VII. JUDGMENT

RULE 54. JUDGMENTS; COSTS

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties; Attorney Fees.

(1) Except as otherwise provided in paragraph (2) of this subdivision and in Rule 80(d), when more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, except those enumerated in paragraph (2) of this subdivision and in the last sentence of Rule 80(d), which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(2) In an action in which there is a claim for attorney fees, a judgment entered on all other claims shall be final as to those claims unless the court expressly finds that the claim for attorney fees is integral to the relief sought. If the court so finds, any order or other form of decision, however designated, shall not terminate the action as to any claim and is subject to revision at any time before the entry of a final judgment adjudicating all claims including that for attorney fees.

(3) When final judgment has been entered on all claims except a claim for attorney fees, an application for the award of attorney fees shall be filed within 60 days after entry of judgment if no appeal has been filed. If an appeal has been filed, the application may be filed and acted upon in the trial court at any time after entry of the judgment appealed from and in any case shall be filed not later than 30 days after final disposition of the action. An application for attorney fees shall

ordinarily be acted upon by the justice or judge who rendered the judgment on the merits.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every judgment shall grant the relief to which the party in whose favor it is rendered is entitled even if the party has not demanded such relief in his pleadings.

(d) Allowance of Costs. Costs shall be allowed as of course to the prevailing party, as provided by statute and by these rules, unless the court otherwise specifically directs.

(e) Taxation of Costs. Costs shall be taxed by the clerk upon a bill to be made out by the party entitled to them or, if no such bill is presented, upon inspection of the proceedings and files. If the adverse party has notified the clerk in writing of a desire to be present at the taxation of costs, no costs shall be taxed without notice to such adverse party.

(f) Schedule of Fees. The following schedule of fees shall be taxable as costs: Costs and fees as allowed to a party or witness by statute or administrative order. Service as taxed by the officer or process server, subject to correction. Surveyors, commissioners and other officers appointed by the court, fees as charged by them subject to correction. Costs of reference as reported by the referee, and allowed by a justice of the court.

(g) Costs on Depositions. The taxing of costs in the taking of depositions shall be subject to the discretion of the court. No costs shall be allowed unless the court finds that the taking of the deposition was reasonably necessary, whether or not the deposition was actually used at trial. Taxable costs may include the cost of service of subpoena upon the deponent, the reasonable fee of the officer before whom the deposition is taken, the stenographer's reasonable fee for attendance, and the cost of the original transcript and one copy of the testimony or such part thereof as the court may fix and, for depositions used at trial in lieu of live testimony, a reasonable fee for appearance by any expert and costs incident to preparing, editing and presenting the deposition at trial.

Advisory Note
January 1, 2003

The purposes of this amendment to M.R. Civ. P. 54(g) are to: (1) allow compensation for expert witnesses who appear at trial by deposition in the same manner as compensation for expert witnesses who testify live at trial, *see Poland v. Webb*, 1998 ME 104, ¶¶ 12-15, 711 A.2d 1278, 1280-82; and, (2) allow recovery of costs for videotaping or other recording and for any necessary editing and any costs for presenting a deposition at trial in lieu of live testimony. With this amendment, costs may be recovered incident to any use and presentation of a deposition at trial in lieu of live testimony.

Advisory Committee's Notes
May 1, 2000

The last sentence of subdivision (f) refers to compensation to clerks or referees in damages hearings to be set by a justice but paid by the county. The counties have no such role at this time and the sentence is eliminated.

Advisory Committee's Notes
May 1, 1999

Rule 54 (f) is amended to remove the schedule of fees, many of which were outdated, and to substitute an incorporation by reference of the governing statutes and administrative orders that may prescribe fees recoverable as costs. In addition, the rule now recognizes that process is frequently served by process servers whose fees should be recoverable as costs.

Advisory Committee's Notes
March 1, 1994

Rule 54(b) is amended to clarify the situation regarding finality of a judgment on the merits in a case where there is also a claim for attorney fees. In such a case, of course, the initial order of judgment may expressly include attorney fees as well as the judgment on the merits. If the judgment is silent as to attorney fees, however, new Rule 54(b)(2) provides that the judgment is final as to all substantive claims which it embraces (subject, of course, to the further provisions of Rule 54(b)(1) concerning a judgment on less than all of the substantive claims). Only if the court expressly finds that the claim for attorney fees "is integral to the relief sought" and defers decision on that claim, is the judgment on the substantive claims rendered non-final.

The purpose of the rule is to enable the parties to be clear on the question of finality. The rule differs from the practice established in the federal courts under *Budinich v. Becton Dickinson & Co.,* 486 U.S. 196 (1988), in which the Court adopted a "bright line rule" providing that the decision on the merits was always final whether or not the issue of attorney fees had been considered. The nature of state court litigation requires a more flexible rule. In matters such as divorce and mortgage foreclosure, attorney fees are in effect a part of the substantive remedy being awarded the prevailing party. In that sense, they are integral to the relief sought. *Cf. Crossman v. Maccoccio,* 792 F.2d 1, 3 (1st Cir. 1986). The rule is consistent with Law Court decisions permitting consideration of attorney fees issues after judgment on the merits. *Cf. Peterson v. Leonard*, 622 A.2d 87, 89-90 (Me. 1993) (on appeal disposing of merits of contempt motion in divorce action, remand for consideration of attorney fees); *Rodrigues v. Tomes*, 610 A.2d 262, 265 (Me. 1992) (in wrongful eviction proceedings under 14 M.R.S.A. § 6014(2)(b), attorney fees could be awarded on motion to amend judgment).

New Rule 54(b)(3) provides a procedure for addressing an application for attorney fees after final judgment on other claims pursuant to paragraph (2). If there is no appeal, the application for fees must be filed within 60 days after entry of judgment. If there is an appeal, the application may be filed at any time between entry of judgment and 30 days after final disposition of the case, which ordinarily will be the entry of judgment in the lower court after receipt of the mandate. (A simultaneous amendment to Rule 73(f) adds actions under this paragraph to the list of those that the Superior Court may take after the appeal has been docketed in the Law Court.) Rule 54(b)(3) is similar to Rule 32 of the Local Rules of the United States District Court for the District of Maine. Rule 54(b)(3) also provides that, to assure continuity, attorney fees issues are, in the usual case, to be acted upon by the judge who decided the issues on the merits.

Advisory Committee's Note
December 1, 1975

This amendment permits taxable costs on depositions to include the cost not only of the original transcript but also of one copy. As a practical matter, in most cases the attorney for either party, whether or not he is taking the deposition, needs to have a copy of the transcript in order adequately to prepare for trial. The original filed in the court can be used only with considerable inconvenience.

It should be emphasized that the first sentence of Rule 54 (g) makes the taxing of costs in the taking of depositions subject to the discretion of the court.

This discretion extends to the scope of such taxable costs as well as the question whether any taxable costs will be allowed. There may be some situations where a copy of the deposition transcript was unnecessary in the preparation of the case and so taxable costs, even though otherwise allowable, would be denied for that item. Needless to say, taxable costs would not include the cost of a copy of the transcript if in fact such cost was not incurred by the party to whom costs are awarded.

Advisory Committee's Note
April 15, 1975

As originally promulgated, Rule 54(b) began "When multiple claims for relief or multiple parties are involved in an action . . . ." Federal Rule 54(b) begins "When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved . . . ." Although no substantive difference whatever is intended between the two rules, the Maine Rule is open to a possible construction of being more limited than the Federal Rule. It might be argued that the Maine Rule applies only to multiple claims asserted in the complaint. To avoid any such unintended construction, Rule 54(b) is amended to conform to the Federal Rule.

Advisory Committee's Note
December 31, 1967

This amendment, although it changes the appearance of Rule 54(f) substantially, makes no drastic change in present practice. It increases the fees payable to attorneys as costs, to make them more realistic in view of present practice and to eliminate the odd amounts previously provided, e. g., $3.60 for a summons and complaint. The provision for costs of $5.00 for the drawing and filing of a conditional judgment comes from 14 M.R.S.A. § 1502. Taxing costs for the pleadings of a successful defendant in the same amount, as are taxed for the plaintiff's summons and complaint, carries out the even-handed treatment of the parties contemplated by 14 M.R.S.A. § 1501.

The amendment to subdivision (f) (2), which provides for miscellaneous items of costs collected by the Clerk of the Superior Court for the use of the county, eliminates some confusion that previously existed. The present subdivision (f) (2) is for the most part a copy of 4 M.R.S.A. § 555. By eliminating the itemized list from the rule it is hoped that some confusion caused by periodic statutory changes not reflected in the rule will be avoided.

Reporter's Notes
December 1, 1959

This rule is like Federal Rule 54 with minor differences and the addition of three subdivisions not found in the federal rule.

Rule 54(a) defines a judgment as including a decree and any order from which an appeal lies. With law and equity merged into a single form of action it is natural that there should be no distinction between a judgment at law and a decree in equity and that there should be a single method of appellate review.

The method of review under these rules is by appeal from the judgment. This is not unlike the present appeal in equity under R.S.1954, Chap. 107, Sec. 21 (repealed in 1959), but it is strikingly different from the existing modes of obtaining appellate review in law cases. The fundamental point to be made is that in all cases, whether sounding in law or in equity, the end result in the trial court is a judgment. Judgment upon a jury verdict is entered "forthwith" by the clerk. Rule 58. At present judgment generally is entered as of the last day of the term in which the verdict was rendered; but if meanwhile a bill of exceptions has been filed, there is no entry of judgment. The case is marked "Law" and continued until after the Law Court has acted. R.S.1954, Chap. 103, Sec. 15 (amended in 1959) [now 4 M.R.S.A. § 57].

Rule 54(b) deals with judgment on multiple claims and provides that the court may direct the entry of a final judgment on one or more but less than all of such claims upon an express determination that there is no just reason for delay. The rule serves a purpose in the light of the provisions for substantially unlimited joinder of claims and parties. Since there may be several unrelated claims in the same action, injustice might result if judgment had to be delayed until the final adjudication of all of them. If the trial court makes the determination called for under this rule, there may be an immediate appeal. The rule does not, however, make appealable any order that does not finally dispose of one or more claims. It should be noted that in appropriate circumstances the court may stay the enforcement of a partial judgment entered under this rule. Rule 62(h).

Rule 54(c) provides that a judgment by default shall not be different in kind from or exceed in amount that demanded in the complaint. In all other situations a party can get the relief to which he is entitled even if he has not demanded it. He may, for example, be awarded a larger amount of damages than he alleged. *Couto v. United Fruit Co.*, 203 F.2d 456 (2d Cir.1953). This is contrary to present Maine

law. *Jeffery v. Sheehan,* 135 Me. 246, 194 A. 543 (1937). He may be granted damages when he prayed for equitable relief, or equitable relief when he prayed for money damages. This also is a departure from Maine law. *See Wolf v. W. S. Jordan Co.*, 146 Me. 374, 82 A.2d 93 (1951).

Rule 54(d) provides for the allowance of costs to the prevailing party and incorporates by reference existing statutes as to costs. *See* R.S.1954, Chap. 113, Sec. 155ff [now 14 M.R.S.A. § 1501]. These sections were amended in 1959 so as to conform to these rules.

Rule 54(e) covers taxation of costs. It is taken from Revised Rules of Court 29.

Rule 54(f) is based upon Revised Rules of Court 48, with minor changes necessitated by the adoption of these rules. It also includes the substance of Revised Rules of Court 13. Taxable costs for travel and attendance are as provided by statute. R.S.1954, Chap. 113, Sec. 156 [now 14 M.R.S.A. § 1502].

Rule 54(g) covers the taxing of costs in the taking of depositions. It has no counterpart in Federal Rule 54, but it reflects the case law developed in Federal practice under the rules. *See* 3 B & H § 1197. It is to be emphasized that the taxing of costs on depositions is subject to the discretion of the court. Costs are not to be allowed unless the court finds that the taking of the deposition was reasonably necessary. Ordinarily the cost of taking a deposition for use at trial because of the prospective unavailability of a witness will be regarded as taxable, but the rule makes it clear that the actual use of the deposition as evidence is not the exclusive test. The rules permit the very broad use of depositions for discovery purposes, and discretion as to the allowance of costs therefor is necessary in order to forestall abuse of this privilege.

RULE 54A. COURT FEES

The fees of the Maine Courts are established by the Supreme Judicial Court and shall be published in a Fee Schedule.

Advisory Notes
July 2003

Rule 54A is amended to provide greater flexibility in the type of order or action that is necessary to adopt or amend a fee schedule.

Advisory Committee's Notes
May 1, 1999

Former Rules 54A and 54B, establishing fees for the Superior Court and District Court respectively, have been abrogated and replaced with a new Rule 54A. The new rule provides that the fees of those courts are established by administrative order of the Supreme Judicial Court

[Rule 54A was promulgated effective October 15, 1979. There were no Advisory Committee Notes.].

[The most current Court Fees Schedule may be referenced as an Administrative Order on the Judicial Branch web site.]