

## **RULE 105. ANSWER; RESPONSE; COUNTERCLAIM**

**(a) Answer and Appearance.** Except as provided for motions to modify support filed pursuant to 19-A M.R.S. § 2009, a party served with a complaint, petition or post-judgment motion shall file an appearance and answer within 21 days after service unless the court directs otherwise. Responses to motions to modify support shall be filed within 30 days after service, unless the court directs otherwise. Any party served with a counterclaim or a cross-claim shall serve an answer within 21 days after service on that party. The time for answer by persons served outside the Continental United States or Canada shall be governed by Rule 12(a). A party who intends to respond to a de facto parentage complaint must file an affidavit addressing the factors of 19-A M.R.S. § 1891(3)(A)-(E), and shall serve it on all parties to the proceeding. When the court schedules a hearing on any matter before the 21 day time for filing an appearance and answer, the appearance and answer shall be filed before the time set for hearing if the hearing notice was served with the complaint, petition or motion.

If parental rights and responsibilities concerning a minor child or children is a subject of the action, the person responding shall file under oath the child-related information required by 19-A M.R.S. § 1753. No answer is required in an emancipation action, an action to establish the guardianship of a minor child, or in a grandparents visitation action pursuant to 19-A M.R.S. § 1803.

A party who does not file an answer or response may enter an appearance before commencement of a hearing and be heard on issues of paternity or parentage, parental rights and responsibilities for children, child support, spousal support, counsel fees, and distribution of marital or nonmarital property.

**(b) Counterclaims and Cross-claims.** A grandparent visitation or emancipation action may not be asserted as a counterclaim or cross-claim and no counterclaim or cross-claim may be asserted in those actions. Any other Family Division action that could be brought pursuant to this chapter, including an action allowable by Rule 111, can be asserted as a counterclaim and cross-claim. Except for an action that could be filed as a Family Division action pursuant to this chapter, no counterclaim shall be permitted

in any action pursuant to this chapter. Failure to file a counterclaim permitted by this rule shall not bar a subsequent action based on such a claim.

### **Advisory Note - July 2016**

The changes made to Rule 105(a) accomplish four goals. They include the Maine Parentage Act's requirements for pleadings in de facto parentage litigation, see 19-A M.R.S. § 1891, clarify a phrase, specifically indicate that parties notified of a petition for guardianship of a minor child are not required to file an answer, and reflect the Judicial Branch's preference for using multiples of 7 for filing or response dates to allow for easier calculations of those dates.

### **Advisory Notes June 2008**

Rules 105 and 106 incorporate significant portions Rule 12, with adjustments for Family Division actions. Placement of the answer and counterclaim requirement at this point in the rule, immediately following the service requirements and preceding the motion requirements, appears more logical for progression of the Family Division actions.

Rule 105, while based upon Rule 12(a), does not incorporate that rule by reference, but rather explicitly states the 20-day responsive pleading requirements to assure that parties responding to Family Division actions are fully informed of the deadlines for response. 19-A M.R.S. § 2009 provides an exception to the 20-day rule. In child support actions, section 2009 requires the response to be filed within 30 days.

The provisions for responsive pleadings by individuals outside of the Continental United States and Canada are incorporated by reference from Rule 12(a).

The rule modifies Rule 12(a) practice for those instances where the court may schedule a hearing on a particular matter before the 20 day response time normally accorded for answer after service of a complaint or post-judgment motion. In such cases, the response must be filed prior to the time set for hearing, if the notice of hearing was served with the complaint or post-judgment motion. This rule makes the time for filing the response to

post-judgment motions the same as the response time for original actions. This rule does require a notice of response to post-judgment motions. However, Rule 105(a) specifies that a party who does not file an answer or response may still be heard on most issues, upon entering an appearance before commencement of a hearing. *See also* Rule 117 addressing Default.

Rule 105(b) contains the restriction on counterclaims in certain Family Division actions, consistent with the restriction on counterclaims in Rule 80(b). Because grandparent visitation actions and emancipation actions are Family Division actions, this rule clarifies that grandparent visitation and emancipation actions cannot be brought as counterclaims or cross-claims, and other Family Division actions cannot be asserted as counterclaims or cross-claims to such actions. Any other Family Division action may be brought as a counterclaim or cross-claim. Actions authorized to be joined pursuant to Rule 111 may be asserted as a counterclaim or cross-claim.