

RULE 80G. ACTIONS FOR LICENSE REVOCATION OR SUSPENSION

(a) Actions for License Revocation or Suspension. Actions in the District Court under 4 M.R.S.A. § 152(9) seeking revocation or suspension of a license issued by a state licensing agency pursuant to 4 M.R.S.A. § 184 shall be governed by this rule.

(b) Complaint and Service of Process. The action shall be commenced by complaint filed in the District Court. The complaint must allege the violation of a cited statute or rule and the relief requested. The complaint and summons shall be served as required by 4 M.R.S.A. § 184.

(c) Emergency Revocation or Suspension of License. Upon the filing of a verified complaint or complaint accompanied by affidavits demonstrating an immediate threat to the public health, safety or welfare, the court ex parte may order the temporary revocation or suspension of a license pursuant to 4 M.R.S.A. § 184 (6). The court shall promptly order expedited notice and hearing on the complaint. A temporary order of revocation or suspension shall expire within 30 days of issuance unless renewed after notice and hearing.

(d) Trial. Trial of the action shall be as provided in these rules.

(e) Judgment. The parties may not dispose of the action by agreement or consent decree without the approval of the court. The court shall make findings of fact and conclusions of law as required by 4 M.R.S.A. § 184(7). Upon entry of judgment, the clerk shall serve each party with a copy of the judgment, including any separate opinion, findings of fact and conclusions of law supporting the judgment, and with a statement describing appellate rights to seek review of the judgment.

Advisory Committee's Notes January 1, 2001

Former Rule 80G prescribed the procedure for separate support and custody proceedings. The Rule was abrogated, effective February 15, 1992, since the procedure was superseded by statutory and rule changes. New Rule 80G now prescribes the procedure for actions for license revocation or suspension. P.L. 1999, c. 547, section B-6 enacted 4 M.R.S.A. § 152(9) to confer exclusive jurisdiction upon the District Court for actions to revoke or to suspend licenses issued by certain state licensing agencies, effective March 15, 2001. P.L. 1999, c.

547, section B-10 enacted 4 M.R.S.A. § 184 to prescribe the procedure for such actions. 4 M.R.S.A. § 184(9) provides that the Supreme Judicial Court may adopt rules governing the procedure.

New Rule 80G incorporates the explicit requirements for procedure set forth in 4 M.R.S.A. § 184. Consequently, the Rule must be read in harmony with the requirements of the statute. The procedure is simple, but has explicit requirements for the content of the complaint, for expedited hearings, and for entry of judgment or approval of negotiated dispositions. The statute also contains explicit directions requiring the witnesses be sworn and an “official record” be maintained of the testimony and exhibits (4 M.R.S.A. § 184(3) and (4)), but these requirements are not different from those governing civil trial generally. Consequently, subdivision (d) of the Rule provides that the trial of the action shall be as provided generally for civil trials.

P.L. 1999, c. 547, section B-6 also enacted 4 M.R.S.A. § 152(10), governing appeals from disciplinary decisions of occupational licensing boards and commissions. That procedure is prescribed by amendments to Rule 80C promulgated this date.

Advisory Committee's Note
November 15, 1976

[Editor’s Note: This Note refers to a version of the Rule when it concerned separate support and custody, abrogated in 1992].

This rule is added to implement the provisions of 19 M.R.S.A. § 304, enacted in 1973, that actions for civil support may be commenced by summons rather than on order of notice under 19 M.R.S.A. § 301 as formerly, and that the Law Court may “prescribe by general rule the procedure” for such actions. The rule thus provides a procedure for willful non-support actions under 19 M.R.S.A. § 301 and for enforcement of the general support obligation under 19 M.R.S.A. §§ 441-452. The rule also includes proceedings for custody and support under 19 M.R.S.A. § 214, because the procedure for such actions is virtually identical to that under § 301. Proceedings under 19 M.R.S.A. § 401 (Uniform Reciprocal Enforcement of Support Act), 19 M.R.S.A. §§ 491-516 (alternative method of support enforcement), and 22 M.R.S.A. §§ 3791-3800 (custody and support of neglected children) are excluded because those statutes contain ample and complex procedural provisions that do not fit the pattern of this rule. See, generally, 2 Field, McKusick, and Wroth, *Maine Civil Practice* 512-513 (2d ed. 1970).

Rule 81(b)(3), which formerly excluded all separate support actions has been amended to exclude only URESA actions. A comparable Rule 80G has been added to the District Court Civil Rules and a comparable change has been made in D.C.C.R. 81(b). The present rule is numbered "80G" for uniformity of numbering with the District Court Civil Rules, where the numbers 80C-80F have already been used. The latter numbers in the Maine Rules of Civil Procedure are "reserved" for future rules that do not have a District Court equivalent.

Rule 80G and D.C.C.R. 80G supersede the procedure of the enumerated statutes for separate support and custody actions in the Superior and District Courts. The statutory procedure remains in effect, however, for such proceedings brought in the Probate Courts, where these rules do not apply. Note also that the new rules apply only in the relatively rare situation where support or custody is sought independent of an action for divorce or judicial separation. If a divorce or separation is also sought, Rule 80 and D.C.C.R. 80 (incorporated by D.C.C.R. 80C for separations) continue to govern support and custody, and the new rules are inapplicable. The differences are minor, however, because Rule 80G and D.C.C.R. 80G adopt a procedure very similar to that now provided by Rule 80 (and incorporated in D.C.C.R. 80) for divorce. Although the new rules supersede the prior statutes, the intent is to carry forward in simplified form the summary procedures of those statutes where they are necessary to meet immediate needs of the plaintiff or minor children. At the same time, the rules preserve the ability of a defendant to raise a genuine defense through appropriate procedures.

Rule 80G(a) makes the rule applicable to actions for support of a husband as well as of a wife or minor child. Although the action provided by 19 M.R.S.A. § 301 for willful nonsupport lies only against a husband, the general support obligation of a woman under 19 M.R.S.A. § 443 extends to "her husband ... when in need."

Rule 80G(b) is based on Rule 80(b), except that the third sentence tracks 19 M.R.S.A. § 394, prescribing the contents of a URESA petition. An action under this rule may thus be readily converted into a URESA proceeding if circumstances warrant. Note that service outside the state under Rules 4(e) and (f) was held invalid to sustain a support order against a nonresident in *Stanley v. Stanley*, 271 A.2d 636 (Me.1970), and Rule 4(f) in terms does not extend to separate custody proceedings. The recent amendment to the long arm statute, 14 M.R.S.A. § 704-A, enacted by 1975 Laws, c. 770, § 80, provides in subd. (2) (G) that

"Maintaining a domicile in this State while subject to a marital or family relationship out of which arises a claim for divorce, alimony, separate maintenance, property settlement, child support, or child custody; or the commission in this State of any act giving rise to such a claim"

is an act the doing of which submits the actor to the jurisdiction of the Maine courts. In addition, subd. (2)(I) of the amended statute extends jurisdiction to "any other relation to the State or to persons or property" sufficient to create a constitutional basis for such jurisdiction. Presumably, by virtue of these amendments, out-of-state service under Rule (3) in support and custody matters is more widely available than previously.

Rule 80G(c) is basically similar to Rule 80(c) as amended simultaneously with the adoption of this rule. See Advisory Committee's Note to that amendment. This rule does not contain the provision of Rule 80(c) for an order barring restraint on personal liberty of the other spouse.

Rule 80G(d) is based on Rule 80(d). Defendant may contest custody and the amount of support without filing an answer but must raise an issue as to liability for support by answer.

Rule 80G(e) is identical to Rule 80(e) as amended simultaneously with the adoption of this rule. See Advisory Committee's Note to that amendment. Nothing is gained by requiring a separate action when a defendant sued for support or custody wishes to inject the question of divorce.

Rule 80G(g) is similar in effect to Rule 80(f). Rules 80G(g), (h), incorporate by reference Rules 80(j), (l).

RULE 80H. CIVIL VIOLATIONS

(a) Applicability. These rules shall apply to civil violation proceedings in the District Court, other than traffic infraction proceedings; provided, however, that this rule, so far as applicable, shall supersede the general provisions of the rules in all such proceedings where the amount of the fine, penalty, forfeiture or other

sanction that may be assessed for each separate violation is \$1,000 or less. “Civil violation” has the meaning set forth in 17-A M.R.S.A. § 4-B.

(b) Commencement of Proceedings. A proceeding under this rule shall be commenced by one of the following methods:

(1) A citation may be filled out in the manner prescribed in paragraph (1) of subdivision (c) of this rule and served upon the defendant within the state by any officer authorized to enforce a statute or ordinance to which this rule applies, if the officer has probable cause to believe that a civil violation under such statute or ordinance has been committed. Service under this paragraph shall be made upon an individual by delivering a copy of the citation to the individual personally and, if the defendant is an incompetent person, personally to the appropriate individual specified in Rule 4(d)(3) of these rules. Service under this paragraph shall be made upon any other entity by delivering a copy of the citation personally to one of the appropriate individuals specified in Rules 4(d)(4) through (10) of these rules.

(2) A citation may be filled out in the manner prescribed in paragraph (1) of subdivision (c) of this rule by any officer authorized to enforce a statute or ordinance to which this rule applies, if the officer has probable cause to believe that a civil violation under such statute or ordinance has been committed. The officer may cause the citation to be served, by any method provided in Rule 4(d), (e), (f), (g) or (j) of these rules.

The officer serving the citation shall not take the defendant into custody, except as temporary detention is authorized by 17-A M.R.S.A. § 17. As soon as practicable after service upon the defendant, the officer shall cause the original of the citation to be filed with the court. No filing fee is required. All proceedings arising under a statute shall be brought in the name of the State of Maine. All proceedings arising under an ordinance shall be brought in the name and to the use of the political subdivision which enacted such ordinance.

(c) Content of Citation and Complaint.

(1) A citation to be served as provided in subdivision (b) of this rule shall contain the name of the defendant; the time and place of the alleged violation; a brief description of the violation; the time, place and date the defendant is to appear in court, which shall in no case be less than seven days from the date of service unless the defendant agrees to a shorter period of time; and the signature of the officer issuing the citation.

(2) The citation shall serve as a complaint, and no other summons, complaint or pleading shall be required, but motions for appropriate amendment of the complaint shall be freely granted. Any form which contains the elements specified in paragraph (1) of this subdivision shall be sufficient under the rules.

(d) Pleadings of Defendant.

(1) *Oral.* Unless the matter has been previously disposed of as provided in paragraph (3) of this subdivision, the defendant shall appear at the time and place specified, either personally or by counsel, and shall answer to the complaint orally. At a defendant's initial appearance before the court, the defendant shall be informed by the court that if the defendant is adjudicated to have committed the civil violation and if a fine is imposed by the court, immediate payment of the fine in full is required.

(2) *No Joinder.* Proceedings pursuant to this rule shall not be joined with any actions other than another proceeding pursuant to this rule, nor shall a defendant file any counterclaim.

(3) *Judgment on Acceptance of Admission.* The District Court Clerk may accept, at the signed request of the defendant, an admission upon payment of a fine as set by the judge in that particular case or as set by the resident judge in accordance with a schedule of fines established by the judge with the approval of the Chief Judge for various categories of civil violations.

(e) *Venue.* A civil violation proceeding shall be brought in the division in which the violation is alleged to have been committed.

(f) *Discovery.* Discovery shall be had only by agreement of the parties or by order of the court on motion for good cause shown.

(g) *Standard of Proof.* Adjudication of a civil violation shall be by a preponderance of the evidence.

(h) *Default.*

(1) *Entry of Default.* If the defendant fails to appear as required by this Rule, the judge shall enter the defendant's default, adjudicate that the defendant has committed the civil violation alleged, and impose a fine as set by the

judge for that particular case or as set in accordance with a schedule of fines for civil violations established by the Chief Judge of the District Court.

(2) Setting Aside the Default. For good cause shown, the court may set aside the default and adjudication under M.R. Civ. P. 55(c) and 60(b), as applicable. If it is determined that, due to the operation of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, a default should not have been entered, the court shall vacate the adjudication, strike the default and all costs assessed, vacate any license suspension, and permit the defendant an opportunity to answer.

(i) Appeal. A party entitled to appeal may do so as in other civil actions.

(j) Costs. Costs shall not be awarded as in other civil actions. Only those costs expressly authorized by statute shall be imposed.

(k) Notice of Orders or Judgments. The clerk is not required to serve a notice of the entry of an order or judgment on the State or municipality. The clerk is not required to serve a notice of the entry of an order or judgment on the defendant when the defendant, in writing, admits the violation or when the defendant, personally or through counsel, appears in court and is informed by the court of the judgment or order.

Advisory Notes July 2003

[M.R. Civ. P. 80H(b)(1)]

This amendment to M.R. Civ. P. 80H(b)(1) removes the requirement that the parent of a minor charged with a civil violation be identified and served with the civil violation citation. This makes Rule 80H consistent with Rule 80F, the traffic infraction rule, which does not require service upon parents of minors. In practice, many civil violations committed by minors occur far from the minor's home or in other situations where a parent may be difficult to identify and serve. The requirement for service upon individuals with responsibility for incompetent persons remains.

[M.R. Civ. P. 80H(h)]

The courts regularly default defendants who fail to appear in court for civil violations pursuant to M.R. Civ. P. 80H. The authority to default defendants in this manner is implied in several statutes and rules, but is not explicitly stated in

the Maine Rules of Civil Procedure. The default provisions found in M.R. Civ. P. 55, while useful, do not exactly address the situation where the defendant fails to appear at court in response to a citation. The new subsection (h) replaces an abrogated subsection addressing enforcement of judgments. It clarifies the default procedure, using language consistent with the default procedure of M.R. Civ. P. 80F and the fine assessment procedure of Rule 80H(d).

The sentence referencing the Soldiers' and Sailors' Civil Relief Act of 1940 adds a directive to vacate any license suspension that may have been imposed as a result of an adjudication for any civil violation. The licenses that are most likely to be affected are hunting and fishing licenses. A similar provision does not appear in M.R. Civ. P. 80F. No traffic infraction results in an immediate suspension of a driver's license, and any subsequent suspension caused by the traffic infraction would occur only after notice and opportunity for hearing.

**Advisory Committee's Notes
January 1, 2001**

In the 2000 Legislative session, 14 M.R.S.A. § 3141(2), was amended to require that at initial appearances before the court in civil violation cases, a defendant shall be informed by the court that, if the defendant is adjudicated to have committed the civil violation, "and if a fine is imposed by the court, immediate payment of the fine in full is required." This amendment to Rule 80H(d)(1) adds the directive of the statute regarding payment of fines to the portion of Rule 80H that addresses the defendant's initial appearance before the court. This advice is similar to other advice given parties at first appearances or arraignments.

Rule 80H(g) has been removed. The unification of the District Court and the Superior Court by P.L. 1999, c. 731, section ZZZ-2, *et seq.*, section ZZZ-4(14) conferred upon the District Court jurisdiction over all civil violations as provided in Title 17-A, § 9, and traffic infractions. 4 M.R.S.A. § 152(14). If a right to trial by jury is available in such actions, the procedure for removal is prescribed by Rule 76C. Thus, there is no longer a need for Rule 80H(g).

**Advisory Committee's Notes
1993**

Rule 80H(b)(2) is amended to eliminate the procedure under which a District Court clerk could fill out and deliver for service a civil violation citation upon

examination of the complainant and any witnesses and a finding of reasonable grounds to believe that a civil violation had been committed. This provision was seldom used. It represents an unnecessary step that could impose an undue burden upon clerks who may have difficulty in applying the standard. Under the amended rule, if an officer with probable cause cannot, or does not wish to, make service in person under Rule 80H(b)(1), the officer may cause the citation to be served by one of the methods of service of civil process provided by Rule 4.

Rule 80H(c) is amended by deleting former paragraph (2) providing for the content of a citation filled out by the clerk and by numbering the former unnumbered final paragraph of the subdivision as paragraph (2).

Comparable amendments are being made simultaneously in Rules 80F(b) and 80K(b) and (c).

Advisory Committee's Notes

1991

Rule 80H(d) is amended consistent with the simultaneous amendment of Rule 80F(d) to expedite the handling of certain civil violation proceedings in which a waiver list may be established by a resident judge or the chief judge. *See* Advisory Committee's Note to simultaneous amendment of Rule 80F(d). Appropriate instances include those offenses for which the Legislature has fixed a minimum mandatory penalty which many judges would order the defendant to pay.

Advisory Committee's Notes

1990

Rule 80H(b) is amended to eliminate the requirement of a filing fee in civil violation proceedings. The amendment reflects what is generally the present practice. Payment of filing fees in such proceedings simply represents the transfer of funds from one pocket of the state to another.

Rule 80H(i) is abrogated. Statutory procedures for the enforcement of fines in civil violation proceedings have effectively superseded the Rule. *See* 14 M.R.S.A. §§ 3141 *et seq.*

Rule 80H(k) is amended to make clear that the only costs to be awarded in civil violation proceedings are those expressly provided by statute. There is presently no costs provision in Rule 80H, which means that the provisions of Rule

54B apply to civil violation proceedings. In practice, the state never files a bill of costs in such proceedings. By statute, costs of \$25 are automatically imposed when a fine is not paid within 30 days. 4 M.R.S.A. § 173-A. The present amendment makes clear that the statute is the sole provision regarding costs.

New Rule 80H(1) eliminates the requirement of service of notice of entry of order or judgment on the state and on a defendant who has pleaded guilty or been informed of the judgment in open court. This provision reflects current practice. The burden of serving such notices in civil violation proceedings would be immense, and the practice is not necessary in the cases encompassed in the Rule.

Advisory Committee's Notes 1988

Rule 80H(g) is amended to provide a procedure for removal from the District Court to the Superior Court of civil violation proceedings brought under Rule 80H in which a right to trial by jury may now be claimed as a result of the Law Court's recent decision in *City of Portland v. DePaolo*, [531 A.2d 669] No. 4522 (Me. Oct. 1, 1987). In that case, a District Court prosecution under a Portland ordinance that prohibited the sale of obscene materials, the Court held that Rules 80H(g) and (j) violated the guarantee of trial by jury in civil actions provided by article I, section 20, of the Maine Constitution because those provisions prevented both removal and appeal with trial de novo to the Superior Court. The reach of *DePaolo* is unclear, because the opinion calls for an examination in each case to determine whether the case is one in which the right to a jury would not have existed at the time of the adoption of the Maine Constitution in 1820. Nevertheless, it seems plain that the jury issue will now be raised frequently in civil violation proceedings and that the right will be found to exist in many instances in which it has not heretofore been recognized.

Under the amended rule, the defendant must demand a jury in a motion for removal filed at any time after the commencement of the proceeding, but in any event not later than 21 days after defendant's appearance under Rule 80H(d)(1). Failure to move for a jury within the time period results in waiver of the right. The 21-day period after appearance is designed for consistency with M.D.C.Cr.R. 40(a), under which jury trial in a District Court criminal prosecution must be demanded within 21 days after arraignment.

In language borrowed from Rule 75B(b) concerning motions for procedural orders in the Law Court, the amended rule provides that the motion may be heard

ex parte. The court, however, has discretion to await a reply and decide the motion after hearing both parties. If the court finds that there is a right to jury trial, it may order the action removed. If the motion is granted, the rule requires the payment of a removal fee as in other removed cases.

Service of the order of removal will fulfill the function of the notice of removal provided for other civil actions in Rule 76C and the action is to proceed thereafter as provided in that rule. The purpose of this provision is to make clear that, regardless of the future course of the proceedings, the action will remain in the Superior Court. If the Superior Court on plaintiff's motion decides that there is no right to trial by jury, or if the defendant ultimately waives the right in the Superior Court, the case will be tried in the Superior Court without a jury. Similarly, if the defendant changes the answer to one that admits the violation, judgment will be entered in the Superior Court without trial.

**Advisory Committee's Note
October 24, 1977**

Rule 80H is abrogated simultaneously with the promulgation of amended D.C.C.R. 80H to implement the amendment of 17 M.R.S.A. § 4-A(4) by 1977 Laws, c. 510, § 16. See Advisory Committee's Notes to 1977 amendment of D.C.C.R. 80H. The present rule is abrogated, because it is conceived that as a practical matter there will be no occasion to invoke Superior Court jurisdiction in civil violation proceedings. The detailed provisions of the present rule, with modifications called for by the increased number of civil violations, have been incorporated in the amended District Court rule.

Abrogation of the present rule means that there is now no procedure available for bringing summary proceedings upon civil violations in the Superior Court. Abrogation should not be understood, however, as reflecting any determination of the question whether there may be Superior Court jurisdiction of civil actions upon civil violations, either in plenary proceedings under the Rules of Civil Procedure or in summary proceedings if the Supreme Judicial Court should again provide for such proceedings by special rule.

**Advisory Committee.'s Note
November 15, 1976**

This rule is adopted to implement the provisions of the new Maine Criminal Code, 17-A M.R.S.A. §§ 4(3), 17(1), that certain conduct is to be deemed a "civil

violation", the sanctions for which are enforceable in a civil action brought by the appropriate public official and commenced by service of a citation. Its provisions are made applicable in the District Court by the simultaneous adoption of D.C.C.R. 80H. In so far as possible, the rule tracks D.C.C.R. 80F, which provides for comparable proceedings under the Uniform Traffic Ticket and Complaint. Certain conforming changes have been made in D.C.C.R. 80F by simultaneous amendment.

The rule applies only to civil violations that have been expressly designated as such in the statute creating them. See 17-A M.R.S.A. § 4(3). An amendment to the rule will be necessary if the provisions of 17-A M.R.S.A. § 4-A(4), declaring prohibited conduct for which imprisonment is not the penalty to be a civil violation, take effect as provided in 17-A M.R.S.A. § 4-A(1)(B) on October 1, 1977, without further legislative change. Further, the rule is not intended to preclude the commencement by the Attorney General of an ordinary civil action to enforce a civil penalty, or for other relief, where authorized by law.

Rule 80H(a) ties the scope of the rule to the statutory definition of "civil violation" and makes clear that the rule does not apply to traffic infractions. Such proceedings will continue to be brought in District Court under D.C.C.R. 80F. A separate rule is needed for traffic infractions because of differences in terminology and the fact that there is no Superior Court jurisdiction of them.

Rule 80H(b) provides that the action is commenced upon service of a citation on the defendant by personal delivery to him. Cf. Rule 3. This is important for purposes such as tolling the statute of limitations. The citation, which is to be in the form provided in subdivision (c), may be prepared either by a law enforcement officer who has probable cause or, upon complaint, by the clerk if he is satisfied that defendant has committed a violation. (This standard, borrowed from D.C.Cr.R. 4(a), is essentially a probable cause standard.) The latter method is based on 4 M.R.S.A. § 171-A, providing for issuance of such civil process upon complaint. The citation is to be served either by the preparing officer or by an officer to whom the clerk has transmitted it for service. In either event, the defendant is not to be taken into custody except as permitted in 17-A M.R.S.A. § 17 for a brief period necessary to ascertain his identity. After service, the officer is required to file the original of the citation with the court.

Rule 80H(c) provides that the citation shall contain the elements required by 17-A M.R.S.A. § 17(1). Cf. D.C.C.R. 80F(c). It is the intent of the rule that, pending adoption of a new form, the Uniform Traffic Ticket and Complaint, with

appropriate deletions, may be used as process for any civil violation. The rule expressly states that the citation, whatever its form, is to serve as the state's complaint for pleading purposes in the civil action that is to follow.

Rule 80H(d) is identical to D.C.C.R. 80F(d), with elimination of references and terminology peculiar to traffic infraction proceedings. Note that, as in the traffic infraction rule, an answer admitting a violation is not admissible as an admission in other proceedings. The purpose is to encourage such answers in the interests of cutting down the number of trials. Cf. M.R.Ev. 410.

Rule 80H(e) limits venue to the county in which the violation is alleged to have been committed. Cf. D.C.C.R. 80F(e).

Rules 80H(f), (h), (i), are identical to D.C.C.R. 80F(f), (h), (i). Rule 80H(g) is necessary in the Superior Court. Like the limitation on discovery, it recognizes the basic simplicity of the issues in such proceedings and is intended to promote speed and economy in court.

Rule 80H(j) is identical to D.C.C.R. 80F(j) as amended. The intent of the rule is to take no position on the question of the state's right to appeal a civil violation, which is arguably left ambiguous by 17-A M.R.S.A. §§ 4(3), 17(1). The rule omits the provision found in D.C.C.R. 80F(j) prior to its amendment that required an appellant to deposit with the court the amount of the judgment as a condition for a stay. This provision was deemed unduly onerous on defendants who might have a legitimate ground of appeal and basically inappropriate as a condition on appeal in a civil action. See Rule 62(e).