

X. SUPERIOR AND DISTRICT COURTS AND CLERKS

RULE 77. SUPERIOR AND DISTRICT COURTS AND CLERKS

(a) Courts Always Open. The Superior and District Courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules. Filings after normal business hours and at places other than appropriate for the venue of the proceeding are governed by Rule 5(g).

(b) Trials and Hearings; Orders in Chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a justice or judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the county or division where the action is pending.

(c) Clerk's Office and Orders by Clerk. The clerk's office with the clerk or a deputy in attendance shall be open on all days except Saturdays, Sundays, legal holidays, and such other days as the Chief Justice of the Supreme Judicial Court may designate. The hours of operation shall be designated by the Chief Justice of the Supreme Judicial Court by way of administrative Order. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings that do not require allowance or order of the court are grantable of course by the clerk; but the clerk's action may be suspended or altered or rescinded by the court upon cause shown.

(d) Notice of Orders or Judgments. Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry in a manner provided for in Rule 5 upon every party who is not in default for failure to appear, and shall make a note in the docket accordingly. In lieu of serving a notice of the docket entry, the clerk may serve a copy of the order or judgment in a manner provided for in Rule 5. Any such service is sufficient notice for all purposes for which notice of the entry of an order is required by these rules;

but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in the Maine Rules of Appellate Procedure.

(e) Facsimile Signature of the Clerk. A facsimile of the signature of the clerk imprinted at the clerk's direction upon any summons, writ, subpoena, judgment, order or notice, except executions and criminal process, shall have the same validity as the clerk's signature.

Advisory Note – May 2017

Rule 77(c) is changed to address an inconsistency with the Maine Rule of Unified Criminal Procedure 54(b) regarding the hours of operation of the Clerk's offices. For years, both Rules were identical and provided that the chiefs of the trial courts had authority to designate the hours of operation. This direction may have been necessary to address what were formerly different clerks' offices for each trial court in many courthouses. However, with practical consolidation of most clerks' offices as a result of changes resulting from the adoption of the Maine Rules of Unified Criminal Procedure, decision-making by both trial court chiefs was no longer necessary. Recently Criminal Rule 54(b) was amended to provide that the Chief Justice of the Supreme Judicial Court has the authority to designate those hours of operation. The first two sentences of Rule 77(c) now incorporate the language of Criminal Rule 54(b).

Advisory Note April 2015

Rule 77(b)(2) is deleted because the content of that provision is superseded by provisions contained in Rule 76H(b). Former subdivision(b)(1) is reformatted as subdivision (b).

Advisory Committee's Notes July 1, 2001

The amendment [to Rule 77(d)] strikes the reference to Rule 73(a) of the civil appeal rules which is being replaced by the Maine Rules of Appellate Procedure. A specific rule citation is not needed in this reference.

Advisory Committee's Notes
May 1, 2000

Subdivision (a) is amended to recognize the after hours filing provisions and limitations of the filing Administrative Orders of September 19, 1997.

Subdivision (b) is amended by adding a subdivision (2) relating to recording as directed by the transcript production Administrative Orders of September 19, 1997.

Advisory Committee's Note
to February 15, 1983, Amendment of Rule 77 (d):

This change permits notice of an order or judgment to be delivered to a party in hand or as otherwise permitted in Rule 5. The purpose of this change is to encourage giving an immediate notice while the parties are in court which will encourage savings of postage.

Advisory Committee's Note
May 15, 1974

Since the organization of the District Court its Chief Judge has designated the hours and days when the District Court clerks' offices are open. See D.C.C.R. 77(c). This amendment puts into the hands of the Chief Justice of the Supreme Judicial Court the comparable function of designating any days (in addition to Saturdays, Sundays and legal holidays) on which the offices of the clerks of courts will be closed. The Committee believes that the substitution of the Chief Justice for the county commissioners of the sixteen counties is most desirable in order both to achieve statewide uniformity and to give prime consideration to the needs of the courts.

The existing rule is ambiguous in requiring the clerk's office to be open "during business hours." This ambiguity is removed by also giving the Chief Justice the responsibility for designating those hours for being open.

Rule 6(a), relating to computation of time periods, is at the same time amended to give any day on which the Chief Justice orders the clerk's office closed the same effect as a legal holiday. Also, Rules 56 and 45(a) of the Maine

Rules of Criminal Procedure are being amended in the same ways as their counterparts, Rules 77(c) and 6(a), of the Civil Rules.

Advisory Committee's Note
November 1, 1969

The amendment of Rule 77(e) is intended to put beyond any possible doubt the use of the facsimile signature of the clerk on any judgment. By proposing the amendment to Rule 77(e) the Committee is not to be taken as believing that a judgment entered under the existing rule with use of the clerk's facsimile signature is for that reason invalid. The Committee is of the opinion that the present Rule 77(e) was intended to cover broadly all types of papers issued by the clerk, the breadth of the papers intended to be included being emphasized by the single express exception for "executions and criminal process." Although Rule 54(a), which declares that "judgment" "includes a decree and any order from which an appeal lies", does not answer the question of whether "order" in Rule 77(e) includes a judgment, it would seem strange if a facsimile signature could be used on something which was called an "order" but could not be used on something which was called a "judgment." The official forms for judgments, Form 28 and Form 29, both of which are signed by the clerk of the Superior Court as a mere ministerial act (Rule 58), contain the language, "It is *Ordered* and *Adjudged*". (Emphasis added) Both the entry of default and the entry of judgment by default are also mere ministerial acts requiring no judicial determination or exercise of discretion on the part of the clerk. See Field & McKusick, *Maine Civil Practice* §§ 55.1, 55.3 (1959). Thus, there is no policy reason forbidding the use of facsimile signatures on those papers. The same is true of the entry of judgment upon the verdict of the jury or upon the direction of the court. Under Rule 58 there are in certain circumstances standing directions to the clerk to enter judgment automatically and as a ministerial act. *See id.* at § 58.2.

Although the Committee is confident that the Law Court would rule that a judgment entered on the facsimile signature of the clerk was not invalid for that reason, it proposes the amendment of the rule in order that the question need not even be litigated.

Explanation of Amendment
(Nov. 1, 1966)

This amendment was taken from a 1963 amendment to F.R. 77(d). It simply eliminated the words "affected thereby" in order to conform to M.R.C.P. 5(a) and to the 1966 amendment of M.R.C.P. 24(c).

Reporter's Notes
December 1, 1959

This rule is substantially the same as Federal Rule 77, with the addition of subdivision (e) which takes into the rules the provisions of R.S.1954, Chap. 106, Sec. 9 [now 4 M.R.S.A. § 108].