CHAPTER 2

OVERVIEW OF THE PROBATE AND FAMILY COURT

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HOW THE PROBATE AND FAMILY COURT WORKS: LEGAL AUTHORITY

The Probate and Family Court Has Specific Power and Authority to Handle Family Law Problems

The Probate and Family Court has the power and authority to handle most family law problems and to grant relief for most family law issues. The powers described here are not a complete list of Probate and Family Court authority.

The jurisdiction of the Probate and Family Court is established by G.L. c. 215, §§ 3, 4, 6, 6C. The Probate and Family Court has jurisdiction over a number of family-law–related matters, such as the following:

- to grant **divorces**, G.L. c. 208
- to grant judgments of separate **support and maintenance of spouses and their children,** G.L. c. 209
- to make orders to prevent **domestic violence and abuse**, G.L. c. 208, §§ 18, 34B; G.L. c. 209, § 32; G.L. c. 209A; G.L. c. 209C, § 15
- to make orders for the **support of children**, as temporary orders pending a final judgment (G.L. c. 208, §§ 19, 20; G.L. c. 209, § 32F; G.L. c. 209A, § 3; G.L. c. 209C, § 15; G.L. c. 215, § 6C) and as part of a judgment (G.L. c. 208, § 28; G.L. c. 209, §§ 32, 37; G.L. c. 209C, § 15)

- to make orders and judgments for the **support for spouse**s both during a marriage, upon divorce and after divorce (G.L. c. 208, §§ 17, 34; G.L. c. 209, § 32), **and for abused persons** (G.L. c. 209A, § 3)
- to **divide marital property**, G.L. c. 208, § 34
- to order **conveyances of real estate** from one spouse to the other, G.L. c. 208, § 34A; G.L. c. 209, § 32D
- to make orders and judgments relative **to child custody and visitation**, G.L. c. 208, §§ 19, 28, 28A, 31A; G.L. c. 209, §§ 32, 38; G.L. c. 209A, § 3; G.L. c. 209C, §§ 10, 15
- to make decisions about the **guardianship of minors**, G.L. c. 201
- to order **investigations and reports** to it of matters involving the care, custody or maintenance of minor children by appointing a guardian ad litem (G.L. c. 215, § 56A) or, in a divorce case, an attorney (G.L. c. 208, § 16), and it can order that the cost of these investigations be paid by the Commonwealth
- to order probation officers to conduct investigations, G.L. c. 276, § 85A
- to enforce custodial rights by issuing writs of **habeas corpus** to bring a child before it, G.L. c. 208, § 32
- to make judgments establishing the **paternity** of children born to parents who are not married to each other and to make orders and judgments relative to the custody and support of those children, G.L. c. 209C
- to **modify** and revise its judgments and orders, G.L. c. 208, §§ 28, 28A; G.L. c. 209, § 37; G.L. c. 215, § 6C
- to **secure support and maintenance** of spouses and children by attachment (G.L. c. 208, §§ 12, 33; G.L. c. 209, § 33) and by trustee process (G.L. c. 208, § 36A; G.L. c. 209, § 33), as well as the power to **enforce its orders** by contempt (i.e., fining or imprisoning the disobedient party until he or she complies) (G.L. c. 215, § 34)

There Are Laws and Rules About the Probate and Family Court and Family Law Practice

The primary sources of law relating to family law matters are in the following chapters of Massachusetts' General Laws (G.L.):

G.L. c. 208:	Divorce
G.L. c. 209:	Husbands and wives
G.L. c. 209A:	Abuse prevention
G.L. c. 209B:	Massachusetts Child Custody Jurisdiction Act

G.L. c. 209C:	Children born out of wedlock
G.L. c. 209D:	Uniform Interstate Family Support Act
G.L. c. 119A:	Child support enforcement
G.L. c. 215:	Probate Courts

The following are the pertinent rules of court governing family law practice:

- Massachusetts Rules of Domestic Relations Procedure (Mass.R.Dom.Rel.P.);
- Uniform Practices of the Probate Court;
- Probate Court Rules;
- Trial Court Rules;
- Standing Orders of the Probate and Family Court; and
- Child Support Guidelines.

HOW THE COURT WORKS: PROPER DECORUM IN COURT

The Probate and Family Court conducts serious business; it makes critical decisions that will affect the lives of your family and your children. It is extremely important for you to behave in a dignified and mature manner. You should dress neatly and conservatively *and always* address the judge as "Your Honor." If you don't, you could jeopardize the outcome of your case.

It is also important for you to be prepared. Know what you want to say and how you want to say it. It is important to state your case clearly and concisely. The forms and documents you prepare, using the samples included in this book, can be used to get your thoughts in order.

When you go before a judge or meet with a probation officer, you will have a turn to speak and state your case. Do not interrupt your spouse; you will have the opportunity to respond in due time.

If you are appearing before the court on a motion, the person who made the motion (the "moving party") speaks first. If you are appearing at a hearing or trial on your complaint, the plaintiff (the party that filed the complaint) speaks first.

Parties in family law cases are often tempted to try to get the judge involved in the case in a nonjudicial way, such as to tell them how to handle the case, to advise them of what they should do, of what their rights are, of how to make the other party behave. Judges do their best to resist these attempts because their duty is first and foremost to make decisions impartially. Being involved in a nonjudicial way undermines the judge's ability

to make decisions and to be impartial. It is inappropriate for you to put judges in nonjudicial roles.

HOW THE COURT WORKS: THE PROBATION DEPARTMENT WORKS WITH JUDGES AND THE PARTIES

When you come to the Probate and Family Court for a hearing, the court may refer you to the Probation Department (which used to be called the Family Service Office). Cases are referred to the Probation Department when court documents show that certain issues are in dispute—for example, custody, visitation and child support. There are two types of Probation Department responsibilities in cases, "dispute intervention" and "investigation."

If the parties disagree over material facts, the court may refer them to the Probation Department for investigation (for example, where one of the parties is a substance abuser). However, if the parties dispute over how often one person can visit the children, the case is usually referred for dispute intervention. However, there is no iron-clad rule; sometimes disputes over who should have custody get referred for dispute intervention and other times for investigation.

The dispute intervention process is a "same day" duty where the court refers the case to the Probation Department on the day of the hearing, and a Probation Officer completes an intervention that day, usually reporting back to the judge that same day.

Dispute intervention involves meeting with a Probation Officer to assess issues and, if possible, to come to an agreement on one or more of the issues before trial. In the dispute intervention process, the Probation Officer does the following:

- gathers information about each case from the parties or their attorneys
- evaluates and assists them in reaching full or partial agreements and writing them up
- if asked by the judge, reports on the facts that have been found or makes recommendations

Probate and Family Court policy is that if your case is referred to the Probation Department for dispute intervention, you are required to participate in the information-gathering phase, but that you are not required to participate in negotiating an agreement or coming to an agreement.

Agreements (sometimes called a "stipulations") produced in the Probation Office are put in writing. This agreement is then signed by the parties, and presented to a judge who "approves" the agreement by making an order that the parties comply with the agreement.

Investigation is a longer process in which the probation officer makes a written report back to the court after completing interviews, reviewing documents and making first-hand observations.

Practice Note
Probation officers are not judges. They do not have the authority or power to make decisions or court orders.

HOW THE COURT WORKS: THE PARENT EDUCATION PROGRAM

Standing Order 1-03, Parent Education Program Attendance (August, 2003) establishes a program to educate parents involved in divorce cases about their children's emotional needs, and the effects of divorce on child behavior and development. Under this order, the court will not hold a pretrial conference or trial unless it has received a certificate of attendance or waives the requirement.

A parent can ask the court for permission to be excused from attending the program. The court can grant the request if the parent shows one of the following:

- that there has been chronic and severe abuse, which rules out safe parental communication
- that there are language barriers
- that the spouse is unavailable (for example, he or she is institutionalized
- that the spouse has not completed the parental education program
- that there is not an approved program in the county where the divorce was filed
- where justice otherwise indicates

The fee for attendance is $65 per party, reducible by the court to $5 if the claimant has submitted an Affidavit of Indigency or an allowed Motion to waive the fee. See What Do You Do If You Cannot Afford to Pay the Filing Fee or Other Costs Associated with Litigation, below. A sample Affidavit of Indigency and Supplement (form issued March, 2003) are included in **Exhibit 2A,** and a Motion for State Payment of Fees and Costs is included as **Exhibit 5M.**

COSTS AND FEES FOR LOW AND MODERATE INCOME LITIGANTS

You Can Apply to Have Court Fees and Costs Waived or Paid by the State if You Cannot Afford Them

There are fees and costs associated with legal cases. For example, the courts charge fees for filing complaints and deputy sheriffs and constables charge fees when they serve summonses and subpoenas. Under the provisions of General Laws, c. 261, §§ 27A et seq., these fees can be waived or paid for by the Commonwealth if the claimant is indigent. To apply for these waivers and costs, you have to fill out an Affidavit of Indigency and Request for Waiver, Substitution or State Payment of Fees and Costs; a sample is included as **Exhibit 2A**.. If you check box 1(c) on the Affidavit, you must fill out the Supplement to the Affidavit of Indigency, which is also included in Exhibit 2A.

You are "indigent" and can have your court fees waived if you meet at least one of the following requirements:

- you receive public assistance
- your income after taxes is less than 125 percent of the current poverty threshold established by the federal government
- you are unable to pay the fees and costs of the proceeding without depriving yourself or dependents of the basic necessities of life; in this case, you status must also fill out and file the "Supplement to the Affidavit of Indigency."

There are two kinds of fees and costs—"normal fees and costs" and "extra fees and costs." Normal fees and costs include filing fees and service of summonses and subpoenas. In Section 2 of the Affidavit of Indigency and Request for Waiver, Substitution or State Payment of Fees and Costs, you must list the normal fees and costs that you want waived or paid for by the Commonwealth.

The Affidavit of Indigency and Request for Waiver, Substitution or State Payment of Fees and Costs must be approved by a clerk, known in the Probate and Family Court as an Assistant Register of Probate. If the Affidavit appears regular and complete and indicates that you are indigent, the clerk is required to approve it immediately. G.L. c. 261, § 27C.

Once approved, court personnel will file complaints without requiring the filing fee. You should get a copy of the Affidavit with the signature of the Assistant Register of Probate on it so you can take it to the Deputy Sheriff who is to serve the complaint and summons. Using the signed and approved Affidavit, the deputy sheriff can bill the Commonwealth directly for the costs of serving the summons.

You Can Apply to Have Your Spouse Help Pay for Your Attorney in Your Divorce Case if You Cannot Afford It

The Probate and Family Court can order one spouse to pay an attorney retainer fee for the other spouse in a divorce case. The Court can do this whether you are the plaintiff or the defendant. Chapter 208, section 17 of the General Laws says: "The court may require either party to pay into court for the use of the other party during the pendency of the action [for divorce] an amount to enable him to maintain or defend the action."

A retainer is an amount of money that an attorney may require a client to pay in advance in order for the attorney to begin work on the case. The attorney then uses this money to pay for the services he or she provides and for legal costs and expenses. The attorney may require that the client pay additional money for his or her fees as the case proceeds.

You will need to prove to the Court that you do not have enough money to pay the retainer for a lawyer and also that your spouse does have enough income or assets to pay for the retainer. Both you and your spouse will have to file a financial statement which states all your income, expenses, and assets. The Court will look at the financial statements to determine whether or not to order your spouse to pay the retainer fee for an attorney for you.

Exhibit 2__ contains instructions and forms for requesting an attorney fee.

INTERPRETERS FOR NON-ENGLISH SPEAKING AND HARD OF HEARING LITIGANTS

Deaf or hearing-impaired persons have the right to the appointment of a qualified interpreter, defined as a person skilled in sign language or oral interpretation. G.L. c. 221, § 92A.

Non-English speakers have a right, throughout a court proceeding, to the assistance of a trained and certified interpreter, appointed by the court. G.L. c. 221C, § 2. The Office of Court Interpreter Services (OCIS) assigns interpreters. Assistance "throughout a court proceeding" includes assistance to institute a proceeding, such as help filling out papers to get a restraining order. OCIS Standards and Procedures (April, 2003), 8.01(A). Non-English speakers are defined as people who cannot speak or understand English, or who have difficulty speaking or understanding English because they use or primarily use a language other than English.

Out-of-court disclosures and communications made through interpreters for non-English speakers and deaf and hearing-impaired persons are confidential as long as the non-English speaker or deaf or hearing-impaired person had a reasonable expectation or intent that the communication be confidential. G.L. c. 221C, § 4; G.L. c. 221, § 92A.

Each court has a clerk who has the responsibility to arrange for court interpreters, and it is very important to notify that clerk in advance so that the proper arrangements can be made. These clerks submit written requests for the assignment of an interpreter. In emergency situations OCIS will provide an interpreter upon telephone request. Standards and Procedures 8.01(A).

If possible, bring to court someone you trust who can interpret for you, because the court interpreter may only be available for when you are in the courtroom. Do not permit the opposing party to interpret for you.

Practice Note

It is often a good strategy to put in a request for an interpreter if the other party needs an interpreter. This can be in your best interest if you have arranged a court date for a hearing and need the court to give you timely relief, since you would not want the case to be postponed because the other party cannot speak English and no interpreter is available.

HOW THE SYSTEM WORKS: THE PROCESS FROM COMPLAINT TO JUDGMENT

How Does a Case Get Started?

A case gets started by filing the appropriate papers in the office of the Register of Probate for the Probate and Family Court division where the case is to be heard.

If you want the court to consider your case, you begin by deciding which particular legal action to bring, and then filing the appropriate complaint. For each legal action there is a corresponding complaint form. A complaint is the document you use to bring a legal "action." Legal actions are created and authorized by statute. For example, General Laws c. 208 creates and authorizes actions for divorce, and there are form complaints for divorce available at the Probate and Family Court. The person who files the complaint is called the "plaintiff" and the opposing party is called the "defendant."

Selecting the Proper Action and Complaint

Divorce (G.L. c. 208, §§ 1, 1A, 1B)

In Massachusetts, divorce actions can be brought in two basic ways:

- one party may file a complaint alleging specific grounds or reasons for the divorce, G.L. c. 208, §§ 1, 1B; or
- both parties may file a Joint Petition for Divorce, G.L. c. 208, § 1A.

Both the Complaint for Divorce and the Joint Petition for Divorce bring the basic issues before the court. These issues include child custody, child support, visitation, alimony, division of marital property, protection from abuse. For more information, see Chapter 5, Divorce.

Complaint for Separate Support (G.L. c. 209, § 32)

This kind of legal action can be filed by a married person seeking support from a spouse or permission of the court to live apart from a spouse without a divorce. For more information, see Chapter 4, Separate Support. The relief that can be granted under such an action also includes custody and visitation.

Complaint for Support (G.L. c. 209, § 32F)

This kind of legal action can be filed by a married person living apart from his or her spouse in order to seek support for himself or herself, or his or her children.

Complaint to Establish Paternity (G.L. c. 209C)

This kind of legal action can be filed by a person seeking a court determination (adjudication) that he is the father of a child born to a mother to whom he not married; it can also be brought by the mother seeking to establish that a particular man is the father of her child, even though she is not married to the man. See Chapter 7, Paternity Issues.

Complaint for Support, Custody or Visitation (G.L. c. 209C)

This kind of legal action can be filed by the mother or the father of a child whose parents were not married to each other , when there has been either a voluntary acknowledgment of paternity signed by both parents or when there has been a determination of paternity by a court. In either of those two situations, you would file this form of complaint to obtain a child support or health insurance order for the child, a custody or visitation order, or an order protecting the child or parent from abuse. See Chapter 8, Child Support, and Chapter 9, Child Custody.

Complaint for Protection from Abuse (G.L. c. 209A)

See Chapter 3, Safety and Protection Issues.

Complaint for Modification (G.L. c. 208, §§ 28, 37; G.L. c. 209, § 37; G.L. c. 209C, § 20)

If there is a final judgment in any of the kinds of action described in this book, and if there has been a significant and material change of circumstances since the court entered that judgment, a person can file a Complaint for Modification to ask the court to modify or change the prior judgment. See Chapter 15, Modifications.

Complaint for Contempt (G.L. c. 215, §§ 34, 35)

If you have received an order or judgment from the court and you believe that the other party has not followed the terms of the order or judgment, you can file a Complaint for Contempt asking that the court hold the other party in contempt for refusing to follow the orders. The action for contempt is a serious and important way for the Probate and Family Court to enforce its orders and judgments. See Chapter 16, Contempt.

Complaint for Grandparent Visitation (G.L. c. 119, § 39D)

Grandparents in certain family situations may be able to go to court to seek visitation with their grandchildren. See Chapter 9, Child Custody.

Cases are assigned to a caseflow track ("Case Management and Time Standards")

On March 10, 2006, the Probate and Family Court issued Standing Order 1-06, "Case Management and Time Standards," effective April 3, 2006. At the time of filing, all cases are assigned to a caseflow track according to the type of case.

There is a "3 – 6 month" track, that is, 3 - 6 months from filing to trial, that includes Change of Name petitions. There is an "8 month" track that includes Complaints to Establish Paternity; for Custody, Visitation, and Support (Paternity); for Modification (except a Joint Petition for Modification of Child Support); for Separate Support; and Petitions for Guardianship and Conservatorship. There is a "14 month" track that includes Divorce Complaints, Equity Complaints; other "'Divorce' Case Types."

Certain other types of cases are time-tracked specifically according to the type of case:

- G.L. c. 209A Abuse Prevention ("restraining order")
- Joint Petitions for Divorce (G.L. c. 208, § 1A)
- Joint Petitions for Modification of Child Support:
- Complaints for Contempt
- Petitions to Dispense with Consent for Adoption (G.L. c. 210, §3)
- Petitions by the Department of Social Services seeking an order to take responsibility for a child (G.L. c. 119, §23, par. C)
- Adoption Petitions

See Standing Order 1-06 for details.

Other important features of the Case Management and Time Standards order include:

"Next Event Scheduling" in which, at the conclusion of each court event, the Court schedules the next court event.

"Case Management Conferences" which are scheduled to establish the Court's control of the progress of the case, to provide early intervention by the Court, to offer Alternative Dispute Resolution processes, to establish discovery limitations and deadlines, to discuss settlement progress and opportunities for settlement, and to assign a date for the pre-trial conference, if needed.

The Automatic Restraining Order (Mass.R.Dom.Rel.P 401)

Upon filing a complaint for **divorce** or **separate support**, and upon being served with such a complaint, the parties are subject to an automatic restraining order. The automatic restraining order restrains the parties from transferring assets, with noted exceptions; from changing the beneficiary of life insurance policies, pensions, retirement plans, and similar accounts; and causing the removal of the other party or minor children from existing insurance policies, including health, life, automobile, and disability insurance.

A party can, upon notice to the other party, appear in court to move to dissolve or modify the automatic restraining order. The order remains in effect during the pendency of the case, except as modified by agreement or court order, and it is automatically vacated upon entry of a judgment of divorce or separate support.

Serving the Complaint

Before you can proceed with the complaint you have filed, the other party (the "defendant") must be served with a Domestic Relations Summons.

When you file a complaint, get the Summons form from the clerk and fill it out. The Complaint and Summons must be served by a disinterested person (preferably a constable or deputy sheriff), in person, by handing the defendant copies of the Complaint and Summons. The constable or sheriff then fills out the original Summons and returns it to you. It is then your responsibility to return the original Summons to the court for filing (an action that is referred to as "return of service").

Answers and Counterclaims

If you have been personally served with a Summons and a Complaint that names you as the defendant, the Summons will say that you have 20 days from the date of service in which to file your Answer. It is very important to do this. An Answer is not a printed court form; it is a document that you prepare yourself, and on which you put the formal name of the case, court, and docket number at the top. You must respond to each allegation in the complaint by admitting to it, denying it or saying that you do not have the information to admit or deny it. You must sign the Answer and date it. You must also

put your address and telephone number on your Answer. You then file the original Answer with the court, send a copy to the other party (or his or her attorney if there is one) and keep a copy for yourself.

If the Summons is issued pursuant to an Order for Service by Publication and mailing, there is a date on the Summons by which you must file your Answer.

If the Summons is a Contempt Summons, there is a date on the Summons on which you must appear in court.

The Rules of Domestic Relations Procedure provide that you can file a counterclaim along with your Answer. See **Exhibit 2B** for a sample Answer and Counterclaim.

Mandatory Self Disclosure (Mass.R.Dom.Rel.P 410)

Under the Mandatory Self Disclosure rule, each party in a **divorce** or **separate support** action is required to deliver to the other, within 45 days of service of the summons, copies of the following documents:

- federal and state income tax returns for the prior three years;
- statements for the prior three years for all bank accounts;
- four most recent pay stubs;
- documentation concerning the cost and nature of available health insurance coverage;
- statements for the prior three years concerning securities, pensions, IRAs and similar assets;
- loan or mortgage applications submitted within three years prior to filing for divorce; and
- financial statements and statements of assets and liabilities prepared by either party within three years prior to filing for divorce.

The Financial Statement

The Financial Statement is a court form on which each party discloses his or her financial condition, including income, expenses, assets, and debts. The primary rule governing Financial Statements is Mass.R.Dom.Rel.P., Rule 401.

- Each party to a divorce, separate support or other action in which financial relief is requested must file a Financial Statement and deliver a copy to the other party within 45 days of the date the summons is served.
- If there is a hearing on a motion for temporary orders or a pretrial conference prior to the expiration of the 45-day period, Financial Statements must be

filed in court and exchanged between the parties no later than two business days before the hearing or conference.

- Each party is required to fill out and file a current Financial Statement whenever the court is asked to enter a financial order such as a child support order or an alimony order.
- Each party must provide the other party with a copy of his or her Financial Statement.
- Financial Statements are signed "under penalties of perjury." They are serious documents and must be filled out with care.
- Financial Statements require that income and expense information be given on a weekly basis. If your information is in terms of monthly figures, divide by 4.3 to determine the weekly amount.
- All income and expenses must be declared on the Financial Statement. If the spaces on the form are not sufficient, you must attach additional pages.
- The Financial Statement must be accurate as of the time when it is presented to a judge. If a previously filed Financial Statement is not up-to-date, it is the duty of the person making the Financial Statement to provide the judge with one that is up-to-date and accurate.
- Every line on the Financial Statement form must be filled in.
- For a hearing on a request for a temporary order for financial support or at a final hearing or trial involving support, you must file your Financial Statement. Some courts require that you file your Financial Statement at the time you *file* your request for the hearing, not at the time you actually see the judge about your request for support.
- A party may formally request that the other party file a Financial Statement in court and send the requesting party a copy on 10 days' notice. The notice is in the form of a separate request entitled "Request for Financial Statement." No further request may be made within 90 days of a prior request except by order of the court. See **Exhibit 2C** for a sample Notice to Furnish Financial Statement.
- Financial Statements are not filed with the other papers in your court; they are kept separate to ensure your privacy. Financial Statements are only available to the parties, their attorneys, Probate and Family Court personnel, and the Massachusetts Department of Revenue (DOR) if a party receives public assistance or support collected by DOR.

Motions and Temporary Orders

What Is a Motion?

Motions are formal written requests to the court for an order or relief, separate from the requests made in a Complaint. A Motion can be used to get a temporary order, that is, an order that is in effect until the court makes its final judgment, or until a significant change of circumstances occurs, in which case the court then can issue a new Temporary Order.

Examples of Temporary Orders are:

- Temporary Custody Orders,
- Temporary Child Support Orders,
- Temporary Orders Concerning Visitation and
- Temporary Restraining Orders.

Practice Notes

One difference between a motion and a complaint is that the court decides on the relief you request in your complaint at the hearing on the complaint during the *trial session* of the court. The court decides the relief that you request in a motion in a *motion session* of the court.

For a motion you can submit an affidavit, a sworn statement of facts which you have reason to believe are true. Since you cannot be sure that the judge will permit testimony in a motion session, it can be very important to submit an affidavit. See EXHIBITS 2E and 2G.

Making a Motion and Scheduling a Hearing

There are a number of steps you must follow if you want to make a motion and request the court to grant a particular form of relief.

1. Fill out the motion form and specify the type of relief you want the court to order.

2. Prepare a proposed order either on a Proposed Order Form or on a document that you create yourself. See **Exhibit 2P** for a sample Proposed Order.

3. Speak to a court clerk to pick a court date for your Motion to be heard.

4. Make a copy of your Motion *with* a notice of the court date on it.

5. File your Motion in the clerk's office. The Motion should be filed with supporting documents, such as an Affidavit stating important facts, occurrences and events that, if true, would show that you are entitled to the relief requested in the Motion and your Propose Order.

6. Serve a copy of the Motion, Affidavit and Proposed Order together with notice of the date, time and place of the hearing.

Practice Note
Unless it is an emergency situation, you must serve a copy of the motion and affidavit to the other party at least 10 days before the scheduled hearing date.

See the exhibits at the end of this chapter for sample Motions, Affidavits and Proposed Orders.

Responding to a Motion?

A Motion will notify you of the date on which the Motion is to be heard or considered by the court. It is important that you are present in court when the Motion is heard. If you have specific objections to the Motion, you can file a written Opposition to the Motion. The Opposition should say which parts of the Motion you are opposed to and the reasons for your opposition. It should be accompanied by an Affidavit. In your Opposition you can also raise your own responses or opposition motions. If you raise an Opposition Motion, be sure to prepare and serve a copy of your Proposed Order with your Opposition. The Opposition should say which parts of the Motion you do not agree with and the reasons you do not agree.

What Happens at a Motion Hearing?

At the hearing, you will have the opportunity to present your case to the judge. If you have already reached an agreement with the other party, then you can present the agreement to the judge for his or her approval. The judge may tell you right at the end of the hearing what his or her decision is, or he or she may consider the case and make a decision after you have left. This delay in decision is called “taking the matter under advisement.”

All court orders are made in writing and signed by the judge. The court mails copies of court orders to both parties.

If the Motion concerns child support, custody, visitation or similar family problems, you will probably be referred to the Probation Department before you see a judge. If appropriate, the probation officer will work with both parties to help reach an agreement. For more information on this, see There is a Probation Department That Works With the Judge and the Parties, above.

Guardian ad litem (GAL) Investigations and Evaluations

The Probate and Family Court may appoint a "guardian ad litem" (GAL) to investigate or evaluate a case and to file a report with the Court. The appointment might also ask the GAL to make recommendations. GAL's are most commonly appointed to investigate or evaluate a contested custody case or to make a decision on behalf of a legally incompetent person. In the latter instance, a GAL may be appointed for a person with mental illness or mental retardation, or for a minor. G.L. c.215, § 56A; G.L. c 201, § 34; G.L. c. 208, § 15.

GAL's are appointed, in order, from lists, unless the judge goes "off the list" and appoints someone who is not next on the list, giving reasons for appointing someone other than the next person on the list (Rules of the Supreme Judicial Court 1:07). The Probate and Family Court has issued Standards of Practice for Guardians ad litem. GAL's are required to attend a six hour domestic violence training session in order to receive appointments, Also GAL's must attend training about the Standards of Practice.

Depending on the type of case, sometimes an attorney or licensed social worker is appointed. The GAL will file a written report of his or her findings and may make recommendations to the court. The court usually gives great weight to the GAL's recommendations regarding custody or visitation. Ultimately, however, the judge makes his or her own conclusions based on all of the evidence. *Delmolino v. Nance,* 14 Mass.App.Ct. 209, 212, 437 N.E.2d 578, 581 (1982). If you have questions about the GAL's report or believe that the GAL may have been biased, you should subpoena him or her.

GAL are paid for their services. G.L. c. 215, § 56A requires that the commonwealth pay for the GAL. The parties themselves, however, are sometimes ordered to share the cost of the GAL; sometimes one party is ordered to pay the full cost of the GAL. If a party is low income, he or she can apply to have the commonwealth pay for the GAL on the basis of indigency. See "You Can Apply to Have Court Fees and Costs Waived or Paid by the State if You Cannot Afford Them", above.

Discovery

Discovery makes it possible for you to gain access to information and documents in the possession of the other party. It also makes it possible for the other party to gain access to information and documents in your possession. Often access to such information and documents is critical to securing your rights.

The Financial Statement is a form of discovery, and it is a form of discovery that is mandatory in every case.

- Another form of discovery is Mass.R.Dom.Rel.P. 410, Mandatory Self-Disclosure, described above, which is mandatory in every divorce or separate support case.

Because the Financial Statement is a form and the mandatory self-disclosure refers to a specific list of documents, the information you obtain on the other party's Financial Statement and through mandatory self-disclosure may not be suited to the actual questions you may have about the other party's financial condition. Questions you might have concerning nonfinancial matters are altogether outside the scope of the Financial Statement and mandatory self-disclosure. As a result, the Massachusetts Rules of Domestic Relations Procedure create a broad range of discovery options. The most common forms of discovery are depositions (that is, recorded testimony) (Mass.R.Dom.Rel.P. 30, 31), interrogatories to parties (that is, lists of questions) (Mass.R.Dom.Rel.P. 33), and production of documents and items (Mass.R.Dom.Rel.P. 34), though the latter two forms are far more common than the first, primarily because they are less expensive.

Samples of Interrogatories are included in **Exhibit 2K,** and Requests to Produce Documents are included **Exhibit 2L**.

Trial – The Case has a Final Hearing

You can request a final hearing on your Complaint by filing a Request for Trial—Pretrial Assignment form.. The Probate and Family Court for each county has its own Request for Trial form. You can obtain the form at the courthouse or at the website maintained by the particular court. If the case is an uncontested one, the court will schedule a trial date. If the case is contested, then the court will most likely schedule and give notice of an assignment for pretrial conference. The notice of assignment for pretrial conference comes on a “Pretrial Notice and Order” that gives notice of the court’s requirements for the conference to the parties. There is a form notice, though some judges issue case specific pretrial notices. Prior to the conference, the parties and their lawyers are required to meet and confer in person; their lawyers must exchange and file a pretrial memorandum. A sample Pretrial Memorandum can be found in **Exhibit 2J**.

Final Judgment

The case ends when the court issues a judgment, such as a judgment of divorce, establishing paternity, or custody. The judgment is issued after the trial of the case. The trial is sometimes referred to as the “hearing on the merits”. The judgment is the court’s decision on the claims and counterclaims made by the parties in the complaint and answer.

Hearings on motions, described above, are different from trials or hearings on the merits. Motion hearings are used to ask the court for relief other than the relief requested in the Complaint , such as a temporary order or order about procedure in the case. The relief requested in the Complaint is what is heard at trial. Courts do not grant final judgments or permanent relief at motion hearings. Only the relief requested in the Complaint itself is subject to final judgment, so it is important to make sure that you include all the issues that you want resolved in your Complaint or counterclaim..

PRESENTING YOUR CASE PROPERLY – FOLLOWING THE RULES OF EVIDENCE

Using Witnesses

During the presentation of your case, witnesses will testify before the judge. When you are questioning witnesses, you must follow the rules of evidence. There are numerous books available in local law libraries that outline both direct and cross-examination of witnesses. If possible, look at some of these books and watch a trial to observe the form of questions. See the Resources section at the end of this book for a list of local law libraries.

The parties to a Probate and Family Court action can and often are called as witnesses. Witnesses must testify orally, under oath in open court and, once testifying for one party, can be cross-examined by the other party. A witness can only testify about things that he or she has personal knowledge of. “Personal knowledge” means that the witness saw or heard something himself or herself; it does not include things that other people have told him or her.

When questioning your own witness (called direct examination), you must ask open-ended questions. Examples of an open-ended question are: “Explain what you saw” or “What happened next?” On cross-examination, or if the witness is hostile or adverse, you can use leading questions. Leading questions require a yes or no answer. Examples of leading questions are: “Isn’t true that you went to the supermarket?” or “You drive a blue car, don’t you?”.

When the witness is being questioned, he or she sits or stands in a witness box near the judge. You must stand while asking your questions. Remember to ask questions, not to argue or make statements. If you plan to take the stand and testify, ask the judge if you can merely talk rather than ask yourself questions. All testimony is recorded and is under oath, which means a person who does not tell the truth can be criminally charged with perjury. Even if no criminal charge is brought for lying, the judge’s decision can be heavily influenced if a witness lies on the stand.

Using Expert Witnesses

Most witnesses are "lay witnesses"—that is, ordinary people testifying about what they saw or heard. Witnesses with specialized knowledge are known as "expert witnesses." These include accountants, real estate appraisers, business appraisers, doctors or psychologists. Expert witnesses not only testify about what they saw or heard, but can provide the court with an opinion on a subject. There are specific procedures that you must follow in order to have the court qualify someone as an expert. You must ask their name, their educational background and their professional experience. You must then ask the court to recognize this person as an expert in their field. If you do not want the other side's witness to be considered an expert by the court, you must object and state why that person is not an expert in his or her particular field.

Experts will charge a substantial fee for both their testimony and their preparation and investigation. If you do not have enough money to hire your own expert because you are indigent, you may use the Affidavit of Indigency forms to bring a request before the court asking for the state to pay the expert's fees.

Subpoenaing Witnesses: Compelling the Presence of Witnesses and Documents

The subpoena is a powerful tool to require the presence of witnesses at hearings. With a subpoena, a witness can be compelled both to give testimony and to bring documentary evidence with him or her to court. For example, at a hearing on child support, you might need to subpoena the other party's employer to bring payroll records to prove income. That sort of subpoena is directed to the "keeper of the records" of the employer, and must be specific about which payroll records need to be brought to court.

Some people will appear in court to testify if you ask them. If for some reason you feel a witness may not appear at court, you will need to subpoena him or her. If the person does not come to court, inform the judge that you subpoenaed the witness, and summarize what you expected him or her to testify to.

> **Practice Note**
> If a witness is crucial to your case, subpoena him or her. On the trial date, you do not want to find out that a key witness has decided not to come.

In order to subpoena a witness, you need to complete a form. These forms can be purchased at a lawyer's stationery store. After you have filled out the subpoena form, you have the subpoena "issued" by having a notary public, clerk of court, or justice of the peace notarize it. G.L. c. 233, §§ 1 et seq. After it has been notarized, bring the form to a deputy sheriff, constable or other process server who will then deliver a copy to the witness or leave it at his or her residence. The subpoena may be served "in any county by

an officer qualified to serve civil process [e.g., deputy sheriffs and constables] or by a disinterested person by exhibiting and reading it to the witness, by giving him a copy thereof or by leaving such copy at his place of abode." A "disinterested" person is any person over the age of 18 who does not have an interest in the case. For crucial witnesses, you will want them served by hand—that is, have the server personally give the subpoena to the witness. You can write a request on the form that the witness bring books, papers, or documents with him or her. The court can modify your subpoena if it finds it to be oppressive or unreasonable. A sample subpoena is included as **Exhibit 2R.**

General Laws c. 233 further requires that the witness be paid or offered fees for one day's attendance and for travel to and from the place where he or she is required to be. The statutory witness fee is $6 per day, and the statutory travel expense is ten cents per mile for travel "out and home" (unless the witness has a place of business or employment in the city or town where the court or hearing is held, in which case travel is measured to and from the place of business or employment and not from the witness's home). G.L. c. 262, § 29.

If you are using an Affidavit of Indigency and Request for Waiver, Substitution or State Payment of Fees and Costs, specifically note in Section 2 that you want the court to approve Commonwealth payment of the costs of serving the subpoena. In such cases, you should have the subpoena served by a deputy sheriff, as deputy sheriff departments are willing to effect the service and bill the Commonwealth.

Practice Note

You should subpoena guardians ad litem or court investigators if you want to ask them questions about their reports. If you do not subpoena the guardian ad litem or investigator, he or she may not come to court for the trial.

Challenging a GAL's Report

To challenge some or all of a GAL's report, you can:

- challenge the GAL's biases and/or credibility.
- move to strike hearsay (i.e., an out-of-court statement being offered as evidence that it is true. In order to include hearsay, the GAL must identify the person who made the statement—otherwise it must be excluded) or privileged communication (i.e., a statement made to a certain type of person—for example, a clergy member or a social worker—that cannot be admitted into court because of your relationship with that person; statements made to such people must meet certain requirements to be privileged. See Privileges, below.

- challenge the GAL's report if the GAL failed to give a "Lamb warning." *Commonwealth v. Lamb,* 365 Mass. 265, 311 N.E.2d 47 (1974). A "Lamb warning" requires the GAL to explain that nothing said to the GAL is confidential and that you have the right to refuse to speak with the GAL; if the GAL failed to provide a "Lamb warning," you should object to the information.

Practice Note

You should bring a Motion to Strike portions of the investigator's report that include hearsay or privileged information. The Motion must be brought before trial. Your Motion should go line by line, identifying the page number, paragraph and line of the information that you want to have stricken.

Using Medical Records

Medical records kept by hospitals and certain institutions, including records of services, treatment, diagnosis, prognosis, and professional opinion are admissible in court under G.L. c. 233, §§ 79, 79G. In order to introduce the records into evidence, you do not need to call the doctors and nurses who provided treatment. General Laws c. 233, § 79 describes how the keeper of the medical records produces the records and delivers them to the court, certifying that they are true and complete. The keeper of the records can be required to do this by a subpoena. G.L. c. 233, § 79G says that you must notify the other side by sending a written notice by certified mail, return receipt requested, with a copy of the medical records. This written notice must be sent at least 10 days before the hearing. You need to file an affidavit with the court stating that you did notify the other side.

Some parts of a medical record may not be admissible. You can object to the inadmissible portion. If you anticipate that the other party will object to the admissibility of a record or portion of record that you want admitted, be prepared with arguments for why the court should do so. If you receive a notice from the other party that they are going to introduce medical records, you can subpoena the medical professionals to question them yourself.

HIV/AIDS testing is not admissible as part of the medical records. G.L. c. 111, § 70F. Health care facilities, physicians , and health care providers are not allowed to disclose the fact that a patient had such testing, regardless of the results, without specific written consent from the patient.

Alcohol or drug test results can be admitted into evidence if the physician ordered the tests. *Commonwealth v. Dube,* 413 Mass. 570, 601 N.E.2d 467 (1992). However, statements in the hospital records indicating that someone "appeared drunk" or "appeared under the influence of drugs" do not relate to treatment and are not admissible.

The release of alcohol or drug abuse treatment records requires a judicial order or written consent of the patient. Alcohol and substance abuse treatment records are confidential and cannot be made available without first obtaining a judicial order for their release. G.L. c. 111B, § 11 (alcohol treatment); G.L. c. 111E, § 18 (substance abuse treatment). If the patient will not provide written consent, you must present a motion in court requesting that the court order the facility to provide you with a copy of the records. You must give notice of this motion to the patient and to the person or facility that has the records that you seek. There will either be a hearing with oral arguments or a hearing in the judge's chamber on your motion. The judge must find that good cause exists for releasing the records, that there is no other way to effectively obtain the information and that the public interest and need for disclosure outweighs the potential injury to the patient. The court may order that certain sections are to be released and that those sections are to be subject to safeguards to prevent further disclosure. 42 U.S.C. § 290dd-2.

Privilege, Confidentiality, and Disqualification

Certain communications between you and certain types of persons, such as clergy or certain kinds of therapists, are "privileged". If the communication is privileged, you can stop it from being disclosed in a court or similar proceeding. Certain communications between you and certain types of persons are "confidential," which means that the person with whom you communicated may not disclose the communication to others, either in or out of a court or similar proceeding. Certain communications are "disqualified". If the communication is disqualified it cannot be disclosed even if you want it to be disclosed. Communications includes conversations, correspondence, actions, observations and similar communications. The law about "privilege", "confidentiality", and "disqualification" are in statutes, cases, and the U.S. Constitution, including the following:

G.L. c. 233, § 20A Privileged communications with clergy
G.L. c. 112, §§ 135A, 135B Confidential and privileged communications with certain social workers
G.L. c. 233, § 20 Spousal disqualification
G.L. c. 233, § 23C Privilege and confidentiality in mediation
G.L. c. 233, § 20B Psychotherapist-patient privilege

G.L. c. 112, § 129A **Confidential communication with psychologists**
G.L. c. 112, §§ 135, 135A **Confidential communications with certain social workers**
G.L. c. 112, § 172B **Privileged communications with certain mental health counselors**
G.L. c. 233, § 20J Confidential communications withSexual-Assault Counselors
G.L. c. 233, § 20K Confidential communications with domestic violence victims' counselors **Case law** Attorney-Client Privilege
5th Am. to US Const: Privilege Against Self-Incrimination

You can object to the introduction of privileged or disqualified communications as evidence in a court or administrative proceeding. The kinds of communications that are privileged or disqualified, and therefore objectionable,are discussed below. These objectionable communications are discussed in much more detail in evidence books available at law libraries. review these as they relate to your case. If you are seeking access to privileged, confidential, or disqualified communications, or needto have such communications admitted into evidence, be prepared to argue why the privilege, confidentiality, or disqualification does not apply in your case. For more information on these issues, see Hon. J. McNaught and J. Harold Flannery, *Massachusetts Evidence: A Courtroom Reference* (MCLE, 1988 and supplements); Hon. Harold W. Potter, Jr. and Paul E. Troy, *A Practical Guide to Introducing Evidence* (MCLE, 1993 & Supp. 1998).

Privileged communications with clergy

Certain confessions to and communications with clergy are privileged. G.L. c. 233, § 20A. Priests, rabbis, ordained or licensed ministers of any church or an accredited Christian Science practitioner are covered by this privilege. The clergy person cannot disclose confessions made to him or her, or any communication by a person seeking religious or spiritual advice or comfort, or any advice the clergy person provides.

Privileged communication with certain social workers and mental health counselors

Communications between client and a licensed social worker or mental health counselor or social worker or mental health counselor employed by a government agency are privileged. G.L. c. 112, §§ 135B, 172B. This privilege applies to any communication, wherever it is made, but it must relate to the diagnosis or treatment of a mental or emotional condition.

The social worker-client and mental health counselor-client privileges do not apply if:

- the client waives the privilege

- the case involves child custody, adoption, or consent to adoption, and the judge, after a hearing in chambers, decides that the social worker or mental health counselor has evidence bearing significantly on the patient's ability to provide suitable care and that it is more important to the child's welfare that the communication be disclosed than that the social worker-client or mental health counselor-client relationship be protected
- the social worker or mental health counselor determines that the client is in need of hospitalization for mental or emotional illness or that the client presents an imminent threat of dangerous activity against himself or another person and the social worker or mental health counselor discloses the otherwise privileged communications for the purpose of placing or retaining the client in the hospital
- a judge finds that the client, having been informed that the communications would not be privileged, made communications to the social worker or mental health counselor in the course of a court ordered examination
- the client, in a case not involving child custody, adoption, or adoption consent, introduces his or her mental or emotional condition as an element of his or her claim or defense
- the social worker or mental health counselor acquired the information a child abuse and neglect investigation under G.L. c. 119, § 51B.
- In cases of adoption and dispensing with consent to adoption, communications with a social worker or mental health counselor can be admitted into evidence if the party was informed that the communications would not be privileged.

Attorney–client privilege

Confidential communications between an attorney and a client are privileged. This means that an attorney cannot be compelled to testify as to what the client said to him or her in confidence. This includes an initial consultation; it applies even if the attorney no longer represents you, and regardless of whether you paid a fee for the services. Be careful though, because a third party, other than an interpreter, who is present while you talk with your attorney, may testify about what he or she heard . *Deloury v. Deloury*, 22 Mass.App.Ct. 611, 495 N.E.2d 888 (1986). The attorney–client privilege does not apply to communications relating to a future crime or fraud. *Commonwealth v. Dyer*, 243 Mass. 472, 505–06, 138 N.E. 296, 312 (1923).

Spousal disqualification

A spouse is disqualified from testifying about private conversations with his or her spouse. G.L. c. 233, § 20. This means that a spouse cannot testify about private

conversations with the other spouse even if the other spouse will allow it. This disqualification applies only if the parties were married at the time of the conversation, if no one else was present while they spoke, and only to oral conversations, not written communications. Abusive or threatening words are not disqualified. *Commonwealth v. Gillis,* 358 Mass. 215, 263 N.E.2d 437 (1970). If an eavesdropper hears a private conversation between husband and wife, that person can testify about what he or she heard. A spouse can testify about any agreement made with the other spouse. *Lima v. Lima,* 30 Mass.App.Ct. 479, 482 n.2, 570 N.E.2d 158, 160 n.2 (1991).

Privilege against self-incrimination

A witness cannot be forced to testify about actions that might result in criminal charges brought against him or her. Embarrassment or the possibility of civil liability are not enough to use this privilege; it must be possible that criminal charges could be brought against the witness as a result of what he or she says. However, in a civil case the court can draw a negative conclusion if the witness claims this privilege. *Wansong v. Wansong,* 395 Mass. 154, 478 N.E.2d 1270 (1985). This means that the court can assume you might be guilty of the crime and that is why you choose not to testify.

Privilege and confidentiality in mediation

A mediator's work product, files and any communications made during mediation are confidential and privileged; these materials are not subject to disclosure in judicial or administrative proceedings. G.L. c. 233, § 23C. The mediator must be appointed by a court to mediate a dispute or must have a written contract with the parties to assist in resolving their dispute, and must be qualified as a professional mediator. If you tried to mediate your dispute before going to court, but were unable to resolve it, any communication made during mediation or about the mediation are not admissible in court.

Psychotherapist-patient privilege

This privilege is very complicated. It is strongly suggested that you have an attorney if you wish to keep your psychotherapist-patient communications communications confidential, or if you need access to communications between your spouse and his or her psychotherapist.

Communications between a psychotherapist and patient are privileged. G.L. c. 233, § 20B. That means that the patient has the privilege or right to refuse to disclose and of preventing a witness from disclosing, in a legal proceeding, any communication relating to the diagnosis or treatment of the patient's mental or emotional condition. You must be the patient in order to assert this privilege; you cannot assert the privilege on someone

else's behalf. In order for this privilege to apply, the psychotherapist must be one of the following:

- a licensed psychologist
- a licensed physician who practices psychiatry
- a graduate of or student in a doctoral degree program working under the supervision of a licensed psychologist with a doctoral degree in psychology
- a registered psychiatric nurse mental health clinical specialist.

You should ask for the person's qualifications to determine if they are one of the people to whom this privilege applies.

The psychotherapist- patient privilege does not apply if:

- the patient waives the privilege.
- the case involves child custody, adoption, or consent to adoption, and the judge, after a hearing in chambers, decides that the psychotherapist has evidence bearing significantly on the patient's ability to provide suitable care and that it is more important to the child's welfare that the communication be disclosed than that the psychotherapist-patient relationship be protected G.L. c. 233, § 20B(e).
- the case is an adoption case or a case to dispense with parental consent for adoption, and *if* the party was informed that the communications would not be privileged. G.L. c. 233, § 20B(e)
- the psychotherapist determines that the patient is in need of hospitalization for mental or emotional illness or that the patient presents an imminent threat of dangerous activity against himself or another person and the psychotherapist discloses the otherwise privileged communications for the purpose of placing or retaining the patient in the hospital. G.L. c. 233, § 20B(a)
- a judge finds that the patient, having been informed that the communications would not be privileged, made communications to the psychotherapist in the course of a court ordered examination. G.L. c. 233, § 20B(b)
- the patient, in a case not involving child custody, adoption, or adoption consent, introduces his or her mental or emotional condition as an element of his or her claim or defense. G.L. c. 233, § 20B(d)

Practice Notes

If a child's privilege is involved, the court must appoint a guardian ad litem (GAL) to determine whether the privilege should be waived. Neither parent may assert the privilege on behalf of a child. *Adoption of George,* 27 Mass.App.Ct. 265, 275, 537 N.E.2d 1251, 1258 (1989). If you want to call the child's psychotherapist as a witness, you should ask that a GAL be appointed to make a recommendation about waiving the privilege. Bring this motion was soon as you realize you want to call the psychotherapist to the stand.

If a "care and protection" (G.L. c. 119, § 24) case is consolidated with a petition to dispense with parental consent for adoption (G.L. c. 210, §3) case, the communications are admissible in making the care and protection finding, but not the dispense with parental consent finding. *Adoption of Adam,* 23 Mass.App.Ct. 922, 500 N.E.2d 816 (1986). If you need to keep out evidence of otherwise privileged psychotherapist-patient communications, you must convince the judge that allowing the court to hear the evidence for one portion of the case would unfairly prejudice the outcome of the other portion of the case.

Confidential communications with psychologists and certain social workers

Communications between patient and a licensed psychologist (or the psychologist's colleagues, agents, or employees) are confidential under G.L. c. 112, § 129A. Communications between a client and licensed social worker or social worker employed by a government agency and a client are confidential. G.L. c. 112, §§ 135, 135A. This means that the psychologist or social worker may not disclose those communications, whether or not in a legal proceeding.

There are exceptions. Psychologist-patient and social worker-client confidentiality do not apply if

- the patient or client expressly consents in writing to disclosure.
- the patient or client presents a clear and present danger to himself and refuses to accept further appropriate treatment, and the psychologist or social worker has reasonable cause to believe that the patient can be committed to a hospital.
- the patient or client has communicated to the psychologist or social worker an explicit threat to kill or inflict serious bodily injury upon a reasonably identified person.
- the psychologist or social worker has a reasonable basis to believe that there is a clear and present danger that the patient or client will attempt to kill or inflict serious bodily injury upon a reasonably identified person.
- the social worker is involved in a child welfare case, such as a "care and protection" case or case to dispense with parental consent for adoption.
- the social worker has provided marital or family therapy, and each adult patient has given written consent.

Confidential communications with sexual assault counselors and domestic violence victims' counselors

Under G.L. c. 233, §§ 20J, 20K, communications with sexual assault and domestic violence victims' counselors are confidential and privileged. The protection is broader

and the exceptions fewer than with respect to psychotherapist-patient and social worker-client communications described above. A domestic violence victims' counselor must work or volunteer at a victims' program and have undergone 25 hours of training. A sexual assault counselor is a person employed or volunteering at a rape crisis center, has 35 hours of training, and reports to a licensed social worker, nurse, psychiatrist, psychologist or psychotherapist.

EXHIBIT 2A—Affidavit of Indigency and Request for Waiver, Substitution or State Payment of Fees and Costs

EXHIBIT 2B—Answer and Counterclaim to Complaint for Divorce

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Probate and Family Court Dept.
No. 90D 0000

_____
)
John Doe,)
Plaintiff)
)
v.)
)
Jane Doe,)
Defendant)
_____)

ANSWER AND COUNTERCLAIM TO COMPLAINT FOR DIVORCE

ANSWER

Now comes the Defendant in the above-entitled Complaint for Divorce, Jane Doe, and answers as follows:

1. Defendant admits the allegations in paragraphs 1, 2 and 3.

2. With respect to paragraph 4, Defendant states that there is such a previous action, *Jane Doe v. John Doe*, a Complaint for Separate Support, 90D 0000, Middlesex Probate and Family Court.

3. Defendant denies each and every allegation in paragraph 5 of the Complaint, and further answers that Plaintiff's allegations fail to state a claim upon which relief can be granted.

4. WHEREFORE, Defendant requests that the Court dismiss Plaintiff's Complaint for Divorce.

COUNTERCLAIM FOR DIVORCE

Further, the Defendant in the above-entitled Complaint for Divorce, Jane Doe, Counterclaims as follows:

1. Counterclaim Plaintiff, Jane Doe, who resides at 210 Jump St., Cambridge, Middlesex County, MA 02139, was lawfully married to the Counterclaim Defendant, John Doe, who now resides at 123 East Street, Cambridge, Middlesex County, MA 02139.

2. The parties were married at Cambridge, Massachusetts on March 24, 1976 and last lived together at 25 Turbine Street, Somerville, Middlesex County, Massachusetts on or about June 1, 1990.

3. The minor children of this marriage are:

   Raymond Doe, born January 30, 1980
   Alexandra Doe, born October 26, 1989

4. Plaintiff-in-Counterclaim certifies that no previous action for divorce, annulling or affirming marriage, separate support, desertion, living apart for justifiable cause or custody of children has been brought by either party against the other except: *Jane Doe v. John Doe,* a Complaint for Separate Support, 90D 0000, Middlesex Probate and Family Court.

5. On or about June 1, 1990, the marriage between the parties, at Cambridge, Middlesex County, Massachusetts, underwent an irretrievable breakdown which continues to the present.

6. WHEREFORE, Plaintiff-in-Counterclaim requests that the Court:

   (a) grant her a divorce on the grounds of irretrievable breakdown of the marriage, General Laws, c. 208, § 1B.

   (b) award her custody of the above-named children.

   (c) order a suitable amount of support for the said minor children.

   (d) order an equitable division of property under G.L. c. 208, § 34.

   (e) enter a Domestic Relations Protective Order providing that

      (1) John Doe not abuse Jane Doe;

      (2) John Doe remain away from Jane Doe’s residence;

(3) John Doe remain away from Jane Doe's workplace;

(4) John Doe be prohibited from imposing any restraint upon the personal liberty of Jane Doe.

Jane Doe,
by her attorney,

_____

Lisa Avocado
BBO # 000000
35 Fruit Street
Cambridge, MA 00000
(617) 000-0000

Date: August 8, 1997

CERTIFICATE OF SERVICE

I, Lisa Avocado, certify that I have this 8th day of August, 1997 served the within ANSWER AND COUNTERCLAIM TO COMPLAINT FOR DIVORCE on John Doe by mailing a copy thereof, postage prepaid, to his attorney, Leonard Bernstein, Esq., at 1 State Street, Boston, MA 02108.

Signed under penalties of perjury,

_____

Lisa Avocado
BBO # 000000

Date: August 8, 1997

EXHIBIT 2C—Notice to Furnish Financial Statement

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Probate and Family Court Dept.
No. 90D 0000

_____
)
John Doe,)
Plaintiff)
)
v.)
)
Jane Doe,)
Defendant)
_____)

NOTICE TO FURNISH FINANCIAL STATEMENT

Defendant in the above-entitled matter, Jane Doe, hereby gives notice to the Plaintiff, John Doe, that he is required to furnish a Financial Statement to the Middlesex Probate and Family Court with a copy to her attorney, Lisa Avocado, 35 Fruit Street, Cambridge, MA 00000 on or before April 17, 1997, pursuant to Supplemental Rules of the Probate Court 401.

Jane Doe,
by her attorney,

_____
Lisa Avocado
BBO # 000000
35 Fruit Street
Cambridge, MA 00000
(617) 000-0000

CERTIFICATE OF SERVICE

I, Lisa Avocado, certify that I have this 8th day of April, 1997 served this NOTICE TO PRODUCE FINANCIAL STATEMENT on John Doe by mailing a copy thereof, postage prepaid, to his attorney, Leonard Bernstein, Esq., at 1 State Street, Boston, MA 02108.

Signed under penalties of perjury,

_____

Lisa Avocado
BBO # 000000
Date: April 8, 1997

EXHIBIT 2D—Defendant's Motion for Temporary Orders

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Probate and Family Court Dept.
No. 90D 0000

Manuel S. Esperanza,
Plaintiff

v.

Julia Maria Esperanza,
Defendant

DEFENDANT'S MOTION FOR TEMPORARY ORDERS

Now comes the Defendant in the above-entitled case, Julia Maria Esperanza, and moves that this Court:

1. Order that she have temporary legal and physical custody of the minor children of the parties:

   John S. Esperanza, born January 1, 1980
   April Esperanza, born November 1, 1981

2. Order that the Plaintiff, Manuel S. Esperanza, pay the Defendant weekly child support for the support of said children.

3. Enter a Domestic Relations Protective Order providing that:

   (1) Manuel S. Esperanza not abuse Julia Maria Esperanza;

   (2) Manuel S. Esperanza remain away from Julia Maria Esperanza's residence;

   (3) Manuel S. Esperanza remain away from Julia Maria Esperanza's workplace;

   (4) Manuel S. Esperanza be prohibited from imposing any restraint upon the personal liberty of Julia Maria Esperanza.

The Defendant sets forth as grounds for this Motion that:

> the parties have been separated since 1988, that two of their three children have been born since their separation, that at all times since the separation the children been in the care and custody of Julia Maria Esperanza, that on October 15, 1996 the Court awarded temporary joint custody of John Esperanza and April Esperanza to Manuel Esperanza and Liza Maria Esperanza with the further provision that "Julia Esperanza may appear in Court to challenge this temporary custody if she so desires," that the children have continued to reside with her from that date to the present, and that Manuel Esperanza has interferred with Julia Maria Esperanza's care and custody of the children and their best interest by perpetrating domestic violence on Julia Maria Esperanza, all as more fully set out in the accompanying affidavit.

Julia Maria Esperanza,
by her attorney,

_____

Lisa Avocado
BBO # 000000
35 Fruit Street
Cambridge, MA 00000
(617) 000-0000

Date: April 8, 1997

CERTIFICATE OF SERVICE

I, Lisa Avocado, certify that I have this 8th day of April, 1997 served the within DEFENDANT'S MOTION FOR TEMPORARY ORDERS with accompanying AFFIDAVIT OF Julia Maria Esperanza on Manuel S. Esperanza by mailing a copy thereof, postage prepaid, to him at 123 River Street, Cambridge, MA 00000, together with notice that said Motion has been scheduled for hearing on April 29, 1997 at 8:30 a.m.

Signed under penalties of perjury,

_____

Lisa Avocado
BBO # 000000

Date: April 8, 1997

EXHIBIT 2E—Defendant's Affidavit in Support of Motion for Temporary Orders

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Probate and Family Court Dept.
No. 90D 0000

Manuel S. Esperanza,
Plaintiff

v.

Julia Maria Esperanza,
Defendant

AFFIDAVIT OF JULIA MARIA ESPERANZA

I, Julia Maria Esperanza, do swear as follows:

1. I reside at XXX Columbia St., Cambridge, Middlesex County, MA 00000

2. I was married to Manuel S. Esperanza on March 24, 1976.

3. We have lived separate and apart since 1984, though we did reside briefly together, for a few months, on or about June 1988.

4. The minor children of this marriage are:

   John S. Esperanza, born January 1, 1980
   April Esperanza, born November 1, 1981

5. At all times since the separation the children have been under my care and custody, though John has been, at times, including now, in a residential school.

6. Since on or about October 15, 1996 the children have not been under the care of Manuel S. Esperanza.

7. Throughout my marriage to Manuel, he has committed acts of violence against me.

8. On or about October 12, 1996 Manuel was in my apartment and he pushed me into a chair, pushed his knee into my stomach, banged my head against a wall, and hit me in the face, all while holding me down with his knee.

9. As a result of this assault I got a restraining order, but did not try to have it extended because Manuel threatened to "bury" me if I did.

10. In June 1995, in my apartment at 29 Putnam Ave., Cambridge, Massachusetts, Manuel broke my foot by stomping on it.

11. On another occasion, in November 1995, Manuel entered my apartment at XXX Columbia Street, Cambridge, Massachusetts and stole my telephone.

12. In January 1996, using keys to my apartment that he had taken from my son, Manuel entered my apartment at XXX Columbia Street, Cambridge, Massachusetts, and stole my bank card.

13. In May 1996, in my apartment at XXX Columbia Street, Cambridge, Massachusetts, Manuel grabbed me by my arms and would not let me move.

14. Manuel is often in my apartment, uninvited, yelling at me, calling me names, and verbally abusing me.

Signed under penalties of perjury this _____ day of April 1997:

_____

Julia Maria Esperanza

EXHIBIT 2F—Plaintiff's Opposition to Defendant's Motion for Custody/Visitation

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Probate and Family Court Dept.
No. 96D 0000

Jane Doe,
Plaintiff

v.

Robert Doe,
Defendant

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR CUSTODY/VISITATION

Now comes the Plaintiff, Jane Doe, in the above-captioned action, and opposes Defendant's Motion for Getting Custody/Visitation dated July 8, 1998.

I. Opposition to Motion for Temporary Shared Legal Custody of Parties' Minor Child

The Plaintiff opposes Defendant's Motion for Custody on the grounds that he has committed numerous acts of violence and abuse toward the Plaintiff and the child, that these acts of violence and abuse are such that granting custody of the minor child to the Defendant is not in the child's best interests, and that these acts are of such a nature that the law provides a presumption that this child not be placed in the custody of the Defendant, as set out in G.L. c. 208, § 31A, enacted in Chapter 179 of the Acts of 1998. G.L. c. 208, § 31A states:

> In issuing any temporary or permanent custody order, the probate and family court shall consider evidence of past or present abuse toward a parent or child as a factor contrary to the best interest of the child.

and:

> "abuse" shall mean the occurrence of one or more of the following acts between a parent and the other parent or a parent and child: (a) attempting to cause or causing bodily injury; or (b) placing another in reasonable fear of imminent bodily injury.

Further, Defendant's abuse creates a presumption that the minor child of the parties not be placed in his custody. Under Section 31A,

> A probate and family court's finding by a preponderance of the evidence that a pattern or serious incident of abuse has occurred shall create a rebuttable presumption that it is not in the best interests of the child to be placed in sole custody, shared legal custody, or shared physical custody with the abusive parent.

In this case, the presumption that the minor child of the parties not be placed in the custody of the Defendant arises because the Defendant has committed a pattern or serious incident of abuse of the Plaintiff and the minor child as set out below and in Plaintiff's accompanying affidavit:

(a) The Defendant is unable to control his temper, becomes out of control over minor incidents on the basis of which he has perpetrated constant and continual domestic violence on numerous occasions during his marriage to the Plaintiff, all as more fully set out in her accompanying affidavit.

(b) During the course of the marriage, the Plaintiff has had to obtain a restraining order against the Defendant, pursuant to G.L. c. 209A, all as more fully set out in her accompanying affidavit. A 209A restraining order from this court 96D 0192 is currently in effect.

(c) The Plaintiff has been the primary caregiver to the minor child, Sarah Doe (hereinafter "Sarah"). Sarah has continued to live with the Plaintiff during each period of marital separation, including the current separation which began on or about July 1, 1996.

II. Opposition to Motion for Visitation with the Minor Child, Sarah Doe

The Plaintiff opposes the Defendant's motion for visitation with the minor child as the minor child has been the object of the Defendant's violence and abuse to the detriment of the child's health, safety, and welfare and contrary to her best interest.

Under G.L. c. 208, s. 31A:

> If ordering visitation with abusive parent, the court shall provide for the safety and well-being of the child, and the safety of the abused parent.

Further, Section 31A provides that the court may order certain protections for the abused parent and the child in connection with visitation.

In this case, the court should order the attendance of and completion by the Defendant of a certified batterer's treatment program as a condition of visitation as provided in section 31A.

Further, any visitation that is permitted should be supervised by a visitation center or agency, at the Defendant's expense.

Jane Doe,
by her attorney,

_____
Lisa Avocado
BBO # 000000
35 Fruit Street
Cambridge, MA 00000
(617) 000-0000

July 25, 1998

CERTIFICATE OF SERVICE

I, Lisa Avocado, certify that I have this 25th day of July, 1998 served the within PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR CUSTODY/VISITATION, PLAINTIFF'S AFFIDAVIT IN SUPPORT OF HER OPPOSITION TO DEFENDANT'S MOTION FOR CUSTODY/VISITATION and PLAINTIFF'S PROPOSED FINDINGS AND ORDER by mailing copies thereof, postage prepaid, to Robert Doe at 21 Jump Street St., Boston, MA 02120.

Signed under penalties of perjury,

_____
Lisa Avocado

EXHIBIT 2G—Plaintiff's Affidavit in Support of Her Opposition to Defendant's Motion for Custody/Visitation

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Probate and Family Court Dept.
No. 96D 0000

_____
)
Jane Doe,)
Plaintiff)
)
v.)
)
Robert Doe,)
Defendant)
_____)

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF HER OPPOSITION TO DEFENDANT'S MOTION FOR CUSTODY/VISITATION

I, Jane Doe, do swear as follows:

1. I was married to Robert Doe on March 4, 1991.

2. There is one child of the marriage, Sarah Doe, born March 17, 1994.

3. I separated from my husband on or about January 10, 1996, following an incident of domestic violence in which he grabbed me by the hair, threw me down, kicked me, grabbed me by the legs and swung me around and around by the legs across the floor.

4. The next day taking my child with me, I left my husband and went into a shelter for battered women.

5. On January 30, 1996, I obtained a Chapter 209A restraining order from this court.

6. On or about April 1, 1996, in response to my husband's pressure on me to return to him, I did return to him and lived with him from that point until on or about July 1, 1996 when I left him for a second time, also with my child.

7. I went back into hiding and am currently in a battered women's shelter. I am afraid of what would happen to me if my husband found me.

8. During the period between April 1, 1996 and July 1, 1996, my husband insisted that I drop the restraining order, but I was afraid of what might happen to me if I did that.

9. During that period of time, my husband often pushed me and would sometime gets so angry at me for not dropping the restraining order that he would bang his head against the wall.

10. Prior to the January 1996 separation, my husband was violent to me constantly and continuously. He was violent toward me from on or about July 1991 until the present. His violence included, pulling my hair, twisting my arm, twisting my fingers, pinching me, kicking me, stepping on my foot with his boots, pushing me against walls, punching me and slapping me on the face.

11. My husband's violence would occur when he got angry about some little thing about which I displeased him.

12. On or about November 1993, shortly after I arrived in the United States from India, my husband became angry at me because I was still wearing Indian clothes, so he spent five or six days continually hitting me, twisting my arm, slapping me, stepping on my foot, and pinching me. This only ended when I sent the Indian clothes back to India.

13. Later, on or about November 1993, when my husband became displeased because I still had some Indian things, he threw a VCR remote control at me and it hit me in the stomach. I was seven months pregnant at the time.

14. On or about July 1994, when I had failed to finish a banana I was eating, my husband got angry, pushed me to the ground, kicked me continuously for about 45 minutes, pulled my hair so hard he ended up with some of it in his hand, and punched me.

15. In October 1995 he kicked and hit me several times over a period of three days in a row, all because he was upset about a purchase I had made.

16. My husband also was violent to our daughter Sarah, also when he became angry about a little thing and lost his temper.

17. Since Sarah was about eight months old, when she would touch something belonging to my husband which she was not supposed to touch, such as the VCR remote or some of his papers, my husband would sometimes grab her by the hair or slap her on

the back or head. Sometimes, these slaps on the back would leave red marks on Sarah.

18. Four or five times, when Sarah would disturb her father, my husband put her in the bathroom or a closet, closed the door, and prevented me from going to my daughter.

19. This violence toward Sarah would occur about once or twice a week.

20. Often when my husband was violent toward me, my daughter would come to me and try to take care of me.

Signed under penalties of perjury this 25th day of July, 1996:

_____

Jane Doe

EXHIBIT 2H—Request for Trial—Pretrial Assignment

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
THE PROBATE AND FAMILY COURT DEPARTMENT

MIDDLESEX Division Docket No. 83D 0000

REQUEST FOR TRIAL — PRE-TRIAL ASSIGNMENT
THIS FORM SHOULD NOT BE USED FOR MARK-UP OF TEMPORARY ORDERS AND MOTIONS
Please print or type

Please assign for hearing:

VICTOR M. SURLY
Plaintiff

v.

PRISCILLA E. SURLY
Defendant

TYPE OF CASE divorce TIME REQUIRED 4 hours HEARING AT Cambridge

☐ Uncontested
☒ Contested

- ☐ Merits
- ☒ Custody
- ☒ Support
- ☐ Visitation
- ☐ 208, s. 34
- ☐ Other _____

The following papers must be on file before cases can be assigned for hearing:

- ☐ Summons or Return of Service
- ☐ Marriage Certificate
- ☐ Statistical Form R408
- ☐ Financial Statement (Supp. Rule 401)
- ☐ Affidavits of Both Parties (1A Divorces)
- ☐ Notarized Agreement (1A Divorces)
- ☐ _____

Has Discovery Been Completed ☒ Yes ☐ No

Has This Case Been Pre-Tried ☐ Yes ☒ No

Please complete reverse side.

I hereby certify that, in my opinion, this case is ready for trial and a copy of such request has been made to opposing counsel this date.

Requested by Lisa Avocado
Name
35 Fruit St.,
Cambridge, MA 00000
617-000-0000
Address and Phone No.

Opposing Counsel:
Cesare Salad
One Gateway Center
Anytown, MA 00001
617-000-0000

FOR REGISTER'S USE ONLY
ACTION

The above-entitled matter has been assigned for:

_____ (Trial) _____ (Pre-Trial Conference)

at _____ on _____ 19__, at _____

_____ Returned without action. Data Incomplete. See above.

Clerk's Initials

Register of Probate
X5085

EXHIBIT 2I—Pretrial Notice and Order

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
THE PROBATE AND FAMILY COURT DEPARTMENT

Suffolk Division Docket No. *_____

_____,

PRE-TRIAL NOTICE AND ORDER

(Divorce)

The above-entitled action is set for a pre-trial conference before JUDGE GOULD of the Probate and Family Court on 11-26-9
at 8:45 @OLD THIRD DISTRICT COURT/121-3rd STREET, Rm.#5
EAST CAMBRIDGE, MA. 02141

It is the Order of the Court that:

Prior to pre-trial conference counsel and parties shall meet and shall confer in person with each other. Each counsel must exchange with each prior to the conference and file with the court at the time of pre-trial a memorandum setting forth:

A. A comprehensive written stipulation of all uncontested facts.

B. A statement of contested issues of fact and law and progress of agreement on such, if any.

C. Certification that all discovery has been completed; if discovery has not been completed list what remains to be done.

D. Copies of current financial statements and any other pertinent financial data.

E. A list of potential witnesses.

F. A list of all exhibits which counsel intend to introduce at the trial.

G. Depositions proposed to be used as evidence to be read into the record. Use of depositions at the trial are subject to the provisions of Mass. R. Dom. Rel. P. 32.

H. Stipulation of current value(s) and cost of all realty and personalty in issue. In the event the parties are unable to agree as to current values, counsel and parties are to submit an opinion of fair market value either themselves or by an appraiser.

I. A realistic time estimate of trial time.

J. If there are issues of alimony and the assignment of property under Chapter 208, Section 34, a written offer of proof setting forth the evidence each party intends to produce with respect to each of the factors enumerated under the statute should be filed.

If any party objects to the admissibility of any of the above listed matters, the name of the party objecting

PRE-TRIAL NOTICE AND ORDER

At such pre-trial conference, the Court will consider the simplification of the issues, the necessity of amendments to the pleadings, the prospects of settlement or such other matters as may aid in the trial or any other disposition of the action.

At the conclusion of such pre-trial conference, an appropriate order will be entered reflecting the action taken at such conference.

All trial counsel and parties shall attend the pre-trial conference. Failure of counsel to appear at any scheduled pre-trial conference or otherwise to comply with the provisions of this order will result in the imposition of such sanctions as the Court may deem appropriate.

If settlement is achieved prior to or at the pre-trial conference, the pre-trial conference time may be utilized for a hearing on an uncontested basis.

The case may be order to immediate trial on the date of the pre-trial if the court determines at the pre-trial that (a) the parties to the action will be the only witnesses; or (b) one party, through a failure to appear at the pre-trial or otherwise, will not present a case; or (c) such commencement of trial is necessary in the Judge's discretion to accomplish justice.

Dated this _____ day of _____, 19____.

Nancy Gould
Justice
Probate and Family Court Department

*THIS CASE HAS BEEN ASSIGNED TO HON. NANCY M. GOULD UNDER THE INDIVIDUAL CALENDAR SYSTEM ADOPTED BY SUFFOLK PROBATE & FAMILY COURT.

THE PAPERS HAVE BEEN SENT TO JUDGE GOULD'S SESSION IN E. CAMBRIDGE.

ALL FUTURE MOTIONS, CONTEMPTS & ETC, SHALL BE SCHEDULED BEFORE JUDGE GOULD AT E. CAMBRIDGE. FOR SCHEDULING YOU MUST CONTACT:

JOE O'CONNOR @ 494-8309 ext. 1

EXHIBIT 2J—Plaintiff's Pretrial Memorandum

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Probate and Family Court Dept.
No. 96D 0000

Jane Doe,
Plaintiff

v.

Robert Doe,
Defendant

PLAINTIFF'S PRETRIAL MEMORANDUM

This divorce matter involves a complaint for divorce in which Jane Doe is the Plaintiff and Robert Doe is the Defendant.

A. Uncontested Facts

1. The parties were married on September 17, 1988 at Laconia, New Hampshire.
2. They last lived together in October 1989 at Watertown, Massachusetts.
3. There is one child of the marriage, Sarah Doe, born June 30, 1989.
4. There has been an irretrievable breakdown of the marriage.

B. Contested Issues of Fact and Law

1. Whether the present visitation structure will remain in effect. Under that structure, Robert Doe has visitation rights with the child in which a third party does the pick up and drop off of the child. Jane Doe wants this arrangement to continue.
2. Whether there shall be a Domestic Relations Protective Order entered in connection with this divorce with terms that prohibit the Husband from imposing any restraint on the Wife's personal liberty and further order the Husband not to abuse the Wife, not to contact the Wife, and to stay away from

the Wife's residence. There was significant domestic violence perpetrated by Robert Doe against Jane Doe.

3. Whether the shared legal custody provisions of the divorce judgment shall be conditioned on the parents communicating with each other in writing or through third parties rather than directly.

4. Whether the Court shall adopt as the limited shared custody implementation plan (G.L. c. 208, § 31) proposed by Jane Doe, in which the parties have shared legal custody, defined as keeping each other informed of the activities and academic, physical and emotional status of the child.

5. The proper amount of child support. The present order for child support is $40.00 per week per order of the court dated June 23, 1993 at which time Robert Doe was unemployed. Jane Doe currently receives public assistance. The Department of Revenue Child Support Enforcement Division is the assignee of Jane Doe's rights to collect child support. The Department has been notified of the November 29, 1995 pretrial conference.

C. Discovery—Discovery has been completed.

D. Financial Statement—On August 11, 1995, Jane Doe filed a current financial statement and sent a copy to Robert Doe's counsel. That financial statement is current. Jane Doe has not received Mr. Doe's current financial statement. Notice to produce a financial statement on or before November 22, 1995 was sent to counsel for Robert Doe on November 17, 1995.

E. Potential Witnesses

1. Jane Doe

2. Robert Doe

F. Exhibits

1. Abuse prevention orders of Waltham District Court

G. Depositions—none

H. Value of realty and personalty—not applicable

I. Estimate of trial time—4 hours

J. Section 34 factors—not applicable

Jane Doe
by her attorney,

_____

Lisa Avocado
BBO # 000000
35 Fruit St.
Cambridge, MA 00000
(617) 000-0000

Date: November 22, 1995

EXHIBIT 2K—Interrogatories Propounded by the Defendant to Be Answered by the Plaintiff

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss. Probate and Family Court Dept.
No. 83D 0000 D1

_____
)
David Moe,)
Plaintiff)
)
v.)
)
Marie Moe,)
Defendant)
_____)

INTERROGATORIES PROPOUNDED BY THE DEFENDANT TO BE ANSWERED BY THE PLAINTIFF

In accordance with Mass.R.Dom.Rel.P. 33, you are to answer fully and separately, within 30 days, under the penalties of perjury, each of the following interrogatories. In answering these interrogatories, you will make such inquiry of your agents, servants and attorneys, and will examine all bills, letters, financial statements and records, books of account, cancelled checks and other writings which may concern the matters dealt with by these interrogatories, all so as to enable you to make true and complete answers. If you cannot answer any of these interrogatories with exactness, you will please answer to the best of your ability.

1. Please state your name, address and date and place of birth.

2. Please state the name and address of each employer you have had from January 1, 1987 to the present, and for each such employer, the dates of such employment, your duties, the days and hours of employment and your gross weekly pay.

3. Please state fully and in detail your gross income for each of the last five calendar years, indicating the source of each component thereof. In answering this interrogatory, please understand the term income to be as defined in the United States Internal Revenue Code.

4. If you have been self-employed at any time since January 1, 1987, please state fully and in detail the nature of such self-employment, the names and addresses of those persons or entities with whom you transacted business, the method by which you determined the profit you earned thereby and the amount of such profit for each calendar year since January 1, 1987.

5. As to any savings accounts maintained by you or over which you had a power of signature from January 1, 1987 to the present, please state: (a) the name of and address of the banking institution; (b) account numbers; (c) the date the account was opened; (d) the name under which the account is or was maintained; (e) if any changes were made in the account, please state the change made and the date of the change; (f) if the account is closed, the date of the closing; (g) please list all deposits, withdrawals and transactions made since January 1, 1987, setting forth the date and amount of each such deposit, withdrawal or transaction. You may respond to this Interrogatory by producing copies of account statements to the extent that they answer the propounded Interrogatory.

6. As to any and all checking accounts maintained by you or over which you had power of signature since January 1, 1987, please set forth: (a) the name and address of the bank; (b) account number; (c) the date the account was opened; (d) the name(s) under which the account is or was maintained; (e) the date the account was closed if no longer open; (f) the name and address of any other person who had power of signature on any such account; and (g) the date and amount of each deposit, withdrawal or transaction. You may respond to this Interrogatory by producing copies of account statements to the extent that they answer the propounded Interrogatory.

7. As to each and any such checking account, please set forth the total monthly deposits for each month since January 1, 1987, specifying the date of the deposit, the amount of the deposit and the source of the funds for the deposit. You may respond to this Interrogatory by producing copies of account statements to the extent that they answer the propounded Interrogatory.

8. Please state, for the period January 1, 1987 to the present, any income or assets you have received and not included in your responses to previous interrogatories and, for each such income or asset, please state the source of the income or asset, the amount of the income or asset, and the date of receipt of the income or asset.

9. Please state whether you presently own or have an interest in, or, during the period January 1, 1987 to the present, have owned or had an interest in, any life insurance policy. If so, please state, for each such policy: (a) the name and address of the insurance company; (b) the number of the policy; (c) the type of policy; (d) the date

the policy was issued; (e) the face amount of the policy; (f) the amount of the annual premium; (g) the total amount of the premiums paid on the policy during the past five years and the names and addresses of the persons making the payments; (h) the name and address of the owner of the policy; (i) the name and address of each beneficiary named in the policy; (j) the date of any change of beneficiary and the name and address of any beneficiary added or deleted; (k) if applicable, the date of assignment of the policy and the name and address of each assignee; (l) the name and address of the insurance agent or broker for the policy, if any; and (m) the current cash surrender value of the policy.

10. Please state whether you filed a federal or state income tax return for the calendar years 1990 and/or 1991, and if so, please include a copy thereof together with W-2 forms as part of your response to this interrogatory.

11. Please set forth a detailed description of any automobile presently owned by you, indicating make, model, year and current value of said automobile.

12. Please state fully and in detail the exact location by street, number, city or town, and state of each parcel of real estate in which you have owned any legal or equitable interest in your name or in the name of your nominee since January 1, 1987.

13. If your answer to the preceding interrogatory is that you have so owned any real estate, please describe whether any such real estate has been sold or conveyed during the period January 1, 1987 to the present by setting forth the name of the person to whom said real estate has been sold or conveyed, the date of said sale or conveyance, and the consideration therefore received by you.

14. As to all financial assets owned by you during the period January 1, 1987 to the present, including but not limited to, stocks, bonds or other securities, accounts receivable, loans receivable, real estate and claims and causes of action, please (a) describe the asset; (b) estimate its current fair market value; (c) state the purchase price; and (d) state, if sold during the period January 1, 1984 to the present, the price and date of sale.

15. If since the date of your marriage to Marie Moe you have received any gift, legacy, devise or inheritance, or, if you are, have been or become during said period the beneficiary of any trust, estate, please state: (a) the value of each such gift, legacy, devise or inheritance; (b) the source of each such gift, legacy, devise or inheritance; (c) the date when each such gift, legacy, devise or inheritance was received; and (d) the name of the donor, settlor, testator or intestate who created each such trust or estate.

16. If during the period January 1, 1988 to the present you have received any medical, psychiatric, psychological, alcohol or substance abuse treatment services in the nature of evaluation, diagnosis or treatment, please state the name and address of the doctor, psychiatrist, psychologist or other medical, mental health, alcohol or substance abuse treatment service provider who provided said services and the nature of the services provided.

17. For each service provided in connection with the preceding Interrogatory, please state the period of time during which you used the service and the frequency with which you used the service.

18. For each service provided in connection with Interrogatories (6) and (7), please state whether you were told the results of any evaluation, the content of any diagnosis, or the results of any treatment, and if the answer is in the affirmative, please state, for each such service, what you were told.

19. If the services provided in connection with Interrogatories (6) through (8) were provided at an institution or health facility, please state the name and address of the institution or facility and the dates during which you received services at the facility.

20. For each such medical, psychiatric, psychological, alcohol or substance abuse treatment service you received, please produce and attach copies of any and all records, documents or letters which you possess concerning said services.

21. During the period January 1, 1986 to the present, please state whether you have ever taken, ingested, smoked or otherwise used any controlled substance within the meaning of G.L. c. 94C. If the answer is in the affirmative, please state the name of the controlled substance, the date or dates of use, the period of use and the frequency of use. If the answer is in the affirmative, please state whether you have ever received any treatment related to the use of said controlled substance, and if so the name and address of the person from whom and place where you received said treatment.

Marie Moe,
by her attorney,

_____

Lisa Avocado
BBO # 000000
35 Fruit Street
Cambridge, MA 00000
(617) 000-0000

Date: June 5, 1992

CERTIFICATE OF SERVICE

I, Lisa Avocado, certify that I have this _____ day of June, 1992 served the foregoing Interrogatories on David Moe by mailing a copy thereof, postage prepaid, to his attorney, Thomas S, 1 State Street, Anytown, MA 00001.

Signed under penalties of perjury this _____ day of June, 1992,

_____
Lisa Avocado
BBO # 000000

EXHIBIT 2L—Request for Production of Documents

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Probate and Family Court Dept.
No. 83D 0000 D1

Victor M. Surly,
Plaintiff

v.

Priscilla E. Surly,
Defendant

REQUEST FOR PRODUCTION OF DOCUMENTS

The Defendant, Priscilla Surly, pursuant to the provisions of Mass.R.Dom.Rel.P. 34, hereby requests that the Plaintiff, Victor Surly, produce the following documents:

1. Copies of all federal and state income tax returns filed by you or on your behalf since January 1, 1991, together with accompanying worksheets, schedules and documents, including W-2 forms.

2. All records pertaining to any income or receipts received by you or on your behalf from January 1, 1991 to the present.

3. Your ten most recent pay stubs from employment.

4. A copy of your health insurance policy with any documentation you may have concerning the extent of coverage and cost of said policy.

5. A copy of any retirement, pension or other similar plan which you may have.

6. With respect to any and all savings accounts, checking accounts, certificates of deposit, or any other form of deposit standing in the name of Victor Surly or over which you had power of signature: copies of all monthly statements, statements of account or other periodic statements; bank books; and/or cancelled checks for the period January 1, 1991 to the present.

7. Copies of all unpaid medical bills for uninsured medical expenses incurred during the period January 1, 1991 to the present.

8. Copies of all receipts and documents indicating your receiving unemployment compensation during the period January 1, 1991 to the present.

Compliance with this Request may be made by producing said documents for copying at the office of the Defendant's attorney, Lisa Avocado, 35 Fruit Street, Cambridge, MA 00000 within 30 days of the service of this Request.

Priscilla Surly,
by her attorney,

_____

Lisa Avocado
BBO # 000000
35 Fruit Street
Cambridge, MA 00000
(617) 000-0000

Date: April 23, 1997

CERTIFICATE OF SERVICE

I, Lisa Avocado, certify that I have this ____ day of April 1997 served the above Request for Production of Documents on Victor Surly by mailing a copy thereof postage prepaid to his attorney, Cesare Salad, One Getaway Center, Anytown, MA 00001.

Signed under penalties of perjury this ____ day of April 1997

_____

Lisa Avocado
BBO # 000000

EXHIBIT 2M—Subpoena with Officer's Return

FORM 494 - SUBPOENA WITH OFFICERS RETURN
DUCES TECUM REVISED DEC 1971

HOBBS & WARREN, INC. PUBLISHERS
BOSTON, MASS

The Commonwealth of Massachusetts

MIDDLESEX ss.

To the Keeper of the Records, International Shoe Company, 35 Jump Street, Motown, MA

greeting.

You are hereby commanded, *in the name of The Commonwealth of Massachusetts, to appear before the* Probate & Family *Court holden at* Cambridge *within and for the county of* Middlesex *on the* 4th *day of* July , 1900 *at* 8:30 *o'clock in the* fore *noon, and from day to day thereafter, until the action hereinafter named is heard by said Court, to give evidence of what you know relating to an action of* divorce *then and there to be heard and tried between*

Victor M. Surly *Plaintiff , and*

Priscilla E. Surly *Defendant , and*

you are further required to bring with you payroll records of Victor M. Surly for the period January 1, 1890 to July 4, 1900

Hereof fail not, *as you will answer your default under the pains and penalties in the law in that behalf made and provided.*

Dated at Cambridge *the* 1st *day of* July *A.D. 19* 90

Notary Public — Justice of the Peace

RETURN OF SERVICE

I this day summoned the within named

to appear and give evidence at Court as within directed by delivering to ..... *in hand,—leaving at* *last and usual place of abode, to wit: No.* ..... *Street, in the* .....*District of said* *an attested copy of the subpoena together with* .....*fees for attendance and travel*

Service and Travel

Cop.

Pd. Witness

Motor vehicle

_____
Police Officer, Constable, Deputy Sheriff

It being necessary I actually used a motor vehicle the distance of..... *miles in the service of this process*

_____
Police Officer, Constable, Deputy Sheriff

Subscribed and sworn to before me .....

This *day of* *, 19*

.....
Notary Public

My commission expires _____ 19____

EXHIBIT 2N—Motion for Funds for Expert Witness

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Probate and Family Court Dept.
Docket No. 000000

_____
)
[HUSBAND],)
Plaintiff)
)
v.)
)
[WIFE],)
Defendant)
_____)

MOTION FOR FUNDS FOR EXPERT WITNESS

Now comes [HUSBAND], Plaintiff in the above-cited matter, and moves this Honorable Court as follows:

1. That Plaintiff be granted funds sufficient to retain the services of a psychiatrist or psychologist ("clinician"), of Plaintiff's choosing, in order to examine Plaintiff and to assist him in the evaluation, preparation and presentation of his case.

2. That said clinician be ordered to refrain from disclosing, in any manner, to any person other than Plaintiff or Plaintiff's counsel any information in respect to Plaintiff that may be gathered in the performance of his or her responsibilities hereunder, including but not limited to any opinions he may form as to Plaintiff's care, treatment, psychiatric diagnosis or ability to make informed decisions as to treatment, unless and until he or she is called to testify by Plaintiff in the instant matter.

As reasons therefor, Plaintiff asserts that:

1. He is indigent.

2. The Court must, pursuant to G.L. c. 261, § 27C, authorize the expenditure of funds necessary to secure such services where, as here, such services are reasonably necessary to assure that Plaintiff is able to prosecute this action in as effective a

manner as would be available to a person of means. *Commonwealth v. Lockley,* 381 Mass. 156, 408 N.E.2d 834 (1980). In respect thereto, Plaintiff further asserts that it cannot reasonably be argued that a person of means, facing the possibility of an adverse custody decision, would ever knowingly choose not to expend his funds to secure the assistance of an independent clinical expert.

Respectfully Submitted,

_____

[NAME]
[ADDRESS]
[PHONE]

Date:

EXHIBIT 2O—Motion to Strike Portions of the Guardian ad Litem's Report

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Probate and Family Court Dept.
Docket No. 000000

[WIFE],
Plaintiff

v.

[DEFENDANT],
Defendant

MOTION TO STRIKE PORTIONS OF THE GUARDIAN AD LITEM'S REPORT

Now comes [WIFE], Plaintiff in the above-captioned matter, by and through her attorney, and objects to the following portions of the guardian ad litem report filed on March 27, 1997.

1. HEARSAY

Plaintiff objects to the following:

1. Page 10, fourth paragraph, second sentence to end of paragraph. ("During this period of time. . . .")

2. Page 10, fifth paragraph in its entirety ("Staff from the Fitzgerald school . . . .")

3. Page 11, fourth paragraph, in its entirety ("Over the course of the 1995/96 academic year . . . .")

4. Page 12, third paragraph in its entirety ("On August 16, 1996 . . . .")

5. Page 15, second paragraph, third sentence ("Extended family members . . . .")

6. Page 16, fourth paragraph in its entirety ("During the course of . . . .")

As grounds therefore, Plaintiff states that said statements constitute hearsay. Although GAL reports may contain statements made to the GAL in the course of her investigation, totem pole hearsay is not admissible and, second, sources of any such statements must be clearly identified. The above referenced statements do not indicate the source of the statements.

2. IRRELEVANT MATERIAL

Plaintiff objects to the following irrelevant material:

1. Page 4, second paragraph in its entirety ("Child has an older sister . . . .")

2. Page 4, third paragraph ("When Child was a young child . . . .")

As grounds therefore, Plaintiff states that the above refers to children who are not named in this petition and therefore should not be included in this report. By including this information in the report, it unfairly prejudices the court's opinion.

3. SUMMARIES, OPINIONS AND RECOMMENDATIONS

Plaintiff objects to the following:

1. Page 14 to 15 inclusive, Section entitled "Issues Facing this Family."

2. Page 16 to 18, entire section entitled "Summary and Recommendations."

3. Page 18 to 19, entire section entitled "Recommendations."

As grounds therefore, Plaintiff states that the above material includes impermissible opinions, summarizes material in a selective fashion, impermissibly makes ultimate decisions that is the ultimate province of the trier of fact and influences the judge's decision in this matter. Further, said recommendations exceed the scope of the GAL's limited appointment to make an assessment of the child's educational needs.

Respectfully submitted,

_____

[NAME]
[ADDRESS]
[PHONE]

Date: April 8, 1997

EXHIBIT 2P—Defendant's Proposed Order

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Probate and Family Court Dept.
90D 0000

Manuel S. Esperanza,
Plaintiff

v.

Julia Maria Esperanza,
Defendant

DEFENDANT'S PROPOSED ORDER

1. Defendant, Julia Maria Esperanza shall have temporary legal and physical custody of the minor children of the parties:

   John S. Esperanza, born January 0, 1900
   April Esperanza, born November 0, 1900

2. The Plaintiff, Manuel S. Esperanza, pay the Defendant support for the minor children each and every Friday in the amount of $150 per week, by income assignment.

3. The Plaintiff, Manuel S. Esperanza is hereby ordered and restrained as follows:

   (1) He shall not abuse Julia Maria Esperanza;

   (2) He shall remain away from Julia Maria Esperanza's residence;

   (3) He shall remain away from Julia Maria Esperanza's workplace;

   (4) He is prohibited from imposing any restraint upon the personal liberty of Julia Maria Esperanza.

EXHIBIT 2Q—Plaintiff's Proposed Findings and Order

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Probate and Family Court Dept.
96D 0000

_____
)
Jane Doe,)
Plaintiff)
)
v.)
)
Robert Doe,)
Defendant)
_____)

PLAINTIFF'S PROPOSED FINDINGS AND ORDER

The Court finds as follows:

1. The court finds that a pattern and serious incidents of abuse have been committed by the Plaintiff against the Defendant and against the minor child.

2. The Defendant has grabbed the Plaintiff by the hair, thrown her down, kick her, grabbed her by the legs and swung her around and around by the legs across the floor.

3. The Defendant, on other another occasions has pulled the Defendant's hair, twisted her arm, twisted her fingers, pinched her, kicked her, stepped on her foot with his boots, pushed her against walls, punched her, and slapped her on the face.

4. The Plaintiff has abused the child by, among other things on occasions grabbing her by the hair or slapping her on the back or head. Sometimes, these slaps on the back would leave red marks on Sarah.

5. Four or five times, when Sarah would disturb her father, he put her in the bathroom or a closet, closed the door, and prevented the Defendant from going to her daughter and providing comfort.

Therefore, the court orders:

1. The Plaintiff, Jane Doe, shall have temporary sole legal and physical custody of the minor child of the parties, Sarah Doe.

2. The Defendant, Robert Doe, shall not be permitted to have visitation with the child at this time.

3. As a condition of visitation the Defendant shall attend and complete, to the satisfaction of the court, a certified batterer's treatment program.

4. Further, any visitation which is permitted shall be supervised by a visitation center or agency, at the Defendant's expense.

EXHIBIT 2R—Summons

FORM 494 - SUMMONS WITH OFFICERS RETURN
DUCES TECUM REVISED DEC 1971

HOBBS & WARREN, INC. PUBLISHERS
BOSTON, MASS.

The Commonwealth of Massachusetts

Suffolk ss.

To Jane Witness
87 Main Street
Boston, MA
greeting.

You are hereby commanded, *in the name of The Commonwealth of Massachusetts, to appear before the* Probate & Family *Court holden at* Boston *within and for the county of* Suffolk *on the* 31st *day of* October *at* 10 *o'clock in the* fore *noon, and from day to day thereafter, until the action hereinafter named is heard by said Court, to give evidence of what you know relating to an action of* divorce *then and there to be heard and tried between* David Moe *Plaintiff, and* Mary Moe *Defendant, and you are further required to bring with you* any and all Notes, correspondence, written reports, or signed statements Regarding either of the parties.

Hereof fail not, *as you will answer your default under the pains and penalties in the law in that behalf made and provided.*

Dated at Boston *the* 1st *day of* October *A. D. 1998*

Notary Public — Justice of the Peace

RETURN OF SERVICE

I this day summoned the within named

to appear and give evidence at Court as within directed by delivering to.....

in hand,—leaving at last and usual place of

abode, to wit: No. ..... Street,

in the.....District of said an attested

copy of the subpoena together with .....fees for attendance and travel

Service and Travel

Cop.

Pd. Witness

Motor Vehicle

Police Officer, Constable, Deputy Sheriff

It being necessary I actually used a motor vehicle the distance of.....miles in the service of this process

Police Officer, Constable, Deputy Sheriff

Subscribed and sworn to before me .....

This day of 19

.....

Notary Public

My commission expires_____ 19___