PMO-SJC-2

STATE OF MAINE JUDICIAL BRANCH
PANDEMIC MANAGEMENT ORDER
Order Issued March 30, 2020
(revised May 13, 2020)
(revised May 20, 2020)
(revised June 5, 2020)

Pandemic Management Order from the Maine Supreme Judicial Court Consolidating, Ratifying, and Superseding the Previous Orders Concerning

A. The Administration of Oaths at Depositions,
B. The Electronic Filing of Motions Directly Bearing on a Criminal Defendant's Liberty Interests,
C. Unexpired Deadlines in Trial Court Cases,
D. Unexpired Deadlines Relating to Law Court Appeal, and
E. Face-to-Face or In-Person Contacts with Children and Families
F. Depositions in Civil Cases
G. Electronic Signatures

Since March 13, 2020, in light of public health concerns arising from the novel coronavirus (COVID-19), Maine's Judicial Branch has issued a number of Emergency Orders in order to adhere to the guidance provided by the Maine and United States Centers for Disease Control and in order to comply with the Governor's Executive Order 19. This Order consolidates some of those Emergency Orders into one document and clarifies, corrects, and ratifies those orders.

PMO-SJC-2(A). EMERGENCY ORDER FOR THE ADMINISTERING OF OATHS AT DEPOSITIONS VIA REMOTE AUDIO-VIDEO COMMUNICATION EQUIPMENT

In light of the public health concerns arising from the novel coronavirus (COVID-19), **effective today**, and until further order of the Court, the Supreme Judicial Court, pursuant to its rulemaking authority, issues the following ORDER:

1. By rule, courts have authority to appoint the person before whom a deposition shall be taken. *See* M.R. Civ. P. 28(a). "A person so appointed has power to administer oaths and take testimony." M.R. Civ. P. 28(a).

2. Until further order of this Court, at any deposition taken pursuant to the Maine Rules of Civil Procedure, including, without limitation, M.R. Civ. P. 27, 28(a), 29, 30, 31, 32(d)(3)(B), or pursuant to an order of court, an officer or other person before whom a deposition is to be taken is hereby authorized to administer oaths and take testimony remotely, so long as that officer or other person can both see and hear the deponent via audio-video communication equipment or technology for purposes of positively identifying the deponent.

3. This order is intended to avoid a situation in which the officer or other person before whom the deposition is to be taken is actually or impliedly precluded, by statute, rule, or otherwise, from administering oaths and taking testimony if not in the presence of the deponent. This order does not in any way address or decide whether notaries public are precluded by statute from administering an oath or affirmation if the deponent is not in their presence. *See* 4 M.R.S. § 1013. As a result of this order, however, any officer or other person before whom a deposition may be taken, including any officer or other person who also happens to be a notary, is authorized to administer oaths and take testimony without being in the presence of the deponent. Such authority arises from this order, not from any person's status as a notary.

4. In addition, all parties are reminded that, "[u]nless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery." M.R. Civ. P. 29. If the parties so stipulate to the person before whom the deposition is to be taken, that person has the authority to administer oaths. *See* M.R. Civ. P. 28(a), 29.

PMO-SJC-2(B). EMERGENCY ORDER REGARDING ELECTRONIC FILING OF MOTIONS DIRECTLY BEARING ON A CRIMINAL DEFENDANT'S LIBERTY INTERESTS

In light of public health concerns arising from the novel coronavirus (COVID-19), effective immediately, and until further order of the court, all motions requesting the incarceration or the release of a criminal defendant will be accepted by email sent to the Clerk and copied to opposing counsel. Paper copies must be sent to the court and opposing counsel. Clerks will provide email addresses to the parties. The email filing of those motions is controlled by PMO-SJC-3.

PMO-SJC-2(C). TERMINATION DATE FOR EMERGENCY ORDER EXTENDING UNEXPIRED DEADLINES IN TRIAL COURTS

On March 17 and March 30, 2020, the court established the following extension deadlines: *In light of the suspension of certain types of civil and family litigation due to public health concerns arising from the novel coronavirus (COVID-19), immediately, and until further order of the court, IT IS ORDERED that 49 calendar days are added to the final date of any unexpired deadline established by court order or court rules including deadlines that come into existence after the date of the original order (March 17, 2020) and this Order.*

This order does not apply to the following case types:

- *Unified Criminal Docket matters related to the bail or release of an incarcerated defendant*
- *Juvenile proceedings*
- *Protection from Abuse*
- *Protection from Harassment*
- *Child Protection*
- *Involuntary mental health commitment and treatment*

This order does not extend any statutory requirements or deadlines, including but not limited to, statutes of limitations and statutory deadlines for appeals of governmental actions and decisions.

The March orders extending deadlines will expire on May 31. Any deadlines that occurred, or will occur, on or before May 31 will continue to be

subject to the 49-day extension, but any deadlines that occur on or after June 1 will remain in full force and effect and will not be extended pursuant to this order.

If the event for which a deadline has been extended triggers a subsequent deadline for another event, the timeline for the subsequent event shall remain as provided by law, rule, or order but shall commence on the date when the triggering event occurs.

PMO-SJC-2(D). TERMINATION DATE FOR EMERGENCY ORDER EXTENDING UNEXPIRED DEADLINES RELATING TO LAW COURT APPEALS

On March 17, 2020, we issued the following Emergency Order Extending Unexpired Deadlines Relating to Law Court Appeals: *In light of the public health concerns arising from the novel coronavirus (COVID-19),* ***effective today****, and until further order of the Court, 49 calendar days are added to any unexpired deadline established by court order, court rules, or notices and schedules issued by the Clerk's Office, related to any Law Court appeals. This order does not include affect deadlines for notices of appeal or any deadlines set by statute.*

SO ORDERED.

On March 30, 2020, we amended the order to specifically exclude notices of appeal. Consistent with deadlines of notices of appeal governed by statute, which were not extended by the March 17 Order, as of the effective date of the order of March 30, the deadline for notices of appeal set by court order, court rules, or notices and schedules issued by the Clerk's Office, related to any Law Court appeal was no longer extended. Accordingly, the Court ordered as follows:

> In light of the public health concerns arising from the novel coronavirus (COVID-19), **effective today**, and until further order of the Court, 49 calendar days are added to any unexpired deadline established by court order, court rules, or notices and schedules issued by the Clerk's Office, related to any Law Court appeals.
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> **As of March 30, 2020, this order does not affect deadlines for notices of appeal or any deadlines set by statute.**

To protect the rights of those whose appeals ripened between March 17 and March 30, a notice of appeal affected by the 49-day extension set forth in the March 17 Order will be deemed timely if filed within the full time period to appeal set as if that period commenced on the effective date of this order. For example, as to appeals governed by Maine Rule of Appellate Procedure 2(b)(1) or Rule 2(c)(1), the due date for which would have, absent entry of the March 17 Order, fallen within the time period between March 21 and the effective date of this order, is now due within 21 days after the effective date of this order. Similarly, as to appeals for which the 21-day time period commenced prior to March 21 but which deadline would not expire until after the effective date of this order, the notice of appeal is also now due within 21 days after the effective date of this order.

The March orders extending deadlines will expire on May 31. Any deadline that occurs on or before May 31, 2020, will continue to be subject to the 49-day extension. Any deadline that occurs on or after June 1, 2020, will remain in full force and effect and will not be extended pursuant to this order. For purposes of this paragraph, a deadline "occurs" on the date when a filing or other document is due or an event must take place.

If the event for which a deadline has been extended triggers a subsequent deadline for another event, the timeline for the subsequent event shall remain as provided by law, rule, or order but shall commence on the date when the triggering event occurs. The Executive Clerk of the Supreme Judicial Court is authorized to modify briefing schedules for cases affected by the 49-day extension to ensure that adequate preparation and response time is available to the parties.

PMO-SJC-2(E). EMERGENCY ORDER REGARDING FACE-TO-FACE OR IN-PERSON CONTACTS WITH CHILDREN AND FAMILIES

In light of public health concerns arising from the novel coronavirus (COVID-19), effective immediately, and until further order of the Court, in a court proceeding or process related to Titles 18-C, 19-A, 22, or any other similar statute, any contact or interviews required or permitted in such proceeding or process shall include contact by video or telephone.

PMO-SJC-2(F). EMERGENCY ORDER REGARDING ORAL DEPOSITIONS IN CIVIL CASES

In light of public health concerns arising from the novel coronavirus (COVID-19), effective immediately, and until further order of the Court, the Supreme Judicial Court, pursuant to its rule-making authority, orders that depositions in civil cases shall be conducted as follows:

1. All depositions shall be conducted via remote means, i.e., in a manner that allows for the deponent, all other persons entitled to attend (including the parties, counsel for the parties, counsel for the deponent), and all other necessary persons (e.g., a court reporter) to participate in the deposition without attending in person, unless all persons referenced in this paragraph agree to conduct the deposition in person. *See* M.R. Civ. P. 43 & Advisory Notes.

2. A remote deposition may be conducted by a video-conferencing platform, or by any other means agreed to by the parties. In addition to any other requirements set out in the applicable rules, all notices of remote depositions shall specify the video-conferencing platform or other means of conducting and recording that will be used for the deposition.

3. As provided in PMO-SJC-2(A), at any deposition taken pursuant to the Maine Rules of Civil Procedure or pursuant to an order of court, an officer or other person before whom a deposition is to be taken is authorized to administer oaths and take testimony remotely, so long as that officer or other person can both see and hear the deponent via audio-video communication equipment or technology for purposes of positively identifying the deponent.

4. In order to comply with this Order, depositions may be conducted by telephone by leave of court or by written stipulation of all parties pursuant to M.R. Civ. P. 30(b)(7).

5. If a party or the party's attorney contends that there are urgent and compelling reasons that a deposition should not be conducted pursuant to the above protocol, within three days after receiving the notice of deposition, the party or counsel shall file a written motion

explaining why the particular deposition must be conducted in person, and/or why counsel or others should be allowed to appear at the deposition personally along with the deponent. The motion must be served on the other party or parties. If any party objects to the motion, it must file its written opposition within three days after the motion is filed. The court will rule on the motion expeditiously, and, for purposes of this Order, "the court" includes the Panel Chair in medical malpractice screening cases.

6. The desire of counsel, a party, or a deponent to appear in person shall not, on its own, constitute sufficient grounds to object to or quash a notice for a remote deposition, or to refuse to make a witness available for a remote deposition. An objection or motion to quash a remote deposition based solely on the desire of counsel, a party, or a deponent to appear in person shall not stay the deposition.

PMO-SJC-2(G). EMERGENCY ORDER REGARDING ELECTRONIC SIGNATURES

In light of the public health concerns arising from the novel coronavirus (COVID-19), effective today, and until further order of the Court, the Supreme Judicial Court, pursuant to its rulemaking authority, issues the following ORDER:

1. In all courts and case types, whenever an attorney is required to sign a document to be served on another party or filed with the court, the attorney may electronically sign the document, unless the trial court or this Court specifically orders otherwise.

2. An electronic signature can take the form of either a "facsimile signature," defined as a captured image incorporated into the document, or a "typographical signature," defined as a signature block with the name of the signatory typed on the signature line preceded by "/s/".

3. Such electronic signature shall have the same force and effect as if the attorney had affixed the attorney's original signature to a paper copy of the document so signed.

4. The document including the electronic signature must also include the following information concerning the attorney:

    a. Printed name;
    b. Address;
    c. Telephone number;
    d. E-mail address;
    e. Law firm; and,
    f. Maine Bar number.

5. If a party has a good-faith basis to believe that an electronic signature was not authorized by the attorney, the party challenging the authenticity of the electronic signature may file a motion with the court. If the court deems that the motion has merit, the court may strike the challenged document, direct that the challenged document be served or filed again with an original handwritten signature, or impose any other requirement it deems necessary.

Dated: June 5, 2020

For the Court,

/s/
Andrew M. Mead
Acting Chief Justice