

STATE OF MAINE  
SUPREME JUDICIAL COURT  
**PROPOSED** AMENDMENT TO  
MAINE RULES OF CIVIL PROCEDURE

1. Rule 92 of the Maine Rules of Civil Procedure is amended to read as follows:

....

(g) Mediation in Title 32 Consumer Collection Actions.

(1) Definitions. A “consumer collection action” is a collection action, 32 M.R.S. § 11002(1-A), brought by a debt buyer against a consumer, 32 M.R.S. §§ 11002(3), (5-A), 11019(1), or brought by a debt collector against a consumer to collect a credit card or student loan debt, 32 M.R.S. §§ 11002(3), (6), 11020(1).

(2) Venue. Consumer collection actions may not be brought in small claims court, 32 M.R.S. §§ 11020(2), 11021.

(3) Management. Mediation services requested under this rule shall be managed by the Court Alternative Dispute Resolution Service (CADRES) according to CADRES policies and procedures. Following Court Order, CADRES shall arrange for mediation services in consumer collection actions.

(4) Mediation Fee. The mediation fee is included in the filing fee.

(5) Mediation Upon Court Order. When a defendant in a consumer collection action appears, answers, or requests mediation, and the case has met initial filing requirements, the court may order mediation pursuant to this rule.

(6) Assignment of Mediators. The scheduling clerk or designee shall notify CADRES when mediation of a consumer collection action is ordered by the Court, and CADRES will schedule mediators in accordance with CADRES policies and procedures.

(7) Format of Mediation. Mediation may take place at the courthouse, remotely by videoconference or telephone, or another location authorized by the court or the CADRES Director.

(8) Attendance at Mediation. Each party and the party's attorney, if any, shall be present at mediation and shall make a good faith effort to mediate all disputed issues. The format of mediation will be determined by CADRES in consultation with the court. Appearance and participation in mediation is mandatory for:

(A) the defendant;

(B) counsel for the defendant, if represented;

(C) counsel for the plaintiff; and

(D) the plaintiff, or representative of the plaintiff, who has the authority to agree to a proposed settlement. When the plaintiff is represented by counsel who is present and has settlement authority, the plaintiff or its representative must still appear but may participate by telephone or video.

If any party or attorney fails to attend or to make a good faith effort to mediate, the court may impose appropriate sanctions.

(9) Mediation Report.

(A) For each mediation session conducted pursuant to this rule, the mediator shall complete and submit a mediation report to the court within 24 hours after the session concludes.

(B) The mediation report shall state the outcome of mediation and any agreements as to substantive issues and/or next steps. Any settlement reached in cases sent to court-ordered mediation does not fall within the definition of a "proposed order concerning settlement" referenced in 32 M.R.S. § 11020(5).

(C) The mediator shall provide a copy of each mediation report to parties and counsel at the end of the mediation session. If the mediator

does not have a party's contact information and is therefore unable to send a copy of the mediation report to that party, the mediator will notify the clerk, who will send a copy.

(10) Multiple Sessions. Mediators are authorized to schedule additional mediation sessions if requested by the parties. Such additional sessions shall be conducted in accordance with this rule and CADRES policies and procedures.

(gh) Sanctions.

If a party or party's attorney fails to appear at mediation or other ADR process scheduled pursuant to this Rule, or fails to comply with any other requirement of this Rule or any court order issued pursuant to this rule, the court may, upon motion of a party or on its own motion, order the parties to submit to mediation or other ADR, dismiss the action or any part of the action, render a decision or judgment by default, or impose any other sanction that is just and appropriate in the circumstances. In lieu of or in addition to any other sanction, the court shall require the party or attorney, or both, to pay reasonable expenses, including attorney fees, of the opposing party, and any fees and expenses of a neutral, incurred by reason of the nonappearance, unless the court finds that an award would be unjust in the circumstances.

### **Advisory Note - \_\_\_\_ 2023**

New subdivision (g) adds Consumer Collection Actions to the list of disputes that may be referred to the Court Alternative Dispute Resolution Service (CADRES), consistent with new legislation. *See* P.L. 2021, ch. 245, §§ F-1 to F-3 (codified at 32 M.R.S. §§ 11019-11021); P.L. 2021, ch. 329 (codified at 4 M.R.S. §§ 18-A(3-A)(C), 18-B(7)). The new subdivision establishes the elements, structure, and requirements of the mediation process in Consumer Collection Actions.

As a result of the addition of this new subdivision, former subdivision (g) [Sanctions] is restyled as subdivision (h).