

STATE OF MAINE  
SUPREME JUDICIAL COURT

AMENDMENTS TO THE MAINE RULES OF CIVIL PROCEDURE

Effective July 1, 2001

Docket No. SJC-11

All of the Justices concurring therein, the following amendments to the Maine Rules of Civil Procedure to address limited appearances and limited representations, are hereby adopted, prescribed, promulgated, and amended, to be effective on July 1, 2001.

The specific rules amendments are set forth below. To aid in understanding of the amendments, an Advisory Note appears after the text of each amendment. The Advisory Note states the reason for recommending the amendment, but it is not part of the amendment adopted by the Court.

1. Rule 5, subdivision (b) of the Maine Rules of Civil Procedure is amended as follows:

**(b) Same: How Made.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party personally is ordered by the court. When an attorney has filed a limited appearance under Rule 11(b), service upon the attorney is not required. Service upon an attorney who has ceased to represent a party is a sufficient compliance with this subdivision until written notice of change of attorneys has been served upon the other parties. Service upon an attorney or upon a party shall be made by delivering a copy to the attorney or to the party or by mailing it to the last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the office of the attorney or of the party with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein, or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

Advisory Committee's Note

The Court has amended the Maine Bar Rules and Rules 5, 11 and 89 of the Maine Rules of Civil Procedure to permit attorneys to assist an otherwise unrepresented litigant on a limited basis without undertaking the full

representation of the client on all issues related to the legal matter for which the attorney is engaged. By these amendments, the Court has sought to enlarge access to justice in Maine courts.

The amendment to Rule 5 (b) makes clear that where an attorney has filed a limited appearance under amended Rule 11 (b), service of papers upon the attorney is not required. Service is sufficient if made upon the party, despite the limited representation. The purpose of the amendment is to avoid confusion by establishing the identity of the person to be served throughout the case. The amendment places the burden upon the otherwise unrepresented litigant and the attorney filing the limited appearance to ensure that have made arrangements for served papers to be processed in a timely fashion. At the same time, two observations are appropriate. First, the amendment applies only in cases in which the limited appearance has been filed under Rule 11 (b); in all other cases, the first sentence of Rule 5 (b) requires service on the attorney, not the represented party. Second, even in cases in which service upon the party is permitted, the amendment is not intended to discourage the tradition of courtesy among the Maine Bar by sending to the attorney copies of served papers.

2. Rule 11, subdivision (a), of the Maine Rules of Civil Procedure is amended and subdivision (b) is added as follows:

(a) Attorney Signature Required; Sanctions. Subject to subdivision (b), ~~E~~ every pleading and motion of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading or motion and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a ~~certificate~~ representation by the signer that the signer has read the pleading or motion; that to the best of the signer's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading or motion is not signed, it shall not be accepted for filing. If a pleading or motion is signed with intent to defeat the purpose of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, upon a represented party, or upon both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading or motion, including a reasonable attorney's fee.

(b) Limited Appearance of Attorneys. To the extent permitted by the Maine Bar Rules, an attorney may file a limited appearance on behalf of an otherwise unrepresented litigant. The appearance shall state precisely the

scope of the limited representation. The requirements of subdivision (a) shall apply to every pleading and motion signed by the attorney. An attorney filing a pleading or motion outside the scope of the limited representation shall be deemed to have entered an appearance for the purposes of the filing.

#### Advisory Committee's Note

The Court has amended the Maine Bar Rules and Rules 5, 11 and 89 of the Maine Rules of Civil Procedure to permit attorneys to assist a pro se litigant on a limited basis without undertaking the full representation of the client on all issues related to the legal matter for which the attorney is engaged. By these amendments, the Court has sought to enlarge access to justice in Maine courts.

Rule 11 (a) is amended to make its provisions subject to a new subdivision (b). New Rule 11 (b) permits attorneys to file a limited appearance on behalf of an otherwise unrepresented litigant. The effect of the limited appearance is to permit the attorney to represent the client on one or more matters in the case but not for all matters. The attorney need not file a motion to withdraw unless the attorney seeks to withdraw from the limited appearance itself. The attorney is responsible under Rule 11 (a) only for those filings signed by the attorney.

The benefits of a Rule 11(b) are obtained only by the filing of a limited appearance identified as such. The limited appearance should clearly state the scope of the limited representation. Any doubt about the scope of the appearance should be resolved in a manner that promotes the interests of justice and those of the client and opposing party. As to those filings signed by the attorney, Rule 11 (a) applies fully and the attorney is deemed to have entered an appearance for the purposes of the filing, even if the filing is beyond the apparent scope of the limited appearance.

A limited appearance is created by the Maine Supreme Judicial Court's rulemaking authority. Consequently, counsel in cases removed to the United States District Court should be aware that limited appearances may not be recognized in the federal forum. See, e.g., Order, *Donovan v. State of Maine*, Civil No. 00-268-P-H (February 16, 2001) (striking partial objection to recommended decision made through purported "limited appearance"); *McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984) (noting trial judge not required to allow hybrid representation); *U.S. v. Campbell*, 61 F.3d 976, 981 (1st Cir. 1982) (same); *O'Reilly v. New York Times Co.*, 692 F.2d 863, 868 (2d Cir. 1982) (same; civil case).

3. Rule 89, subdivisions (a) and (b) of the Maine Rules of Civil Procedure is amended as follows:

**(a) Withdrawal of Attorneys.** An attorney may withdraw from a case in which the attorney appears as sole counsel for a client, by serving notice of withdrawal on the client and all other parties and filing the notice, provided that (1) such notice is accompanied by notice of the appearance of other counsel, (2) there are no motions pending before the court, and (3) no trial date has been set. Unless these conditions are met, the attorney may withdraw from the case only by leave of court. A motion for leave to withdraw shall state the last known address of the client and shall be served on the client in accordance with Rule 5. This subdivision shall not apply to a limited appearance filed under Rule 11 (b) unless the attorney seeks to withdraw from the limited appearance itself.

**(b) Visiting Attorneys.** Any member in good standing of the bar of any other state or of the District of Columbia may at the discretion of the court, on motion by a member of the bar of this state who is actively associated with the out-of-state attorney in a particular action, be permitted to practice in that action. The court may at any time for good cause revoke such permission without hearing. An attorney so permitted to practice in a particular action shall at all times be associated in such action with a member of the bar of this state, upon whom all process, notices and other papers shall be served and who shall sign all papers filed with the court and whose attendance at any proceeding may be required by the court. Visiting attorneys shall not be permitted to file limited appearances.

#### Advisory Committee's Note

The Court has amended the Maine Bar Rules and Rules 5, 11 and 89 of the Maine Rules of Civil Procedure to permit attorneys to assist an otherwise unrepresented litigant on a limited basis without undertaking the full representation of the client on all issues related to the legal matter for which the attorney is engaged. By these amendments, the Court has sought to enlarge access to justice in Maine courts.

A limited appearance is filed under Rule 11 (b). The last sentence in Rule 89 (b) is added to provide that visiting lawyers may not file limited appearances. Rule 89 (a) is amended to add a new last sentence making the conditions for withdrawal or a motion for leave to withdraw unnecessary for a limited appearance unless the attorney seeks to withdraw from the limited appearance itself. An attorney who has filed and fulfilled a clearly stated limited appearance is presumptively no longer representing the client. Any doubt about the scope of the appearance should be resolved in a manner that promotes the interests of justice and those of the client and opposing party.

If the attorney has signed filings beyond the scope of the limited appearance, Rule 11 (b) applies fully and the attorney is deemed to have entered an appearance for the purposes of the filing. Thus, the attorney may not withdraw from the matter of the filing without complying with Rule 89 (a).

A limited appearance is created by the Maine Supreme Judicial Court's rulemaking authority. Consequently, counsel in cases removed to the United States District Court should be aware that limited appearances may not be recognized in the federal forum. See, e.g., Order, *Donovan v. State of Maine*, Civil No. 00-268-P-H (February 16, 2001) (striking partial objection to recommended decision made through purported "limited appearance"); *McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984) (noting trial judge not required to allow hybrid representation); *U.S. v. Campbell*, 61 F.3d 976, 981 (1st Cir. 1982) (same); *O'Reilly v. New York Times Co.*, 692 F.2d 863, 868 (2d Cir. 1982) (same; civil case).

Dated: May 16, 2001

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Daniel E. Wathen, Chief Justice

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Robert W. Clifford

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Paul L. Rudman

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Howard H. Dana, Jr.

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Leigh I. Saufley

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Donald G. Alexander

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Susan Calkins

Associate Justices