

RULE 46. PRESERVING OBJECTIONS

Objections to rulings admitting or excluding evidence and other rulings or orders of the court shall be made, preserved and appealed in accordance with Maine Rules of Evidence, these Rules and any applicable statutes.

Exceptions to rulings or orders of the court shall not be made. It is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice that party.

Advisory Committee's Notes May 1, 2000

Rule 46, making exceptions unnecessary, addresses a practice that has not existed for forty years. The rule is completely revised to pertain to objections, now fully covered by the Maine Rules of Evidence. The title is amended to be entitled "Preserving Objections."

Reporter's Notes December 1, 1959

This rule is substantially the same as Federal Rule 46. It is a great departure from traditional practice in Maine. Exceptions, hitherto essential to the preservation of a question for appellate review, are abolished. This change has also been incorporated in R.S.1954, Chap. 106, Sec. 14, as amended in 1959 [now 15 M.R.S.A. § 2117], with respect to civil cases. It was deemed desirable to make the change a matter of statute to avoid any possible contention that the requirement of exceptions as a prerequisite to appellate review was jurisdictional.

It is to be noted that although formal exceptions are unnecessary, a party must still make known at the time of the ruling the actions he wants or his objection to the action taken and his grounds therefor. There is no good reason for requiring the talismanic word "exception" as essential to the preservation of rights.

The importance of this rule rests upon its relation to appellate review. Since there are no exceptions, there can be no bill of exceptions. All appellate review is

by appeal, and any claimed error to which adequate objection was made is open to the aggrieved party on appeal.

Lawyers should be alert to the fact that this rule has no applicability to criminal cases, which are not within the scope of the rule-making power delegated to the Supreme Judicial Court. Review by exceptions will accordingly continue in criminal cases.*

* [Field, McKusick & Wroth noted: “This situation has now been changed by statute and rule. 15 M.R.S.A. § 2117 and Maine Criminal Rule 51 are identical to M.R.C.P. 46. See Glassman § 51.1.” 1 Field, McKusick & Wroth, *Maine Civil Practice* at 631 (2d ed. 1970)].