has attained ~~12~~ 15 years of age, a specific sum to be paid depending on the number of minor children remaining with the primary care provider. Because the support guidelines are based on the actual costs of raising a given number of children in a household, the order must provide a specific dollar amount for every combination of minor children. Except as provided in paragraph G, the court or hearing officer may not apportion support between the parents by determining the parental support obligation amount and dividing by the total number of children;

Sec. 10. 19-A MRSA §2006, sub-§11 is enacted to read:

11. Child between 18 and 19 years of age attending secondary school. The child support table and the support guidelines include a child between 18 and 19 years of age who is attending a secondary school for whom an obligation of support is established or deemed to remain in force pursuant to section 1653, subsection 8, paragraph B; section 1653, subsection 12, paragraph A; or section 2306, subsection 4, paragraph D.

A Summary of Recent Child Support Cases
Prepared by AAG Jennifer Googins Huston

Brochu v. McLeod, 2016 ME 146

Catherine Brochu and Richard McLeod were married in 1970 and had two children. Mr. McLeod went into hiding after the parties separated. The Court issued a Divorce Judgment that included an order for child support. Mr. McLeod was not located until 2014, and Ms. Brochu filed a motion to enforce forty years' overdue support payments. Mr. McLeod moved to dismiss the complaint based on the affirmative defense of laches. The district court granted the motion to dismiss. The Supreme Judicial Court vacated the order of dismissal to the extent that the court's conclusions are founded upon the application of the doctrine of laches, holding that the doctrine of laches does not apply to child support. LD 81, An Act Regarding the Payment of Back Child Support, amended 14 M.R.S. § 864 by adding language removed the presumption for the payment of child support.

Dunwoody v. Dunwoody, 2017 ME 21

This decision affirmed the court's decision in *Brochu v. McLeod* that laches does not apply to the collection of child support arrearages. In 2001, Steven Dunwoody and Janice Dunwoody were divorced. Steven was ordered to pay child support and the parties' children received dependent benefits based on Steven's disability. In 2014, the Department of Health and Human Services issued a notice of debt. Steven then filed a motion seeking a modification of his child support obligation and a declaration that he did not owe any arrearages. The magistrate granted Steven's motion to modify child support but denied his request for a declaration that he did not owe past support. The district court affirmed and the Law Court affirmed. This decision further addressed the equitable defense of waiver finding that the parties' shared misunderstanding of whether or not the child support obligation had been met by the expenditure of dependent benefits does not demonstrate that the mother voluntarily and knowingly relinquished the right to collect child. Further, equitable estoppel did not apply in this case as it requires a misrepresentation arising through a combination of misleading statements, conduct, or silence and no such facts in this case existed.

Mitchell v. Kriekhaus, 2017 ME 70

Joyce Mitchell and Alexander Kriekhaus were married in 1997 and Ms. Mitchell filed a complaint for divorce seventeen years later. A settlement agreement was ultimately reached in May of 2016. The stipulated order called for child support to be paid pursuant to the Maine Child Support Guidelines. The parties were to share parental rights and responsibilities and also share primary residence of their son, with Mitchell having primary residence of their two daughters. The court requested that Mr. Kriekhaus's counsel submit a stipulated divorce judgment by May 23, 2016. The child support worksheets attached to the proposed judgment included a supplemental worksheet that presumed that the parties provided substantially equal care for their son. Ms. Mitchell argued that before the court issued a child support order it was required to hold an evidentiary hearing on the issue of whether the parties provided substantially equal care of their son. The Law Court agreed that the trial court was required to hold an

evidentiary hearing on the issue of whether the parties provided substantially equal care of their son prior to issuing child support order in divorce proceedings. The Law Court gave guidance on this issue finding that substantially equal care was not based on a limited list of statutory factors, but instead on an open-ended inquiry requiring findings regarding the extent to which the parents participate in the child's total care.

CHAPTER 13 - DISPOSITION OF PROCEEDINGS BY SETTLEMENT, STIPULATION OR CONSENT DECISION; WAIVERS

2. INCARCERATED OBLIGORS

When a party is incarcerated, the Department may suspend an order for support during the period of incarceration. When the Department learns that the obligor will be incarcerated for more than 180 calendar days, without the need for a specific request, and upon notice to all parties, the Department will initiate a review of the order, and, if appropriate, adjust or suspend it. The support order will automatically revert to the amount in place before the obligor's incarceration two weeks after the obligor's release from incarceration, or the first Friday after becoming employed, whichever occurs first.

Notice of the decision will be sent to the custodial parent, who may request a hearing on the matter within 10 business days of receiving notice of the intended modification. The custodial parent may at any time present evidence that the incarcerated obligor nonetheless has a source of income through which to pay the previously ordered weekly support amount.

3. COMPLIANCE WITH LAW

Where parties agree to an outcome of a dispute which they wish to be memorialized in the form of a Decision, the hearing officer shall approve such consent decision only if it is consistent with applicable law. However, strict compliance with the requirement of these regulations shall not be required in order to approve a consent decision.

4. WAIVERS

A. Waiver of Notice

A responsible parent may waive any requirement with respect to service of a Notice of Hearing, receipt of a Notice of Review Hearing or receipt of a Notice of Hearing to Set Aside a Default Decision. The waiver may be made orally on the record before the hearing officer or it may be made in a written record.

B. Waiver of Hearing

Either party to a proceeding may waive that party's right to a hearing. The waiver may be made orally on the record before the hearing officer or it may be made in a written record.

C. Form of Waiver

A waiver may be set forth in a written record, stipulation, Consent Decision or Decision after Hearing. Other forms of waiver are permitted if duly executed and witnessed.

Maine Parentage Act

Enacted June 30, 2015 – Effective July 1, 2016
One year later – how are things going?

Debby Willis
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My Interests

- Establishment of Parentage
- Establishment of Paternity
- Acknowledgment of Paternity
- No acknowledgment of maternity

Debby finally gets what she wants – lasting consequences for a 'poor man's adoption'

2 years to change your mind and then you are a permanent parent

Mothers and fathers have 2 years (Section 1868 (1))

Section 1853 (2) – more than 2 parents

Did Debby really get what she wanted?

Voluntary Acknowledgment of Paternity
(AOP)
He believes he is the genetic father
There is no other presumed parent (3 party)
Rescind within 60 days – no questions asked
Challenge after 60 days on the basis of fraud,
duress or material mistake of fact and MUST
be within 2 years
But we are seeing challenges after 2 years

A challenge by another man must be brought within 2
years unless he "did not know and could not reasonably
have known of his potential genetic parentage on account
of material misrepresentation or concealment" (Section
1868 (2))
All get rights and responsibilities under Section 1653
Unless there is material misrepresentation or concealment
there is effectively a 2 year limitation on challenging an
AOP

Parallel process for denial of paternity – legal/bio (3 party AOP's) – appears to not have a time limitation

If the mother is married and the husband is not the genetic father

Husband can deny (Section 1863)

Genetic father & mother can acknowledge

All 3 must sign (can be separate)

Presumed parentage

Marriage – remains the same

Extends presumed legal parent to the unmarried partners (Section 1881 (3)) – for those who:

Reside in the household

Openly hold the child out as that person's own for 2 years from birth or adoption

Assumed personal, financial or custodial responsibilities for the children

1882 (2) (A) permits a spouse who “could not have reasonably known about the birth of a child” To challenge after 2 years but within 2 years of discovery

1882 (2) (B) permits a 3rd party challenge to a presumed parent after 2 years only if the person did not know and could not reasonably have known of genetic parentage on account of material misrepresentation or concealment

The Court does not disestablish the presumed parent – the child has 3 parents

Court may invoke 1912 (1) (B) to deny genetic testing if "it would be an inequitable interference to the relationship between the child and they presumed parent or otherwise contrary to the best interest of the child

Genetic Testing (Sections 1911 and 1912) (aka Magistrate (now Judge) Paul Mathew's Wiggle Room)

Court may order genetic testing if there is a reasonable, good faith basis for alleging or denying genetic parentage (Section 1911)

Court may deny testing or admission of test results

Deny if the conduct of the parties estops a party from denying parentage or

It would an inequitable interference to the relationship between the child and a parent or otherwise contrary to the best interests of the child

Section 1912 – parent by estoppel

Factors:

- Length of time between the request and the time the parent was placed on notice that genetic parentage is at issue
- Length of time during which the parent has assumed a parental role for the child
- Facts surrounding discovery that genetic parentage is at issue
- Nature of the relationship between the child and the parent
- The age of the child
- Any adverse effect on the child if parentage is disproved
- The nature of the relationship between the child the alleged parent
- The extent to which the passage of time reduces the chances of establishing the parentage of another person and a child support obligation in favor of the child, and
- Any other factor that may affect equities arising from the disruption of the relationship or any other adverse effect to the child

De Facto Parentage (Section 1891)

- > Prima facie showing of standing
- > Clear and convincing evidence
- > "permanent, unequivocal, committed and responsible parental role in the child's life"
- > Consistent caretaking
- > Bonded and dependent relationship – fostered or supported by the other parent
- > Both have understood, acknowledged or accepted or behaved as though the person is a parent
- > Person has accepted full and permanent responsibilities without expecting financial compensation
- > The continuing relationship between person and child is in the child's best interests

Changes to Parentage after 2 years

Biology does not rule – a difficult concept

Mom and Mr. Jones sign an AOP when the child is born 5/30/2013

Bio Dad files a parentage action 9/7/2016

Testimony of Mom and Bio Dad confirm Bio Dad knew in 2013 he might be the father.

Courts find Mr. Jones remains the legal father.

Court further finds, and with agreement of the parties, Bio Dad is Bio Dad.

Did Debby really get what she wanted?

Mom is married and husband is not the father of the child.

Husband knew about the child.

Bio dad knew about the child.

4 years pass.

Should bio dad become legal dad?

Does it matter if husband cannot be found?

STATE OF MAINE

DISTRICT COURT.

Location:

DOCKET NO.: FM-17

Mom

v.

Dad

At a Case Management Conference held 2017, Defendant indicated that the minor child, (dob 03/ /2015), may be his biological child. Therefore, Mom and Dad are Ordered to participate in blood or tissue typing tests as follows:

Within 21 days, the Defendant or the Department of Health and Human Services shall arrange testing directly through LabCorp or DNA Diagnostics Center, or other suitable testing facility. The Department of Health and Human Services, Division of Support Enforcement and Recovery shall coordinate and pay for the testing.

The parties are Ordered to cooperate in the testing, complete any required paperwork in a timely manner, and appear for testing as scheduled.

The professional staff members of LabCorp or DNA Diagnostics Center are appointed as expert examiners of blood or tissue types.

The results of the testing must be filed with the court.

Failure of the Defendant to cooperate as ordered herein will result in a waiver of his right to challenge the presumption of paternity. Failure of the Plaintiff and/or child to cooperate as ordered herein may result in Plaintiff being sanctioned and/or held in Contempt of Court.

This Order is effective immediately and subject to de novo review by a judge at final hearing.

The clerk is directed to incorporate this Order by reference into the docket for this case pursuant to M.R.Civ.P. 79(a).

DATED: 8,

IMPORTANT NOTICE:

IF THIS JUDGMENT/FINAL ORDER IS SIGNED BY A MAGISTRATE, then pursuant to Title 4 M.R.S.A. §183(1)(E) and M.R.Civ.P. Rule 118, you are hereby notified that a party may file an Objection within 21 days from the date of this Judgment. An appeal from the Judgment may be taken in the manner specified by M.R.App.P.2.

If no objection is filed, the parties are deemed to have waived their right to object and to appeal, and the Magistrate's final order shall become judgment of the court and have the same effect as any final judgment signed by a District Court Judge.

STATE OF MAINE
CUMBERLAND, ss.

DISTRICT COURT
LOCATION: Portland
DOCKET NO. FM-2017-_____

IN RE: Child
State of Maine DHHS, Petitioner
Nicole, Mother
Charles, Respondent
James, Party in Interest

**COMPLAINT FOR DETERMINATION OF
GENETIC PARENTAGE, ESTABLISHMENT
OF ARREARS AND ESTABLISHMENT
OF A CHILD SUPPORT ORDER**

NOW COMES the State of Maine Department of Health and Human Services (hereinafter “the Department”), by and through its attorney, _____, Assistant Attorney General, and respectfully states:

1. This is a complaint brought pursuant to 19-A M.R.S. §§ 1552 *et seq.*, 1831 *et seq.* and 1901 *et seq.* for the determination of genetic parentage of Child - (hereinafter “the minor child”), born January 12, 2017; for the collection of past expenses and for the establishment of a support order for said minor child.
2. The District Court has jurisdiction of this matter pursuant to 19-A M.R.S. § 1834.
3. The Petitioner is a public authority, authorized to bring parentage actions pursuant to 19-A M.R.S. § 1835, as it has expended public assistance on behalf of the minor child.
4. Nicole is a resident of Portland, Cumberland County, State of Maine.
5. Charles is a resident of Lewiston, Androscoggin County, State of Maine.
6. James is a resident of Saco, York County, State of Maine.
7. Nicole and James were married during the possible time of conception and when the minor child was born. (See Attachment A – Affirmation of Paternity and Marriage). Chad Price is the presumed parent of the minor child pursuant to 19-A M.R.S. § 1881(1)(A). The minor child is less than two years old and the Department is initiating this proceeding to determine the parentage of the minor child pursuant to 19-A M.R.S. § 1882(1).
8. James is not listed as father on the minor child’s birth record. (See Attachment B – Birth Record).
9. Nicole has affirmed that she and Charles engaged in sexual intercourse with each other in the State of Maine, during March, April or May, 2016. (See Attachment A).
10. The minor child was conceived as a result of sexual intercourse between Nicole and Charles, during March, April or May, 2016.
11. Nicole gave birth to said minor child, a female child, on January 12, 2017.

12. Respondent Charles, as the genetic father of the minor child, has a duty to support said child.

13. Respondent Charles has the ability through property and/or his capacity for labor to provide such support.

14. The State of Maine Department of Health and Human Services is expending, or has expended in the past, public funds for the necessary support of the minor child. The Department will request a judgment for all periods of past support including, but not limited to, periods when public assistance was paid on behalf of the minor child up through the date of trial, pursuant to 19-A M.R.S. §§ 1552, 1852 and 2001 *et seq.*, with an execution to issue forthwith.

WHEREFORE, the Petitioner asks that this Court:

1. Find that Party in Interest James is not the father of child
2. Establish that Respondent, Charles, is the genetic father of Child, born to Nicole on January 12, 2017.
3. Order the Respondent, Charles, to pay child support for his minor child, if appropriate.
4. Order the Respondent, Charles, to pay his proportionate share of the past support incurred on behalf of the minor child, including, but not limited to, periods when public assistance was paid on behalf of the minor child and to grant judgment to the State of Maine in such amount, with execution to issue forthwith.
5. Require Respondent Charles to pay his proportionate share of medical, hospital, dental, optical and pharmaceutical expenses of the minor child and to provide private medical/health insurance coverage for the minor child, whenever such coverage is available at reasonable cost, and provide proof of such coverage to the State of Maine Department of Health and Human Services and to the mother of the child.
6. Grant such further relief as this Court deems just and proper.

DATE: _____

Assistant Attorney General

An Aid in Calculating Child Support with 3 parents

Plaintiff

CHILD SUPPORT WORKSHEET

v.

Defendant

1. a. Primary care provider (parent children live with most of the time): Plaintiff Defendant Both
 If parents provide substantially equal care, higher income parent should be show as non-primary care provider.
 b. Parent providing health insurance for the children: Plaintiff Defendant Both

2. Child's Name Date of Birth Child's Name Date of Birth

Yearly Amounts	Primary Care Provider	Non-Primary Care Self-Support Reserve Below Poverty Level	Non-Primary Care Self-Support Reserve Below Poverty Level	Combined Income
3. Gross Income	\$	\$	\$	
4. Minus other obligations	a.	a.	a.	
a. support paid to former spouse				
b. Support paid for other children	b.	b.	b.	
c. Other children living with non-primary care provider				
5. Total of 4a, b, & c				
6. Adjusted yearly gross Income (Subtract line 5 from line 3)	a.	b.	c.	d.
7. Share of Gross Income Divide each parent's Income by combined income	%	%	%	(Add 6a, 6b & 6c)

8. Basic weekly support for all children up to 18 years (or up to 19 years if still in high school), (see Instructions on reverse.)
 Total number of children multiplied by amount from table ____ = \$ _____ Total 8. _____
9. Weekly health insurance cost for children
 Name & amount per child per week _____ \$ _____
 _____ \$ _____ Total: 9. _____
10. Weekly child care expenses
 Name & amount per child per week _____ \$ _____
 _____ \$ _____ Total: 10. _____
11. Extraordinary medical expenses
 Name & amount per child per week _____ \$ _____
 _____ \$ _____ Total: 11. _____

*If parents provide substantially equal care, continue calculations on supplemental worksheet.
 12. TOTAL WEEKLY SUPPORT OBLIGATION (Add lines 8, 9, 10 and 11) 12. _____

13. WEEKLY PARENTAL SUPPORT OBLIGATION:

Primary Care	Non-Primary Care	Non-Primary Care
Provider spends directly \$ _____	Provider support obligation \$ _____	Provider support obligation \$ _____
<small>(Multiply line 7a by line 12)</small>	<small>(Multiply line 7b by line 12)</small>	<small>(Multiply line 7c by line 12)</small>
Health Insurance Adjustment _____	Health Insurance Adjustment _____	
Non-Prim Care Provider pays as support _____	Non Prim Care Provider pays as support _____	

Date: _____ Prepared by: _____

Docket No. _____, ss.

Location _____
Docket No. _____

_____ Plaintiff

v. _____ Defendant

CHILD SUPPORT WORKSHEET
 Supplemental Worksheet Attached
M.R. Civ. P. 108(B)
19-A M.R.S. §§ 2001-2012

- 1. a. Primary care provider (parent children live with most of the time): Plaintiff Defendant Both
If parents provide substantially equal care, higher income parent should be shown as the non-primary care provider.
- b. Parent providing health insurance for the children: Plaintiff Defendant Neither
- c. Parent providing weekly child care expenses for the children: Plaintiff Defendant Neither
- d. Parent providing extraordinary medical expenses for the children: Plaintiff Defendant Neither

2. Child's Name	Date of Birth	Child's Name	Date of Birth
_____	_____	_____	_____
_____	_____	_____	_____

Yearly Amounts	Primary Care Provider	Non-Primary Care Provider <input type="checkbox"/> Self-support reserve <input type="checkbox"/> Below poverty level	Combined Income
3. Gross income	\$ _____	\$ _____	
4. Minus other obligations			
a. Support paid to former spouse	a. _____	a. _____	
b. Support paid for other children	b. _____	b. _____	
5. Obligor Gross Income		(Subtract lines 4a and 4b from line 3.)	
6. Other children living with non-primary care provider (See instructions on page 3.)			
7. Adjusted Gross Income	a. (Subtract lines 4a and 4b from line 3.)	b. (Subtract line 6 from line 5.)	c. (Add lines 7a and 7b.)
8. Share of Adjusted Income (Divide each parent's income by combined income)	a. _____ %	b. _____ %	

9. Basic weekly support for all children up to 18 years (or up to 19 years if still in high school) (See instructions on page 3.)
Total number of children (a) _____ multiplied by amount from table (b) _____ = 9c. _____

10. Weekly health insurance cost for children

Name & amount per child per week	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____

Total: 10. _____

11. Weekly child care expenses

Name & amount per child per week

_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____

Total: 11. _____

12. Extraordinary medical expenses

Name & amount per child per week

_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____

Total: 12. _____

*If parents provide substantially equal care, continue calculations on supplemental worksheet.

13. TOTAL WEEKLY BIWEEKLY OBLIGATION (Add lines 9c, 10, 11 and 12; if biweekly, multiply x 2) 13. _____

14. WEEKLY BIWEEKLY PARENTAL SUPPORT OBLIGATION:

<p>a. Primary Care Provider Spends directly \$ _____ (Multiply line 8a by line 13)</p>	<p>b. Non-Primary Care Provider's support obligation \$ _____ (Multiply line 8b by line 13)</p> <p>Non-Primary Care Provider Adjustments (Amounts paid directly by Non-Primary Care Provider)</p> <p>Weekly health insurance (line 10) - \$ _____</p> <p>Weekly child care (line 11) - \$ _____</p> <p>Extraordinary Medical Expenses (line 12) - \$ _____</p> <p>Non-Primary Care Provider pays as support = \$ _____</p>
--	--

Date: _____

Prepared by: _____
(Attorney for) (Plaintiff) (Defendant) (Judge)(Magistrate)(Mediator)

AOP (1)



Maine Center for Disease Control and Prevention
 An Office of the Department of Health and Human Services

Maine Center for Disease Control and Prevention (Maine CDC)
 220 Capitol Street
 11 State House Station
 Augusta, Maine 04333-0011
 (207) 287-3771
 Fax : (207) 287-1093 TTY Users: Dial 711 (Maine Relay)

ACKNOWLEDGMENT OF PATERNITY (AOP)
 (Please type or print clearly in black ink.)

Check where signed: Hospital Division of Support Enforcement and Recovery (DSER) Office of Data, Research, and Vital Statistics (DRVS) Other

CHILD	1. Child's Name (First, middle, other middle, last, suffix)		2. Date of Birth (mm/dd/yyyy)		3. Sex			
	4. Place of Birth (City or town)	5. County of Birth		6. Type of Place of Birth <input type="checkbox"/> Hospital <input type="checkbox"/> Freestanding Birthing Center <input type="checkbox"/> Clinic/Doctor's Office <input type="checkbox"/> Home Birth <input type="checkbox"/> Unknown <input type="checkbox"/> Other (Specify) _____				
	7. Facility Name (If not an institution, give street and number)			8. Facility Address (Street and number, city/town, state, zip code)				
MOTHER	9. Mother/Parent Current Legal Name (First, middle, last, suffix)			10. Mother/Parent Name Prior to First Marriage (First, middle, last, suffix)				
	11. Date of Birth (mm/dd/yyyy)		12. Birthplace (State, Territory, or Foreign Country)		13. Social Security Number (xxx-xx-xxxx)			
	14. Mother/Parent Residence Address (Street and number, city/town, state, zip code)							
FATHER	15. Father/Parent Current Legal Name (First, middle, last, suffix)			16. Father/Parent Name Prior to First Marriage (First, middle, last, suffix)				
	17. Date of Birth (mm/dd/yyyy)		18. Birthplace (State, Territory, or Foreign Country)		19. Social Security Number (xxx-xx-xxxx)			
	20. Father/Parent Residence Address (Street and number, city/town, state, zip code)							
FATHER	EDUCATION (Highest grade completed at time of child's birth)		ANCESTRY (Check one box below and <u>must</u> specify if other)		RACE (Check all that apply)			
	<input type="checkbox"/> 8 th grade or less <input type="checkbox"/> 9-12 th grade, no diploma <input type="checkbox"/> High school graduate or GED completed <input type="checkbox"/> Some college credit, but no degree <input type="checkbox"/> Associate Degree, AA, AS <input type="checkbox"/> Bachelor's Degree, BA, AB, BS <input type="checkbox"/> Master's Degree, MA, MS, MEng, MSW, MBA <input type="checkbox"/> Doctorate, PhD, EdD or Professional Degree, MD, DDS, DVM, LLB, JD <input type="checkbox"/> None <input type="checkbox"/> Unknown		<input type="checkbox"/> Hispanic <input type="checkbox"/> Mexican, Mexican American, Chicana <input type="checkbox"/> Puerto Rican <input type="checkbox"/> Cuban <input type="checkbox"/> Other <input type="checkbox"/> Non-Hispanic <input type="checkbox"/> Italian <input type="checkbox"/> African <input type="checkbox"/> American <input type="checkbox"/> Haitian <input type="checkbox"/> Pakistani <input type="checkbox"/> Ukrainian <input type="checkbox"/> Nigerian <input type="checkbox"/> Taiwanese <input type="checkbox"/> Other, Specify _____ <input type="checkbox"/> Unknown		<input type="checkbox"/> White <input type="checkbox"/> Black or African American <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Specify _____ <input type="checkbox"/> Asian Indian <input type="checkbox"/> Chinese <input type="checkbox"/> Filipino <input type="checkbox"/> Japanese <input type="checkbox"/> Korean <input type="checkbox"/> Vietnamese		<input type="checkbox"/> Other Asian <input type="checkbox"/> Specify _____ <input type="checkbox"/> Native Hawaiian <input type="checkbox"/> Guamanian or Chamorro <input type="checkbox"/> Samoan <input type="checkbox"/> Other Pacific Islander <input type="checkbox"/> Specify _____ <input type="checkbox"/> Other <input type="checkbox"/> Specify _____ <input type="checkbox"/> Don't know/ Not sure <input type="checkbox"/> Refused	
	STATEMENT OF PARENTS: We affirm, under penalty of perjury, by the woman giving birth (mother/parent) and the man (father/parent) seeking to establish his paternity, that we have examined the statements on page 2 of this form and that it is correct to the best of our knowledge and belief. We are voluntarily signing this acknowledgment of paternity without being subject to force, threats or coercion of any kind.							
PARENTS	Signature of Mother/Parent		Date Signed (mm/dd/yyyy)		Signature of Father/Parent			
	▶		▶		▶			
NOTARY PUBLIC	STATEMENT OF NOTARY PUBLIC: The above individuals personally appeared before me and made oath to the truth of the foregoing statements.							
	State of: _____			State of: _____				
	County of: _____			County of: _____				
Signed or attested before me on (mm/dd/yyyy): _____			Signed or attested before me on (mm/dd/yyyy): _____					
Commission Expiration Date: _____			Commission Expiration Date: _____					
Signature of Notary Public			Signature of Notary Public					
▶			▶					

AOP (2)

ACKNOWLEDGMENT OF PATERNITY (Continued)

(Please type or print clearly in black ink.)

Case ID Number

Child's Name (First, middle, last, suffix)		Date of Birth (mm/dd/yyyy)	Sex
STATEMENTS OF ACKNOWLEDGMENT			
Mother/Parent Initials	Father/Parent Initials	The statements of acknowledgment below must be read to each parent before it is signed, initialed and notarized. Parents must initial each of the statements provided below in order for the AOP to be valid.	
		We understand we have the right to talk with an attorney before signing.	
		We understand once we have signed this acknowledgment, we will be legally responsible for financially supporting this child until at least the age of 18, and until the age of 19 if still in high school. Parents may be required to pay for past medical expenses, birth expenses and child support for this child.	
		We understand by signing this acknowledgment, we will give this child a legal record identifying each of us as parents. This will enable this child to get access to Social Security or veteran benefits, inheritance rights, life insurance and access to health insurance and medical information.	
		We understand the completion of an Acknowledgment of Paternity does not involve custody or visitation rights. (Parents must go to court to gain rights.)	
		We understand it is a crime to sign this form knowing that the man signing is not the biological father of this child and this document will be considered void if another man has already acknowledged paternity or if a court determination has already been done to establish parentage.	
		We swear the man (father/parent) signing the acknowledgment believes himself to be the biological father of this child.	
		We understand that this acknowledgment is the equivalent of a court determination of paternity of this child and that a challenge to the acknowledgment is permitted only under limited circumstances and is not allowed after two years.	
		We understand that we may rescind this acknowledgment by filing a Rescission form with the Office of Data, Research, and Vital Statistics within 60 days after the Acknowledgment form has been filed and accepted.	
		We understand that after 60 days of filing the acknowledgment and a denial of parentage, if applicable, with the Office of Data, Research, and Vital Statistics we must obtain a court determination to rescind or challenge the acknowledgment or denial in order to remove or add a parent.	
Parents must check one of boxes in the below statements in addition to initialing.			
		<input type="checkbox"/> We acknowledge that the child subject to this AOP does <u>not</u> already have a presumed, acknowledged, or adjudicated father. <p style="text-align: center;">OR</p> <input type="checkbox"/> We acknowledge that the child subject to this AOP already <u>has</u> a presumed father and does not have another acknowledged or adjudicated father. It is understood that a <i>Denial of Paternity (DOP)</i> form from the presumed father is required in order for this AOP to be valid. The full name of the presumed father is: _____	
		<input type="checkbox"/> We acknowledge that there has <u>not</u> been genetic testing regarding this child's paternity. <p style="text-align: center;">OR</p> <input type="checkbox"/> We acknowledge that there <u>has</u> been genetic testing and that the acknowledging man's claim of paternity is consistent with the results of the testing.	
		<input type="checkbox"/> Single Mother <p style="text-align: center;">OR</p> <input type="checkbox"/> Married or Formerly Married Mother: <ul style="list-style-type: none"> ▪ If the mother was married and the child was born within 300 days after the termination of the marriage, the name of the spouse shall be entered on the child's birth certificate unless paternity has been established. ▪ If a DOP is not signed by the presumed father, do not proceed. The AOP and DOP may be filed separately or simultaneously, but neither is valid until both are filed. 	
		We have read and understand the instructions provided. We understand the legal consequences of and the rights and responsibilities that arise from signing the acknowledgment. We have authenticated, under penalty of perjury the above statements are correct to the best of our knowledge and belief.	

AOP 3

ACKNOWLEDGMENT OF PATERNITY NOTES AND INSTRUCTIONS

Each parent should carefully read all notes and instructions before completing and signing the Acknowledgment of Paternity (AOP) form.

Establishment of paternity means the establishment of a genetic parent-child relationship. The AOP shall be signed under penalty of perjury by the woman (mother/parent) who gives birth to a child and a man (father/parent), not her spouse, claiming to be the genetic father of the child seeking to establish paternity.

1. **SINGLE MOTHER:** When a proper AOP is received by the Office of Data, Research, and Vital Statistics, the father/parent will be added to the child's Certificate of Live Birth.
 - A. The signatories understand that an acknowledgment of paternity is the equivalent of a court determination of paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred after two years.
2. **MOTHER IS OR WAS FORMERLY MARRIED:** When a mother is or was married within 300 days of the birth of the child, the name of the spouse shall be entered on the Certificate of Live Birth, including situations when:
 - A. The spouse may not be the genetic father.
 - B. The mother has been separated (legally or otherwise) from the spouse, regardless of the period of the separation.
 - C. The mother was legally married or attempted to marry, and the child is born within 300 days after the termination of the marriage (unless the final divorce decree specifies that the spouse is not the natural father).
3. **AFFIDAVIT OF DENIAL OF PATERNITY (DOP):** If a married or formerly married mother claims that her spouse or ex-spouse is not the genetic father of the child and the genetic father would like to acknowledge paternity, the spouse may complete a Denial of Parentage (DOP). At that time, the mother and genetic father must submit an AOP along with the DOP. The AOP and DOP may be filed separately or simultaneously, but neither is valid unless both are filed with the Office of Data, Research, and Vital Statistics.
4. **LEGAL CITATIONS: Title 19-A Chapter 61: The Maine Parentage Act**

"Acknowledged father" means a man who has established parentage by filing the AOP with the Office of Data, Research, and Vital Statistics.

"Adjudicated parent" means a person who has been adjudicated by a court of competent jurisdiction to be the parent of the child.

"Presumed parent" means a person who is recognized as the parent of the child until that status is rebutted or confirmed in a judicial proceeding.

A person is presumed to be the parent of a child if:

 - A. The person and the woman giving birth to the child are married to each other and the child is born during the marriage; or
 - B. The person and the woman giving birth to the child were married to each other and the child is born within 300 days after the marriage is terminated by death, annulment, divorce or declaration of invalidity or after a decree of separation; or
 - C. Before the birth of the child, the person and the woman giving birth to the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300 days after its termination by death, annulment, divorce or declaration of invalidity or after a decree of separation.
5. **INSTRUCTIONS FOR PARENTS FOR THE COMPLETION OF AOP:**
 - ❖ Each parent must sign in the presence of a notary public and the notary must notarize each signature on page 1.
 - ❖ Each parent must initial and select the appropriate statements of acknowledgment on page 2.
 - ❖ Alterations, erasures, white-outs, cross-outs, write overs, etc., will not be accepted and will invalidate the form.
 - ❖ The completed and notarized Acknowledgment of Paternity form and statements, along with any applicable fees, must be submitted to the Office of Data, Research, and Vital Statistics at the mailing address provided below:

Data, Research, and Vital Statistics
220 Capitol Street
11 State House Station
Augusta, Maine 04333-0011

6. **NOTES:**

- ❖ The Certificate of Live Birth, including the father/parent information will be available for issuance by the municipality where the child was born, the municipality where the mother resided at the time of birth and the Office of Data, Research, and Vital Statistics.
- ❖ The fee for one certified copy of the Certificate of Live Birth is \$15.00. Additional copies requested at the same time are \$6.00 each.
- ❖ All forms are available through the DRVS website at <http://www.maine.gov/dhhs/mecdc/public-health-systems/data-research/vital-records/forms/index.shtml>.

DOP (1)



Maine Center for Disease Control and Prevention
An Office of the Department of Health and Human Services

Maine Center for Disease Control and Prevention 220 Capitol Street
11 State House Station
Augusta, Maine 04333-0011
(207) 287-3771
Fax: (207) 287-1093 TTY Users: Dial 711 (Maine Relay)

DENIAL OF PARENTAGE (DOP)
(Please type or print clearly in black ink.)

Check where signed: Hospital Division of Support Enforcement and Recovery (DSER) Office of Data, Research, and Vital Statistics (DRVS) Other

CHILD	1. Child's Name (First, middle, last, suffix)		2. Date of Birth (mm/dd/yyyy)	3. Sex
	4. Place of Birth (City or town)	5. County of Birth	6. Type of Place of Birth <input type="checkbox"/> Hospital <input type="checkbox"/> Freestanding Birthing Center <input type="checkbox"/> Clinic/Doctor's Office <input type="checkbox"/> Home Birth <input type="checkbox"/> Other (Specify) _____	
	7. Facility Name (If not an institution, give street and number)		8. Facility Address (Street and number, city/town, state, zip code)	
MOTHER	9. Mother/Parent Current Legal Name (First, middle, last, suffix)		10. Mother/Parent Name Prior to First Marriage (First, middle, last, suffix)	
	11. Date of Birth (mm/dd/yyyy)	12. Birthplace (State, Territory, or Foreign Country)	13. Social Security Number (xxx-xx-xxxx)	
	14. Mother/Parent Residence Address (Street and number, city/town, state, zip code)			
PRESUMED PARENT	Complete and file this form with the Office of Data, Research, and Vital Statistics, with an Acknowledgment of Paternity (AOP) form, to be discharged of all the rights and duties of the parent for the child listed above. The registration of this form will remove and replace the presumed father listed below with the genetic father listed on a valid AOP.			
	15. Presumed Parent Current Legal Name (First, middle, last, suffix)		16. Presumed Parent Name Prior to First Marriage (First, middle, last, suffix)	
	17. Date of Birth (mm/dd/yyyy)	18. Birthplace (State, Territory, or Foreign Country)	19. Social Security Number (xxx-xx-xxxx)	
	20. Presumed Parent Residence Address (Street and number, city/town, state, zip code)			
	STATEMENTS OF DENIAL			
	Presumed Parent's Initials	Presumed parent must initial each of the statements provided below in order for the DOP to be valid.		
		I have read and understand the instructions provided and the legal consequences of and the rights and responsibilities that arise from signing the denial.		
		I understand I have the right to talk with an attorney before signing.		
		I understand that this denial, in conjunction with a valid Acknowledgment of Paternity (AOP), is the equivalent to an adjudication of the nonparentage of the presumed parent and discharges the presumed parent from all rights and duties of a parent.		
		I state that I am not the father or have been adjudicated or acknowledged as the father of the above-named child.		
	I understand it is a crime to sign this form knowing if another man is an acknowledged or adjudicated father of this child.			
	I understand that I may rescind this denial by filing a Rescission Form with the Office of Data, Research, and Vital Statistics within 60 days after the denial has been filed and accepted.			
	I understand that after 60 days of filing the acknowledgment and a denial of parentage, if applicable, with the Office of Data, Research, and Vital Statistics I must obtain a court determination to rescind or challenge the acknowledgment or denial in order to remove or add a parent.			
I swear under penalty of perjury that I have read and understand the statements contained in this Denial of Parentage (DOP). I declare the information is correct to the best of my knowledge and belief. I am signing this DOP without being subject to force, threats or coercion of any kind.				
Signature of Presumed Father			Date Signed (mm/dd/yyyy)	
NOTARY PUBLIC	STATEMENT OF NOTARY PUBLIC: The individual personally appeared before me and made oath to the truth of the foregoing statements.			
	State of: _____ County of: _____ Signed before me on: _____ Commission Expiration Date: _____			
	Signature of Notary Public			

If the mother is married and the spouse is not the biological parent

DOP (2)

DENIAL OF PARENTAGE (DOP) NOTES AND INSTRUCTIONS

The presumed parent should carefully read all notes and instructions before completing and signing the Denial of Parentage (DOP).

A Denial of Parentage (DOP) form is a legal form signed by a presumed father to swear that he is not the child's genetic (natural) father. If a married or formerly married mother claims that her spouse or ex-spouse (presumed parent) is not the genetic father of the child and the genetic father would like to acknowledge paternity, the spouse may complete a Denial of Parentage form in the presence of a notary public. To be valid, the child's genetic father and mother must also sign an Acknowledgment of Paternity (AOP) form. The AOP and DOP may be filed separately or simultaneously, but neither is valid unless both are filed with the Office of Data, Research, and Vital Statistics (DRVS). This DOP shall be signed under penalty of perjury by the presumed father who is seeking to relinquish paternity in the presence of a notary public.

- MOTHER IS OR WAS FORMERLY MARRIED:** When a mother is or was married within 300 days of the birth of the child, the name of the spouse shall be entered on the Certificate of Live Birth, including situations when:
 - The spouse may not be the genetic father.
 - The mother has been separated (legally or otherwise) from the spouse, regardless of the period of the separation.
 - The mother was legally married or attempted to marry, and the child is born within 300 days after the termination of the marriage (unless the final divorce decree specifies that the spouse is not the natural father).
- IF DOP COMPLETED AT HOSPITAL:** If a DOP has been completed and the Affidavit is given to the hospital before the Certificate of Live Birth is submitted to DRVS, the genetic father will be listed as the father/parent on the birth certificate, provided the biological father acknowledges paternity.
- IF DOP IS NOT COMPLETED AT HOSPITAL:** If this DOP has not been completed before the hospital submits the Certificate of Live Birth to DRVS, the spouse/ex-spouse (presumed parent) will be listed as the father on the birth certificate.

4. LEGAL CITATIONS: Title 19-A Chapter 61: The Maine Parentage Act

"Acknowledge father" means a man who has established parentage by filing the AOP with the State Register of Vital Statistics.

"Adjudicated parent" means a person who has been adjudicated by a court of competent jurisdiction to be the parent of the child.

"Presumed parent" means a person who is recognized as the parent of the child until that status is rebutted or confirmed in a judicial proceeding.

A person is presumed to be the parent of a child if:

- The person and the woman giving birth to the child are married to each other and the child is born during the marriage; or
 - The person and the woman giving birth to the child were married to each other and the child is born within 300 days after the marriage is terminated by death, annulment, divorce or declaration of invalidity or after a decree of separation; or
 - Before the birth of the child, the person and the woman giving birth to the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300 days after its termination by death, annulment, divorce or declaration of invalidity or after a decree of separation.
- 5. INSTRUCTIONS FOR THE COMPLETION OF THE DOP:**
- ❖ The presumed parent must read and initial all the statements included on the DOP.
 - ❖ The presumed parent must sign the DOP in the presence of a Notary Public and the Notary must notarize the signature.
 - ❖ Alterations, erasures, white-outs, cross-outs, write over's, etc., will not be accepted and will invalidate the completed form.
 - ❖ The presumed parent may present the completed and notarized DOP to the hospital prior to the submission of the Certificate of Live Birth or directly with the Office of Data, Research, and Vital Statistics, at the mailing address provided below:

Data, Research, and Vital Statistics
220 Capitol Street
11 State House Station
Augusta, Maine 04333-0011

6. NOTES:

- ❖ The amended birth certificate will be available for issuance by the municipality where the child was born, the municipality where the mother resided at the time of birth and/or the Office of Data, Research, and Vital Statistics.
- ❖ The fee for one certified copy of the Certificate of Live Birth is \$15.00. Additional copies requested at the same time are \$6.00 each.
- ❖ All forms are available through the DRVS website at <http://www.maine.gov/dhhs/mecdc/public-health-systems/data-research/vital-records/forms/index.shtml>.



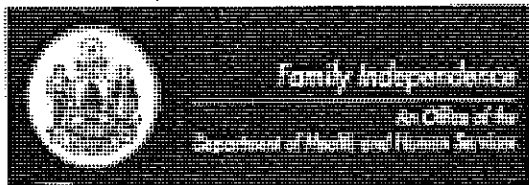
Maine Center for Disease
Control and Prevention
An Office of the
Department of Health and Human Services

Maine Center for Disease Control and Prevention (Maine CDC)
220 Capitol Street
11 State House Station
Augusta, Maine 04333-0011
(207) 287-3771
Fax : (207) 287-1093 TTY Users: Dial 711 (Maine Relay)

RESCISSION/REMOVAL OF ACKNOWLEDGMENT OR DENIAL OF PATERNITY

(Please type or print clearly in black ink.)

SECTION 1. Child's information as it appears on the Acknowledgment of Paternity (AOP) form				
CHILD	1. Child's Name (First, middle, last, suffix)		2. Date of Birth (mm/dd/yyyy)	3. Sex
	4. Place of Birth (City or town)	5. County of Birth	6. Type of Place of Birth <input type="checkbox"/> Hospital <input type="checkbox"/> Freestanding Birthing Center <input type="checkbox"/> Clinic/Doctor's Office <input type="checkbox"/> Home Birth <input type="checkbox"/> Other (Specify) _____	
	7. Facility Name (If not an institution, give street and number)		8. Facility Address (Street and number, city/town, state, zip code)	
SECTION 2. Parent's information as it appears on the Acknowledgment of Paternity (AOP) form				
MOTHER	9. Mother/Parent Current Legal Name (First, middle, last, suffix)		10. Mother/Parent Name Prior to First Marriage (First, middle, last, suffix)	
	11. Date of Birth (mm/dd/yyyy)	12. Birthplace (State, Territory, or Foreign Country)	13. Social Security Number (xxx-xx-xxxx)	
	14. Mother/Parent Residence Address (Street and number, city/town, state, zip code)			
FATHER	15. Father/Parent Current Legal Name (First, middle, last, suffix)		16. Father/Parent Name Prior to First Marriage (First, middle, last, suffix)	
	17. Date of Birth (mm/dd/yyyy)	18. Birthplace (State, Territory, or Foreign Country)	19. Social Security Number (xxx-xx-xxxx)	
	20. Father/Parent Residence Address (Street and number, city/town, state, zip code)			
SECTION 3. Presumed father's information as it appears on the Denial of Parentage (DOP) form (if applicable)				
PRESUMED PARENT	21. Father/Parent Current Legal Name (First, middle, last, suffix)		22. Father/Parent Name Prior to First Marriage (First, middle, last, suffix)	
	23. Date of Birth (mm/dd/yyyy)	24. Birthplace (State, Territory, or Foreign Country)	25. Social Security Number (xxx-xx-xxxx)	
	26. Father/Parent Residence Address (Street and number, city/town, state, zip code)			
SECTION 4. Rescinding party's information				
RESCINDING PARTY	STATEMENT OF RESCINDING PARTY: I understand this legal document is used to withdraw the legal father and child relationship created by the Acknowledgment of Paternity (AOP) form that was filed with the Maine Department of Health and Human Services, Data, Research, and Vital Statistics (DRVS) office. This form must be completed and submitted to DRVS prior to the 60 th day after the effective date of the acknowledgment and prior to a court proceeding to adjudicate parentage related to the child. I understand that all parties who signed (signatories) the AOP, and DOP if applicable, must be notified of this process.			
	Signature of Rescinding Party			Date Signed (mm/dd/yyyy)
SECTION 5. Statement of Notary Public: The above individual personally appeared before me and made oath to the truth of the foregoing statements.				
NOTARY PUBLIC	State of: _____ County of: _____ Signed or attested before me on (mm/dd/yyyy): _____ Commission Expiration Date: _____			
	Signature of Notary Public			Date Signed (mm/dd/yyyy)
Data, Research, and Vital Statistics Use ONLY				
<input type="checkbox"/> The AOP, and DOP if applicable, was filed with DRVS on _____ and is within the 60 day limitation specified in Title 19-A §1867. <input type="checkbox"/> Written notification of the request for rescission/removal has been sent to the following parties who signed (signatories) the AOP, and DOP if applicable: <input type="checkbox"/> The mother listed on the AOP, and DOP if applicable, on (mm/dd/yyyy) _____. <input type="checkbox"/> The father listed on the AOP on (mm/dd/yyyy) _____. <input type="checkbox"/> The presumed parent listed on the DOP on (mm/dd/yyyy) _____.				



Some helpful hints

Acknowledgment of Paternity (AOP) Completion list

The following information needs to be completed and/or corrected on the enclosed AOP in order for it to be submitted to Vital Records:

- Complete in Black ink
- State Of Birth Filled In
- Complete all sections in the Mother Portion (Mother signing) lines 1 - 14.
- Complete all sections in the Father Portion (Father signing) lines 15 - 20.
- No Scratch out (lines thru words or letters, scribbling)
- Read and Initial the AOP.
In first section of boxes to check, you will always check the first box (We acknowledge that the child subject to this AOP does not already have a presumed, acknowledged, or adjudicated father) unless there is already a legal father (you were married at the time of conception or birth or someone else is already on birth certificate).
- Signed in Front of notary, not before

I would be more than happy to help you fill out this form and I can notarize for free. Please feel free to call me directly a and we can schedule a date and time.

Thank You,

Paternity Team
Div. Support Enforcement

Typical and Interesting Child Support Calculations with Multiple Parents
From the Files of the Child Support AAG's

#1 – Mom, Dad and Dad #2 – Mom earns \$20,000, Dad earns \$40,000 and Dad #2 earns \$60,000 and there are 2 children.

Mom and Dad - Dad pay Mom	\$193.00
Mom and Dad #2 – Dad #2 pay Mom	\$246.00
Mom receives	\$439.00

If you use the 3 parent aid worksheet in theory:

Mom and Dad – Dad pay Mom	\$124.00
Mom and Dad #2 – Dad #2 pay Mom	\$188.00
Mom receives	\$312.00

#2 – Mom, Dad and Dad #2 – Mom earns \$40,000, Dad earns \$50,000 and Dad #2 earns \$30,000 and there is one child.

Mom and Dad – Dad pay Mom	\$131.00
Mom and Dad #2 – Dad #2 pay Mom	\$ 92.00
Mom receives	\$223.00

If you use the 3 parent aid worksheet in theory:

Mom and Dad – Dad pay Mom	\$111.00
Mom and Dad #2 – Dad #2 pay Mom	\$ 66.00
Mom receives	\$177.00

From real life:

In 2009 Mark files a PR&R against Jane and adds Jane's husband Jacob as an interested party. The children are Nicole (born 2005) and Conner (born 2007). Mark is found to be the biological father of Nicole and Conner. Jacob is found to be the de facto father of Nicole and the legal father of Conner. Mark is ordered to pay Jane \$219.00 in child support (includes day care costs).

In 2016 Jane files for divorce from Jacob. They have 2 biological children together Jacob Junior (born 2010) and Linda (born 2014). Linda will reside with Jane and Jacob Junior will reside with Jacob.

#1

SUPERIOR COURT

STATE OF MAINE

DISTRICT COURT

Docket No. _____, ss.

Location _____
Docket No. _____

Mom Plaintiff

v. Dad Defendant

CHILD SUPPORT WORKSHEET
 Supplemental Worksheet Attached
M.R. Civ. P. 108(B)
19-A M.R.S. §§ 2001-2012

- 1. a. Primary care provider (parent children live with most of the time): Plaintiff Defendant Both
If parents provide substantially equal care, higher income parent should be shown as the non-primary care provider.
- b. Parent providing health insurance for the children: Plaintiff Defendant Neither
- c. Parent providing weekly child care expenses for the children: Plaintiff Defendant Neither
- d. Parent providing extraordinary medical expenses for the children: Plaintiff Defendant Neither

2. Child's Name	Date of Birth	Child's Name	Date of Birth
<u>Girl</u>	<u>11/1/2002</u>		
<u>Boy</u>	<u>12/12/2004</u>		

Yearly Amounts	Primary Care Provider	Non-Primary Care Provider <input type="checkbox"/> Self-support reserve <input type="checkbox"/> Below poverty level	Combined Income
3. Gross income	\$ <u>20,000</u>	\$ <u>40,000</u>	
4. Minus other obligations			
a. Support paid to former spouse	a.	a.	
b. Support paid for other children	b.	b.	
5. Obligor Gross Income		(Subtract lines 4a and 4b from line 3.)	
6. Other children living with non-primary care provider (See instructions on page 3.)			
7. Adjusted Gross Income	a. (Subtract lines 4a and 4b from line 3.) <u>20,000</u>	b. (Subtract line 6 from line 5.) <u>40,000</u>	c. (Add lines 7a and 7b.) <u>60,000</u>
8. Share of Adjusted Income (Divide each parent's income by combined income)	a. <u>33</u> %	b. <u>67</u> %	

9. Basic weekly support for all children up to 18 years (or up to 19 years if still in high school) (See instructions on page 3.)
Total number of children (a) 2 multiplied by amount from table (b) 144 = 9c. 288

10. Weekly health insurance cost for children
Name & amount per child per week

Total: 10. 288

111

#1

11. Weekly child care expenses

Name & amount per child per week

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Total: 11. _____

12. Extraordinary medical expenses

Name & amount per child per week

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Total: 12. _____

*If parents provide substantially equal care, continue calculations on supplemental worksheet.

13. TOTAL WEEKLY BIWEEKLY OBLIGATION (Add lines 9c, 10, 11 and 12; if biweekly, multiply x 2) 13. 288

14. WEEKLY BIWEEKLY PARENTAL SUPPORT OBLIGATION:

<p>a. Primary Care Provider Spends directly \$ <u>95.00</u> (Multiply line 8a by line 13)</p>	<p>b. Non-Primary Care Provider's support obligation \$ <u>193.00</u> (Multiply line 8b by line 13)</p> <p>Non-Primary Care Provider Adjustments (Amounts paid directly by Non-Primary Care Provider)</p> <p>Weekly health insurance (line 10) - \$ _____</p> <p>Weekly child care (line 11) - \$ _____</p> <p>Extraordinary Medical Expenses (line 12) - \$ _____</p> <p>Non-Primary Care Provider pays as support = \$ _____</p>
---	--

Date: _____

Prepared by: _____
(Attorney for) (Plaintiff) (Defendant) (Judge)(Magistrate)(Mediator)

95.00 for Mom
193.00 for Dad

2/11

#1

SUPERIOR COURT

STATE OF MAINE

DISTRICT COURT

Docket No. _____, ss.

Location _____

Docket No. _____

Mom Plaintiff

v. Dad #2 Defendant

CHILD SUPPORT WORKSHEET
 Supplemental Worksheet Attached
M.R. Civ. P. 108(B)
19-A M.R.S. §§ 2001-2012

- 1. a. Primary care provider (parent children live with most of the time): Plaintiff Defendant Both
If parents provide substantially equal care, higher income parent should be shown as the non-primary care provider.
- b. Parent providing health insurance for the children: Plaintiff Defendant Neither
- c. Parent providing weekly child care expenses for the children: Plaintiff Defendant Neither
- d. Parent providing extraordinary medical expenses for the children: Plaintiff Defendant Neither

2. Child's Name	Date of Birth	Child's Name	Date of Birth
<u>Girl</u>	<u>1/1/2002</u>		
<u>Boy</u>	<u>12/12/2004</u>		

Yearly Amounts	Primary Care Provider	Non-Primary Care Provider <input type="checkbox"/> Self-support reserve <input type="checkbox"/> Below poverty level	Combined Income
3. Gross income	\$ <u>20,000</u>	\$ <u>60,000</u>	
4. Minus other obligations			
a. Support paid to former spouse	a.	a.	
b. Support paid for other children	b.	b.	
5. Obligor Gross Income		(Subtract lines 4a and 4b from line 3.)	
6. Other children living with non-primary care provider (See instructions on page 3.)			
7. Adjusted Gross Income	a. (Subtract lines 4a and 4b from line 3.) <u>20,000</u>	b. (Subtract line 6 from line 5.) <u>60,000</u>	c. (Add lines 7a and 7b.) <u>80,000</u>
8. Share of Adjusted Income (Divide each parent's income by combined income)	a. <u>25</u> %	b. <u>75</u> %	

9. Basic weekly support for all children up to 18 years (or up to 19 years if still in high school) (See instructions on page 3.)
Total number of children (a) 2 multiplied by amount from table (b) 164 = 9c. 328

10. Weekly health insurance cost for children

Name & amount per child per week	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Total: 10. _____

3/1

#1

11. Weekly child care expenses

Name & amount per child per week

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Total: 11. _____

12. Extraordinary medical expenses

Name & amount per child per week

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Total: 12. _____

*If parents provide substantially equal care, continue calculations on supplemental worksheet.

13. TOTAL WEEKLY BIWEEKLY OBLIGATION (Add lines 9c, 10, 11 and 12; if biweekly, multiply x 2) 13. 328

14. WEEKLY BIWEEKLY PARENTAL SUPPORT OBLIGATION:

<p>a. Primary Care Provider Spends directly \$ <u>82</u> (Multiply line 8a by line 13)</p>	<p>b. Non-Primary Care Provider's support obligation \$ <u>246</u> (Multiply line 8b by line 13)</p> <p>Non-Primary Care Provider Adjustments (Amounts paid directly by Non-Primary Care Provider)</p> <p>Weekly health insurance (line 10) - \$ _____</p> <p>Weekly child care (line 11) - \$ _____</p> <p>Extraordinary Medical Expenses (line 12) - \$ _____</p> <p>Non-Primary Care Provider pays as support = \$ _____</p>
--	---

Date: _____

Prepared by: _____
(Attorney for) (Plaintiff) (Defendant) (Judge)(Magistrate)(Mediator)

82.00 for Mom
246.00 for Dad #2

193.00 Dad
246.00 Dad #2

439.00

411

#1

An Aid in Calculating Child Support with 3 parents

Mom

Plaintiff

CHILD SUPPORT WORKSHEET

v.

Dad + Dad #2

Defendant

- 1. a. Primary care provider (parent children live with most of the time): Plaintiff Defendant Both
If parents provide substantially equal care, higher income parent should be show as non-primary care provider.
- b. Parent providing health insurance for the children: Plaintiff Defendant Both

2. Child's Name	Date of Birth	Child's Name	Date of Birth
Girl	11/1/2002		
Boy	12/12/2004	Dad	Dad #2

Yearly Amounts	Primary Care Provider	Non-Primary Care Self-Support Reserve Below Poverty Level	Non-Primary Care Self-Support Reserve Below Poverty Level	Combined Income
3. Gross Income	\$ 20,000	\$ 40,000	\$ 60,000	
4. Minus other obligations				
a. support paid to former spouse	a.	a.	a.	
b. Support paid for other children	b.	b.	b.	
c. Other children living with non-primary care provider				
5. Total of 4a, b, & c				
6. Adjusted yearly gross Income (Subtract line 5 from line 3)	a. 20,000	b. 40,000	c. 60,00	d. 120,000
7. Share of Gross Income Divide each parent's Income by combined income	17 %	33 %	50 %	(Add 6a, 6b & 6c)

8. Basic weekly support for all children up to 18 years (or up to 19 years if still in high school), (see Instructions on reverse.)
Total number of children multiplied by amount from table 2 = \$188 Total 8. 376

9. Weekly health insurance cost for children
Name & amount per child per week _____ \$ _____ Total: 9. _____

10. Weekly child care expenses
Name & amount per child per week _____ \$ _____ Total: 10. _____

11. Extraordinary medical expenses
Name & amount per child per week _____ \$ _____ Total: 11. _____

*If parents provide substantially equal care, continue calculations on supplemental worksheet.
12. TOTAL WEEKLY SUPPORT OBLIGATION (Add lines 8, 9, 10 and 11) 12. 376

13. WEEKLY PARENTAL SUPPORT OBLIGATION:
 Primary Care Provider spends directly \$ 64 (Multiply line 7a by line 12)
 Non-Primary Care Provider support obligation \$ 124 (Multiply line 7b by line 12)
 Non-Primary Care Provider support obligation \$ 188 (Multiply line 7c by line 12)
 Health Insurance Adjustment _____
 Non-Prim Care Provider pays as support _____

Date: _____

Prepared by: _____

\$64 for Mom	Mom gets 5/11 124.00 188.00 ----- \$312.00	2 work weeks
\$124 for Dad		Mom gets 193.00
\$188 for Dad #2		246.00
		<u>\$439.00</u>

#2

SUPERIOR COURT

STATE OF MAINE

DISTRICT COURT

_____, ss.
Docket No. _____

Location _____
Docket No. _____

Mom Plaintiff

v. Dad Defendant

CHILD SUPPORT WORKSHEET
 Supplemental Worksheet Attached
M.R. Civ. P. 108(B)
19-A M.R.S. §§ 2001-2012

- 1. a. Primary care provider (parent children live with most of the time): Plaintiff Defendant Both
If parents provide substantially equal care, higher income parent should be shown as the non-primary care provider.
- b. Parent providing health insurance for the children: Plaintiff Defendant Neither
- c. Parent providing weekly child care expenses for the children: Plaintiff Defendant Neither
- d. Parent providing extraordinary medical expenses for the children: Plaintiff Defendant Neither

2. Child's Name Child Date of Birth 3/3/2013 Child's Name _____ Date of Birth _____

Yearly Amounts	Primary Care Provider	Non-Primary Care Provider <input type="checkbox"/> Self-support reserve <input type="checkbox"/> Below poverty level	Combined Income
3. Gross income	\$ <u>40,000</u>	\$ <u>50,000</u>	
4. Minus other obligations			
a. Support paid to former spouse	a.	a.	
b. Support paid for other children	b.	b.	
5. Obligor Gross Income		(Subtract lines 4a and 4b from line 3.)	
6. Other children living with non-primary care provider (See instructions on page 3.)			
7. Adjusted Gross Income	a. (Subtract lines 4a and 4b from line 3.) <u>40,000</u>	b. (Subtract line 6 from line 5.) <u>50,000</u>	c. (Add lines 7a and 7b.) <u>90,000</u>
8. Share of Adjusted Income (Divide each parent's income by combined income)	a. <u>44</u> %	b. <u>56</u> %	

9. Basic weekly support for all children up to 18 years (or up to 19 years if still in high school) (See instructions on page 3.)
Total number of children (a) 1 multiplied by amount from table (b) 234 = 9c. 234.00

10. Weekly health insurance cost for children
Name & amount per child per week

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Total: 10. _____

112

#2

11. Weekly child care expenses

Name & amount per child per week

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Total: 11. _____

12. Extraordinary medical expenses

Name & amount per child per week

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Total: 12. _____

*If parents provide substantially equal care, continue calculations on supplemental worksheet.

13. TOTAL WEEKLY BIWEEKLY OBLIGATION (Add lines 9c, 10, 11 and 12; if biweekly, multiply x 2) 13. 234.00

14. WEEKLY BIWEEKLY PARENTAL SUPPORT OBLIGATION:

<p>a. Primary Care Provider Spends directly \$ <u>103.00</u> (Multiply line 8a by line 13)</p>	<p>b. Non-Primary Care Provider's support obligation \$ <u>131</u> (Multiply line 8b by line 13)</p> <p>Non-Primary Care Provider Adjustments (Amounts paid directly by Non-Primary Care Provider)</p> <p>Weekly health insurance (line 10) - \$ _____</p> <p>Weekly child care (line 11) - \$ _____</p> <p>Extraordinary Medical Expenses (line 12) - \$ _____</p> <p>Non-Primary Care Provider pays as support = \$ _____</p>
--	---

Date: _____

Prepared by: _____
(Attorney for) (Plaintiff) (Defendant) (Judge)(Magistrate)(Mediator)

Dad pays Mom \$131.00
(versus \$111.00)

2/2

#2

SUPERIOR COURT

STATE OF MAINE

DISTRICT COURT

Docket No. _____, ss.

Location _____

Docket No. _____

Mom Plaintiff

v. Dad # 2 Defendant

CHILD SUPPORT WORKSHEET

Supplemental Worksheet Attached

M.R. Civ. P. 108(B)

19-A M.R.S. §§ 2001-2012

- 1. a. Primary care provider (parent children live with most of the time): Plaintiff Defendant Both
If parents provide substantially equal care, higher income parent should be shown as the non-primary care provider.
- b. Parent providing health insurance for the children: Plaintiff Defendant Neither
- c. Parent providing weekly child care expenses for the children: Plaintiff Defendant Neither
- d. Parent providing extraordinary medical expenses for the children: Plaintiff Defendant Neither

2. Child's Name Child Date of Birth 3/3/2013 Child's Name _____ Date of Birth _____

Yearly Amounts	Primary Care Provider	Non-Primary Care Provider <input type="checkbox"/> Self-support reserve <input type="checkbox"/> Below poverty level	Combined Income
3. Gross income	\$ <u>40,000</u>	\$ <u>30,000</u>	
4. Minus other obligations			
a. Support paid to former spouse	a.	a.	
b. Support paid for other children	b.	b.	
5. Obligor Gross Income		(Subtract lines 4a and 4b from line 3.)	
6. Other children living with non-primary care provider (See instructions on page 3.)			
7. Adjusted Gross Income	a. (Subtract lines 4a and 4b from line 3.) <u>40,000</u>	b. (Subtract line 6 from line 5.) <u>30,000</u>	c. (Add lines 7a and 7b.) <u>70,000</u>
8. Share of Adjusted Income (Divide each parent's income by combined income)	a. <u>57</u> %	b. <u>43</u> %	

9. Basic weekly support for all children up to 18 years (or up to 19 years if still in high school) (See instructions on page 3.)
Total number of children (a) 1 multiplied by amount from table (b) 214 = 9c. 214

10. Weekly health insurance cost for children
Name & amount per child per week _____ \$ _____
_____ \$ _____
_____ \$ _____
_____ \$ _____
_____ \$ _____
_____ \$ _____

Total: 10. _____

3/2

#2

11. Weekly child care expenses

Name & amount per child per week

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Total: 11. _____

12. Extraordinary medical expenses

Name & amount per child per week

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Total: 12. _____

*If parents provide substantially equal care, continue calculations on supplemental worksheet.

13. TOTAL WEEKLY BIWEEKLY OBLIGATION (Add lines 9c, 10, 11 and 12; if biweekly, multiply x 2) 13. 214

14. WEEKLY BIWEEKLY PARENTAL SUPPORT OBLIGATION:

a. Primary Care Provider
Spends directly \$ 122.00
(Multiply line 8a by line 13)

b. Non-Primary Care Provider's support obligation \$ 92
(Multiply line 8b by line 13)

Non-Primary Care Provider Adjustments
(Amounts paid directly by Non-Primary Care Provider)

Weekly health insurance (line 10)	- \$ _____
Weekly child care (line 11)	- \$ _____
Extraordinary Medical Expenses (line 12)	- \$ _____

Non-Primary Care Provider pays as support = \$ _____

Date: _____

Prepared by: _____
(Attorney for) (Plaintiff) (Defendant) (Judge)(Magistrate)(Mediator)

Dad #2 pays Mom \$92.00
(VERSUS \$66.00)

4/2

#2

An Aid in Calculating Child Support with 3 parents

Mom

Plaintiff

CHILD SUPPORT WORKSHEET

v.

Dad : Dad #2

Defendant

- 1. a. Primary care provider (parent children live with most of the time): Plaintiff Defendant Both
If parents provide substantially equal care, higher income parent should be show as non-primary care provider.
- b. Parent providing health insurance for the children: Plaintiff Defendant Both

2.	Child's Name	Date of Birth	Child's Name	Date of Birth

Yearly Amounts	Primary Care Provider	Non-Primary Care Self-Support Reserve Below Poverty Level	Non-Primary Care Self-Support Reserve Below Poverty Level	Combined Income
3. Gross Income	\$ 40,000	\$ 50,000	\$ 30,000	
4. Minus other obligations				
a. support paid to former spouse	a.	a.	a.	
b. Support paid for other children	b.	b.	b.	
c. Other children living with non-primary care provider				
5. Total of 4a, b, & c				
6. Adjusted yearly gross Income (Subtract line 5 from line 3)	a. 40,000	b. 50,000	c. 30,000	d. 120,000
7. Share of Gross Income (Divide each parent's Income by combined income)	33 %	42 %	25 %	(Add 6a, 6b & 6c)

- 8. Basic weekly support for all children up to 18 years (or up to 19 years if still in high school), (see Instructions on reverse.)
Total number of children multiplied by amount from table 1 = \$ 264 Total 8. 264.00
- 9. Weekly health insurance cost for children
Name & amount per child per week _____ \$ _____ Total: 9. _____
- 10. Weekly child care expenses
Name & amount per child per week _____ \$ _____ Total: 10. _____
- 11. Extraordinary medical expenses
Name & amount per child per week _____ \$ _____ Total: 11. _____

*If parents provide substantially equal care, continue calculations on supplemental worksheet.

12. TOTAL WEEKLY SUPPORT OBLIGATION (Add lines 8, 9, 10 and 11) 12. _____

13. WEEKLY PARENTAL SUPPORT OBLIGATION:

Primary Care Provider spends directly \$ <u>87.00</u> <small>(Multiply line 7a by line 12)</small>	Non-Primary Care Provider support obligation \$ <u>111.00</u> <small>(Multiply line 7b by line 12)</small>	Non-Primary Care Provider support obligation \$ <u>66.00</u> <small>(Multiply line 7c by line 12)</small>
Health Insurance Adjustment _____	Health Insurance Adjustment _____	Health Insurance Adjustment _____
Non-Prim Care Provider pays as support _____	Non Prim Care Provider pays as support _____	Non Prim Care Provider pays as support _____

Date: _____ Prepared by: _____

Mom gets \$ 111.00 + 66.00 = \$ 177.00

VERSUS \$ 131.00 + 92.00 = \$ 223.00

5/2

Maine Parentage Act

{ Enacted June 30, 2015 – Effective July 1, 2016
One year later – how are things going?

Debby Willis
Assistant Attorney General
Chief, Child Support Division
626-8525
debby.willis@maine.gov

My Interests

Establishment of Parentage
Establishment of Paternity
Acknowledgment of Paternity
No acknowledgment of maternity

Debby finally gets what she wants – lasting consequences for a 'poor man's adoption'

2 years to change your mind and then you are a permanent parent

Mothers and fathers have 2 years (Section 1868 (1))

Section 1853 (2) – more than 2 parents

Did Debby really get what she wanted?

Voluntary Acknowledgment of Paternity
(AOP)

He believes he is the genetic father

There is no other presumed parent (3 party)

Rescind within 60 days – no questions asked

Challenge after 60 days on the basis of fraud,
duress or material mistake of fact and MUST
be within 2 years

But we are seeing challenges after 2 years

A challenge by another man must be brought within 2 years unless he “did not know and could not reasonably have known of his potential genetic parentage on account of material misrepresentation or concealment” (Section 1868 (2))

All get rights and responsibilities under Section 1653

Unless there is material misrepresentation or concealment there is effectively a 2 year limitation on challenging an AOP

Parallel process for denial of paternity –
legal/bio (3 party AOP's) – appears to not
have a time limitation

If the mother is married and the husband is
not the genetic father

Husband can deny (Section 1863)

Genetic father & mother can acknowledge

All 3 must sign (can be separate)

Presumed parentage

Marriage – remains the same

Extends presumed legal parent to the unmarried
partners (Section 1881 (3)) – for those who:

Reside in the household

Openly hold the child out as that person's own for
2 years from birth or adoption

Assumed personal, financial or custodial
responsibilities for the children

1882 (2) (A) permits a spouse who “could not have reasonably known about the birth of a child”
To challenge after 2 years but within 2 years of discovery

1882 (2) (B) permits a 3rd party challenge to a presumed parent after 2 years only if the person did not know and could not reasonably have known of genetic parentage on account of material misrepresentation or concealment

The Court does not disestablish the presumed parent – the child has 3 parents

Court may invoke 1912 (1) (B) to deny genetic testing if “it would be an inequitable interference to the relationship between the child and they presumed parent or otherwise contrary to the best interest of the child

Genetic Testing (Sections 1911 and 1912) (aka Magistrate (now Judge) Paul Mathew's Wiggle Room)

Court may order genetic testing if there is a reasonable, good faith basis for alleging or denying genetic parentage (Section 1911)

Court may deny testing or admission of test results

Deny if the conduct of the parties estops a party from denying parentage or

It would an inequitable interference to the relationship between the child and a parent or otherwise contrary to the best interests of the child

Section 1912 – parent by estoppel

Factors:

- Length of time between the request and the time the parent was placed on notice that genetic parentage is at issue
- Length of time during which the parent has assumed a parental role for the child
- Facts surrounding discovery that genetic parentage is at issue
- Nature of the relationship between the child and the parent
- The age of the child
- Any adverse effect on the child if parentage is disproved
- The nature of the relationship between the child the alleged parent
- The extent to which the passage of time reduces the chances of establishing the parentage of another person and a child support obligation in favor of the child, and
- Any other factor that may affect equities arising from the disruption of the relationship or any other adverse effect to the child

De Facto Parentage (Section 1891)

- Prima facie showing of standing
- Clear and convincing evidence
- “permanent, unequivocal, committed and responsible parental role in the child's life”
- Consistent caretaking
- Bonded and dependent relationship – fostered or supported by the other parent
- Both have understood, acknowledged or accepted or behaved as though the person is a parent
- Person has accepted full and permanent responsibilities without expecting financial compensation
- The continuing relationship between person and child is in the child's best interests

Changes to Parentage after 2 years

Biology does not rule – a difficult concept

Mom and Mr. Jones sign an AOP when the child is born
5/30/2013

Bio Dad files a parentage action 9/7/2016

Testimony of Mom and Bio Dad confirm Bio Dad knew
in 2013 he might be the father.

Courts find Mr. Jones remains the legal father.

Court further finds, and with agreement of the parties,
Bio Dad is Bio Dad.

Did Debby really get what she wanted?

Mom is married and husband is not the father
of the child.

Husband knew about the child.

Bio dad knew about the child.

4 years pass.

Should bio dad become legal dad?

Does it matter if husband cannot be found?

A VIEW FROM THE BENCH ON THE MAINE PARENTAGE ACT AND THE HOME COURT

Deputy Chief Judge Susan Oram
Maine District Court, Lewiston

NO WRITTEN MATERIALS FOR THIS CHAPTER

**This page was included simply to assign
the speaker a chapter number.**

JURISDICTION AND VENUE IN ADOPTIONS AND MINOR GUARDIANSHIPS: HOME COURT AND BEYOND

Professor Deirdre M. Smith
University of Maine School of Law, Portland

STATE OF MAINE

—
 IN THE YEAR OF OUR LORD
 TWO THOUSAND AND SIXTEEN

—
 H.P. 609 - L.D. 890

An Act To Ensure a Continuing Home Court for Cases Involving Children

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 4 MRSA §152, sub-§5-A is enacted to read:

5-A. Actions involving minors under Title 18-A. Exclusive jurisdiction of actions for guardianship, adoption, change of name or other matters involving custody or other parental rights brought under Title 18-A if proceedings involving custody or other parental rights with respect to a minor child, including but not limited to adoption, divorce, parental rights and responsibilities, grandparents' rights, protective custody, change of name, guardianship, paternity, termination of parental rights and protection from abuse or harassment, are pending in the District Court.

A. The District Court presiding over any matter involving custody or other parental rights with respect to a minor child shall require all parties to disclose whether they have knowledge of:

- (1) Any interim or final order then in effect concerning custody or other parental rights with respect to the minor child;
- (2) Any proceeding involving custody or other parental rights with respect to the minor child currently filed or pending before any court of this State or another state, including before a probate court in this State; or
- (3) Any other related action currently filed or pending before any court of this State or another state, including before a probate court in this State.

B. If the District Court presiding over any matter involving custody or other parental rights with respect to a minor child becomes aware that a proceeding for guardianship, adoption or change of name or another matter involving custody or other parental rights with respect to the minor child is pending in a probate court in this State, the District Court shall notify the Probate Court and take appropriate action to facilitate a transfer of the matter from the Probate Court;

Sec. 2. 4 MRSA §157, sub-§1, ¶A, as amended by PL 2015, c. 377, §1, is further amended to read:

A. The Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and to confirmation by the Legislature, shall appoint to the District Court ~~38~~ 39 judges. At least one judge must be appointed from each district who is a resident of a county in which the district lies, except that in District 3 there must be 2 judges appointed who are residents of a county in which the district lies; in District 6 there must be 2 judges appointed who are residents of a county in which the district lies; and in District 9 there must be 2 judges appointed who are residents of a county in which the district lies. Each District Court Judge has a term of office of 7 years.

To be eligible for appointment as a District Judge, a person must be a member of the bar of the State. The term "District Judge" includes the Chief Judge and Deputy Chief Judge.

Sec. 3. 4 MRS §251 is amended to read:

§251. General jurisdiction

Each judge may take the probate of wills and grant letters testamentary or of administration on the estates of all deceased persons who, at the time of their death, where inhabitants or residents of ~~his~~ the judge's county or who, not being residents of the State, died leaving estate to be administered in ~~his~~ the judge's county, or whose estate is afterwards found therein; and has jurisdiction of all matters relating to the settlement of such estates. ~~He~~ A judge may grant leave to adopt children, change the names of persons, appoint guardians for minors and others according to law; and has jurisdiction as to persons under guardianship, and as to whatever else is conferred ~~on him~~ by law, except in cases in which the District Court has jurisdiction over a child pursuant to section 152, subsection 5-A.

Sec. 4. 4 MRS §251-A is enacted to read:

§251-A. Other proceedings involving parental rights; transfer to District Court

1. Disclosure of orders and proceedings. The judge of probate presiding over any matter involving guardianship, adoption or change of name or another matter involving custody or other parental rights with respect to a minor child shall require all parties to disclose whether they have knowledge of:

A. Any interim or final order then in effect concerning custody or other parental rights with respect to the minor child;

B. Any proceeding involving custody or other parental rights with respect to the minor child currently filed or pending before any court of this State or another state, including the District Court; or

C. Any other related action currently filed or pending before any court of this State or another state, including the District Court.

2. Transfer to District Court. If in a matter before the Probate Court concerning a minor child a judge of probate becomes aware that a proceeding involving custody or other parental rights with respect to the minor child is pending in the District Court, the

judge shall notify the District Court and take appropriate action to facilitate a transfer of the matter to the District Court.

Sec. 5. 18-A MRSA §1-701, sub-§(a), as enacted by PL 2001, c. 163, §1, is amended to read:

(a). If a person desires to have that person's name changed, the person may petition the judge of probate in the county where the person resides. If the person is a minor, the person's legal custodian may petition in the person's behalf. If there is a proceeding involving custody or other parental rights with respect to the minor pending in the District Court, the petition must be filed in the District Court.

Sec. 6. 18-A MRSA §5-102, sub-§(a), as enacted by PL 1979, c. 540, §1, is amended to read:

(a). ~~The~~ Subject to Title 4, section 152, subsection 5-A, the court has exclusive jurisdiction over guardianship proceedings and has jurisdiction over protective proceedings to the extent provided in section 5-402.

Sec. 7. 18-A MRSA §9-103, as enacted by PL 1995, c. 694, Pt. C, §7 and affected by Pt. E, §2, is amended to read:

§9-103. Jurisdiction

(a). ~~The~~ Subject to Title 4, section 152, subsection 5-A, the Probate Court has exclusive jurisdiction over the following:

- (1). Petitions for adoption;
- (2). Consents and reviews of withholdings of consent by persons other than a parent;
- (3). Surrenders and releases;
- (4). Termination of parental rights proceedings brought pursuant to section 9-204;
- (5). Proceedings to determine the rights of putative fathers of children whose adoptions or surrenders and releases are pending before the Probate Court; and
- (6). Reviews conducted pursuant to section 9-205.

(b). The District Court has jurisdiction to conduct hearings pursuant to section 9-205. The District Court has jurisdiction over any matter described in subsection (a) if the proceeding concerns a child over whom the District Court has exclusive jurisdiction pursuant to Title 4, section 152, subsection 5-A.

Sec. 8. 18-A MRSA §9-204, sub-§(a), as enacted by PL 1995, c. 694, Pt. C, §7 and affected by Pt. E, §2, is amended to read:

(a). A petition for termination of parental rights may be brought in Probate Court in which an adoption petition is properly filed as part of that adoption petition except when ~~a child protection proceeding is pending or is subject to review by the District Court~~ has exclusive jurisdiction over the child pursuant to Title 4, section 152, subsection 5-A.

RULE 126. TRANSFERS FROM PROBATE COURT WHEN A FAMILY MATTER OR A CHILD PROTECTION MATTER IS PENDING IN THE DISTRICT COURT

(a) Transfer of Any Pending Matters in Probate Court. The District Court presiding over any family matter or child protection case involving a minor child shall, at the first conference, determine whether there are any proceedings involving custody or other parental rights, including adoption, concerning that child currently filed or pending before a Probate Court. A case is “pending” in a court when it has been filed in the court and is being litigated in the court, and/or is awaiting a judgment or order from the court.

(1) If the District Court learns of any such proceedings, it shall, within 7 days, conduct a telephone conference with the Probate Court to determine the appropriate action to facilitate a transfer of the matter from the Probate Court. In making that determination, the District Court shall be guided by the requirement that the District Court serve as the home court for all cases involving a minor child’s custody or parental rights, whether filed in the Probate Court or District Court, while at the same time ensuring that parties are not required to re-litigate a matter that has already been heard by the Probate Court. Before determining the most appropriate action, the District Court shall consider all relevant factors, including:

- (A) The type of case filed in each court,
- (B) The identity of the parties,
- (C) The extent of the Probate Court litigation,
- (D) The extent of the litigation or anticipated litigation in the District Court,
- (E) The length of time the proceeding has been pending in the Probate Court,
- (F) The date and nature of any already-scheduled proceedings,
- (G) Whether the Probate Court has already conducted any interim or final hearings, and
- (H) Whether there are any impediments to the immediate transfer.

(2) The District Court shall make an audio record of the conference conducted with the Probate Court.

(3) If the District Court is unable to hold a conference with the Probate Court within the time specified in Rule 126(a)(1), the District Court shall, using the factors listed in that section, determine the appropriate action to facilitate a transfer of the matter from the Probate Court.

(4) As soon thereafter as possible, and in any case no more than 28 days after the conference with the Probate Court or 35 days after the District Court learns of the case pending or filed in the Probate Court, whichever is sooner, the District Court shall issue an order that immediately transfers the Probate Court proceeding to the District Court where there is a pending family matter or child protection case, unless the court determines that immediate transfer would result in undue delay or waste of judicial resources. If the District Court does not order immediate transfer, it shall issue an order that transfers the proceeding from Probate Court to District Court:

(A) As soon as a specified event in the Probate Court has occurred,

(B) As soon as the Probate Court has issued an order ruling on a matter it has under advisement, or

(C) On a date certain.

The District Court shall provide copies of the transfer order to all parties and to the Probate Court.

(b) Procedure for Transfer. Within 7 days after the date of transfer specified in the transfer order, the Register of the Probate Court shall file with the District Court that issued the order of transfer the original filings, orders, exhibits, and transcripts, if any, of the proceeding, together with a certified copy of all docket entries for the proceeding being transferred.

(c) Effect of Transfer. The transferred action shall be litigated in the District Court as if originally begun there, and the District Court shall have exclusive, continuing jurisdiction of all matters concerning the child(ren) involved in the transferred action pursuant to 4 M.R.S. § 152(5-A). Thereafter, any family matter, guardianship, adoption, name change, or other matter involving custody or

other parental rights with respect to that minor child or those minor children must be filed in the District Court.

(d) Determining Course of Proceedings after Transfer. Immediately after issuing the order of transfer, the District Court shall schedule a case management conference, which must be held no later than 28 days after the issuance of the transfer order. Participants in the conference shall include the parties involved in the District Court proceeding and the Probate Court case that has been transferred. At the conclusion of that conference, the court shall decide whether to consolidate for hearing the case transferred from the Probate Court with the action already pending in the District Court, and shall determine the course of both cases.

(e) Effect of Previous Orders. Any order of the Probate Court entered before transfer shall remain in force until modified by the District Court.

Advisory Note - July 2016

This new rule creates the procedures through which the District Courts will handle and process the guardianship, adoption, and name change cases that are transferred to them 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. It also provides a definition of “pending” to allow the court and parties to share an understanding of the term used in the new legislation. See the July 2015 Advisory Notes to Rule 100.

Pursuant to 18-A M.R.S. § 5-205, venue for guardianship cases in the Probate Court is in the county where the minor resides “or is present.” Pursuant to 18-A M.R.S. § 9-104, venue for adoption cases in the Probate Court is determined by a number of factors, including whether the child is being placed for adoption by the Department of Health and Human Services. Section 9-104(c) permits Probate Courts to transfer cases to other Probate Courts “in the interests of justice or for the convenience of the parties.” Similarly, 4 M.R.S. § 155(3) provides that venue for some family cases in the District Court is “in the division where either the plaintiff or the defendant resides,” but 4 M.R.S. § 155(8) allows the District Court to “transfer any case to another division for the convenience of parties or witnesses or in the interest of justice.” In order to ensure that the transfer of cases from Probate Court to District Court does, in fact, result in the establishment of a “home court” for families, each case involving a child that is transferred from the Probate Court

will be transferred to the District Court where the action involving that child is pending.

STATE OF MAINE

DISTRICT COURT

Location _____

Docket No. _____

In re: _____
Minor Child(ren)

JURISDICTIONAL AFFIDAVIT

4 M.R.S. § 152(5-A)

Pursuant to 4 M.R.S. § 152(5-A), in order for the District Court to accept for filing a petition for guardianship, adoption or name change concerning a minor child or children, there must already be a **pending** case in the District Court concerning custody or other parental rights concerning that child or children, OR a case involving the children must have already been **transferred** from a Probate Court.

A “pending” case is a case that has been filed in a District Court, is being litigated in that court, and/or is awaiting decision by that court. In order to assist the District Court in determining whether it has jurisdiction, you must provide the following information.

Petitioner’s(s’) name(s), date(s) of birth, and address(es):

1. Petitioner(s) wish/es to file a guardianship, adoption or name change case involving the following child(ren) (provide name, date of birth, and address of minor child(ren)):

Petitioner(s) claim/s that the District Court has jurisdiction over this case because (**CHECK ALL THAT ARE TRUE**):

A. There is a case concerning the child(ren) that is currently pending before a Maine District Court. The case name is _____, docket number _____, and it is pending in the _____ District Court.

B. There is a **second** case concerning the child(ren) that is currently pending before a Maine District Court. The case name is _____, docket number _____, and it is pending in the _____ District Court.

C. Although there is no pending case in the District Court, a guardianship, adoption, or name change case concerning the child(ren) was transferred from a Probate Court to the District Court. The name of that case is _____, its docket number is _____, and it was transferred from _____ Probate Court to the _____

_____ District Court.

2. **(CHOOSE ONE)** There is / is not a guardianship, adoption, or name change case concerning the child(ren) that is currently pending before any Maine Probate Court.

3. **(CHOOSE ONE)** There is / is not a judgment or order issued by the _____ Court that currently affects the care and custody of the child(ren). A copy of that order is attached.

4. Name, date of birth, address and telephone number of child(ren)'s first legal parent: _____

5. Name, date of birth, address and telephone number of child(ren)'s second legal parent: _____

6. Name, date of birth, address and telephone number of child(ren)'s guardian: _____

7. Telephone number of PETITIONER(S): _____

8. Relationship of petitioner(s) to child(ren): _____

I understand that, if I give false information on this form, I may be subject to a determination that I am in contempt of court, and I may be sanctioned for that contempt.

Petitioner Signature

Date

STATE OF MAINE
COUNTY OF _____

_____ personally appeared and made oath that the foregoing is true to the best of his/her knowledge, information and belief and, to the extent it is based upon his/her information and belief, that s/he believes the same to be true.

Dated: _____ Notary Public: _____

Petitioner Signature

Date

STATE OF MAINE
COUNTY OF _____

_____ personally appeared and made oath that the foregoing is true to the best of his/her knowledge, information and belief and, to the extent it is based upon his/her information and belief, that s/he believes the same to be true.

Dated: _____ Notary Public: _____

How do I fill out the Jurisdictional Affidavit (PB-003) in District Court?

What is the Jurisdictional Affidavit, and why do I need to fill it out?

You need to use this form when you file a guardianship, adoption, or name change case for a child. The District Court uses this form to make sure it knows about any other court cases concerning the child in the case you are filing.

A court must have jurisdiction (power) to hear and decide the case you are filing. The District Court only has jurisdiction for these kinds of cases if there is already a pending case or transferred case involving the child in the District Court. If the District Court does not have jurisdiction, then you will need to file your guardianship, adoption, or name change case in a different court, like a county Probate Court. The District Court also needs to know if there are any pending cases in a Probate Court that will need to be transferred to the District Court.

What is the difference between the District Court and Probate Court?

The Maine District Court is part of the state court system. It hears all types of cases involving children. The Probate Court is a county-based court. Both kinds of courts can hear guardianship, adoption, or name change cases. This form is important for figuring out which court you can file your case in.

What is a “pending” case?

A pending case is a case that has already been filed with the court where not everything has been decided. This means that there are still things going on like:

- scheduled hearings
- trials
- mediations
- conferences, or
- appeals

If the judge still needs to make a final judgment or order, the case is pending. If the court has entered an order and there aren't other things the court needs to do, then the case is not pending.

What is a “transferred” case?

A transferred case is one that was started in the Probate Court and then sent to the District Court. It can be either pending or not pending.

What is a case “concerning” the child?

There are many kinds of family law cases that are about, or "concerning" a child. Some examples are:

- divorce or parental rights cases between the child's parents;
- a protective custody case (a child welfare case involving the Department of Health and Human Services);
- a Protection from Abuse case where the custody of a child is an issue;
- Grandparents Visitation Act case;

- adoption; or,
- a parentage or paternity case, like where DHHS is seeking child support.

What if I’m not sure if there are any pending or transferred cases concerning the child?

If you don’t know if there are cases concerning the child, you may be able to find out by calling the District or Probate Court where you think the case would have been filed. You can also check with someone who might have been involved in the case, like a parent.

What if I learn about a pending or transferred case concerning the child after I sign the form?

You should tell the District Court about the case as soon as possible.

What if I’m wrong about whether there are any pending or transferred cases concerning the child? Will I be in trouble?

As long as you answer the questions truthfully and based on your knowledge, information, and belief at the time you sign the form, you haven’t done anything wrong. You should tell the District Court judge and clerks about incorrect information on this form as soon as you learn that you made a mistake.

What is a “judgment or order” issued by a court “that currently affects the care and custody of the child(ren)?”

This is a document that has been signed by a judge or magistrate having to do with the child. Like:

- custody
- support
- residence
- visitation
- parentage

What if I don’t know if there is a “judgment or order” issued by a court “that currently affects the care and custody of the child(ren)?”

If you don’t know if there is a judgment or order about the child, you may be able to find out by calling the District or Probate Court where you think the case would have been handled.

What if I know there is a judgment or order, but I don’t have a copy to attach to the form?

Get a copy if you can. If you can’t get one or don’t know how to do that, include as much information as you have about the judgment or order on the form.

What are the “child(ren)’s legal parent” or “guardian”?

These are the people who are listed on the child’s birth certificate or have been involved in a court or other case about the child.

STATE OF MAINE

_____ COUNTY

PROBATE COURT
DOCKET NO. _____

In Re _____ **JURISDICTIONAL AFFIDAVIT**
Minor Child(ren)

Pursuant to 4 M.R.S. § 251-A, in order to accept for filing a petition for paternity, guardianship of minor(s), a petition for termination of a guardianship of minor(s), a petition for adoption of minor child(ren), a petition to establish parental rights and responsibilities, a petition for termination of parental rights, or a petition for name change of minor child(ren), Maine’s Probate Courts must first determine: 1) whether there are any **pending** cases involving the child or children in any of Maine’s District Courts; and, 2) whether a case involving the child or children has ever been **transferred** from a Probate Court to a District Court. A “pending” case is a case that has been filed in a District Court, is being litigated in that court, and/or is awaiting decision by that court. In order to assist the Probate Court in determining whether it has jurisdiction, you must provide the following information.

1. Name, date of birth, and address of minor child(ren) _____

2. Name, date of birth, address and telephone number of child(ren)’s first legal parent: _____

3. Name, date of birth, address and telephone number of child(ren)’s second legal parent: _____

4. Name, date of birth, address and telephone number of child(ren)’s guardian: _____

5. Name, date of birth, address and telephone number of PETITIONER: _____

6. Relationship of petitioner to child(ren): _____

7. I, _____, state under oath, that I know of no guardianship, adoption, name change, divorce, family matter, protection from abuse, protection from harassment, or child protective custody case concerning the child(ren) that is currently pending before any Maine District Court.

8. I, _____, state under oath, that I know of no guardianship, adoption, or name change case concerning the child(ren) that is currently pending before any Maine Probate Court.

9. I, _____, state under oath, that I know of no proceeding involving custody or other parental rights case concerning the child(ren) that is currently pending before any court of another state.

How do I fill out the Jurisdictional Affidavit in Probate Court?

What is the Jurisdictional Affidavit, and why do I need to fill it out?

You need to use this form when you file a guardianship, adoption, or name change case for a child. The Probate Court uses this form to make sure it knows about any other court cases concerning the child in the case you are filing.

A court must have jurisdiction (power) to hear and decide the case you are filing. The Probate Court does not have jurisdiction for these kinds of cases if there is already a pending case or transferred case involving the child in the District Court. If the Probate Court does not have jurisdiction, then you will need to file your guardianship, adoption, or name change case in District Court.

What is the difference between the District Court and Probate Court?

The Maine District Court is part of the state court system. It hears all types of cases involving children. The Probate Court is a county-based court. Both kinds of courts can hear guardianship, adoption, or name change cases. This form is important for figuring out which court you can file your case in.

What is a “pending” case?

A pending case is a case that has already been filed with the court where not everything has been decided. This means that there are still things going on like:

- scheduled hearings
- trials
- mediations
- conferences, or
- appeals

If the judge still needs to make a final judgment or order, the case is pending. If the court has entered an order and there aren't other things the court needs to do, then the case is not pending.

What is a “transferred” case?

A transferred case is one that was started in the Probate Court and then sent to the District Court. It can be either pending or not pending.

What is a case “concerning” the child?

There are many kinds of family law cases that are about, or "concerning" a child. Some examples are:

- divorce or parental rights cases between the child's parents;
- a protective custody case (a child welfare case involving the Department of Health and Human Services);
- a Protection from Abuse case where the custody of a child is an issue;
- Grandparents Visitation Act case;
- adoption; or,
- a parentage or paternity case, like where DHHS is seeking child support.

What if I’m not sure if there are any pending or transferred cases concerning the child?

If you don’t know if there are cases concerning the child, you may be able to find out by calling the District or Probate Court where you think the case would have been filed. You can also check with someone who might have been involved in the case, like a parent or guardian.

What if I learn about a pending or transferred case concerning the child after I sign the form?

You should tell the Probate Court about the case as soon as possible.

What if I’m wrong about whether there are any pending or transferred cases concerning the child? Will I be in trouble?

As long as you answer the questions truthfully and based on your knowledge, information, and belief at the time you sign the form, you haven't done anything wrong. You should tell the Probate Court judge and clerks about incorrect information on this form as soon as you learn that you made a mistake.

What is a “judgment or order” issued by a court “that currently affects the care and custody of the child(ren)?”

This is a document that has been signed by a judge or magistrate having to do with the child. Like:

- custody
- support
- residence
- visitation
- parentage

What if I don’t know if there is a “judgment or order” issued by a court “that currently affects the care and custody of the child(ren)?”

If you don’t know if there is a judgment or order about the child, you may be able to find out by calling the District or Probate Court where you think the case would have been handled.

What if I know there is a judgment or order, but I don’t have a copy to attach to the form?

Get a copy if you can. If you can’t get one or don’t know how to do that, include as much information as you have about the judgment or order on the form.

What are the “child(ren)’s legal parent” or “guardian”?

These are the people who are listed on the child’s birth certificate or have been involved in a court or other case about the child.

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND SEVENTEEN

H.P. 427 - L.D. 611

An Act To Amend Certain Laws Affecting the Judicial Branch

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 4 MRSA §55, as amended by PL 1983, c. 164, is further amended to read:

§55. Preservation of briefs

The clerk of the Supreme Judicial Court shall preserve 2 complete sets of briefs filed in all cases decided in the Supreme Judicial Court sitting as the Law Court. ~~Under the direction of the Chief Justice these briefs shall be arranged in order. One set each shall thereupon be delivered to the law libraries respectively of Cumberland and Penobscot Counties for preservation and reference~~ The clerk shall provide complete sets of the briefs to the law library of Cumberland County and to the Law and Legislative Reference Library, either by delivering a physical set to each library or by delivering or providing access to an electronic copy of the briefs. All expenses incurred in preparation and delivery of these briefs ~~shall~~ must be paid by the State from the appropriation for expenses of the Supreme Judicial Court.

Sec. 2. 5 MRSA §48-A, sub-§1, ¶M, as amended by PL 2009, c. 174, §1, is further amended to read:

M. "Qualified legal interpreter" means a person who is licensed under Title 32, chapter 22 as a certified interpreter, certified deaf interpreter or certified transliterator and who:

(1) Is a hearing person who:

(a) Holds a current Specialist Certificate: Legal from the Registry of Interpreters for the Deaf, Inc. or its successor;

(b) Satisfies the eligibility criteria for taking the exam for the specialist certificate described in division (a) as long as, by January 1, 2012, that person obtains the specialist certificate described in division (a); ~~or~~

(c) Is included on the bureau's list of qualified interpreters on the effective date of this section, as long as that person, by January 1, 2006, meets the

eligibility criteria for taking the exam for the specialist certificate described in division (a) and, by January 1, 2012, obtains the specialist certificate described in division (a); or

(d) Possesses qualifications, certifications or credentials to interpret in court proceedings as established by the Supreme Judicial Court; or

(2) Is a deaf interpreter who holds a current Certificate of Interpretation from the Registry of Interpreters for the Deaf, Inc. or its successor or a Reverse Skills Certificate from the Registry of Interpreters for the Deaf, Inc. or its successor. Beginning January 1, 2006, a deaf person, hard-of-hearing person or late-deafened person must also satisfy the eligibility criteria for taking the exam for the Specialist Certificate: Legal or its successor.

Sec. 3. 14 MRSA §1202-A, as enacted by PL 1981, c. 705, Pt. G, §2, is amended to read:

§1202-A. Prohibition of discrimination

A citizen shall not be excluded from jury service in this State on account of race, color, religion, sex, sexual orientation as defined in Title 5, section 4553, subsection 9-C, national origin, ancestry, economic status, marital status, age or physical handicap, except as provided in this chapter.

Sec. 4. 18-A MRSA §5-205, as enacted by PL 1979, c. 540, §1, is amended to read:

§5-205. Court appointment of guardian of minor; venue

The venue for guardianship proceedings for a minor is in the ~~place~~ county or division where the minor resides or is present, where the petitioner or a parent or guardian of the child resides or where another proceeding concerning custody or other parental rights with respect to the child is pending.

Sec. 5. 18-A MRSA §9-104, as amended by PL 1997, c. 239, §1 and affected by §6, is further amended to read:

§9-104. Venue; transfer

(a). If the adoptee is placed by a licensed child-placing agency or the department, the petition for adoption must be filed in the court in the county or division where:

- (1). The petitioner resides;
- (2). The adoptee resides or was born; ~~or~~
- (3). An office of the agency that placed the adoptee for adoption is located; or
- (4). The parental rights of the minor adoptee's parents were terminated.

(b). If the adoptee is not placed by a licensed child-placing agency or the department, the petition for adoption must be filed in the county or division where the adoptee resides or where the petitioners reside.

(c). If, in the interests of justice or for the convenience of the parties, the court finds that the matter should be heard in another ~~probate~~ court, the court may transfer, stay or dismiss the proceeding, subject to any further conditions imposed by the court.

THE “NEW” GAL RULES AND BEST PRACTICES

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IMPORTANT DEVELOPMENTS IN MAINE FAMILY LAW: A VIEW FROM THE BENCH AND THE BAR

THE "NEW" GAL RULES AND BEST PRACTICES FOR LAWYERS

MSBA, SEPTEMBER 7, 2017, FREEPORT, MAINE

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*THE OPINIONS EXPRESSED IN THIS PRESENTATION ARE THE
EXCLUSIVE RESPONSIBILITY AND OPINIONS OF THE PRESENTER
AND DO NOT REFLECT THE VIEWS OF ANY OTHER
ORGANIZATION OR INDIVIDUAL.

History: GALs are not a New Invention!



- A court "should appoint a guardian *ad litem* to appear in the cause and protect and safeguard the rights of the infant, and, unless the infant is so protected and the record so show, a judgment or decree against him is erroneous and may be reversed on a writ of error." *Easton v. Easton*, 33 Me. 114, 122 (1851).
- A GAL appointment may occur when the "minor's interests require separate representation." *Cyr v. Cyr*, 432 A.2d 793, 798 (Me. 1981).
- In the 1980s, The Legislature began enacting statutory definitions for the best interests test, which included authority to appoint GALs, and amendments have continued over the decades.

Nor is the Duty or the Role

- *Gerber v. Peters*, 584 A.2d 605, 607 (Me. 1990) (“The duty of a court appointed guardian ad litem of a minor child in a divorce case is to the court, and the scope of that duty lies within the parameters of the order of appointment.”).
- *Coppersmith v. Coppersmith*, 786 A.2d 602, 604 (Me. 2001) (“Given the extensive history of conflict between the parents...the District Court needed an objective and independent investigation into the interests and desires of the Coppersmiths' children, and did not abuse its discretion in appointing a guardian ad litem.”).
- *Richards v. Bruce*, 691 A.2d 1223, 1226 (Me. 1997) (“The guardian serves as the court's agent and prepares a report for the court detailing his or her findings.”).

3

And When Parents Litigate: Due Process...No Matter How Small



- *Miller v. Miller*, 677 A.2d 64, 70 (Me. 1996) (The “use of guardians ad litem to protect the best interests of children in divorce proceedings fully satisfies any federal constitutional requirements. Accordingly, the Miller children are not entitled to intervene in the divorce action of their parents and be represented by independent legal counsel.”).
- *S**** S**** v. State*, 299 A.2d 560, 571 (Me. 1973) (The “power of the State to act as *parens patriae* for the benefit of children and adolescents does not override the constitutional privilege of substantive due process to which minor children are entitled equally as much a adults.”) (Dufresne, C.J., dissenting).

4

See Wechsler v. Simpson, 2016 ME 21, ¶15

- Pursuant to 19-A M.R.S. § 1507(4) (2015), a “guardian ad litem shall use the standard of the best interest of the child as set forth in section 1653” when reporting findings and recommendations to a court.
- During testimony, GAL stated that “Washington’s guidelines are informative on child development and are relevant in this action only to the extent that they address factors included in Maine’s statute.
- Further, in his report, the GAL explicitly stated that “our state should not and cannot follow the laws or guidelines of another state.”
- The GAL thereby “expressly demonstrated a clear understanding that his analysis was to be governed by the best interest standard established in Maine law.”

5

I. The GAL “Paradigm Shift” for Judges and Lawyers



6

The New GAL Law and Rules

➤ Who Qualifies as a GAL?

- Only licensed professionals who take GAL training and placed on roster by CJ

➤ Mandatory Duties:

- Interview child and parents/partners in home
- Investigate, write a report, and appear at trial to testify or assist court

➤ Non-Mandatory Duties if in AO:

- Interview third parties like grandparents (if not living in home), teachers, therapists, physicians or day care providers *designated by AO*
- Obtain and review records from other sources
- Attend mediation or other court proceedings before trial
- Recommend therapist, psychological evaluations, or other service providers

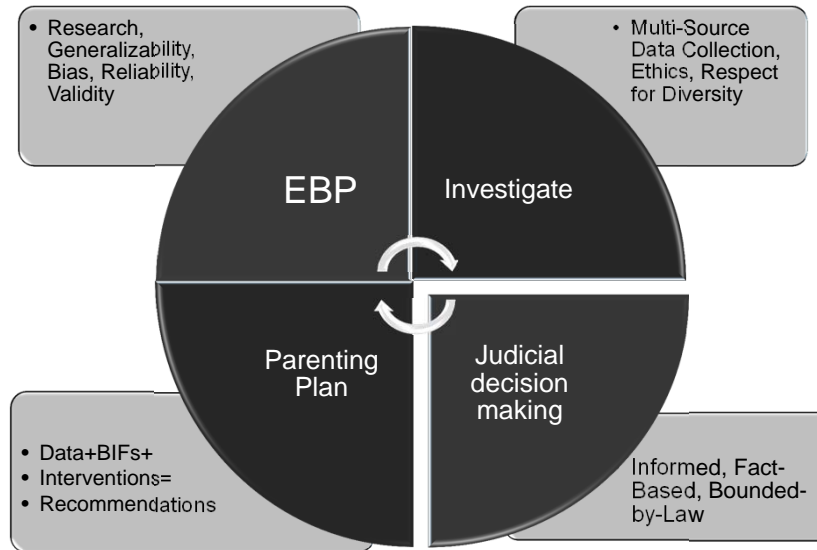
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A Summary: Know the GAL Rules

- Law and practices for GALs are evolving as to role, duties, and funding in title 22, 18-A, and 19-A cases.
- The AO is not “inspirational” but defines immunity and ethical protections for a GAL so “no means no” unless judge orders.
- If you intend to file for a GAL do so early: “Use it or lose it.”
- Magistrates/judges must justify appointment based upon needs of child and financial capacity of parents in non-title 22 cases.
- Understand the differences between investigation and recommendations by GAL and how a judge may view the roles.
- **Bend Don't Break:** Bad tactical strategy and worse outcomes for parents in court.
- Providing data to GAL within the scope of the AO is not the same as lobbying hence the admonition above.....
- C-X is not a chance to disrespect or theatrical for clients: Your audience is a judge not internet ratings or client kudos.

8

Conceptualizing GAL “Best Practices” Today



9

Legislative Enactments and Law Court Rules Now Define the Role for All GALs

- 4 M.R.S. §1555(1) (In "proceedings to determine parental rights and responsibilities and guardianship of a minor under Title 18-A and in contested proceedings pursuant to Title 19-A, section 904, 1653 or 1803 in which a minor child is involved, the court may appoint a guardian ad litem for the child when the court **has reason for special concern** as to the welfare of the child.").
- 4 M.R.S. §1556(1) ("An order appointing a guardian ad litem pursuant to Title 22, section 4005 must specify the terms and conditions of the appointment as provided in Title 22, this chapter and rules adopted by the Supreme Judicial Court.").

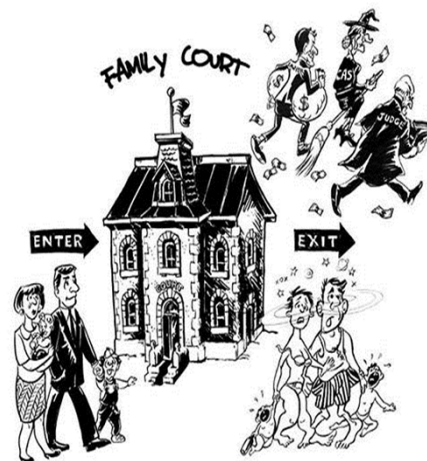
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A Common Core

- M.G.A.L.R. 1 (“These Rules are adopted pursuant to 4 M.R.S. §§1551 to 1557, 18-A M.R.S. §1-112, 19-A M.R.S. §1507, and 22 M.R.S. §4005, to address practice and performance of guardians ad litem for children in the District Court, the Superior Court, and the Probate Court.”).
- These Rules “govern the qualifications for guardians ad litem, standards of conduct for guardians ad litem, appointment of guardians ad litem, and placement of guardians ad litem on, and removal of guardians ad litem from, the guardian ad litem Roster.”
- http://www.courts.maine.gov/rules_adminorders/rules/index.shtml;
http://mebaroverseers.org/regulation/gal_rules.html
- Order: FM-125, Rev. 09/15 - Order Appointing GAL, at http://www.courts.maine.gov/fees_forms/forms/index.shtml#fm

11

II. Trips and Traps for the Unwary



12

Timing of AOs under Rule 4(b)(2)

- In Title 19-A, any motion for appointment of a GAL shall be filed:
 - no later than the conference with the court following the first scheduled mediation session or,
 - if mediation is waived, 60 days after the first conference with the court.
- A motion or request for appointment of a guardian ad litem may be considered at a later time only if the court finds that:
 - (A) There is good cause for the late motion;
 - (B) The reasons for the late motion could not have been anticipated at a point when a timely motion could have been filed; and
 - (C) The appointment will not unreasonably delay resolution of the matter or harm the best interest of the child in achieving clarity in parental rights and responsibilities for the child.

13

AOs, Scope of Duty/Investigations under Rule 4(a)

- (1) A limited purpose appointment order issued pursuant to Rule 4(b)(4)(D)(i), 4 M.R.S. § 1555, and either 19-A M.R.S. § 1507 or 18-A M.R.S. § 1-112;
- (2) A standard appointment order issued pursuant to Rule 4(b)(4)(D)(ii), 4 M.R.S. § 1555, and either 19-A M.R.S. § 1507 or 18-A M.R.S. § 1-112;
- (3) An expanded appointment order issued pursuant to Rule 4(b)(4)(D)(iii), 4 M.R.S. § 1555, and either 19-A M.R.S. § 1507 or 18-A M.R.S. § 1-112; or
- (4) An appointment order issued pursuant to Rule 4(c), 4 M.R.S. § 1556, and 22 M.R.S. § 4005.

14

4 M.R.S. §1554(3)

- A person appointed by the court to serve as a GAL acts as the court's agent and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the GAL.

- As a quasi-judicial officer, GAL shall perform the assigned duties independently and impartially in all relevant matters within the scope of the order of appointment, respecting the court's obligation to dispose of all judicial matters promptly, efficiently and fairly as provided in the Maine Code of Judicial Conduct.

15

Ethical Duties and Scope of Protection

- M.R.G.A.L. 4(b)(4)(A) (“The GAL may not perform and shall not be expected to perform any duties beyond those specified in the appointment order, unless subsequently ordered to do so by the court.”).

- *See also* 4 M.R.S. §1556(2)(A) (“The appointment order must be written on a court-approved form and must specify the guardian ad litem's length of appointment and specific duties, including the filing of a written report.”).

16

Immunity and the AO

- M.R.G.A.L. III (A GAL “is entitled to quasi-judicial immunity from liability for actions undertaken pursuant to their appointments, these Rules or the Standards of Practice for Guardians ad Litem in Maine Courts.”).
- *Dalton v. Dalton*, 2014 ME 108, ¶9, 99 A.3d 723 (“Judicial immunity protects a GAL from civil liability for acts performed within the scope of a GAL's official duties in the event that he or she is personally sued.”).
- 19-A M.R.S. §1507(6) (“A person serving as a guardian ad litem under this section acts as the court's agent and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the guardian ad litem.”).

17

But What about *Implied* Authority (or Not)?

EX1: The AO directs the GAL to interview both parents but makes no mention of third persons. The pleadings suggest that a third person is engaging in corporal punishment and the mother wants the GAL to interview witnesses and her parents during the home visit but they do not reside with her. Yes or no?

EX2: The AO directs the GAL to *interview* the children's therapist who communicates regularly with the parents' therapists. Father's lawyer wants the GAL to review the therapeutic records of both parents. Mother's lawyer agrees and the lawyers agree in emails to these interviews and records. Yes or no? [Confidentiality of records?].

EX3: The AO directs the GAL write an interim report for mediation but does not order the GAL to attend mediation (or a judicial settlement conference). May the GAL attend mediation as demanded by the attorneys? Yes or No?

18

III. Child Wishes or Meaningful Preferences?

- 4 M.R.S. §§1555(5), 1556(4); M.G.A.L.R. 4(b)(6): The GAL shall make the wishes of the child known to the court if the child has expressed them, regardless of the recommendation of the GAL.
- 19-A M.R.S. §1653(3)(C): “The preference of the child, if old enough to express a meaningful preference.”
- Query: Where is “meaningful preferences”? What if disclosure of a wish increases risk of harm? And what if the child does not want the GAL to tell? Can “wishes” mean anything?
- Caveat: If you intend for a child to testify, give the court and GAL advance notice. Do not bring the child to court without disclosure.
- Caveat: If you decide to interview a child after appointment of a GAL, think about who is the client and how you may then be a witness.

19

Unique to title 22 GALs (though it should not be....)

M.G.A.L.R 4(c)(5). *Protection of Child as Witness.*

- GAL shall advocate for the interests of the child when the child is called to testify as a witness in any judicial proceeding relating to the case in which the guardian ad litem has been appointed.
- GAL may advocate for special procedures, including, but not limited to, special procedures to protect the child witness from unnecessary psychological harm resulting from the child’s testimony.

20

IV. Reports and Filing

- 4 M.R.S. §1555(6) in 18-A and 19-A and M.GAL.R 4(b)(7)
- GAL shall provide a copy of each report to the parties and the court at least 14 days before each report is due.
- GAL shall provide a copy of the final report to the parties and the court at least 14 days in advance of final hearing.
- Reports are admissible and subject to cross-examination and rebuttal, whether or not objected to by a party.
- Any objections to a report must be filed at least 7 days before the applicable hearing. [What objections are objections? *See* Rule 43(e)?]

21

But look again, 19-A M.R.S. §1507

- GAL shall make a written report of investigations, findings and recommendations as ordered by the court, with copies of the report to each party and the court (§1507(3)(A)(3)).
- GAL shall make a final written report to the parties and the court reasonably in advance of the hearing. The report is admissible as evidence and subject to cross-examination and rebuttal, whether or not objected to by a party (§1507(5)).

22

But then see, 18-A M.R.S. §1-112(e)

- If required by the court, GAL shall make a final written report to the parties and the court reasonably in advance of hearing.
- The report is admissible as evidence and subject to cross-examination and rebuttal, whether or not objected to by a party.

23

22 M.R.S. §4005(1)(D) and M.G.A.L.R 4(c)(6)

- GAL shall make a written report of the investigation, findings and recommendations and shall provide a copy of the report to each of the parties reasonably in advance of the hearing and to the court,
- except that the GAL need not provide a written report prior to a hearing on a preliminary protection order.
- The court may admit the written report into evidence as provided by statute.

24

RULE 5: STANDARDS OF CONDUCT

- (a) Performance of Duties
- (b) Agent of the Court
- (c) Develop Understanding of Litigation*
- (d) Explanation of Court Process
- (e) Advocate for Clear Court Orders
- (f) Mandated Reporting
- (g) Confidentiality**
- (h) Ex Parte Communications
- (i) Conflicts of Interest and Mandatory Disclosures
- (j) Withdrawal

25

Rule 5(g): A Sticky Web for All Professionals



26

“Bending” means Knowing these Limits

- GAL shall observe all statutes, rules, and regulations concerning confidentiality.
- GAL shall not disclose information or participate in the disclosure of information relating to a case to any person who is not a party to the case, except as necessary to perform the GAL duties, or as may be specifically provided by law or by these Rules.
- GAL shall exercise reasonable discretion about whether to disclose communications made by the child to the court, or to professionals providing services to the child or the family based on the GAL’s evaluation of the best interest of the child.
- Any decision by the GAL not to disclose such information, however, shall be subject to review by the court following an in camera review.

27

No Privilege but Work Product Counts

- Communications made to a GAL, including those made to a GAL by a child, are not privileged.
- A GAL’s notes and work papers are privileged and shall not be disclosed to any person (reserving to the court authority to order disclosure if the court determines disclosure).
- If the GAL is an attorney, she or he shall be deemed to act as a GAL rather than as an attorney, and information he or she receives is not subject to the attorney-client privilege.

28

FYI

In re Adoption of T.D., 2014 ME 36, ¶18, 87 A.3d 726:

- Often the most effective challenge to the quality, completeness, or competence of a GAL's work will be accomplished through cross-examination of the GAL at trial.
- If a parent or other interested party has filed a motion to remove the GAL or otherwise challenging the GAL's investigations, the court can, and should, hear the motion during the trial and allow examination of the GAL on the pertinent issues.
- If the court concludes that the investigation has been insufficient or that the GAL has demonstrated a bias that has made the GAL's testimony unreliable, the court may disregard that testimony in whole or in part.
- But be careful as a trial lawyer because if you are overreaching.....

29

Nevers for GALs....For All of Us Please

- Never say or write anything to a parent or third person unless you are prepared to have it recorded and replayed to you.
- Never use denigrating language like "poor" or "personality disordered."
- Never use a diagnosis or label unless you are quoting from an authenticated and current report that is evidence-based and not just notes of a therapist or thought experiment.
- Never tell one lawyer something "off the record" unless you would say the same thing to the other lawyer.
- Never assume that what you are told will be testified to in court because the presence of a judge and parents may change "how can I help" role to "I do not remember saying it that way?"
- Never use irrelevant "he/said she said" statements. This is not a sandbox.
- Remember to "stay in your professional lane." You are not a magic wand.....

30

And always but always respect and account for diversity and vulnerability



- MARCIA BOUMIL ET AL., *Legal and Ethical Issues Confronting Guardian ad Litem Practice*, 13 J. LAW & FAM. STUDIES 43 (2011).
- RICHARD DUCOTE, *Guardians ad litem in Private Custody Litigation: The Case for Abolition*, 3 LOY. J. PUB. INT. L. 106 (2001).
- LINDA D. ELROD, *Raising the Bar for Lawyers Who Represent Children: ABA Standards of Practice for Custody Cases*, 37 FAM. L. Q. 105 (2003).
- MARY KAY KISTHARDT, *Working in the Best Interests of Children: Facilitating the Collaboration of Lawyers and Social Workers in Abuse and Neglect Cases*, 30 RUTGERS L. REV. 1, 76 (2006) .
- RAVEN C LIDMAN & BETSY R. HOLLINGSWORTH, *The Guardian Ad Litem in Child Custody Cases: The Contours of Our Judicial System Stretched beyond Recognition*, 6 GEO. MASON L. REV. 255 (1997).
- Dana E. Prescott, *The New Phoenix: Maine's Innovative Standards for Guardians Ad Litem*, 69 Me. L. Rev. 67 (2016).
- Dana E. Prescott, *Inconvenient Truths: Facts and Frictions in Defense of Guardians Ad Litem for Children*, 67 ME. L. REV. 43 (2014).
- MARGARET E. SJOSTROM, *What's a GAL to do?: The Proper Role of Guardians Ad Litem in Disputed Custody and Visitation Proceedings*, 24 CHILD. LEG. RIGHTS J. 2 (2004) .

