

are named as defendants. For the procedural purpose of service of process, the partners are treated by the amendment much the same as if they had elected the corporate form of doing business rather than the partnership. Compare subdivisions (d) (8) and (d) (9). Service upon one partner (or upon a general or managing agent of the partnership) will be effective as service upon all partners sued on a partnership liability.

Under the existing procedure, service may be made upon a partner only by service upon him personally by the method provided in Rule 4(d) (1), subject to other methods being available in limited circumstances. Even if all members of the partnership are Maine residents such requirements for service are onerous in the case of any partnership of more than two or three partners. When many of the partners reside outside the state, even though personal service upon such non-resident partners is expressly authorized by Maine's "long-arm" statute (the 1959 Jurisdiction Act) as to most causes of action arising in Maine (14 M.R.S.A. § 704), the complications involved in getting personal service upon many different partners, often residing in many different states, can for practical purposes deny justice to meritorious claims against the partnership.

On causes of action arising out of the doing within Maine by one partner or an agent of the partnership of any of the acts listed in the 1959 Jurisdiction Act, such as the transaction of any business or the commission of a tortious act, all partners are by that Act declared to have submitted themselves to the jurisdiction of the courts of this state. The particular mode for serving process provided by the Act is expressly stated not to limit or affect "the right to serve any process in any other manner now or hereafter provided by law." 14 M.R.S.A. § 704(4). The Committee is confident that the method for making service provided in the new subdivision (d) (10) satisfies due process. Cf. *Henry L. Doherty & Co. v. Goodman*, 294 U.S. 623, 55 S.Ct. 553, 79 L.Ed. 1097 (1935). The Federal Rules and the rules of states following the entity theory of partnerships permit process to be served as prescribed in the new subdivision. See F.R. 4(d) (3); N.J.Rule 4.4-4(e); Minn.Rule 4.03(b); McKinney's N.Y. CPLR § 310. There is no factual or substantive law difference that would make such service adequate in giving the partners due notice of the action under the entity theory, but would render such service inadequate in Maine with its common law concept of the partnership. Indeed Maine already permits service upon partners by less than personal service upon all, in two limited situations: (1) Rule 4B (c), preserving the substance of a pre-rules statute, makes service of trustee process on one partner an effective attachment as to any of the defendant's property in the hands of the firm; and (2) Rule 4(j) (1), added in 1966 after careful study by both those concerned with

federal rulemaking and those here in Maine, permits service upon a partnership in a foreign country by delivery to a managing or general agent.

In this day of mammoth partnerships, it may be difficult for the plaintiff's attorney to determine the names of all the parties. With the new subdivision (d) (10), it would appear permissible for him then to caption his suit by the style "John Smith v. James Jones, Henry Richards and all other persons who are partners of James Jones and Henry Richards in the partnership known as 'Jones & Company'." The plaintiff could, through discovery against Jones and Richards determine the names of all other partners and could amend his complaint prior to trial so as to include those defendants specifically. The original service upon either Jones or Richards or a general or managing agent of the partnership would have been effective to give them the constitutionally required notice of the action and of its application to them.

**Reporter's Notes**  
**December 1, 1959**

This rule is a combination of Federal Rule 4, existing Maine statutes, and new provisions designed to simplify and improve methods of serving process.

Rule 4(a) prescribes the form of the summons and is substantially the same as Federal Rule 4(b). *See* Form 1 in the Appendix of Forms. The reference to the facsimile signature of the clerk is inserted to make it clear that R.S.1954, Chap. 106, Sec. 9 [now 4 M.R.S.A. § 108], is not superseded by the rule. Alternate Form 1 in the Appendix of Forms is provided so that the clerk in one county may issue a summons for the commencement of an action in another county. Alternate Forms 2 and 2A are provided for the same reason.

Rule 4(b) places upon the plaintiff's attorney the obligation to fill out the summons, which he procures in blank from the clerk, and to make the necessary copies of both summons and complaint. It is also provided that in all cases the plaintiff's attorney shall deliver the papers to the officer for service. This departs from the Federal Rules, which require the clerk to prepare the summons and deliver it to the officer for service. It does not seem desirable to put this additional burden upon the clerk's office.

Rule 4(c) provides for service by presently authorized officers or by a person specially appointed by the court, the latter being taken from Federal Rule 4(c).

The general statutes relating to method of service of process, R.S.1954, Chap. 112, Sec. 17ff, have been repealed and service of process will in general be governed by Rule 4(d) to (i), inclusive.

Rule 4(d) (1) changes the requirements for personal service upon an individual by eliminating the possibility that the process may be left at the last and usual place of abode without delivery of it to any person. The present practice of sliding the process under the door of an empty house is subject to possible abuse. The last sentence provides, however, that the court may order service to be made by leaving the process at the defendant's dwelling house or usual place of abode upon a showing that the prescribed service cannot be made with due diligence. This is designed to cover the situation where the officer might have to make repeated attempts to serve a defendant who was trying to evade service. It is intended as an alternative for rare cases and contemplates a substantial showing by the plaintiff. Because of the possibility that leaving the process at an empty house might in the particular circumstances be less effective than publication, the court may order service by the latter method (which would normally be accompanied by mailing the published notice to the defendant's address).

Service by reading the writ or original summons to the defendant, as provided in R.S.1954, Chap. 112, Sec. 18, is not preserved in the rule.

The reference to service on an agent "authorized by appointment or by law to receive service", taken from Federal Rule 4(d) (1), covers the situation where a defendant individual has made an actual appointment, whether voluntary or under compulsion of a statute such as R.S.1954, Chap. 84, Sec. 10 [now 32 M.R.S.A. § 4002] (non-resident real estate brokers and salesmen). It also covers situations where no appointment has been made in fact, but where the doing of an act within the state is given the effect of appointing a public official as agent for service. R.S.1954, Chap. 22, Sec. 70, as amended [now 29 M.R.S.A. § 1911] (non-resident operators of motor vehicles and aircraft), is such a statute. When service is on a statutory agent, such further notice as the statute requires shall be given.

Rule 4(d) (2) to (9), inclusive, incorporates to a large extent the repealed statutes for service of process, but with some simplifications and modifications. As in the case of individuals, corporations may be served through an agent authorized by appointment or statute to receive such service on behalf of the corporation. This has the effect of retaining the numerous provisions scattered through the Revised Statutes which either require the designation of an agent for service of process as a condition of engaging in business activity in the state or

provide that service upon a named public official shall be sufficient. Any further notice required by the statute shall also be given. These requirements for service and notice vary from statute to statute without apparent reason, but it has seemed preferable to retain them as they are rather than to substitute a single uniform method of service.

Rule 4(e) also provides that service may be made outside the state upon a person who has submitted to the jurisdiction of the courts of the state. The word "person" includes a corporation. R.S.1954, Chap. 10, Sec. 22 (XIV) [now 1 M.R.S.A. § 72]. Taken in connection with 1959 Laws, c. 317, § 125, which becomes R.S.1954, Chap. 112, Sec. 21, as amended [now 14 M.R.S.A. § 704] this provision significantly extends the jurisdiction of the courts of Maine.

The purpose is to make a non-resident who comes into Maine and commits a tort or fails to perform a contract answerable for that wrong in the Maine courts even though he departs from the state before he can be served with process. It is an extension of the principle of the familiar non-resident motor vehicle statute (R.S.1954, Chap. 22, Sec. 70 [now 29 M.R.S.A. § 1911]). Under the 1959 amendment, a defendant can be personally served outside the state and a personal judgment rendered against him, on which he can of course be sued in his home state. At present jurisdiction cannot be obtained over such a non-resident without personal service in the state; but if his property can be attached, judgment good only against that property can be had. *Martin v. Bryant*, 108 Me. 253, 80 A. 702 (1911).

This statute is borrowed with slight change from Illinois Revised Statutes, Chap. 110, Par. 17, the constitutionality of which has been upheld in that state, *Nelson v. Miller*, 11 Ill.2d 378, 143 N.E.2d 673 (1957), and it is believed that the United States Supreme Court would also uphold it. *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154 (1945) ; *McGee v. International Life Ins. Co.*, 355 U.S. 220, 78 S.Ct. 199 (1957) ; and see *Smyth v. Twin State Improvement Corp.*, 116 Vt. 569, 80 A.2d 664 (1951) (upholding a Vermont statute making the commission of a single tort a basis of jurisdiction over a foreign corporation). Moreover, it seems eminently fair to provide that a person who comes to Maine and commits a wrongful act shall by so doing submit himself to the jurisdiction of the Maine courts, rather than to require the Maine resident whom he has wronged to pursue him to his home state. Maine being the place of the wrong, it is presumably the most convenient place to assemble the witnesses for trial.

Rule 4(f) deals with service by mail outside the state. It is limited to cases (1) where the plaintiff has made an attachment or served a trustee writ within the state, (2) where the object of the action is to affect the defendant's title to real or personal property within the state, or (3) in divorce or annulment actions. In these cases the out-of-state service is not the basis for a personal judgment, but it satisfies due process requirements of notice so that a judgment affecting the defendant's property or status is effective. *Pluredé v. Levasseur*, 89 Me. 172, 36 A. 110 (1896) (notice of enforcement of lien). If the address of a person to be served is unknown or if the rights of unknown claimants are involved, publication under Rule 4(g) can be used. In such a case publication satisfies due process.

Rule 4(g) deals with service by publication, which is permitted only upon a showing that service cannot be made by another prescribed method. These rules recognize, as Mr. Justice Jackson did in *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 315, 70 S.Ct. 652, 658 (1950), that "it would be idle to pretend that publication alone . . . is a reliable means of acquainting interested parties of the fact that their rights are before the courts." The typical situation for service by publication will be when the whereabouts of the person to be served cannot be ascertained with due diligence.

Rule 4(h) provides that the proof of service shall be made on the original process and that the person making the service shall return it to the plaintiff's attorney, who has the duty to file it with the court within the time during which the defendant must answer the complaint. Since it is the attorney's responsibility to make sure that the service and proof thereof were proper, it seems wise to have the process returned to him instead of having the officer return it to the court. It is not necessary that the original complaint be delivered to the officer who serves the copy. See the third sentence of Rule 4(h).

Rule 4(i) is not covered by any existing statute, but is consistent with the general common law rule, and apparently with Maine practice. Cf. *Glidden v. Philbrick*, 56 Me. 222 (1868); *Fairfield v. Paine*, 23 Me. 498 (1844).

### III. PLEADINGS AND MOTIONS

#### RULE 7. PLEADINGS ALLOWED: FORM OF MOTIONS

(a) Pleadings. There shall be a complaint and an answer, and a disclosure under oath, if trustee process is used; and there shall be a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim denominated as such; a third-party complaint, if a person who was not an original party is summoned under Rule 14; and there shall be a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

#### (b) Motions and Other Papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial or under Rule 26(g), shall be made in writing, shall state with particularity the grounds therefor and the rule or statute invoked if the motion is brought pursuant to a rule or statute, and shall set forth the relief or order sought.

(A) Any motion except a motion that may be heard ex parte shall include a notice that matter in opposition to the motion pursuant to subdivision (c) of this rule must be filed not later than 21 days after the filing of the motion unless another time is provided by these Rules or set by the court. The notice shall also state that failure to file timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing. If the notice is not included in the motion, the opposing party may be heard even though matter in opposition has not been timely filed.

(B) In addition to the notice required to be filed by subparagraph (1)(A) of this subdivision, a motion for summary judgment served on a party shall include a notice (i) that opposition to the motion must comply with the requirements of Rule 56(h) including specific responses to each numbered statement in the moving party's statement of material facts, with citations to points in the record or in affidavits filed to support the opposition; and (ii) that not complying with Rule 56(h) in opposing the motion may result in entry of judgment without hearing.

(C) A pre-judgment motion to decide a case on the merits, pursuant to Rule 12(b)(6), 12(c), or Rule 56, and a post-judgment motion for relief, to modify, to reconsider, to enforce by contempt, for a new trial, or for a stay, pursuant to Rules 59, 60(b), 62, 66, or 80(k) shall be accompanied by a fee set in the Court Fees Schedule which shall be paid when the motion is filed. A pre-judgment motion to decide a case based on res judicata or any defense that is addressed in Rule 12 (b) (1), (2), (3), (4), or (5), is not subject to payment of a fee.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) Any party filing a motion, except motions for enlargement of time to act under these rules, for continuance of trial or hearing, or any motion agreed to in writing by all counsel, shall file with the motion or incorporate within said motion (1) a memorandum of law which shall include citations of supporting authorities, (2) a draft order which grants the motion and specifically states the relief to be granted by the motion, and (3) unless the motion may be heard ex parte, a notice of hearing if a hearing date is available. When a motion is supported by affidavit, the affidavit shall be served with the motion.

(4) Any party filing a motion for enlargement of time to act under these rules or for continuance of trial or hearing, shall include in the motion a statement that (1) the motion is opposed; or (2) the motion can be presented without objection; or (3) after reasonable efforts, which shall be indicated, the position of an opposing party regarding the motion cannot be determined.

(5) Motions for reconsideration of an order shall not be filed unless required to bring to the court's attention an error, omission or new material that could not previously have been presented. The court may in its discretion deny a motion for reconsideration without hearing and before opposition is filed.

(6) If a motion is pursued or opposed in circumstances where the moving or opposing party does not have a reasonable basis for that party's position, the court, upon motion or its own initiative, may impose the sanctions provided by Rule 11 upon the party, the party's attorney, or both.

(7) Except as otherwise provided by law or these rules, after the opposition is filed the court may in its discretion rule on the motion without

hearing. The fact that a motion is not opposed does not assure that the requested relief will be granted.

(c) Opposition to Motions.

(1) Any party opposing a motion that was filed prior to or simultaneously with the filing of the complaint shall file a memorandum and any supporting affidavits or other documents in opposition to the motion not later than the time for answer to the complaint, unless another time is set by the court.

(2) Any party opposing any other motion shall file a memorandum and any supporting affidavits or other documents in opposition to the motion not later than 21 days after the filing of the motion, unless another time is set by the court.

(3) A party failing to file a timely memorandum in opposition to a motion shall be deemed to have waived all objections to the motion.

(d) In addition to the requirements of this rule, motions for summary judgment are subject to the requirements of Rule 56.

(e) Reply Memorandum. Within 7 days of filing of any memorandum in opposition to a motion, or, if a hearing has been scheduled, not less than 2 days prior to the hearing, the moving party may file a reply memorandum, which shall be strictly confined to replying to new matter raised in the opposing memorandum.

(f) Form and Length of Memoranda of Law. All memoranda shall be typed or otherwise printed on one side of the page of 8 1/2 x 11 inch paper. The typed matter must be double spaced in at least 12 point type, except that footnotes and quotations may appear in 11 point type. All pages shall be numbered. Except by prior leave of court, no memorandum of law in support of or in opposition to a nondispositive motion shall exceed 10 pages. Except by prior leave of court, no memorandum of law in support of or in opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or a motion for injunctive relief shall exceed 20 pages. No reply memorandum shall exceed 7 pages.

(g) The use of telephone or video conference calls for conferences and non-testimonial hearings is encouraged. The court on its own motion, or upon request of a party, may order conferences or non-testimonial hearings to be conducted by

telephone conference calls or with the use of video conference equipment. The court shall determine the party or parties responsible for the initiation and expenses of a telephone or video conference or non-testimonial hearing.

**Advisory Note  
July 2008**

This amendment adds Rule 12(c), addressing motions for judgment on the pleadings to those motions subject to a fee as addressed in sub-paragraph (C).

**Advisory Note  
April 2008**

This amendment to M.R. Civ. P. 7(b)(1) adopts a new sub-paragraph (C) to place motion filers on notice that certain motions must be accompanied by a filing fee set in the Court Fees Schedule. The amendment is adopted to limit confusion that has existed since filing fees for some motions were adopted in the past few years. At the same time, the Court Fees Schedule is being amended to adopt a new fee for pre-judgment motions to decide a case on the merits by a motion to dismiss or a motion for summary judgment. Fees are not required for pre-judgment motions based on res judicata, lack of personal or subject matter jurisdiction, improper venue, or improper service of process, as a motion addressing one of these grounds does not reach the factual or legal merits of the claim asserted.

**Advisory Notes 2004**

Rule 7(g) is amended to increase efficiency within the court system while reducing costs and expenses for the parties. The use of video and telephone conferences will allow for more flexible event scheduling, increased event certainty, and reduced travel expenses associated with routine conferences and hearings.

**Advisory Notes  
July 2003**

Rule 7(b)(4) is amended to allow a party filing a motion covered by M.R. Civ. P. 7(b)(4), as an alternative to filing a statement that the motion is opposed or can be granted without objection, to file a statement that, after reasonable efforts,

the position of another party cannot be determined. This covers the situation where a party makes reasonable efforts but cannot contact another party. The efforts must be indicated, and normally would include efforts to obtain a verbal statement of position. Reasonable efforts should be something more than sending another party a written notice of the motion and asking for a response.

**Advisory Committee's Notes  
December 4, 2001**

Rule 7(b)(7) is amended to permit the court in its discretion to rule on a motion without a hearing, assuming that the hearing is not otherwise required by law or rule (*see, e.g.*, Rule 80(k) requiring a hearing for post-judgment relief under Title 19-A), and that the opposition is filed. The amendment is intended to address the considerable delay that occurs when the court finds that it would not benefit from oral argument but cannot act on the motion until a hearing can be scheduled. Hearing dates in some counties may not be available for weeks or even months after motions are fully briefed. The amendment is not intended to diminish the importance of hearings as a process for assisting the court and as an opportunity for counsel and the parties to address the court directly. It is anticipated that the court will exercise its discretion to hold a hearing when the parties so request.

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

[Rule 7(b)(1) Amendment]

With increased emphasis on the importance, in summary judgment practice, of precise statements of material fact with record references as required by M.R. Civ. P. 56(h) and similarly precise opposition tied to record references, courts and practitioners have noticed an increasing problem with unrepresented litigants not properly responding to motions for summary judgments in ways which comply with the requirements of Rule 56(h). This rule amendment assures that individuals who must defend against a motion for a summary judgment, are properly notified not only of the timing and necessity of any response, but also of the requirements of Rule 56(h) which their response must meet. Where litigants, defending against motions for summary judgments, are improperly notified of the requirements of Rule 56(h), trial courts may be more flexible in considering responses that do not meet the requirements of the rule.

[Rule 7(b)(4) & 7(b)(7) Amendments]

When Rule 7(b)(4) was originally adopted in 1988, it required that most motions include with the motion a statement as to whether the motion was or was not opposed. The last sentence, indicating that the fact that a motion was not opposed did not assure that the requested relief would be granted by the court, as then drafted, also applied to most motions. Its purpose was to recognize the court's inherent authority to refuse to grant requested relief, even if it were agreed to or unopposed, where the relief would be inconsistent with the interests of justice. Subsequently, subdivision (b)(4) was considerably narrowed to apply to only a limited number of motions relating to changes of time to act or continuance of trial or hearing. This narrowing was not intended to change recognition of the court's broader authority to refuse to act on motions or to deny motions even if the motions were agreed to, unopposed, or improperly opposed. Moving the sentence recognizing this authority to its own subparagraph (7) reflects the initial intent when subparagraph (b)(4) was drafted that this authority apply to motions generally.

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

The provisions of Rule 7(d) which addressed statements of material fact in summary judgment motion practice under Rule 56, are amended and moved to become Rule 56(h).

The rules are also amended to be consistent with changes in the Local Rules of the United States District Court for Maine which were adopted in 1999. Those changes are addressed in detail in the comments to the amendments to Rule 56.

Rule 7(f) is amended to respond to a growing concern among trial judges that parties are seeking to avoid the page limitations on memoranda of law by submitting memoranda printed in small fonts that are difficult to read. The Rule is amended to be consistent with the rules for appeals to require a 12-point font for the text of memoranda and at least an 11-point font for footnotes and quotations.

**Advisory Committee's Notes  
May 1, 2000**

A new subdivision (b)(5) is added to address the continuing confusion about motions for reconsideration. A corresponding amendment has been made to Rule 59 to provide explicitly that a motion to reconsider a judgment is a Rule 59 motion

to alter or amend the judgment. Motions to reconsider should not be filed under Rule 60. Whether a motion seeks reconsideration of an interlocutory order or a judgment, however, new subdivision (b)(5) makes clear that such motions are not encouraged. Too frequently, disappointed litigants bring motions to reconsider not to alert the court to an error or to matter that could not have been presented earlier, but solely to reargue points that were or could have been presented to the court on the underlying motion. The new subdivision provides that the latter motions “shall not be filed” and, even on Rule 59 motions, the court may dispose of the motion without waiting for opposition to be filed. The existing subdivision (5) is redesignated (6).

In subdivision (f) the “at the bottom” portion of the page numbering requirement is eliminated. This accommodates current computer printing which often places page numbers at the top.

#### **Advisory Committee’s Notes**

**May 1, 1999**

Rule 7(b)(1) was amended to conform to the amendments to the discovery rules. The addition of the phrase “or under Rule 26(g)” recognizes that written discovery motions are no longer permitted unless the court orders otherwise. The purpose of the amendment is to cross-reference Rule 26(g) as an exception to the general rule that all applications to the court must be made by written motion. Rule 7(f) was amended to make clear that memoranda to the court should be printed on one side of the paper to ensure that submissions comply with the page limitations and to facilitate the use of court files.

#### **Advisory Committee’s Notes**

**March 1, 1998**

Subdivision (f) of Rule 7 is adopted to specify the form and length of memoranda of law. It is taken from Local Rule 7 (e) of the U.S. District Court for the District of Maine. The need for this amendment was identified by several justices and judges of the trial courts, who have found lengthy memoranda both burdensome and unnecessary for all but unusual circumstances. More specific requirements relating to font size and margins were considered, but the spirit of the rule is clear and should be enforced when transparent devices have been used to lengthen memoranda.

#### **Advisory Committee’s Notes**

**February 15, 1996**

Rule 7(c) is amended to correct a problem that has arisen regarding motions for attachment under Rules 4A and 4B.

In 1993, Rules 4A(c) and 4B(c) were amended to provide that matter in opposition to a motion for attachment shall be filed "as required by Rule 7(c)," with the intent of incorporating the provision of that rule for filing matter in opposition 21 days after the *filing* of the motion. Previously, Rules 4A(c) and 4B(c) had provided that matter in opposition was to be filed within 10 days after *service* of the motion. See M.R. Civ. P. 4A(c), 4B(c) advisory committee's notes, Feb. 15, 1993, amends., Me. Rptr., 602-17 A.2d LXII-LXIII. Since motions for attachment are often filed and served with the complaint, the defendant may not receive notice of the motion until a substantial time has elapsed after filing. Thus, the time to file matter in opposition may be shorter than the 10 days provided in the earlier version of the attachment rules.

The present amendment provides that matter in opposition to any motion filed at or before the filing of the complaint must be filed not later than the time for answer. Thus, the opposing party will know the nature of the action and will have at least 20 days for the response. The rule applies to any such motion, including motions for early discovery or for interim divorce relief.

**Advisory Committee's Notes  
March 1, 1994**

Rule 7(b)(1) is amended at the request of the trial judges to provide that a motion must include a notice to the opposing party that failure to file matter in opposition within 21 days pursuant to Rule 7(c) will result in waiver of all objections to the motion. The amendment is intended primarily to assist pro se litigants unfamiliar with the rule. The summons provides warning of the time for answer, but there is no comparable warning of the consequences of failure to respond to a motion. The result may be dismissal of a meritorious claim or the use of court time in hearing and granting a request for relief from the sanction of Rule 7(c). The amendment will give the court a clear basis for dealing promptly and firmly with parties, whether represented or unrepresented, who fail to file the required material in time. The last sentence makes clear that if the moving party fails to include the notice in the motion, the opposing party will be relieved of any resulting failure to make a timely filing.

Rule 7(b)(5) is added to provide that the court may impose sanctions on a party who persists in frivolous support of or opposition to a motion. The rule assumes that the motion when made satisfied the standard of Rule 11 that there was "good ground to support it." A moving party who continues to press for hearing after matter in opposition has been filed pursuant to Rule 7(c) or (d) must continue to have a "reasonable basis" to support the motion. Similarly, a party opposed to a motion who files matter in opposition pursuant to Rule 7(c) or (d) must have a "reasonable basis" for that position. In either case, the court may impose upon the party, the party's attorney, or both, the sanctions provided for the filing of a frivolous motion by Rule 11, including actual expenses and attorney fees incurred.

### **Advisory Committee's Notes 1990**

Rule 7 is amended to unify and consolidate the presently diverse time requirements for filing motions and memoranda in opposition to motions and to end the current uncertainties inherent in tying filing times to hearing dates. Simultaneous conforming amendments are being made to Rules 6 and 56.

These changes are necessitated by amendments to various rules in recent years which have resulted in inconsistent requirements for filing opposing memoranda and in changed practices whereby in the Superior Court motions are not now scheduled for hearing at the time they are filed. Allowing opposing memoranda to be filed shortly before hearing has created considerable confusion in motion practice and difficulty in scheduling hearings because of the uncertainty, at the time a hearing is scheduled, as to whether a motion will be opposed or unopposed. The new practice changes this direction to require that an opposing memorandum and other matter in opposition to a motion, if any is to be entered, be filed within a time certain after filing the motion.

The last sentence of Rule 7(b)(1) is stricken. Statement of a motion within a notice of hearing is inconsistent with current practice and is no longer appropriate.

Rule 7(b)(3) is amended to add a new clause (3) reflecting District Court practice by requiring inclusion of a notice of hearing if a date is available. The rule is also amended to incorporate the requirement of filing affidavits with motions from abrogated Rule 6(d). The provisions regarding timing and waiver of opposition to motions are deleted because these matters are covered in new Rule 7(c).

Rule 7(b)(4) is amended to narrow the requirement that a moving party file a statement of opposition or non-opposition. The statement is only required for those matters where the moving party should be able to determine by a telephone call or other contact with opposing counsel that the motion will or will not be opposed. Thus, application of paragraph (4) is limited to motions to continue trials or hearings or to change dates or deadlines set by court rule or order.

Former Rule 7(c) directing that demurrers and other archaic pleadings no longer be used is abrogated. This provision was necessary when the rules were first adopted in 1959. However, it is no longer necessary as practice has developed in the past 30 years. The types of papers that can be filed are affirmatively described in Rules 7(a) and (b).

Rule 7(c) is added to govern timing of opposition to motions. Essentially the new rule requires that if a motion is to be opposed, a party must file a memorandum in opposition within 21 days after the motion is filed. Affidavits under Rule 56(c) must be filed within the same period. Twenty-one days is a sufficient time for a party to prepare and develop opposition to a motion. Under Local Rule 19(c) of the United States District Court for the District of Maine, parties have only 10 days to prepare and file similar opposing material. If a timely memorandum in opposition is not filed, the party's objections will be deemed waived and the motion may be presented to the court for action without opposition. The rule also includes provision for the court to set another time for filing opposition to a motion.

Previously, Rules 6(d), 7(b)(3), and 56(c) provided somewhat inconsistent time periods for filing motions and opposing memoranda and affidavits, all of which were tied to the date of hearing. The elimination of these provisions and the adoption of Rule 7(c) mean that there is no longer any minimum time prescribed between the final filing and the date of hearing. In setting hearing dates under the amended rules, parties must be accorded reasonable notice. The notice period must necessarily be longer than the 21 days for filing opposing memoranda provided by Rule 7(c), except in a case where the court sets an earlier time for such filing. (Note that particular rules continue to impose restrictions on the times within which certain motions must be filed. *See, e.g.*, Rules 12(b), (c); 50(b); 52(b); 56(a), (b); 59(b).)

Rule 7(d) is added to make special provision regarding motions for summary judgment. This rule is similar to Rule 19(b) of the Local Rules of the United States

District Court for the District of Maine. The purpose of the new provision is to more directly focus argument on motions for summary judgment by requiring that moving parties briefly specify those facts which they claim are not in dispute and that opposing parties briefly specify those facts that they claim are in dispute. The statements to be filed under the rule must refer to specific portions of the record, including affidavits filed in support of or opposition to the motion, which support the party's contentions as to the facts. Those references should include page, paragraph, or other appropriate specific designation. The new rule will require some adjustment of the current practice under which, too frequently, generalized claims that there are or are not disputes as to material facts are presented in arguments on motions for summary judgment.

Rule 7(e) is added to govern the time for filing reply memoranda. In essence, a reply memorandum must be filed within 7 days after the filing of any opposition memorandum or within 2 days of hearing if that time is less than 7 days after receipt of the opposing memorandum. This rule is based on Local Rule 19(d) of the United States District Court for the District of Maine.

#### **Advisory Committee's Notes 1989**

Rule 7(b)(4) is amended to provide that in all motions where a statement of opposition or nonopposition is required, the statement must be filed with the motion. The prior provision allowing such a statement to be filed within ten days after filing the motion had proved unworkable. Such motions are often filed less than 10 days before action on the motion is required. Moreover, they ordinarily do not require the extensive review contemplated by the 10-day period.

#### **Advisory Committee's Notes 1988**

Rule 7(b)(3) is amended to add a requirement that all motions, except those already exempted from the other provisions of the paragraph, shall be accompanied by a draft of a proposed order granting the motion and stating the relief granted in specific terms. On more complicated motions, the terms of the draft order will aid the court and the opposing party in determining exactly what relief is requested. The draft will also provide a basis for preparing an order specifically directed to the relief sought. The draft order, whether or not it is granted in terms, will also assist those reviewing the file in determining exactly what rulings have been issued on prior motions. The draft order should not simply indicate "motion granted." It

should specify who has made the motion and that it is granted. In a separate paragraph, the draft order should then state the specific relief that is to be granted.

Rule 7(b)(4) is added, providing that a statement indicating whether or not a motion is opposed must be filed with the motion or within ten days after filing, except in the cases of motions for summary judgment and dismissal and ex parte motions. The paragraph also makes clear that the court retains the discretion to deny an unopposed motion. The new provision is intended to eliminate a burden which present motion practice imposes upon the clerks' offices. The clerks now must frequently call counsel for opposing parties to determine whether some motions—particularly motions for continuance or motions to extend deadlines—are opposed or not. The amendment shifts the burden for making this determination to counsel for the moving party. In order to comply with the rule, counsel must consult or otherwise ascertain the position of opposing counsel in some manner prior to the date set for hearing on the motion. In addition to relieving the clerks' offices, this requirement should result in a significant reduction of the number of motions that are set for hearing as opposed.

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

The purpose of this amendment is to require counsel to expressly set forth in any motion that rule or statute upon which the request for relief set forth in the motion is based. It is suggested that the procedural rule under which the motion is brought should be indicated in parenthesis immediately under the title of the motion. Further it is the intent of the rule to require that counsel cite in the body of the motion any rule or statute on which the request for relief is based which is set forth in the motion in order that the Court and opposing counsel may have notice of the pertinent provisions of law on which the claim for relief is based.

**Advisory Committee's Note**  
**February 2, 1976**

A trap for the unwary is created by the fact that a reply to a counterclaim is required only if the counterclaim is "denominated as such", whereas an answer to a cross-claim is required without any such limitation. 2A Moore's Federal Practice, § 7.04, expresses the thought that "it might have been better had the rule provided for 'an answer to a cross-claim *denominated as such.*' " The Committee does not completely share the confidence expressed by Moore in the very next sentence:

. . . since cross-claims concern co-parties, a co-party served with an answer will probably be adequately informed that a claim is being made against him by his co-party, which he should answer although that claim is not denominated a cross-claim.

There seems no reason for leaving the matter in doubt. The amendment treats the cross-claim exactly the same as a counterclaim and requires a responsive pleading only if the cross-claim is denominated as such.

### **Explanation of Amendment December 1, 1959**

Rule 7(d) was amended November 2, 1959, effective December 1, 1959, by deleting reference to the time for serving reasons of appeal, thereby leaving the matter wholly to statute. 4 M.R.S.A. § 402. Consistent with Probate Rule LIII, 151 Me. at 525, the papers to be filed in the Superior Court and the prescribed time for such filing are indicated.

### **Reporter's Notes December 1, 1959**

This rule is substantially the same as Federal Rule 7. The only pleadings ordinarily required under these rules are the complaint and the answer. "Complaint" includes what has hitherto been a declaration at law and a bill in equity. The answer, as will be seen from Rule 12(b), includes every defense in law or fact, whether hitherto made by plea in bar or in abatement, but certain defenses may also be made by motion. Demurrers are specifically abolished. The function of a general demurrer is served by a motion under Rule 12(b) (6) to dismiss for failure to state a claim upon which relief can be granted.

Rule 7(d) in effect adopts existing practice with respect to appeals to the Superior Court sitting as the Supreme Court of Probate. Although these appeals are subject to these rules, no defensive pleading is required.

The Maine practice of permitting a counter brief statement by the plaintiff, R.S.1954, Chap. 113, Sec. 36 (repealed in 1959), is altered by this rule.

Statutes which use the words "petition", "declaration", "plea", "demurrer", and other such terminology are modified in form.

## **RULE 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS**

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; or (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment, or a conflicting commitment that could not be broken or scheduled at another time without subjecting the witness or others to legally enforceable sanctions or significant risk of physical detriment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action in any court of the United

States or of any State has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(b) *Objections to Admissibility.* Subject to the provisions of Rule 28(b) and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) *Transcript.* Regardless of the method by which a deposition was recorded or is to be used in court proceedings, a party using a deposition in court proceedings under this rule shall provide to the court an accurate written transcript of the deposition.

(d) *Effect of Errors and Irregularities in Depositions.*

(1) *As to Notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) *As to Disqualification of Officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) *As to Taking of Deposition.*

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are