GLOSSARY

abuse—For the purposes of obtaining a restraining order under G.L. c. 209A, "abuse" is defined as attempting to cause or causing someone physical harm; placing another in fear of imminent physical harm; or causing another to engage involuntarily in sexual relations by force, threat of force, or duress.

affidavit—A written statement by someone who swears or affirms the truth of the statement. It is generally attached to court documents, such as a petition for protective orders, and is used as evidence.

alimony—An allowance for support made under a court order; it is usually given by one person to his or her former partner after a divorce or legal separation.

answer—A court document that is filed in response to a complaint in a lawsuit. The answer states whether a person agrees or disagrees with the statements in the complaint. The answer can also include a counterclaim.

appeal—A request to a higher court for a rehearing or review of the decision of a lower court to determine if the lower court applied the law incorrectly or failed to follow court procedures.

arbitration—A process for resolving disputes with a decision maker who is not the judge in a court case. This person is a neutral party who hears the issues and makes a decision. This process is related to mediation, but is different; in mediation, the neutral third party assists the parties in a dispute to negotiate a resolution.

arrears—This term is generally used to refer to an amount of support (child support or alimony) that is past due or unpaid despite a court order.

assets—Items with value that can be liquidated—for example, bank accounts.

battered women's syndrome (BWS)—A name given to a pattern of behavior closely related to posttraumatic stress disorder that can result from trauma suffered by one who has endured intimate partner abuse. These symptoms can include a decrease in self-esteem, an emotional dependence upon dominant personalities, or emotional paralysis. Women with battered woman syndrome change their behavior in an attempt to survive an abusive situation.

best interest of the child—A standard or guideline used by a judge to decide questions related to a minor child, usually during a custody determination.

burden of proof—The responsibility of the moving party to establish evidence at a certain level of belief in the mind of the trier of fact. For example, to terminate parental rights, the unfitness of a parent must be proven by clear and convincing evidence. In a criminal matter, a prosecutor must prove that the accused committed the crime beyond a reasonable doubt.

care and protection (C & P)—This term refers to the legal action filed in court by the Department of Children and Families (DCF) stating that the child's parents are unfit. It is taken from the statute that allows the DCF to file the action if it believes that the child is in need of care and protection.

civil case—A legal action involving one party against another to redress or prevent a legal wrong, or to enforce or protect a private right; this type of case does not deal with a public wrong or punishment. Examples of civil cases are divorce actions, child support actions, and custody matters.

common law—A body of law, sometimes referred to as "case law," that has been developed by court decisions over the years, and that establishes how judges should interpret statutes and other matters not covered by a statute.

complaint—The document filed with a court to begin a legal action.

contempt—Failure or refusal to obey a court order. In the Probate and Family Court, this usually refers to an action brought by one party against another to enforce support or another court order.

court of record—The court in which permanent documentation of a proceeding or hearing is made.

court officer—A uniformed, unarmed officer stationed in the courtrooms to keep order.

court record—The written or taped transcript of the court proceeding and any documents that are filed with the court in a particular matter.

custody—In the context of this manual, this term refers to the custody of minor children—i.e., the care and keeping of children as decided in a court proceeding. There are two types of custody: physical and legal. A person who has physical custody has the right to have the child live with him or her. A person with legal custody has the right to make decisions about the child's welfare. A person who has full custody has both physical and legal custody.

defendant—The person defending or denying; the party against whom relief or recovery is sought in a court action.

Department of Revenue/Child Support Enforcement (DOR/CSE)—The agency in Massachusetts that helps people collect child support payments on behalf of a minor child from an absent parent.

Department of Children and Families (DCF)—The agency in Massachusetts responsible for the protection of children and strengthening families. This is the agency that receives reports about children who may be abused or neglected.

dependent children—This term generally refers to children under eighteen, but may also include children over the age of majority who are still in school or who are disabled.

deposition—Parties in a lawsuit are able to use this process to gather information from the other side by asking questions, usually in a face-to-face interview. The answers are recorded by a stenographer, and the person responding is under oath to tell the truth.

discovery—Ways to gather information in a lawsuit. Discovery is a legal process before the court trial that allows parties in a lawsuit to get information from one another. Discovery includes interrogatories, requests for the production of documents, requests for admissions, and depositions.

dispositional hearing—The hearing in which the judge, generally in juvenile matters, decides issues, such as where to place a child who has been adjudicated in need of care and protection, or in need of services, or who has been found delinquent; visitation; services needed; and any other issues that may affect the child.

Domestic Violence Registry—A computerized record of domestic violence, protective orders, abusers, violations of the orders, and any other information relevant to domestic violence. It is available to the court and police.

due process—The constitutionally protected right to face an accuser, hear charges, and be afforded a right to be heard in a fair proceeding.

duress—A wrongful act by one person that forces another person to do something against their will.

earning capacity—A judicial determination of the amount of salary a person is able to obtain if that person were employed in a position suitable to his or her skills and/or educational level.

emergency response system—The judicial system that has been established to provide a judicial response to an emergency request at times when the court is not normally in session. An example of how this system works is when a person needs an emergency restraining order on the weekend, the police are able to contact a judge who can issue an order that will remain in effect until the next business day that the court is in session.

equity—Principles of fairness and justice. In courts that allow "equitable relief," judges can order a person to do something or stop doing something if it harms or interferes with the rights of another person. The Probate and Family Court can fashion "equitable relief."

ex parte—In Latin, this means "from one side." It refers to hearings where the court hears only one side. An example of this is generally the initial request for a restraining order, where the court hears only from the victim before issuing a temporary order.

family service officer (FSO)—See "probation officer."

51A—Massachusetts General Laws Chapter 119, § 51A, which makes it mandatory to report child abuse or neglect.

financial statement—A document required of litigants in a Probate and Family Court matter; it requests information on income, assets, expenses, and liabilities.

findings—The particular issues of fact that a judge determines after hearing a case or a specific issue in a case that support the decision made by the judge.

full faith and credit—The obligation of one state to enforce the valid order of another state. To be considered valid, the order must have been issued by a court that had the power to issue the order, and the other side must have been given notice of the hearing and must have had a chance to be present.

garnishment—A proceeding by a creditor to obtain payment of a debt by collecting it from funds due to the debtor but in the hands of a third party—for example, by collecting payment directly from the debtor's employer.

guardian ad litem (GAL)—A person assigned by the court to investigate, evaluate, and make recommendations to the court. In the Probate and Family Court, this person often evaluates custody issues and makes recommendations to the court in the best interest of the child. A GAL can also be appointed by the court to make substitute decisions for someone who is incapacitated.

injunction—An order by the court that requires someone to do something or to stop doing something. An injunction can order an abuser to stay away from the victim.

interlocutory appeal—A request for a review of a decision of a lower court made before the lower court has completed the whole case.

interrogatories—A way to gather information in a legal matter in which parties to a lawsuit submit written questions to one another that must be answered in writing and under oath.

joint legal custody—Both parents share the right to make major decisions affecting the child's welfare—for example, decisions about the child's education, religion, and medical treatment.

joint physical custody—Both parents share the right to live with and supervise the children. This usually means that both parents spend time living with the children. This arrangement can be done in many different ways. The parents can divide days of the week, alternate months, or split the year so that the children can live with both parents. Joint physical custody generally implies that both parents have equal time with the children, but it does not always work out this way.

judgment—The official decision of the judge after the case is heard.

jurisdiction—The authority of legal power to hear and decide cases. To obtain a valid order, a party must bring a case where the court has the authority to hear the issue. Jurisdiction is determined by geographic location and the subject matter of the case. For example, a Probate and Family Court in Essex County has the jurisdiction to hear a divorce matter involving a family from Salem, but not necessarily the divorce of a couple who lives in Springfield.

long-arm jurisdiction—A statutory mechanism by which courts in Massachusetts are allowed to hear certain cases even if one of the parties is outside of the Commonwealth. An example is an action for modification of a child support order after the other parent has left the state.

mediation—An alternative form of resolving disputes where a neutral third party assists the parties in negotiating an agreement or resolution of the dispute.

minor—A child under the age of majority, which is currently eighteen.

modification—In the context of this manual, modification generally refers to a request to change the court's order, usually through an action called a complaint for modification.

motion—A request for some type of judicial action.

motion in limine—A request to the court in advance of a hearing to limit the amount or type of evidence presented.

nisi / judgment nisi—Latin for "if not" or "absolute"; the period of time before a judgment or decree will become final on a particular date unless set aside or invalidated by certain specified contingencies. Divorce judgments are entered "nisi," meaning they do not become final until after a certain number of days.

parenting plan/time—Refers to the arrangement between parents regarding when and how each parent spends time with the child(ren).

pendente lite—Generally refers to a motion for something to be ordered pending the litigation. Examples are a request for attorney fees or alimony before the issue is litigated.

perjury—The act of providing false testimony while under oath. In Massachusetts, this also covers statements signed under the "pains and penalties of perjury."

perpetrator—The person who has or is alleged to have committed an act.

petition—A request to the court for relief. The person making the request is the petitioner.

pretrial conference—Conference of all of the parties to a lawsuit and the judge to identify contested and uncontested issues before the trial. At this conference, pretrial orders are made, and a trial date is scheduled. It is also an opportunity for the court to determine if the dispute can be settled without the necessity of a trial.

prima facie case—The elements of proof needed to present a case to the trier of fact and to obtain a favorable ruling, provided that the other party does not successfully challenge the evidence.

privilege—A right that a person has. Often used to refer to privilege communication, which is a communication between two people in a confidential relationship (such as attorney-client, doctor-patient, and priest-penitent communication), that society has allowed to be free from disclosure.

pro bono—Literally means "for free." This usually refers to free legal representation.

pro se—To represent yourself in court.

probation officer—Formerly known as family service officers, probation officers who work in the Probate and Family Court conduct dispute intervention and/or investigation when a case is referred to the probation office by a judge. A person on criminal probation reports to a probation office in the criminal courts.

protective order—A legal document intended to prevent one party from acting in a certain way. They are sometimes called a "restraining order" or a "209A order." Such orders require an abuser to refrain from abusing the victim, and may contain other orders, such as a "no contact" order or an order for custody and support.

qualified domestic relations order (QDRO)—An order that is required under federal law to allow pension plan administrators to pay a portion of an employee's pension to the ex-spouse.

real property—Land and houses or other things permanently fixed and immovable.

removal action—In the context of this book, this generally refers to someone's request to leave the Commonwealth with his or her minor children.

res judicata—An issue involving the same parties and the same subjects in dispute that has already been decided.

responsive pleading—A document responding to the allegations of a complaint or a counterclaim. This is the same as an answer.

restraining order—An order that aims to protect a person from abuse, also known as an abuse prevention order. Abuse prevention orders are issued under Chapter 209A of the Massachusetts General Laws, and are often referred to as "209A orders."

return hearing/return date—The hearing for a 209A protective order that takes place within ten days of the filing date or date of the ex parte hearing. Also the date by which a person served with an order to show cause in a contempt matter is ordered to come to court.

return of service—Statement of an officer or another person who delivered a legal document that he or she delivered the document in the specific manner that the court requires.

revocation—A cancellation or recall.

Rules of Domestic Relations Procedure—The body of regulations that governs practice in domestic relations matters before the Probate and Family Court.

sanctions—Penalty ordered to be paid by a wrongdoer for a breach of an order.

service—The process of delivering court papers or notice of court action to someone, such as a summons or a protective order.

sole legal custody—Only the parent who was awarded this type of custody has the right to make major decisions affecting the child's welfare.

sole physical custody—Means that the children live primarily with the parent who was awarded this type of custody. Often the other parent has some type of parenting time.

standing—The legal right to bring a particular type of lawsuit. For example, since a third party cannot bring an action forcing a married couple to divorce, that third party is said to have no standing to do so.

statutory law—Laws that are passed or enacted by a state or federal legislature.

stay—To postpone an action or proceeding, or to put a temporary stop to further proceedings.

stipulations—An agreement, admission, or concession made in a court proceeding, usually of certain facts, that relieves the need to present evidence to support those facts. In this context, it is usually as part of the agreement made in the Family Services Office.

subpoena—A legal document that requires a witness to appear before the court and give testimony. A document called a "subpoena duces tecum" requires a person to bring documents to court.

subpoena duces tecum—An order directing a person to come to court and bring certain documents or records with them.

summons—This is a legal document that tells you to come to court, usually to answer the complaint that was served with the summons.

temporary orders—A provisional or interim order that the court issues pending a final hearing on the matter.

ten-day hearing—The hearing in which both the victim of abuse and the abuser can present their arguments to the court on whether a protective order should be issued under G.L. c. 209A.

testimony—Statements made in court by a person who swears to tell the truth, or makes some other affirmation to tell the truth.

transcript—A written copy of something relating to a case. A typed copy or written copy of the stenographer's notes at a trial, the complete record of a case filed in appeal, or a deposition reduced to writing are all examples of a transcript.

trustee process—A proceeding in which property or money held by a third party is "frozen" to prevent the debtor from depriving the person of money that the debtor owes him or her.

209A—Massachusetts General Laws Chapter 209A, entitled "Abuse Prevention," which allows an abused person to seek protective orders.

vacate—1. An order by a court to terminate the provisions of a previous court order. 2. An order from the court to leave a place, such as an order for the defendant to vacate the house that the parties lived in together.

valuation—Establishing a value for a thing; estimating its worth. For example, in establishing the value of a house that the parties own, one may wish to determine the price at which others may buy the house as a gauge to determine the value of the house.

venue—The geographic area that the court serves. For example, if the parties to a divorce action last lived in a town or area served by a particular court, that court has the power to hear the case.

visitation—Refers to the arrangements made either voluntarily or pursuant to court order to allow the noncustodial parent or grandparents to visit with the minor children.

wage assignments—The process whereby courts order employers to deduct child support payments from the noncustodial parent's paycheck. The money can be sent directly to the custodial parent or to DOR/CSE.

APPENDIX

SELECTED FAMILY LAW RULES, REGULATIONS, AND GUIDELINES

PART 1—MASSACHUSETTS RULES OF DOMESTIC RELATIONS PROCEDURE (EXCERPTS)

TABLE OF CONTENTS

Rule 4. Process

(a) Summons: Issuance. Upon commencing the action the plaintiff or his attorney shall deliver a copy of the complaint and a summons for service to the sheriff, deputy sheriff, or special sheriff; any other person duly authorized by law; a person specifically appointed to serve them; or as otherwise provided in subdivision (c) of this rule. Upon request of the plaintiff separate or additional summons shall issue against any defendant. The summons may be procured in blank from the clerk, and shall be filled in by the plaintiff or the plaintiff's attorney in accordance with Rule 4(b). *Identical to Mass.R.Civ.P. Rule 4(a).*

(b) Same: Form. The summons shall bear the signature or facsimile signature of the clerk; be under the seal of the court; be in the name of the Commonwealth of Massachusetts; bear teste of the first justice of the court to which it shall be returnable who is not a party; contain the name of the court and the names of the parties; be directed to the defendant; state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend; and shall notify him that in case of his failure to do so judgment by default may be rendered against him for the relief demanded in the complaint. *Identical to Mass.R.Civ.P. Rule 4(b).*

(c) By Whom Served. Except as otherwise permitted by paragraph (h) of this rule, service of all process shall be made by a sheriff, by his deputy, or by a special sheriff; by any other disinterested person; by any other person duly authorized by law; by some person specially appointed by the court for that purpose; or in the case of service of process outside the Commonwealth, by an individual permitted to make service of process under the law of this Commonwealth or under the law of the place in which the service is to be made, or who is designated by a court of this Commonwealth. A subpoena may be served as provided in Rule 45. Notwithstanding the provisions of this

paragraph (c), wherever in these rules service is permitted to be made by certified or registered mail, the mailing may be accomplished by the party or his attorney.

(d) Summons: Personal Service Within the Commonwealth. The summons and a copy of the complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) The defendant, whether within or without the Commonwealth, may accept personal service by written endorsement of his duly notarized acceptance of service on the summons or other process. In the event that service is not so accepted, service shall be made as set forth hereafter:

(2) Upon an individual by delivering a copy of the summons and of the complaint to him personally.

In complaints seeking establishment of paternity or for support of a child born out of wedlock, complaints for support of a spouse or child under Chapter 209, § 32F, for actions under Chapter 209D, for contempt and complaints for modification only, upon an individual:

(i) by delivering a copy of the summons and complaint to him personally, or

(ii) by leaving a copy of the summons and complaint at his last and usual place of abode and by mailing copies thereof to the defendant. Notice under this subsection shall be proved by affidavit containing a particular statement thereof.

(3) If the person authorized to serve process makes return that after diligent search he cannot find the defendant, or if it appears that a defendant resides outside of the Commonwealth or is of parts unknown, the court may on application of the plaintiff issue an order of notice in the manner and form prescribed by law.

(4) If personal service shall not be made as aforesaid, such notice in the form ordered by the court shall be served by publishing a copy of the said notice once in some newspaper designated by the Register or the court and by mailing a copy of such notice by registered or certified mail, if practicable, to the defendant at his last known address. The defendant shall file his answer or other responsive pleading within the time periods allowed under these rules computed as if the date of last publication were the date on which personal service was made.

(5) Service of publication and mailing shall be proved by affidavit containing a particular statement thereof, accompanied by a copy of the advertisement (or tear sheet) of the newspaper containing the publication and, if practicable, by the return receipt showing receipt of a copy sent by registered or certified mail.

(6) The court shall require proof of actual notice when practicable. If such notice is not shown to have been received by the defendant, the complaint shall not be assigned for hearing until the expiration of three months after the publication date, date of service at a last and usual place of abode, or date of a mailing to the last known address of the defendant if such service has been ordered by the court. Nothing in this rule shall prevent hearing of a motion for temporary orders or issuance of temporary orders prior to the expiration of three months, provided notice of the motion and hearing has been mailed to the defendant's last and usual place of abode in accordance with Rules 5 and 6.

(7) [Deleted].

(e) Same. Personal Service Outside the Commonwealth. When any statute or law of the Commonwealth authorizes service of process outside the Commonwealth, the service shall be made by delivering a copy of the summons and of the complaint: (1) in any appropriate manner prescribed in subdivision (d) of this Rule; or (2) in the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction; or (3) by any form of mail addressed to the person to be served and requiring a signed receipt; or (4) as directed by the appropriate foreign authority in response to a letter rogatory; or (5) as directed by order of the court. *Identical to Mass.R.Civ.P.Rule 4(e).*

(f) Return. The person serving the process shall make proof of service thereof in writing to the court promptly and in any event within the time during which the person served must respond to the process. The person making return of service shall state in his return of service that a copy of the summons and complaint was delivered by him in hand to the defendant and shall further state the date on which and the place where such service was made. If service is made by a person other than a sheriff, deputy sheriff, or special sheriff, he shall make affidavit thereof. Proof of

service outside the Commonwealth may be made by affidavit of the individual who made the service or in the manner prescribed by the law of the Commonwealth, or the law of the place in which the service is made for proof of service in an action in any of its courts of general jurisdiction. When service is made by mail, proof of service shall include a receipt signed by the addressee or such other evidence of personal delivery to the addressee as may be satisfactory to the court. Failure to make proof of service does not affect the validity of the service.

(g) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process is issued. *Identical to Mass.R.Civ.P. 4(g).*

(h) Certain Actions in Probate Courts: Service. Notwithstanding any other provision of these rules, in actions in the Probate Courts in the nature of petitions for instructions or for the allowance of accounts, service may be made in accordance with G.L. c. 215, § 46, in such manner and form as the court may order. *Identical to Mass.R.Civ.P. 4(h).*

(i) [Deleted].

(j) Summons: Time Limit for Service. If a service of the summons and complaint is not made upon a defendant within 90 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion. *Identical to Mass.R.Civ.P. 4(j).*

Credits
Amended effective January 1, 1976; March 8, 1976; amended January 16, 1979, effective February 12, 1979; November 16, 1979, effective December 17, 1979; amended effective January 1, 1983; amended June 27, 1983, effective July 1, 1983; July 18, 1988, effective August 1, 1988; August 5, 1992, effective September 1, 1992; January 6, 1995, effective February 1, 1995; amended effective July 26, 1995; amended October 10, 1997, effective December 1, 1997; June 5, 2003, effective September 2, 2003; amended April 1, 2009, effective May 1, 2009.

Editors' Notes

REPORTER'S NOTES—1997
Rule 4(d)(7) was deleted in order to eliminate the requirement of an identifying witness in service of process.

REPORTER'S NOTES—2003
Rule 4(d)(6) was amended to clarify the misunderstanding that the court is prohibited from entering a temporary order prior to the expiration of three (3) months if there is not proof of actual notice.

REPORTER'S NOTES—2009
Rule 4(d)(4) was amended to reduce the number of times notice must be published. This change is consistent with the probate rule requirement and will be more cost effective for litigants.

Notes of Decisions (98)

Massachusetts Rules of Domestic Relations Procedure (Mass. R. Dom. Rel. P.), Rule 4, MA ST DOM REL P Rule 4
Current with amendments received through November 1, 2017.

Rule 5. Service and Filing of Pleadings and Other Papers

(a) Service: When Required. Except as otherwise provided in these Rules, or unless the court on motion with or without notice or of its own initiative otherwise orders, every order required by its terms to be served, every pleading subsequent to the original complaint, every paper relating to discovery required to be served upon a party, every written motion other than one which may be heard ex parte, and every written notice, notice of change of attorney, appearance, demand, brief or memorandum of law, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on any party in default for failure to appear except that any pleading asserting new or additional claims for relief against him shall be served upon him in the manner provided for service of summons in Rule 4. *Identical to Mass.R.Civ.P. 5(a).*

(b) Same: How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the register of probate. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. If notice of a hearing is given by service in hand delivered after 4 p.m., an additional day shall be added for purposes of computation of time under Rule 6(c). The time when the in hand service was made shall be reflected on the Certificate of Service.

(c) Same: Multiple Defendants. The court, on motion with or without notice or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs. *Identical to Mass.R.Civ.P. 5(c).*

(d) Filing Generally, and Nonfiling of Discovery Materials.

(1) Except as otherwise provided in Rule 5(d)(2), all papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter. Such filing by a party's attorney shall constitute a representation by him, subject to the obligations of Rule 11, that a copy of the paper has been or will be served upon each of the other parties as required by Rule 5(a). No further proof of service is required unless an adverse party raises a question of notice. In such event, prima facie proof of service shall be made out by a statement signed by the person making service, or by a written acknowledgment signed by the party or attorney served; and such statement or acknowledgment shall be filed within a reasonable time after notice has been questioned. Failure to make proof of service does not affect the validity of service.

(2) Unless the court, generally or in a specific case, on motion ex parte by any party or concerned citizen, or on its own motion shall otherwise order, the following shall not be presented or accepted for filing: notices of taking depositions, transcripts of depositions, interrogatories under Rule 33, answers and objections to interrogatories under Rule 33, requests under Rule 34, and responses to requests under Rule 34. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to court if needed or so ordered. Notwithstanding anything in this Rule 5(d)(2), any party pressing or opposing any motion or other application for relief may file any document pertinent thereto. *Identical to Mass.R.Civ.P. 5(d).*

(e) Filing with the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that a judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk. *Identical to Mass.R.Civ.P. 5(e).*

(f) Effect of Failure to File. If any party fails within five days after service to file any paper required by this rule to be filed, the court on its own motion or the motion of any party may order the paper to be filed forthwith; if the order be not obeyed, it may order the paper to be regarded as stricken and its service to be of no effect. *Identical to Mass.R.Civ.P. 5(f).*

(g) Information Required. On any pleading or other paper required or permitted by these rules to be filed with the court, there shall appear the name of the court and the county, the title of the action, the docket number, the designation of the nature of the pleading or paper, and the name and address of the person or attorney filing it. In any case where an endorsement for costs is required, the name of any attorney of this Commonwealth appearing on the complaint filed with the court shall constitute such an endorsement in absence of any words used in connection therewith showing a different purpose. *Identical to Mass.R.Civ.P. 5(g).*

Credits
Amended June 8, 1989, effective July 1, 1989; October 10, 1997, effective December 1, 1997; June 5, 2003, effective September 2, 2003.

Editors' Notes

REPORTER'S NOTES—1997
The amendment to Rule 5(b) allows for an additional day to be added for the purpose of computation of time if service is delivered in hand after 4 p.m. The amendment also provides that if service is made by in hand service it will be reflected on the Certificate of Service.

REPORTER'S NOTES—2003
The amendment to Rule 5(d) is in response to the amendment to Mass.R.Civ.P. Rule 5(d) Service and Filing of Pleadings and Other Papers. The amendment is intended to relieve the parties and court personnel of the burdens involved with the filing of interrogatories and answers with the court.

Notes of Decisions (16)

Massachusetts Rules of Domestic Relations Procedure (Mass. R. Dom. Rel. P.), Rule 5, MA ST DOM REL P Rule 5
Current with amendments received through November 1, 2017.

Rule 6. Time

(a) Computation. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute or rule, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 77(c), "legal holiday" includes those days specified in Mass. G.L. c. 4, § 7 and any other day appointed as a holiday by the President or the Congress of the United States or designated by the laws of the Commonwealth. *Identical to Mass.R.Civ.P. 6(a).*

(b) Enlargement. When by these rules or by a notice given thereunder or by order or rule of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; or (3) permit the act to be done by stipulation of the parties; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d), and (e), and 60(b), except to the extent and under the conditions stated in them. *Identical to Mass.R.Civ.P. 6(b).*

(c) For Motions-Affidavits-Proposed Orders. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than seven (7) days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may be made on ex parte application when an emergency justifies the same. An application for ex parte relief from the seven (7) day notice requirement shall be by motion and supported by affidavit setting forth the nature of the emergency. On allowance of the motion, the court shall make a written finding that the emergency exists and setting forth the nature of the emergency. Whenever a motion is supported by a memorandum or affidavit, the memorandum or affidavit shall be served with the motion; and except as provided in Rule 59(c), opposing memoranda or affidavits must be served not later than one (1) business day before the hearing, unless the court permits them to be served at some other time. Every motion shall be accompanied by a proposed order, which shall be served with the motion. The proposed order shall set forth in detailed itemized paragraphs the relief sought from the court. The proposed order should not be docketed or included in the permanent file if the order is not adopted by the court and may be destroyed after the hearing on the motion. The service and the content of all motions, affidavits, and supporting papers shall be subject to the sanctions of Rule 11 of these rules.

(d) Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other papers upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period. *Identical to the Mass.R.Civ.P. 6(d).*

Credits
Amended October 10, 1997, effective December 1, 1997; October 27, 1999, effective January 1, 2000; June 5, 2003, effective September 2, 2003.

Editors' Notes

REPORTER'S NOTES—1997
This amendment to Rule 6(c) changes the time requirements for service of a motion from three (3) to seven (7) days, unless it is a motion that may be heard ex parte. All ex parte motions must be accompanied by an affidavit setting forth the nature of the emergency. If the motion is allowed, the court must make written findings that an emergency exists and set forth the nature of the emergency.

The amendment also provides that if a motion is supported by an affidavit it must be served with the motion, except as provided in Rule 59(c). The service of opposing affidavits is no longer optional. If a motion is accompanied by an affidavit, then an opposing affidavit must also be served. The amendment to the rule changes the time requirement for service of the opposing affidavit from not later than one (1) day before the hearing, to not later than two (2) full business days before the hearing.

All motions must now be accompanied by a proposed order which sets forth, in itemized detail, the relief sought from the court. In addition, Rule 6(c) explicitly states that the service and content of motions are subject to the sanctions of Rule 11.

REPORTER'S NOTES—2000
Rule 6(c) requires every motion to be accompanied by a proposed order. The amendment to rule 6(c) makes clear that the proposed order should not be docketed or included in the permanent case file and may be destroyed after a hearing on the motion.

REPORTER'S NOTES—2003
The amendment to Rule 6(c) requires that any pleadings, whether an affidavit or a memorandum in support or in opposition to a motion, be served prior to the time fixed for hearing on the motion.

Notes of Decisions (30)

Massachusetts Rules of Domestic Relations Procedure (Mass. R. Dom. Rel. P.), Rule 6, MA ST DOM REL P Rule 6
Current with amendments received through November 1, 2017.

Rule 26. General Provisions Governing Discovery

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods except as otherwise provided in Rule 30(a) and Rule 30A(a), (b): depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise, or unless otherwise provided in these rules, the frequency of use of these methods is not limited. *Identical to Mass.R.Civ.P. 26(a) (as amended January 1, 1981).*

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information

concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial Preparation: Materials. Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

> (A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this rule, concerning fees and expenses as the court may deem appropriate.
>
> (B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.
>
> (C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this rule; and (ii) with respect to discovery obtained under subdivision (b)(4)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Claims of Privilege or Protection of Trial Preparation Materials: Privilege Log. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as material prepared in anticipation of litigation or for trial, the party shall make the claim expressly and, without revealing information that is privileged or protected, shall prepare a privilege log containing the following information: the respective author(s) and sender(s) if different; the recipient(s); the date and type of document, written communication or thing not produced; and in general terms, the subject matter of the withheld information. By written agreement of the party seeking the withheld information and the party holding the information or by court order, a privilege log need not be prepared or may be limited to certain documents, written communications, or things.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county or judicial district, as the case may be, where the deposition is to be taken may make any order which justice

requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery. *Identical to Mass.R.Civ.P. 26(d).*

(e) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (A) he knows that the response was incorrect when made, or (B) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses. *Identical to Mass.R.Civ.P. 26(e).*

(f) Format of Discovery Motions. A motion to compel (1) further responses to interrogatories, (2) answers to a request for admissions, (3) answers to questions propounded at a deposition, or (4) production of documents or tangible things shall be submitted with a separate document setting forth each separate interrogatory, item or category of items, request, question, document or tangible thing to which further response, answer or production is requested. Said separate document shall include the response given, and the factual and legal reasons that the court should compel the specific item. Materials may not be incorporated by reference in the documents accompanying the motion. If pleadings or other documents in the court file are relevant to the motion, the party relying on such pleadings or other documents shall clearly identify and summarize each relevant document in a separate paragraph in any papers submitted to the court regarding the discovery motion. The motion must include a sworn statement by the moving party setting forth the specific steps taken in an attempt to obtain the desired discovery responses. The responding party shall submit to the court and to the moving party a written statement setting forth the reasons for non-compliance and/or a denial, in whole or in part, of the allegations of the motion to compel and its supporting documentation. Said written statement shall be served not later than two (2) business days before the hearing.

(g) Mandatory Pre-Motion Conference. Prior to seeking judicial resolution of a discovery or procedural dispute, the attorneys for the affected parties or non-party witness shall confer in good faith in person or by telephone in an effort to resolve the dispute.

(h) Certification of Discovery Motions. All discovery motions shall contain a certificate by the party filing same that efforts to resolve the discovery dispute without the necessity of court intervention have been attempted and failed. The certification shall be included in the statement required of the moving party under Rule 26(f) supra.

(i) No-Contact Order. Where there is no-contact order in effect, the parties shall be exempted from the requirements of Rule 26(f) and (g). There shall be no requirement that they confer in order to resolve the discovery dispute.

(j) Special Master. The court, on its own motion or at the request of either party, may appoint a special master to control the extent of discovery, including the scheduling and oversight of depositions as more fully set out in Rule 30(c), the time for completion of discovery and to resolve any discovery disputes which may arise during the course of the litigation. Prior to the appointment of said special master, the court may inquire whether the parties can agree upon a special master. The court may appoint the person agreed upon or such other suitable person.

The special master shall be appointed by a written order of reference. Said order shall set the terms and conditions under which the special master is to proceed and may specify or limit the special master's powers. The fees and costs of the special master including a reasonable retainer shall be borne equally by the parties unless the special master determines that a different allocation of the fees and costs is appropriate.

Subject to the specifications and limitations stated in the order of reference, the special master has and shall exercise the power to regulate all matters before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order, including the authority to grant sanctions limited to reasonable counsel fees and/or special master fees if a party takes an unreasonable position, in accordance with the standards established pursuant to rule 37.

If a party disagrees with a decision of the special master, the matter may be brought before the court. Each party and the special master shall submit proposed orders to the court. A party who has acted arbitrarily or in bad faith in bringing the matter before the court may be subject to sanctions as the court deems appropriate, including counsel fees and/or special master fees.

Credits
Amended effective September 1, 1981; amended October 10, 1997, effective December 1, 1997; October 27, 1999, effective January 1, 2000; February 27, 2008, effective April 1, 2008.

Editors' Notes

REPORTER'S NOTES—1997
Rule 26 was expanded by adding section (f), (g) and (h) and (i). Section (f) of the rule sets forth the specific format for motions to compel discovery. Sections (g) and (h) requires that parties confer in an effort to resolve the discovery dispute, and then certify to the court that efforts to resolve the dispute have been tried and failed. Section (i) exempts parties from the requirement of section (g) and (h) where there is a no-contact order in effect.

REPORTER'S NOTES—2000
Rule 26(j) was added to provide for the appointment of a special master on motion of the court or on motion of either party. The special master may be appointed to control discovery including scheduling and oversight of depositions, the time for completion of discovery and to resolve any discovery disputes which may arise during the course of litigation. If a party disagrees with a decision of the special master, the matter may be brought before the court. However, if a party has acted arbitrarily or in bad faith in bringing the matter before the court, they may be subject to sanctions. The fees and costs of the special master, including a reasonable retainer, shall be borne equally by the parties unless the special master determines that a different allocation of the fees and costs is appropriate.

Notes of Decisions (79)

Massachusetts Rules of Domestic Relations Procedure (Mass. R. Dom. Rel. P.), Rule 26, MA ST DOM REL P Rule 26
Current with amendments received through November 1, 2017.

Rule 56. Summary Judgment

(a) Motions for Summary Judgment. A party may move for summary judgment subsequent to the commencement of any proceeding under these rules except in actions for divorce or in actions for custody or visitation or for criminal contempt. Each motion for summary judgment shall be accompanied by an "Affidavit of Undisputed Facts" which shall enumerate discretely each of the specific material facts relied upon in support of the motion and cite the

particular portions of any pleading, affidavit, deposition, answer to interrogatories, admission or other document relied upon to establish that fact. The motion shall be served at least ten (10) days before the time fixed for the hearing. The moving party shall be responsible for filing with the Court all evidentiary documents cited in the moving papers. The motion for summary judgment shall be denied if the moving party fails to file and serve the affidavit required by this paragraph.

(b) Opposition. Any party opposing a motion for summary judgment shall file and serve no later than three (3) days before the time fixed for the hearing, unless the court otherwise orders, an affidavit using the same paragraph numbers as in the "Affidavit of Undisputed Facts" and admit those facts which are undisputed and deny those which are disputed, including with each denial a citation to the particular portions of any pleading, affidavit, deposition, answers to interrogatories, admission or other document relied upon in support of the denial. The opposing party may also file a concise "Affidavit of Disputed Facts," and the source thereof in the record, of all additional material facts as to which there is a genuine issue precluding summary judgment. The opposing party shall be responsible for the filing with the court of all evidentiary documents cited in the opposing papers. If a need for discovery is asserted as a basis for denial of the motion, the party opposing the motion shall provide a specification of the particular facts on which discovery is to be had or the issues on which discovery is necessary.

(c) Stipulated Facts. All interested parties may jointly file a stipulation setting forth a statement of stipulated facts to which all interested parties agree. As to any stipulated facts, the parties so stipulating may state that their stipulations are entered into only for the purposes of the motion for summary judgment and are not intended to be otherwise binding.

(1) In any pending motion for summary judgment, the assigned judge may order the parties to meet, confer and submit, on or before a date set the assigned judge, a joint statement of undisputed facts.

(d) [deleted] [Case Not Fully Adjudicated on Motion].

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in any affidavits shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the responsible expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(h) Judgment. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and responses to requests for admission under Rule 36, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Summary judgment, when appropriate, may be rendered against the moving party.

Credits

Adopted October 10, 1997, effective December 1, 1997. Amended October 27, 1999, effective January 1, 2000; June 5, 2003, effective September 2, 2003; April 1, 2009, effective May 1, 2009.

Editors' Notes

REPORTER'S NOTES—1997
Rule 56 introduces summary judgment for the first time to domestic relations procedure. The rule allows a party to move for summary judgment in actions for modification and actions to modify or enforce a foreign judgment. Rule 56(h) allows summary judgment only if there is "no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Rule 56(a) requires that each motion for summary judgment be accompanied by an "Affidavit of Undisputed Facts" which sets forth the material facts relied upon in support of the motion. If the moving party fails to file and serve the affidavit, the summary judgment motion will be denied.

The party opposing the motion for summary judgment shall reproduce the "Affidavit of Undisputed Facts" and shall admit those facts which are undisputed and deny those which are disputed. The opposing party has the option of filing an "Affidavit of Disputed Facts" enumerating all additional material facts where there is a genuine issue which would preclude summary judgment.

Rule 56 allows parties to jointly file a statement of stipulated facts. If they do so, they may state that the stipulation is only for the purpose of the motion for summary judgment and is not intended to be otherwise binding. The rule also allows the judge to order the parties to meet and submit a joint statement of undisputed facts.

Sections (e), (f) and (g) of Rule 56 address the form of the affidavits, when an affidavit is not available, and sanctions for falsely made affidavits.

REPORTER'S NOTES—2000
As originally promulgated, rule 56(b) did not require the party opposing a motion for summary judgment to file an affidavit. Rather, it required the opposing party to reproduce the itemized facts contained in the "Affidavit of Undisputed Facts" and admit those facts which were undisputed and deny those which were disputed. The amendment to rule 56(b) rectifies this problem by requiring the party opposing the motion for summary judgment to file and serve, no later than three (3) days before the time fixed for the hearing, an affidavit reproducing the itemized facts contained in the "Affidavit of Undisputed Facts."

REPORTER'S NOTES—2003
The amendment to Rule 56(h) deletes the phrase "on file" from the first sentence in recognition that discovery documents are generally no longer filed separately with the court. See Rule 5(d)(2). The previous reference to admissions has also been replaced by a reference to "responses to requests for admission under Rule 36."

REPORTER'S NOTES—2009
The amendment will allow for summary judgment in all cases exclusive of divorce actions, actions for custody or visitation or actions for criminal contempt.

Notes of Decisions (683)

Massachusetts Rules of Domestic Relations Procedure (Mass. R. Dom. Rel. P.), Rule 56, MA ST DOM REL P Rule 56
Current with amendments received through November 1, 2017.

Rule 59. New Trials: Amendment of Judgments

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the Commonwealth. On a motion for a new trial, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. A motion for a new trial shall be served not later than 10 days after the entry of judgment. *Identical to Mass.R.Civ.P. 59(b).*

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits. *Identical to Mass.R.Civ.P. 59(c).*

(d) On Initiative of Court. Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor. *Identical to Mass.R.Civ.P. 59(d).*

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment. *Identical to Mass.R.Civ.P. 59(e).*

Notes of Decisions (768)

Massachusetts Rules of Domestic Relations Procedure (Mass. R. Dom. Rel. P.), Rule 59, MA ST DOM REL P Rule 59
Current with amendments received through November 1, 2017.

Rule 60. Relief from Judgment or Order

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court. *Identical to Mass.R.Civ.P. 60(a).*

(b) Mistake; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation.

This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of review, of error, of audita querela, and petitions to vacate judgment are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action. *Identical to Mass.R.Civ.P. 60(b).*

Notes of Decisions (465)

Massachusetts Rules of Domestic Relations Procedure (Mass. R. Dom. Rel. P.), Rule 60, MA ST DOM REL P Rule 60
Current with amendments received through November 1, 2017.

Rule 62. Stay of Proceedings to Enforce a Judgment

(a) Automatic Stay; Exceptions-Injunctions and Receiverships. Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the time for appeal from the judgment has expired. In the District Court, in the case of a default judgment, no execution shall issue until 10 days after entry of such judgment. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending,

modifying, restoring, or granting of an injunction during the pendency of an appeal. *Identical to Mass.R.Civ.P. 62(a).*

(b) Stay on Motion to Vacate Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for relief from a judgment or order made pursuant to Rule 60. *Identical to Mass.R.Civ.P. 62(b).*

(c) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party. *Identical to Mass.R.Civ.P. 62(c).*

(d) [Deleted].

(e) Power of Appellate Court Not Limited. The provisions in this rule do not limit any power of the appellate court or of a single justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered. *Identical to Mass.R.Civ.P. 62(e).*

(f) Stay of Judgment as to Multiple Claims or Multiple Parties. When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered. *Identical to Mass.R.Civ.P. 62(f).*

(g) Stay of Nisi Period in Divorce Cases. The filing of an appeal shall stay the running of the nisi period as provided by Rule 58(c) only if the claim of appeal is from that portion of the judgment nisi which dissolved the marriage. If the appeal is subsequently dismissed by the appellate court, the judgment shall become absolute as of ninety days from the date of the judgment nisi. Unless the court otherwise orders, the filing of an appeal shall not stay the operation:

(i) of any other aspect of a divorce judgment; or

(ii) of any other order or judgment of the court relative to custody, visitation, alimony, support, or maintenance.

Credits
Amended December 15, 1986, effective January 2, 1987; June 8, 1989, effective July 1, 1989; April 29, 1992, effective June 1, 1992.

Editors' Notes

COMMENTS—MASS.R.DOM.REL.P.
Rule 62(g) has been added to clarify the difference between the stay of the nisi period pending an appeal from the permissive stay of any other terms of a judgment pending an appeal.

Notes of Decisions (24)

Massachusetts Rules of Domestic Relations Procedure (Mass. R. Dom. Rel. P.), Rule 62, MA ST DOM REL P Rule 62
Current with amendments received through November 1, 2017.

PART 2—STANDING ORDERS OF THE PROBATE AND FAMILY COURT

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Standing Order 2-83. Individual Calendar Sessions

No division of the Probate & Family Court Department currently utilizing a master calendar system, so-called, shall implement an individual calendar system for any justice without the prior written approval of the Chief Justice of this department.

Divisions currently utilizing individual calendar systems may continue to do so, provided, however, that no such system shall be modified to include any judgeship established after July 1, 1982 without prior written approval of the Chief Justice of this department.

Credits
Adopted December 1, 1983.
Probate and Family Court Standing Order 2-83, MA R PROB AND FAM CT Order 2-83
Current with amendments received through November 1, 2017.

Standing Order 2-97. Service

Service by facsimile or other electronic or telephonic transmittal is not service within the meaning of Mass.R. Dom.Rel.P. 5 unless expressly permitted by a specific rule for a specific purpose, by order of the court for cause shown, or pursuant to a written stipulation of the parties allowing for service by facsimile.

Credits
Adopted effective November 1, 1997.
Probate and Family Court Standing Order 2-97, MA R PROB AND FAM CT Order 2-97
Current with amendments received through November 1, 2017.

Standing Order 2-98. Tracking of Appointments of Guardians Ad Litem and Probation Officers to Conduct Investigations in Domestic Relations* and Child Welfare† Matters

It is ordered that the Probation Department of each Division shall track all appointments of Guardians Ad Litem and Probation Officers to conduct investigations in Domestic Relations* and Child Welfare† matters.

The following procedure will be followed:

1. When a Judge appoints a Guardian Ad Litem (G.A.L.) or a Probation Officer (P.O.) to conduct an investigation in Domestic Relations or Child Welfare matters, the person preparing the appointment form will provide the Probation Department with a copy of the completed form.

2. Upon receipt of the copy of the appointment form the Probation Department will prepare a tracking system which will record, at a minimum, the following:

a. Docket number;

b. Name of the case;

c. Date of appointment;

d. Name of the Judge making the appointment;

e. Whether the appointing judge wants to be notified when the Report is filed;

f. Name(s) of Attorney(s) of record;

g. Name of G.A.L. or P.O.;

h. Due date of the Report;

i. Extension date, if any, granted by the judge;

j. Date Report is received;

k. Date Parties are notified of receipt of Report;

l. Pre-trial date; and

m. Trial date.

3. The G.A.L. will file his/her report with the Probation Department on or before the due date. In situations where the G.A.L. has not filed his/her report in a timely fashion, the Probation Department will contact the G.A.L., either by telephone or in writing, to notify him/her of the need to file the Report and determine if an extension is necessary. If the G.A.L. fails to respond or fails to meet the agreed upon due date, the Probation Department shall notify the Judge who made the appointment of this fact and seek further instruction. It is expected that the Probation Department has in place a mechanism to ensure the timeliness of Reports on investigations performed by its Probation Officers in accordance with the Standards of the Office of the Commissioner of Probation.

4. Once the Report is filed, the Probation Department will notify in writing the attorney(s) of record, if any, or the litigant(s) if pro se that the Report has been filed and is available for inspection; how to inspect the Report; and that

it is required that counsel or a party, within thirty (30) days from the date of the notice, request the hearing of the matter as an uncontested matter or the scheduling of a pre-trial conference. In its notice the Probation Department shall give a brief description of the process for requesting an uncontested hearing or pre-trial conference. For pro se litigants, a Trial Request Form shall be sent with the notice.

5. Once the Probation Office has recorded the receipt of the G.A.L. Report, the Report shall be filed and stored in accordance with the directions of the First Justice.

6. After thirty (30) days from the date of notice to counsel or the parties the Probation Department will contact the Trial Department to establish whether a Trial Request Form has been received requesting an uncontested hearing or a pre-trial conference. If no request has been received, the Trial Assignment Clerk shall schedule a pre-trial conference.

7. On the first day of each month, the Probation Department will supply each judge with a status report on his/her outstanding G.A.L. and/or Probation Officer investigations and a report to the First Justice as to the status of all Guardian Ad Litem and Probation Officer investigations in the Division.

The court shall provide a copy of this protocol to the Guardian Ad Litem with each appointment.

Credits
Adopted September 22, 1998, effective October 1, 1998.

Editors' Notes

GENERAL NOTES

* Domestic Relations refers to: Divorce G.L. c. 208; Paternity G.L. c. 209C; Separate Support G.L. c. 209; and Abuse Prevention G.L. c. 209A.

† Child Welfare refers to: Termination of Parental Rights G.L. c. 210, § 3; Care and Protection G.L. c. 119, § 23C; and Guardianship of Minor G.L. c. 201, § 5.

Probate and Family Court Standing Order 2-98, MA R PROB AND FAM CT Order 2-98
Current with amendments received through November 1, 2017.

Standing Order 2-99. Procedure for Submission and Disposition of Certain Post-Hearing Motions

Pursuant to Rule 78 of the Rules of Civil Procedure and Domestic Relations Procedure, the provisions of this Standing Order shall apply to the following post-hearing motions:

i) to Amend Findings of Fact (Rule 52)

ii) to Amend Conclusions of Law (Rule 52)

iii) for New Trial (Rule 59)

iv) to Amend Judgments (Rule 59 (e))

v) for Relief from Judgment and Order (Rule 60)

The purpose of this Standing Order is to set out the procedures by which relief pursuant to subparagraphs i) through v) above, is sought. This Standing Order does not create any substantive right to relief, other than as set forth above.

Motions for post-hearing relief should be titled to reference the rule the moving party asserts is applicable to the relief requested. Even if the rule is not specifically identified, the motion shall be disposed of by the Court in accordance with the factors and time limitations set out in the applicable Rule specified in subparagraphs i) through v) above, since no other relief is available. The provisions of this Standing Order shall not apply to the following:

i) Objections to a Judgment of Divorce Nisi—pursuant to Rule 58(c) of the Rules of Domestic Relations Procedure

ii) Motions to Stay Proceedings to Enforce a Judgment (Rule 62)

(a) Submission of the Motion and Opposition Thereto.

(1) Submission of Motion. The moving party shall serve with the motion a copy of the order or judgment at issue and a concise statement of facts and law in support of why the motion should be granted. The statement shall be no longer than five (5) pages and shall be signed under the penalties of perjury. All documents required to be served with the motion shall be filed with the court on the date of service or within five (5) days after service. Compliance with this paragraph is compliance with the "reasonable time" provisions of Mass.R.Civ.P. 5(d)(1) and Mass.R.Dom. Rel.P. 5(d)(1).

(2) Submission of Statement in Opposition or Support of the Motion. Except by leave of court, upon motion, within ten (10) days after service of the motion, the non-moving party(ies) opposing or supporting the motion may file and serve a concise statement of facts and law in opposition to or in support of the motion. Said statement shall be no longer than five (5) pages, should explain why the motion should or should not be allowed, and shall be signed under the penalties of perjury.

(3) Additional Papers. With the exception of the certificate of service or, when applicable, the motion to extend the time for filing the statement in opposition or support of the motion provided for under paragraph (a)(2) of this rule, papers not served with the motion or statement in opposition or support may be filed only with leave of court.

(4) Form of the Motion. The moving party shall indicate in the title of the motion the name of the Justice who decided the original order or judgment and identify the applicable rule.

(5) Filing the Motion and Statement in Opposition or Support by Mail. If the motion and/or the statement in opposition or support is filed by mail, the bottom left-hand corner of the envelope should clearly indicate "Post-Hearing Motion".

(b) Hearing on Motion.

(1) Marking. No party shall mark the motion for hearing. No later than twenty (20) days from the date the motion is filed, the motion, supporting papers and any statement(s) of opposition or support shall be transmitted to the justice who decided the original order or judgment, unless the court has extended the time for filing the statement in opposition or support of the motion. In such case, the motion and supporting papers shall be transmitted to the justice who decided the original order or judgment within five (5) days from the date the certificate of service is filed with the court on the statement in opposition or support of the motion. In the event the court believes that a hearing is necessary or helpful to the disposition of the motion, the court will set the time and date for the hearing and will notify the parties of that date and time.

(2) Request for Hearing. If a party wishes to request a hearing on the motion, said request shall be filed and served with the motion or the statement in opposition or support of the motion. A request for a hearing shall set forth any statute, rule of court or case law which, in the opinion of the submitting party, mandates a hearing on the motion. After reviewing the motion, the statement in opposition or support of the motion, and the request for hearing, the court will determine whether a hearing should be held and, if a hearing is to be held, will notify the parties of that date and time. Failure to request a hearing shall be deemed a waiver of any right to a hearing afforded by statute, court rule or case law.

(c) Disposition of Motion.

Motions which are not set down for hearing shall be decided on the written submissions filed in accordance with this order.

(d) Sanction for Noncompliance.

Failure to comply with any and all of the provisions of this order may result in the Court's refusal to entertain the motion and/or the imposition of sanctions and/or costs against a party or his/her counsel.

Credits
Adopted effective October 1, 1999. Amended May 23, 2012, effective July 2, 2012.

Probate and Family Court Standing Order 2-99, MA R PROB AND FAM CT Order 2-99
Current with amendments received through November 1, 2017.

Standing Order 1-06. Case Management and Time Standards for Cases Filed in the Probate and Family Court Department

PREAMBLE

The fair and efficient administration of justice requires that all cases and actions before the Probate and Family Court receive timely attention and action from the court. This requires that the judicial system dispose of cases as expeditiously as is consistent with care, fairness and sound decisions. It is the responsibility of the court to manage the process and disposition of the cases before the court. These time standards are intended to provide the Probate and Family Court with recognized goals for the timely disposition of cases.

These time standards represent aspirational goals to measure the movement of cases in the Probate and Family Court. Each case is unique and the Judges must, consistent with the rules of court and statutes, exercise sound judgment in such a manner as to provide the parties with a fair opportunity to be heard and to allow the court to achieve a reasoned disposition. Those individuals who appear before our courts have distinct needs that must be addressed on an individual basis, case by case. These time standards preserve discretion for judges to schedule individual cases according to the particular needs of the individuals involved.

These time standards recognize that there are many factors that determine the flow of cases in the Probate and Family Court which are not within the control of the court. These standards also recognize that the cases heard in the Probate and Family Court require consideration of the individual needs of the families who come before the court.

Accordingly:

1. GENERAL PROVISIONS

This Standing Order applies to all actions filed in the Probate and Family Court.

This Standing Order applies to all Divisions of the Probate and Family Court.

The timing for the completion of the case, from filing to trial, settlement, or dismissal, shall be calculated from the date of filing the petition or complaint.

At time of filing, all cases shall be assigned to a caseflow track according to the type of case. Most cases shall be assigned to one of the following tracks; 3-6 months to trial, 8 months to trial, or 14 months to trial.

2. TRACK ASSIGNMENT AND CASE MANAGEMENT

a. *Track Assignment*

At filing each case is assigned to a track.

The Plaintiff/Petitioner shall be provided with a Track Assignment Notice except as set forth below. The Plaintiff/Petitioner shall serve the Track Assignment Notice upon the Defendant/Respondent along with the summons or notice (citation). No service of the Track Assignment Notice will be required in cases where service is by publication.

No Track Assignment Notice shall be issued for cases in the 3-6 month track: Probate of Will, Administration, Accounts, Real Estate Sales, and Change of Name. No Track Assignment Notice shall be issued for cases described in sections 10 through 17 of this Standing Order. No Track Assignment Notice shall be issued at the time of filing for any case filed by the Department of Revenue, Child Support Enforcement Division.

The goals for completion of all cases filed in the Probate and Family Court are outlined in the chart in section 7(a) and in sections 10 through 17 of this Standing Order. A Judge, at any time, may change the track designation for a case and issue a new Track Assignment Notice.

b. *Next Event Scheduling*

At the conclusion of every court event, until a judgment has issued or the complaint has been dismissed, or until a permanent decree has issued or the petition has been dismissed, the Court shall schedule the next court event for the case.

Once a motion hearing, conference, or any other court event has been scheduled and placed on a court list, whether at the request of a party, a party's lawyer, the Register, or the Court, it can be removed from the list or continued only if a next court event is scheduled.

c. *Case Management Conferences: Generally*

Case Management Conferences will be scheduled by the court for the case types set forth in sections 2(d),(e), and (f) below, when a return of service, answer, objection, or counterclaim is filed and there is no future court event scheduled for the case.

In scheduling a case management conference, the Register shall issue a Case Management Conference Notice and Order in the format specified by the Chief Justice of the Probate and Family Court.

The purpose of the Case Management Conference is 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.

d. *Case Management Conference: Equity, Petition to Partition, and Domestic Relations, including Paternity (except Joint Petitions for Divorce, Joint Petitions for Modification and Complaint for Divorce filed under G.L. c. 208, § 1B).*

Upon the filing of the return of service, answer, objection, or counterclaim, the Register shall review the case to determine if a future court event has been scheduled in the case. If no future court event has been scheduled, the Register shall schedule a Case Management Conference on the next available date, but no sooner than thirty (30) days from the filing of the return of service, answer, objection, or counterclaim. The Register shall send the Case Management Conference Notice and Order to all parties.

e. *Case Management Conference: 1B Divorce, Guardianship and Conservatorship*

All G.L. c. 208, § 1B Divorce Cases

The Register shall review the case one hundred twenty (120) days after the case is filed. If no return of service has been filed, and no answer, appearance, motion, or other paper has been filed by a defendant, the Register shall mail to the plaintiff a written notice of dismissal in accordance with section 3 of this Standing Order. If the return of service or an answer, objection, or counterclaim has been filed, but no future court event has been scheduled, a Case Management Conference shall be scheduled on the next available date, but no sooner than thirty (30) days from the filing of the return of service. The Register shall send the Case Management Conference Notice and Order to all parties.

Guardianship and Conservatorship Cases

The Register shall review the case one hundred twenty (120) days after the case is filed. If no future court event has been scheduled, the Register shall schedule a Case Management Conference on the next available date. The Register shall send the Case Management Conference Notice and Order to all parties. All temporary guardianships shall include an expiration date and a further hearing date. All guardianships with approval and authorization of an anti-psychotic medication treatment plan shall include an expiration date and a review date, which may be the same date. All guardianships with authority to approve other extraordinary medical treatment shall include an expiration date for the authority.

f. *Case Management Conference for Certain Probate Matters*

A Track Assignment Notice shall not be issued at the time of filing for the cases assigned to the 3-6 Month Track: Probate of Will, Administration, Accounts, Real Estate Sales, and Change of Name. If a timely appearance in

opposition or objection is filed in a case initially assigned to the 3-6 Month Track, the Register shall reassign the case to the 8 Month Track and issue to all parties a Track Assignment Notice. The Register shall also issue a Pre-Trial Notice and Order in the form specified by the Chief Justice of the Probate and Family Court with an established date for a Pre-Trial Conference unless another future court event has been scheduled. The date for the Pre-Trial Conference shall be after the return date, but no more than forty-five (45) days after the return date.

g. *Case Management Conference conducted at Motion Hearing*

If a motion, or other hearing, is scheduled and held prior to the date of the Case Management Conference, the Judge may conduct a Case Management Conference in connection with the motion hearing, even if there has been no notice of a Case Management Conference for that day, and may cancel any previously scheduled Case Management Conference, making sure to schedule a next event in the order on the motion or the order after Case Management Conference.

Motions shall not be heard at a scheduled Case Management Conference without prior approval of the Court. As a general rule, the discovery schedule and deadline and a Pre-Trial Conference date should be assigned the first time the case is before a Judge with both parties or counsel present.

h. *Joint Stipulation on Case Management Conference*

Counsel and pro se parties may, at any time after a complaint is filed, file a Joint Stipulation signed by counsel for each represented party and by each pro se party which, at a minimum, requests a pre-trial conference date and agrees to a specific date to be the discovery deadline for that case. The discovery deadline date shall be not more than 180 days after the date of filing of the complaint.

Counsel and pro se parties may, after receiving notice that a Case Management Conference has been scheduled, file, on or before the date of the Case Management Conference, a Joint Stipulation signed by counsel for each represented party and by each pro se party which, at a minimum, requests a pre-trial conference date and agrees to a specific date to be the discovery deadline for that case. The discovery deadline date shall be not more than 120 days after the date of filing of the Joint Stipulation. If the Joint Stipulation is filed prior to the time scheduled for the Case Management Conference, no one need appear for the Case Management Conference.

Upon the filing of such a Joint Stipulation, the Register shall schedule a pre-trial conference for the next available date not sooner than 14 days after the discovery deadline and issue a Pre-Trial Notice and Order in the form specified by the Chief Justice of the Probate and Family Court. The scheduled pre-trial conference is a “future court event” so that a Case Management Conference will not be automatically scheduled upon the 120 day review or upon the filing of a return of service, answer, objection or counterclaim.

i. *Joint Requests to Continue Case Management Conference*

Parties engaged in alternative dispute resolution may request an extension of a scheduled Case Management Conference date by filing a joint or assented to motion which attests that the parties are engaged in alternative dispute resolution and includes:

- the name of the alternative dispute resolution provider;
- the dates and number of sessions held and;
- the dates and number of future sessions scheduled.

All other joint requests to continue shall be by written motion stating detailed and specific reasons for the request. All motions shall include proposed dates for the rescheduling of the Case Management Conference. Joint or assented to motions shall be considered without an in person hearing, unless otherwise ordered by the Court. If the motion is allowed, the court shall reschedule the Case Management Conference and send notice to all parties.

j. *Citations in Probate, Guardianship, Child Welfare, and Adoption Petitions*

Unless all required assents are filed with a probate petition, including guardianship petitions, custody petitions under c.119, and adoption petitions, the Register shall issue a citation no later than three (3) court days after the date of filing.

k. *General Provisions*

Nothing in this Standing Order precludes the marking of an earlier hearing date for a motion or other case event when appropriate.

The Court may schedule conferences, including Case Management, Pre-Trial and Status Conferences, as well as Trials, in its discretion.

Any party to any matter filed in the Probate and Family Court may request a Case Management Conference or Pre-Trial Conference after service of the complaint or petition, with notice to the other side of such request.

When a Case Management Conference is held, the conference will include discussion of all actions pending between the named parties. Other pending actions shall be scheduled for a future court event or shall be dismissed.

3. DISMISSAL FOR LACK OF SERVICE

The Register shall review all Domestic Relations and Equity cases 120 days after filing of the complaint to determine whether a return of service has been filed. If a return of service has not been filed, and no future court event has been scheduled, the Register shall issue a notice in a format specified by the Chief Justice of the Probate and Family Court. The notice shall inform the plaintiff that, because no return of service has been filed to show that service was made within 90 days of filing as required by Mass.R.Civ.P./Mass.R.Dom.Rel.P. 4(j), the case will be dismissed 21 days after the date of the notice unless the plaintiff files the return of service showing that service was made within ninety (90) days after the filing of the complaint or unless within those twenty-one (21)days, the plaintiff files and has scheduled a motion for extension of time which shows good cause why service was not made within ninety (90) days after the filing of the complaint.

4. CONDUCT OF CASE MANAGEMENT CONFERENCE

a. *Counsel and/or Parties Encouraged to Confer.*

Prior to the Case Management Conference, counsel and/or parties are encouraged to confer for the purpose of agreeing on a proposed schedule of deadlines and dates through trial.

If a domestic violence restraining order (G.L. c. 209A) or a domestic violence protective order (G.L. c. 208) has been issued for one party against the other, then the parties are not expected to confer. The Case Management Conference shall still be held.

b. *At a Case Management Conference the Court may:*

(1) explore the possibility of settlement including but not limited to exploring the use of Alternate Dispute Resolution (ADR) processes;

(2) identify or formulate (or order attorneys or parties to formulate) the principal issues and disputes;

(3) prepare (or order attorneys or parties to prepare) a discovery schedule including discovery parameters and deadlines;

(4) establish deadlines for filing motions, including but not limited to motions for summary judgment and a time frame for their disposition;

(5) explore any other matters that the court determines appropriate for the fair and efficient management of the litigation;

(6) hear the case on an uncontested basis if settlement has been achieved, or if no appearance or answer is filed after service and return of service and there is no opposition; or

(7) dismiss the case if no parties are present for the Case Management Conference or if the plaintiff or petitioner is not present.

c. *Next Event Scheduling*

At the Case Management Conference, the next court date shall be assigned unless a judgment or permanent decree is issued or the case is dismissed.

d. *Requirement to Appear*

Counsel and parties, or parties alone if not represented by counsel, shall be required to appear at the Case Management Conference, except as provided in section 2(h) above. The Court, in its discretion, may waive the requirement for the appearance of the parties if they are represented by counsel. The Court may conduct Case Management Conferences by telephone, in its discretion.

e. *Sanctions for Failure to Appear.*

The court may impose sanctions for failure to attend the Case Management Conference without good cause, including dismissal, or may hear the case as if it were uncontested.

5. ALTERNATE DISPUTE RESOLUTION SERVICES

When appropriate, cases may be referred to:

a. Probation Officers for dispute intervention services in contested matters at any court event; or

b. Other approved providers of court connected dispute resolution services as defined in S.J.C. Rule 1:18, Uniform Rules on Dispute Resolution.

6. CHANGES TO TRACK ASSIGNMENT AND RESCHEDULING OF SCHEDULED EVENTS

a. A party may file and serve a motion requesting a change in track assignment or rescheduling of scheduled events. Changes in track assignment or rescheduling of scheduled events shall be allowed only at the discretion of the Judge. A Probation Officer, in connection with an investigation, may file and serve on all parties a motion requesting a change in track assignment or rescheduling of scheduled events.

b. Motions to continue a trial may be allowed, only for good cause shown, with notice and hearing, in accordance with Mass.R.Dom.Rel.P. 40(b) and Mass.R.Civ.P.40(b).

c. All requests for rescheduling shall include proposed future dates. No action shall be "continued generally." Any rescheduling shall be to a date and event certain.

d. In cases involving allegations or a history of domestic violence, or a prior or current abuse prevention order, the Judge shall take into account the safety of alleged victims and victims and the reduction of conflict when considering any requests for changes in track assignment or rescheduling of scheduled events.

7. ASSIGNMENT TO TRACKS:

a. At filing, all Probate, Equity, Domestic Relations (including Paternity) cases (except Joint Petitions for Divorce, Joint Petitions for Modification of Child Support, and Complaints for Contempt, which shall be heard as outlined in sections 10 through 12) shall be assigned to a track according to the chart below:

3-6 Month Track[1]	**8 Month Track**	**14 Month Track**
Probate of Wills and Administration of Estates	Complaint to Establish Paternity	Complaint for Divorce
Accounts	Complaint for Custody, Visitation, and Support (Paternity)	Complaints in Equity
All Other "Probate" except Guardianships and Conservatorships	Complaint for Modification (except Joint Petition for Modification of Child Support)	Petitions to Partition
Real Estate Sales	Probate-Guardianships Conservatorships	Other " Divorce" Case Types (except Joint Petition for Divorce)
Change of Name	Complaint for Separate Support	
	Other Paternity Case Types	

b. G.L. c. 209A Complaints and G.L. c.19A Petitions for Protection from Abuse, cases concerning the custody of children under G.L. c. 119, § 23A, G.L. c. 119, § 23C, and G.L. c. 210, § 3, and Adoptions shall be heard as outlined below in sections 13 through 17.

c. Assignment to a track indicates the maximum amount of time in which a case should be tried, settled, or dismissed. Most cases should be tried, settled, or dismissed before the maximum time period of the track.

d. There may be extraordinary cases which cannot be disposed of within the time frames set forth in their track designations.

e. The Register shall issue a Track Assignment Notice for each case in the 8 month and 14 month tracks, except as outlined in section 2 (a) of this Standing Order, in a format specified by the Chief Justice of the Probate and Family Court. The Track Assignment Notice shall reflect the time requirements for each track.

8. CONDUCT OF PRE-TRIAL CONFERENCES

a. The Pre-Trial Conference shall be conducted in accordance with Rule 16 of the Massachusetts Rules of Domestic Relations Procedure or the Massachusetts Rules of Civil Procedure.

b. In scheduling a Pre-Trial Conference the court shall issue a Pre-Trial Notice and Order in a format specified by the Chief Justice of the Probate and Family Court.

c. If a case is not resolved at the Pre-Trial Conference, an Order After Pre-Trial Conference shall be issued which shall include provisions specified by the Chief Justice of the Probate and Family Court, and may also include additional provisions at the discretion of the Judge conducting the Pre-Trial Conference.

9. SEQUENTIAL TRIAL DAYS

When trial dates are originally assigned, they shall be scheduled on days as close to sequential trial days as the calendar of the trial Judge permits. When trials are not completed in the number of days originally scheduled, the Court shall schedule the remaining trial days as soon as possible using the earliest available trial days, with the goal of minimizing intervals between trial days.

10. TRACK FOR COMPLAINTS FOR CONTEMPT

At time of filing, a summons shall issue with the date for the contempt hearing. The hearing date shall be set for no later than twenty-eight (28) days from the date of filing.

11. JOINT PETITIONS FOR DIVORCE UNDER G.L. c. 208, § 1A

All Joint Petitions for Divorce shall be scheduled for hearing within thirty (30) days of filing of all required documents.[2]

12. JOINT PETITION FOR MODIFICATION OF CHILD SUPPORT

Pursuant to Probate and Family Court Supplemental Rule 412 and Protocol, these cases shall be decided on the pleadings without hearing, within fourteen (14) days of filing, unless otherwise ordered by the Court. If a hearing is ordered by the Court, the Court shall set the time and date for the hearing and shall notify the parties within fourteen (14) days of the filing of the joint petition.

13. G.L. c. 209A COMPLAINT FOR PROTECTION FROM ABUSE

All proceedings pursuant to G.L. c. 209A shall be processed in accordance with the existing statutory time requirements and each order shall specifically state the next hearing date and expiration date of the order, unless the order is permanent. If the order is permanent, it shall so specify.

14. COMPLAINTS FOR PROTECTION FROM ELDER AND DISABLED ABUSE, G.L. c. 19A, § 20, G.L. c. 19C, § 7

An initial hearing shall be held within fourteen (14) days of the filing of a petition. Emergency hearings may be held with at least twenty-four (24) hours notice to the elderly or disabled person. The court may dispense with notice

upon finding that immediate and foreseeable physical harm to the individual or others will result from the twenty-four (24) hour delay and that reasonable attempts have been made to give notice.

15. TRACK FOR PETITIONS FILED PURSUANT TO G.L. c. 210, § 3 AND PETITIONS FILED PURSUANT TO G.L. c. 119, § 23C

a. If the Petition is uncontested, due to the assent of all parties or completion of proper notice, with no appearance in opposition filed, the Register shall, within fourteen (14) days of the return date, notify the petitioners that the case is uncontested, and schedule an uncontested hearing within 30 days of the return date. For cases filed under G.L. c. 210, § 3, an adoption plan shall be filed, in accordance with Uniform Probate Court Practice X prior to the hearing date.

b. If, by virtue of an appearance the case is contested, the Register shall issue a Track Assignment and Scheduling Notice for a Case Management Conference to be held not more than thirty (30) days after the return date.

c. At the Case Management Conference, referral to Permanency Mediation shall be considered and a Pre-Trial Conference shall be scheduled for a date within seventy-five (75) days of the Case Management Conference. At the Pre-Trial Conference, a trial date shall be set for no later than one hundred twenty (120) days from the date of the Pre-Trial Conference.

d. If a sua sponte or ex parte custody order under c.119, § 23C is issued, the Court shall schedule a hearing within 72 hours of the sua sponte or ex parte custody order, unless a prior evidentiary hearing has been held. Notice shall be given to all parties and counsel.

16. TRACK FOR ADOPTION PETITIONS

a. If a Petition is filed as uncontested, due to the filing of necessary surrenders or termination decrees, and notice is not required, a hearing shall be scheduled within thirty (30) days of the filing of the Petition.[3]

b. If a timely appearance is filed, a Case Management Conference shall be scheduled for not more than thirty (30) days after the return date.

c. At the Case Management Conference, a Pre-Trial Conference shall be scheduled for a date within seventy-five (75) days of the Case Management Conference. At the Pre-Trial Conference, a trial date shall be set for no later than one hundred twenty (120) days from the date of the Pre-Trial Conference.

17. PETITIONS FILED PURSUANT TO G.L. c. 119, § 23(A), VOLUNTARY PLACEMENT WITH DEPARTMENT OF SOCIAL SERVICES

At time of filing, all petitions filed pursuant to G.L. c. 119, § 23(A) shall be scheduled for hearing within thirty (30) days.

18. ISSUANCE OF TEMPORARY ORDERS

Temporary orders shall be issued as expeditiously as possible, but in no event more than fourteen (14) days from the conclusion of the hearing, or the receipt by the court of all written submissions. On motions for summary judgment, orders shall be issued within thirty (30) days of the conclusion of the hearing, or the receipt by the court of all written submissions.

19. ISSUANCE OF JUDGMENT OR DECREE

Except as otherwise indicated in this Standing Order, or with notice to the Chief Justice of the Probate and Family Court, and counsel or parties, the judgment or decree shall be issued as follows:

Trial Time	**Entry of Judgment or Decree**
One day or less	Within 30 days of the conclusion of the trial
Two days	Within 60 days of the conclusion of the trial
Three to Seven days	Within 90 days of the conclusion of the trial
Exceeds Seven days	Within 120 days of the conclusion of the trial

Credits
Adopted effective April 3, 2006.

Footnotes

1 As described in section 2(f) above, if a case assigned to this track becomes contested due to the filing of an appearance and, if required, objections, the Register shall change the track designation to an 8 month track.

2 If a case is ready for hearing at time of filing, a hearing shall be scheduled within 30 days. If a case is uncontested at time of filing, but incomplete, the case shall be scheduled for hearing within thirty (30) days of the date of filing all required documents.

3 If a case is ready for hearing at time of filing, a hearing shall be scheduled within 30 days. If a case is uncontested at time of filing, but incomplete, the case shall be scheduled for hearing within thirty (30) days of the date of filing all required documents.

Probate and Family Court Standing Order 1-06, MA R PROB AND FAM CT Order 1-06
Current with amendments received through November 1, 2017.

Standing Order 2-08. Impoundment of Guardian Ad Litem Reports

Unless otherwise ordered by the court, all guardian ad litem reports except those filed in cases involving accounts, licenses to sell and estate plans are impounded. As used herein, "impounded" shall mean the act of keeping the guardian ad litem report separate and unavailable for public inspection. The reports shall be kept in the Registry of Probate unless otherwise determined by the First Justice. The following procedure will be followed:

1. Upon filing with the court, guardian ad litem reports shall be kept separate from the case file and unavailable for public inspection. Access to inspect the impounded reports shall be limited to the court, the attorney(s) of record, if any, and the party(ies), unless otherwise ordered by the court. Where appropriate, the court may instruct the guardian ad litem to send a copy of a report to the attorney(s) of record or the parties.

2. Unless otherwise ordered by the court, the attorney(s) of record, if both parties are represented by counsel, shall be entitled to receive a copy of a report. If a party wishes to obtain a copy of the report, the party or their attorney must file a Motion with the Court. If a party is unrepresented by counsel and wishes to obtain a copy of the report, they must file a Motion with the Court. The attorney(s) of record or the party(ies) who are authorized to have a copy of the guardian ad litem report:

a. Shall make no further copies of the report for use outside of counsel's office except as provided below;

b. Shall not show the report to any person except, to his or her client or, to an expert engaged or consulted regarding the case;

c. Shall, in the case of an attorney, return the copy of the report to the court upon withdrawal or conclusion of the case, and in the case of a party, return the copy of the report to the court at the conclusion of the case,

d. Shall comply with such conditions as the Trial Judge may impose.

e. May provide a copy to an expert engaged or consulted on the case, provided the expert certifies in writing that he or she will be bound by this Standing Order, and;

f. Shall not provide a copy to his or her client except upon the allowance of a motion.

3. In accordance with Trial Court Rule IX, Rule 2, Uniform Rules on Subpoenas to Court Officials, the Register shall not provide a copy of an impounded guardian ad litem report to a person who is not a party to the case.

4. Relief from impoundment may be sought by Motion supported by affidavit, and may be granted after notice by the court only upon written findings.

5. Service of the Motion for Relief from Impoundment and affidavit shall be made on all parties in accordance with Rule 5 of the Massachusetts Rules of Domestic Relations Procedure. The time periods for hearing shall be as set forth in Rule 6 of the Massachusetts Rules of Domestic Relations Procedure.

6. The attorney(s) of record, if any, or the party(ies) if unrepresented by counsel, shall receive a copy of this Standing Order when they are notified in writing by the Court in accordance with Standing Order 2-98 that a report has been filed and is available for inspection.

Credits
Adopted effective March 10, 2008.
Probate and Family Court Standing Order 2-08, MA R PROB AND FAM CT Order 2-08
Current with amendments received through November 1, 2017.

Standing Order 3-08. Impoundment of Qualified Domestic Relations Orders, Domestic Relations Orders and Orders Commonly Known as *Mangiacotti* Orders

Unless otherwise ordered by the court, all qualified domestic relations orders, domestic relations orders and orders issued pursuant to Contributory Retirement Board of Arlington v. Mangiacotti, 406 Mass.184, (1989) are impounded. As used herein, "impounded" shall mean the act of keeping the orders separate and unavailable for public inspection. The following procedure will be followed:

1. Upon filing with the court, the orders shall be kept separate from the case file and unavailable for public inspection. Access to inspect the impounded orders is limited to the court, the attorney(s) of record, if any, and the party(ies), unless otherwise ordered by the court.

2. In accordance with Trial Court Rule IX, Rule 2, Uniform Rules on Subpoenas to Court Officials, the Register shall not provide a copy of the impounded orders to a person who is not a party to the case.

3. Relief from impoundment may be sought by Motion supported by affidavit, and may be granted after notice by the court only upon written findings.

4. Service of the Motion for Relief from Impoundment and affidavit shall be made on all parties in accordance with Rule 5 of the Massachusetts Rules of Domestic Relations Procedure. The time periods for hearing shall be as set forth in Rule 6 of the Massachusetts Rules of Domestic Relations Procedure.

Credits
Adopted effective March 10, 2008.
Probate and Family Court Standing Order 3-08, MA R PROB AND FAM CT Order 3-08
Current with amendments received through November 1, 2017.

Standing Order 6-08. Parent Education Program for Never Married Parents *"For the Children"*

This Court finds that the interests of the minor children of never-married parents appearing before the Court would be well served by educating the parents about children's emotional needs and the effects of family-related litigation on child behavior and development.

IT IS HEREBY ORDERED THAT:

1. In the Hampshire, Essex and Suffolk Divisions of the Probate and Family Court Department, all parties to Complaint to Establish Paternity, a Complaint for Custody/Support/Visitation, and in any case involving visitation or custody of minor children of never-married parents filed on or after July 1, 2008, may be ordered by a judge of this court to attend and participate in a education program known as *"For the Children"*. Nothing herein shall limit the judge or his or her designee from waiving this requirement.

2. Attendance at the program is mandatory unless waived by the Court. Parties must register within sixty (60) days of service of the complaint and attend the next available session. The Court may waive the attendance requirement upon motion, with notice, for one or both parties. Waivers will be granted upon a showing of chronic and severe violence which negates safe parental communication, language barriers, institutionalization or other unavailability of a party, or where justice otherwise indicates.

3. Sanctions may be imposed by the Court for a party's failure to register with *"For the Children"* within sixty days of service of the complaint.

4. A pamphlet describing *"For the Children"* and including a copy of this Order shall be given to the plaintiff or his/her attorney upon the filing of a complaint involving minor children as set forth above. The plaintiff or his/her attorney shall serve a copy of the pamphlet along with the complaint and summons to the person authorized to make service according to Mass.R.Dom.Rel.P.4(c)

5. Nothing herein shall be construed to limit the authority of any Probate and Family Court Justice sitting in the Hampshire, Essex and Suffolk Divisions to order parties to attend a parent education program in any case involving visitation, custody or support of minor children.

6. All information and materials submitted in conjunction with *"For the Children"* shall not be discoverable.

7. The parties to a particular case are prohibited from attending the same program session.

Credits
Adopted effective November 1, 2008.
Probate and Family Court Standing Order 6-08, MA R PROB AND FAM CT Order 6-08
Current with amendments received through November 1, 2017.

Standing Order 1-09. Impoundment of Personal Medical Information

1. Whenever a Medical Certificate or Clinical Team Report is required to be filed under Article V of G.L. c. 190B, it must be in the possession of the Court or accompany the petition or motion. The Medical Certificate must be dated and an examination must have taken place within 30 days of the filing of the petition or motion or, in the case of a person alleged to be mentally retarded, the Clinical Team Report must be dated and an examination must have taken place within 180 days of the filing of the petition or motion.

2. The Court may waive or postpone the requirement of filing of a Medical Certificate or Clinical Team Report upon the filing of a statement that it is **impossible** to obtain a Medical Certificate or Clinical Team Report. Such a statement of impossibility shall be supported by an affidavit or affidavits meeting the requirements set forth in Massachusetts Rules of Civil Procedure 4.1(h).

3. All Medical Certificates, Clinical Team Reports, treatment plans and medical affidavits shall be impounded and kept separate from other papers in the case and shall not be available for public inspection. These documents shall be available for inspection to authorized Court personnel, the Respondent, the attorneys who have filed an appearance in the case, all persons named in the petition who make a written request, and any Guardian ad litem appointed in the case. They may not be copied without further order of the Court, but Registry staff may scan them into an impounded computer file.

4. Authorized Court personnel, parties, attorneys, and Guardians ad litem with access to a Medical Certificate, Clinical Team Report, treatment plan or medical affidavit are prohibited from using or disclosing the information on the form for any purpose other than the Guardianship or Conservatorship case for which it was filed.

Credits
Adopted effective July 1, 2009.
Probate and Family Court Standing Order 1-09, MA R PROB AND FAM CT Order 1-09
Current with amendments received through November 1, 2017.

Standing Order 2-09. Application of G.L. c. 190B, Article V to Guardianship and/or Conservatorship Cases Pending on July 1, 2009 or with a Decree Issued Prior Thereto

On July 1, 2009, certain provisions of the Massachusetts Uniform Probate Code, G.L. c. 190B ("the Code"), become effective. The provisions are primarily contained in Article V of the Code, Protection of Persons under Disability and Their Property. The Code significantly reforms the practice of Guardianship and Conservatorship law.

The Probate and Family Court interprets the Massachusetts Uniform Probate Code to apply to any Guardianship and Conservatorship case:

(a) pending on July 1, 2009 without a permanent decree having entered;

(b) where a permanent decree has previously entered and the Guardianship or Conservatorship has not terminated; or

(c) commenced on or after July 1, 2009.

Accordingly:

1. PENDING CASES WITH NO PERMANENT DECREE

Any Petition for Guardianship of the person and/or estate or Conservatorship filed prior to and pending as of July 1, 2009 generally does not need to be amended. If the petitioner seeks authority to admit the alleged incapacitated person to a nursing facility and such authorization was not explicitly requested on the petition, the petition must be amended to include a request for such authorization and a new citation must issue.

Any citation issued before July 1, 2009 shall be accepted by the Court after July 1, 2009 as sufficient even if the return date is after July 1, 2009. Any citation issued after July 1, 2009 must be served in accordance with the notice requirements of the applicable MUPC sections.

Any Petition for Guardianship of the person and/or estate or Conservatorship filed prior to and pending as of July 1, 2009 must be accompanied by the new Medical Certificate or Clinical Team Report form.

Any Petition requesting the appointment of a Guardian of the estate pending as of July 1, 2009 shall be treated as a Petition for the Appointment of a Conservator. At the time of allowance, an Order and Decree of Appointment of Conservator shall be issued (in addition to an Order and Decree of Appointment of Guardian if appointment of a Guardian of the person was also requested) and docketed in a Conservator file. The Conservator case file shall include a copy of the Petition for Guardianship docket sheet up to the time of appointment. There shall be no fee charged when a new Conservator case initiation is required. Thereafter, the Conservator shall file any and all required Financial Plan, Inventory and Accounts in the Conservator file.

2. CASES WHERE A GUARDIAN OF THE PERSON AND/OR ESTATE OR A CONSERVATOR WAS APPOINTED PRIOR TO JULY 1, 2009

a. Issuance of Letters of Appointment.

When any party seeks a certified copy of the Decree appointing the Guardian of the person, a Letter of Appointment of Guardian shall be issued in accordance with the prior Decree and the Code.

When any party seeks a certified copy of the Decree appointing the Guardian of the estate or the Conservator, a Letter of Appointment of Conservator shall be issued indicating all powers vested in the Conservator in accordance with the prior Decree and the Code and a new Conservator file opened.

The Letter of Conservatorship shall be placed in the new case file. The new case file shall include a copy of the Petition for Guardianship docket sheet up to the time of the issuance of the Letter of Conservatorship. There shall be no fee charged if a new Conservator case initiation is required.

b. Reporting Requirements

Guardians of Incapacitated Persons are required to file a Care Plan/Report within 60 days following their appointment. All Guardians of Incapacitated Persons and Guardians of Wards, regardless of the date of appointment, must file a Report annually thereafter. G.L. c. 190B, § 5-309(b). Whenever any Guardian of the person is before the Court, the Court shall insure the timely filing and review of any and all Care Plans/Reports. If Care Plans/Reports have not been filed, the Court shall order the filing of a Care Plan/Report.

A Conservator may be required to file a Conservator Financial Plan for managing, expending and distributing the assets of the estate. G.L. c. 190B, § 5-416(c). Whenever any Guardian of the estate or Conservator is before the Court, the Court may order the filing of a Conservator Financial Plan.

c. Accounting Requirements

Any Guardian of the estate or Conservator is subject to the accounting requirements of G.L. c. 190B, § 5-418 of the Code. Whenever any Guardian of the estate or Conservator is before the Court, the Court shall insure the timely filing and review of any and all required Inventory and Accounts.

d. Nursing Facility Admissions

Any nursing facility admission made by a Guardian before July 1, 2009 shall continue to be considered a valid admission after July 1, 2009 without the need for further Court authorization. If the incapacitated person is temporarily hospitalized, the Guardian may readmit the incapacitated person to the nursing facility the incapacitated person was in immediately before being hospitalized, without further authorization, notwithstanding the fact that this admission may be considered a new admission due to the length of hospitalization and/or loss of the prior bed. However, if the incapacitated person is being admitted to a nursing facility other than one the incapacitated person was in immediately before being hospitalized or, if it is a first-time admission after July 1, 2009, Court authorization for admission must be sought by the filing of a General Petition.

e. Previous Authority to Admit/Commit

Beginning July 1, 2009, the Probate and Family Court no longer has the authority to authorize a Guardian to admit or commit an incapacitated person to a mental health facility or a mental retardation facility as defined in the regulations of the department of mental health. G.L. c. 190B, § 5-309(f). In addition, beginning July 1, 2009, the Probate and Family Court will no longer have the authority to review or extend an admit/commit order previously authorized by the Court. An initial commitment order is generally valid for six months, and subsequent commitment orders are valid for one year. G.L. c. 123, § 8(d). Guardianship of Weedon, 409 Mass. 196 (1991).

If the authority to admit/commit is in an existing decree allowed before July 1, 2009, but the incapacitated person is not admitted/committed before July 1, 2009, this authority shall be considered to have expired on July 1, 2009 and the authority to admit/commit may not be relied upon after July 1, 2009. A new order must be sought through the appropriate District Court proceeding.

If the authority to admit/commit is in an existing decree allowed before July 1, 2009, and the incapacitated person is admitted/committed before July 1, 2009, this authority shall continue to be valid, but will expire six months after the date of admission/commitment.

If the authority to admit/commit issued before July 1, 2009 has expired, it cannot be relied upon nor can the Probate and Family Court review or extend the prior authorization. Any such order must now be sought through the appropriate District Court proceeding.

3. STANDBY OR EMERGENCY GUARDIANSHIP PROXY

The current provisions of G.L. c. 201, § 2(A)-(H) regarding Standby or Emergency Guardianship Proxies will be repealed as of July 1, 2009. Under G.L. c. 190B, § 5-202(a) and (b), a parent or a current Guardian may appoint a Guardian for any minor child in a writing that must be attested to by at least two witnesses. This requirement is similar to the requirements of G.L. c. 201, § 2B, which provides that the standby Guardianship proxy must be in writing, designate an adult and be "witnessed by two or more persons, at least eighteen years of age, neither of whom is to be designated as the proxy." Therefore, the Court shall deem designations executed in accordance with G.L. c. 201, § 2B valid parental or Guardian appointments under G.L. c. 190B, § 5-202 regardless of the date of execution.

Credits
Adopted effective July 1, 2009.
Probate and Family Court Standing Order 2-09, MA R PROB AND FAM CT Order 2-09
Current with amendments received through November 1, 2017.

Standing Order 4-09. Notice in Guardianship of Minors Matters

(Amended effective February 8, 2010)

Pursuant to G.L. c. 190B, § 1-401 (b) of the Massachusetts Uniform Probate Code, to promote the well-being of the children of the Commonwealth who are the subjects of Guardianship proceedings, the Probate and Family Court establishes the following order for notice to parties in all Petitions for Appointment of Guardian of a Minor proceedings.

Petition for Appointment of Guardian of a Minor

Notice to Interested Parties

Definitions:

Interested Parties under G.L. c. 190B, § 5-206:

(1) The minor, if the minor is 14 or more years of age and is not the petitioner;

(2) Any person who has been awarded care or custody of the minor by a Court of competent jurisdiction, who is alleged to have had the principal care or custody of the minor, or with whom the minor has resided during the 60 days preceding the filing of the petition, excluding foster parents. If the Department of Children and Families has custody of the minor, it must be served;

(3) Any living parent of the minor, excluding a parent whose parental rights have been terminated or a parent who has signed a voluntary surrender or, if none, brothers and sisters 18 years or older or, if none, heirs apparent or presumptive;

(4) The spouse if the minor is married;

(5) Any person nominated as Guardian by the minor if the minor has attained 14 years of age;

(6) Any parental or Guardian appointee whose appointment has not been prevented or terminated under G.L. c. 190B, § 5-203;

(7) Any Guardian or Conservator currently acting for the minor in this Commonwealth or elsewhere; and

(8) The United States Veterans Administration or its successor if the minor is entitled to any benefit, estate or income paid or payable by or through said administration or its successors.

Order:

Upon the filing of the Petition for Appointment of Guardian of a Minor, the Court shall establish a date for hearing on the Petition and enter this date on the "Order and Notice." For Petitions that also include a request for the appointment of a temporary Guardian (either with notice or ex parte), the date for hearing on the Petition shall be on or before the expiration of the temporary Guardianship. For all other Petitions, the date for hearing on the Petition shall be at least twenty-one (21) days after the filing of the Petition, but no more than forty-five (45) days after the filing of the Petition.

Except as provided for in subsection "c" of this order, following the filing of Petition, the petitioner shall cause an "Order and Notice" and a copy of the Petition to be served by a constable, deputy sheriff, sheriff or other person approved by the Court on all interested parties. The Order and Notice shall be on a form issued or approved by the Court and shall be served with a copy of the Petition in the following manner:

(a) If the place of residence or whereabouts of an interested party is known, service shall be accomplished on the interested party by:

(i) Delivery in hand to the party at least fourteen days before the date of hearing for the Petition. If the minor is above the age of fourteen years and has not nominated the Guardian proposed in the petition in conformance with the requirements of G.L. c. 190B, § 5-207, then service shall be made in the same manner on the minor; or

(ii) Written and duly notarized endorsement of the party's acceptance of service on the Order and Notice of hearing, whether within or without the Commonwealth.

(b) If the place of residence or whereabouts of an interested party is known, but the petitioner has been unable to accomplish service by delivery despite efforts to do so, the Petitioner may accomplish service on that interested party, either within or without the Commonwealth, by leaving a copy of the Petition and Order and Notice at his or her last and usual place of residence, and by mailing by first-class mail copies to the interested party at least fourteen (14) days before the date of the hearing for the Petition, or by some other method as ordered by the Court.

(c) If the place of residence or whereabouts of an interested party is not known or cannot be ascertained with reasonable diligence, the Court shall order that service be accomplished on that interested party, either within or without the Commonwealth, by mailing by first-class mail to the interested party at his or her last known address, at least fourteen (14) days before the date of the hearing for the Petition, or by some other method as ordered by the Court. In addition, the Court shall issue an Order for Service by Publication, and the petitioner shall cause notice to be published at least one time in the newspaper or newspapers designated by the Register of Probate having general circulation in the county where the proceeding is pending, the publication to appear at least seven days before the date of the hearing for the Petition, unless otherwise directed by the Court.

(d) If the identity of an interested party is not known, service shall be accomplished on that interested party by publication as follows: the Court shall issue an Order for Service by Publication, and the petitioner shall cause notice to be published at least one time in the newspaper or newspapers designated by the Register of Probate having general circulation in the county where the proceeding is pending, the publication to appear at least seven days before the date of the hearing for the Petition, unless otherwise ordered by the Court.

(e) If the minor is entitled to any benefit, estate, or income paid or payable through the United States Veterans Administration or its successor, service shall be made on the Veterans Administration by regular first-class mail at least seven days before the date of the hearing for the Petition.

(f) If the minor is in the custody of the Department of Children and Families, service shall be made on the Department of Children and Families by regular first-class mail at least seven days before the date of the hearing for the Petition.

(g) No notice need be given in the following circumstances:

(1) to a person entitled to notice under this rule who has consented in writing to the allowance of the Petition, if the consent is filed in Court;

(2) to a parent who signed a voluntary surrender in conformance with G.L. c. 210, § 2, or

(3) if the Court has terminated parental rights pursuant to G.L. c. 210, § 3.

(h) The officer or other person making service in accordance with this rule shall make a return of service on a copy of the Order and Notice, which the petitioner shall promptly file with the Court. The return of service shall indicate the method of service. If service is made by leaving at last and usual address and first class mail, the officer or other person making service shall describe the efforts made to complete in-hand service.

APPLICABILITY OF ORDER TO OTHER PROCEEDINGS

This order for notice shall apply to all petitions relating to the Guardianship of a Minor, including, but not limited to, Petitions to Resign as Guardian of a Minor, Petitions for Removal of Guardian of a Minor, Petitions for Visitation, and Petitions for Support.

Credits
Adopted effective July 1, 2009. Amended effective February 8, 2010.
Probate and Family Court Standing Order 4-09, MA R PROB AND FAM CT Order 4-09
Current with amendments received through November 1, 2017.

Standing Order 5-09. Medical Certificates in Conservatorship of Minor Matters

No Medical Certificate or Clinical Team Report shall be required in proceedings for Conservatorship of a minor filed pursuant to G.L. c. 190B, § 5-401(b) unless ordered by the Court.

Credits
Adopted effective July 1, 2009.
Probate and Family Court Standing Order 5-09, MA R PROB AND FAM CT Order 5-09
Current with amendments received through November 1, 2017.

Standing Order 1-10. Special Procedures for Cases Involving Children

Preamble

The Hampshire Division of the Probate and Family Court is committed to a child-focused procedural model for all cases involving children and has developed a pilot project for this purpose.

This Standing Order applies to all cases involving children filed in the Hampshire Division and will be liberally construed and applied to establish, ensure and support child-focused parenting and care giving, professional conduct and court procedures by and for families served by this Court.

The purposes of the child-focused model are as follows:

- to provide early opportunities for parents and care givers to learn the effects of hostile litigation on children;
- to provide early opportunities for non-adversarial planning of all unresolved issues;
- to establish a problem-solving environment in which each parent, care giver and attorney is expected to be a problem solver; and
- to establish an atmosphere in which parents and care givers are encouraged to experiment responsibly with multiple child care models as they observe children's adjustment to parenting in two households.

A. Application of the Rule

This Standing Order applies:

1. to all cases involving children filed in the Hampshire Division, including Divorce, Separate Support, Paternity, Support/Custody/Visitation, Modification, Contempt, Guardianship and Termination of Parental Rights; and

2. to all attorneys, parents and care givers involved in each such case. A "care giver" is a party to a case who is either a guardian, potential guardian, grandparent seeking visitation, de facto parent or person seeking de facto parent status.

B. Domestic Violence and Application of the Rule

Parents, care givers and attorneys will not be expected to adhere to the requirements of Paragraph E of this Standing Order if there is an abuse prevention order in effect.

C. Introductory Letter

1. After the commencement of an action, the Court will send an Introductory Letter to each parent, care giver or to the attorney representing each parent or care giver.

2. The attorney, upon receipt of the Introductory Letter, shall provide the original letter to his or her client.

D. Duties of Attorneys, Parents, Care Givers and the Court

1. Problem solving

Attorneys, parents and care givers shall make all efforts to solve problems before seeking the decision making intervention of the Court and shall seek that intervention only as needed.

2. Conduct

Parents, care givers, attorneys and the Court shall consistently observe the following conduct:

a. consistent, focused attention on each child's needs including maintaining an awareness that children suffer when their parents or care givers fight about them;

b. consistent, focused attention on each parent or care giver's needs, including maintaining an awareness

i. that children will be well served if each parent or care giver's ability to provide safe, healthy and responsible parenting time with the children is supported by each parent or care giver;

ii. that children will be well served if there is reasonable financial security in each household; and

iii. that children will be well served if parents or care givers are able to resolve conflicts in a constructive manner.

3. Resources

a. Attorneys shall inform their clients about resources available for counseling, mediation, conciliation or other assistance to help parents, care givers and children improve their relationships and functioning, and to adjust to the realities of parenting or care giving in two households.

b. The Court shall maintain and make available to the public information about the following court-related resources, which parents are encouraged (and may be ordered) to use:

i. Parenting websites

www.uptoparents.org

www.proudtoparent.org

ii. Mediation/Conciliation

Hampshire Introductory Mediation Program

Hampshire Conciliation Program

iii. Referrals to bar association lawyer referral services and the Massachusetts Justice Project.

4. Planning

Parents, care givers, attorneys and the Court shall engage in consistent and, if necessary, repeated attempts to improve the circumstances of the children by cooperative planning on each relevant issue at each stage of the court process.

5. Administrative Efficiency

The Court shall establish an administrative process to accept full written agreements for temporary orders without the necessity of a hearing.

E. Introductory Meeting

1. General Requirement

All parties and attorneys shall schedule and participate in an Introductory Meeting at a time and place to be agreed upon by the attendees which shall take place as set forth below and, except in an emergency, no less than two days prior to a motion hearing.

The Introductory Meeting shall take place no later than forty-five days after the filing of an Answer or other relevant responsive pleading.

2. Content and Process of the Introductory Meeting

Attendees at the Introductory Meeting shall:

a. explore whether the parents or care givers need assistance gaining access to resources that could help them resolve the open issues or improve relevant relationships or functioning, and adjust to the realities of parenting or care giving in two households;

b. confirm, if applicable, whether the parents or care givers have completed their website work, and if so, discuss the Agreed Commitments reached;

c. work on a parenting or care giving plan;

d. identify

i. issues that require immediate resolution;

ii. issues that require additional planning prior to resolution;

iii. tasks to be performed as to each issue;

iv. person(s) responsible for completing each task; and

v. the completion date for each task.

e. attempt to resolve all issues that require resolution by the parties;

f. confirm that each parent has complied with the parent education program required of them; and

g. write, for presentation in court, any agreements or partial agreements achieved by the parties in the Introductory Meeting.

3. Facilitation Services

The family service resources of the Probation Department of the Court are available to assist in (a) facilitating the Introductory Meeting or any follow-up meeting, (b) suggesting resources available to the parents and care givers, and (c) writing any agreements or partial agreements reached in any meeting. In order to make use of these resources, the parents or care givers or counsel shall, in sufficient time to be in compliance with the scheduling requirements of this Standing Order, make an appointment with the Probation Department for assistance on a day before the date on which a motion or Case Management Conference is scheduled to be heard.

4. Non-Compliance

If parents or care givers and/or attorneys representing each parent or care giver fail to comply with the requirements of the Introductory Meeting, they shall be prepared to report to the Court the reasons therefor. In the event of an unexcused non-compliance, the Court has the discretion to refuse to hear the motion, alter the Case Management Order and issue sanctions, including but not limited to attorney's fees.

5. Follow Up Meetings

A follow-up meeting shall be held upon the request of any attorney or self-represented parent or care giver at any time, and at least two days prior to any hearing on each subsequently filed motion. Such a follow-up meeting may be held in person or by conference call, and shall, as applicable, address the same issues addressed in the Introductory Meeting.

6. Summary of Cooperative Efforts

Parents, care givers and attorneys, in compliance with the Pre-Trial Notice and Order, shall present at the Pre-Trial Conference a summary of the steps they have taken under this Standing Order toward the cooperative resolution of the unresolved issues.

F. Training

The Court, in collaboration with the Hampshire County Bar Association, shall offer training to attorneys on such topics as:

- representing children, parents and care givers in the context of this Standing Order;
- special skills needed to represent children, parents and care givers in the context of this Standing Order;

- processes developed in this Court and other Courts to carry out the purposes of the Standing Order; and
- ethical considerations in representing children, parents and care givers.

4/7/10

Date Paula M. Carey, Chief Justice

Credits
Adopted effective May 5, 2010.
Probate and Family Court Standing Order 1-10, MA R PROB AND FAM CT Order 1-10
Current with amendments received through November 1, 2017.

Standing Order 1-11. Probate and Family Court's Use of Information Contained in the Court Activity Record Information (CARI) Report

1. The Probation Department shall obtain Court Activity Record Information (CARI) and Warrant Management system information (WMS) for all parties referred by a judge of the Probate and Family Court for probation services. Such services include, but are not limited to, dispute intervention, short-term investigation, full investigation, supervision and case intervention.

2. CARI includes Criminal Offender Record Information (CORI), juvenile records and civil restraining order information.

3. The Court has an obligation to obtain CARI in all cases pertaining to abuse prevention orders pursuant to Chapter 209A and domestic relations protective orders pursuant to Chapters 208, 209 or 209C. Nothing in this Standing Order is intended to restrict access that the Court would otherwise have to CORI/CARI records.

4. Prior to the delivery of any probation services, the Probation Department shall disclose to a party who is the subject of a CARI record, and his or her counsel, that the party's CARI record has been reviewed by the Probation Department.

5. In a dispute intervention where all parties and their counsel, if any, are present, the Probation Department shall advise all of the parties, and their counsel, whether CARI information of any party has been considered. If safety concerns are raised by either party, the CARI information shall be discussed separately.

6. The Probation Department shall inform each party who is the subject of a CARI record, and his or her counsel, of the information in his or her CARI record that has been considered by the Probation Department in the context of completing the referred service. The Probation Department shall provide the party and his or her counsel the opportunity to review the CARI record.

7. A party may consent to the disclosure to the other party of the information contained in his or her CARI record in order to complete the referred services. Absent such consent, a party seeking disclosure of CARI information may request an order from the judge for disclosure of the CARI information. Subject to the judge's discretion, including the entry of appropriate protective orders, CARI information may be disclosed pursuant to a court order to adverse counsel and/or the adverse litigant, in order to complete the referred services, including, but not limited to, dispute interventions and court hearings.

8. The Probation Department is authorized to provide the CARI record to the judge. If the judge reviews the CARI record, the judge shall explain on the record or by written findings the information relied upon and any inferences or conclusions made as a result of the review of the CARI information.

9. The judge shall afford a party a reasonable and meaningful opportunity to rebut any adverse information that might appear in the party's CARI record, and to otherwise respond to the CARI record. Upon request, additional time to rebut such adverse information may be allowed in the judge's discretion. The Court shall enter an order if necessary to protect the interests of a party or the child or children involved prior to the continued hearing.

10. Upon receipt of information that an outstanding warrant exists for either party, a member of the Probation Department shall notify the judge.

11. No CARI/WMS information shall be stored in the court case file. All CARI/WMS information shall be shredded unless a party or the judge requests that it be returned to the Probation Department and kept in the Probation file.

12. No dissemination or use of any CARI information obtained under this order may be used outside the context and purpose for which it was sought without further order of the court unless otherwise permitted by law.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

_____ DIVISION Docket No.

_____
Plaintiff

v.

_____
Defendant

NOTICE, CONSENT and/or REQUESTS
RELATING TO PROBATE AND FAMILY COURT'S USE OF CARI RECORDS

Standing Order 1-11

Notice to Parties

Standing Order 1-11 is about Court Activity Record Information (CARI).

CARI includes all Criminal Offender Record Information (CORI), as well as juvenile court records and civil restraining order information.

The Court is required to review CARI in all cases about abuse prevention orders and domestic relations protective orders.

Before delivering any probation services, the Probation Department shall inform you if your CARI has been reviewed.

The Probation Department will inform you of the information included in your CARI that they have considered in this case.

You shall have the opportunity to review your CARI record.

The Probation Department shall inform both parties, together, whether any CARI information has been considered. If you have safety concerns, the Probation Department will discuss the information separately.

You may consent to the disclosure of your CARI information to the other party.

Absent your consent, the other party may ask the Court for an order disclosing your CARI information, and the Court may order its disclosure.

A member of the Probation Department may provide the CARI record to the Court.

If the Court reviews the CARI record, the Court shall explain on the record or describe by written findings what CARI information was relied on and any conclusions that were made as a result of the review the CARI.

You shall have a reasonable and meaningful opportunity to rebut or otherwise respond to the CARI record.

You may request additional time to prepare your rebuttal.

The Probation Department will notify the Court if there is an outstanding warrant for either party.

Credits
Adopted effective June 1, 2011.
Probate and Family Court Standing Order 1-11, MA R PROB AND FAM CT Order 1-11
Current with amendments received through November 1, 2017.

Standing Order 2-11. Probate and Family Court's Use of Information Obtained by the Department of Children and Families

1. Whenever the Probate and Family Court determines that it requires information from the Department of Children and Families (DCF) in order to make a determination relating to the care and custody of a child, the Court shall either obtain the written, informed consent of the party(ies), after identifying the documents requested on the form entitled "Consent and/or Order for Production of Department of Children and Families Documents", and/or issue an order identifying the documents to be produced. Such orders may, in the judge's sound discretion, be made under G.L. c. 119, §§ 51E and 51F, or any other applicable provision of law. Any written, informed consent and/or order shall be docketed. Parties may request a hearing on the issue of the need for DCF documents.

2. Circumstances where documents may be requested include, but are not limited to, where (a) a party's "Affidavit Disclosing Care or Custody Proceedings (Trial Court Uniform Rule IV)" or other filing reveals a pending child welfare case; (b) a Probation or guardian ad litem report reveals a party's past or pending child welfare case, past or present DCF involvement, or history of child abuse or neglect; (c) witness testimony reveals a party's past or pending child welfare case, past or present DCF involvement, or history of child abuse or neglect; or (d) a party discloses his or her own, or alleges another party's, past or pending child welfare case, past or present DCF involvement, or history of child abuse or neglect.

3. The Court shall provide DCF with a copy of the written, informed consent or order, which identifies the requested documents.

4. The parties and counsel shall be given the opportunity to review all documents obtained from DCF prior to the hearing, and be provided with an adequate and meaningful opportunity to respond. Upon the request of counsel or a party for additional time to rebut or respond to the DCF documents, the matter may be continued for up to 7 days for hearing. Leave to continue shall be freely granted. The Court shall enter an order if necessary to protect the interests of the child or children prior to the continued hearing. At the hearing, the DCF documents shall be available to the Court and to the parties and shall be admissible in accordance with applicable rules of evidence.

5. Upon its own initiative, or upon the request of any party, or upon the request of DCF, the Court may issue an order allowing a representative of DCF to present oral testimony at a hearing or trial by electronic means. The phrase "electronic means" shall include communication by telephone, video teleconference, or the Internet. Testimony presented by electronic means shall be admissible in accordance with the applicable rules of evidence.

6. The Court shall afford a party the opportunity to object to and rebut information about the party that appears in the DCF documents and otherwise to respond to the DCF documents or information presented in person by DCF.

7. Parties and counsel shall have the right to view the DCF documents as often as they wish, upon reasonable request. Handwritten notes may be taken, however, no electronic reproductions shall be allowed. This restriction includes, but is not limited to, scanning and photography, by mobile device or otherwise.

8. Unless otherwise ordered by the court, the attorney(s) of record, if both parties are represented by counsel, shall be entitled to copies of the DCF documents. In the event only one party, or neither party, is represented by counsel and a party wishes to obtain a copy of the DCF documents, the party or his/her attorney must file a motion with the Court. Service of the motion and the time periods for hearing shall be in accordance with the Massachusetts Rules of Domestic Relations Procedure, or the Massachusetts Rules of Civil Procedure, as applicable.

9. In order to protect the privacy of the parties and the children involved, all documents received from DCF will be segregated by the Court and will be made available to parties, counsel and any other individual who would otherwise be authorized to have access to such information, who shall treat such information as confidential. Any individual who views DCF documents, including counsel, is prohibited from disclosing an impounded address or using information in the DCF documents except as allowed by order of the Court. Any DCF documents produced

pursuant to the procedures set forth in this Standing Order will be maintained in the Probation Department of each division of the Probate and Family Court. In the event DCF records are subpoenaed for trial or evidentiary hearing, the records shall be kept in the Registry of Probate, in the customary manner.

10. This Standing Order shall be construed to authorize a judge to issue such other or additional orders or rulings as are necessary and appropriate under the circumstances and consistent with due process.

11. Once the Court has placed a child with DCF pursuant to G.L. c. 119, § 23(a)(3), the provisions of this Standing Order no longer apply and the protections and procedures of Chapter 119 apply.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

_____ DIVISION Docket No. _____

_____
Plaintiff

v.

_____
Defendant

CONSENT and/or ORDER FOR PRODUCTION OF DEPARTMENT OF CHILDREN AND FAMILIES DOCUMENTS

Standing Order 2-11

Notice to Parties

Your signature below permits the Department of Children and Families (DCF) to produce the specific documents listed below to the Probate and Family Court.

You will have an adequate and meaningful opportunity to review all documents received by the Court before the judge sees them.

If you do not sign this Consent for Production, the judge may issue an order requesting DCF to produce the specific documents.

You may request a hearing on the issue of the need for DCF documents.

The Court may use the documents produced as evidence in the case.

You will have the opportunity to object to the judge considering the documents as evidence in the case.

You will have the opportunity to rebut, address, and respond to the information contained in the documents.

At your request the judge will grant you a continuance of up to 7 days if you need additional time in order to object, rebut, address, or respond to the documents. However, the Court shall enter an order, if necessary, to protect the interests of the child or children prior to the continued hearing.

Neither your consent nor the judge's order requires or permits DCF to disclose information contained in the documents that DCF is prohibited by law from disclosing.

Documents to be Produced

[ ] Records or reports of investigations or assessments of allegations of child abuse or neglect pursuant to G.L. c. 119, § 51B during the period _____ to _____.

[ ] Reports of child abuse or neglect pursuant to G.L. c. 119, § 51A which are currently being investigated.

[ ] _____

_____

_____

covering the period _____ to _____.

Personal Information to be Removed from Produced Documents

I request that DCF remove from its records any occurrence of:

[ ] my residential address and telephone number

[ ] my workplace address and telephone number

[ ] the school name, address and telephone number of myself and/or child(ren) because:

_____

_____

_____ _____

Signature of Party Date

Order for Production

The Court requests that the above referenced documents be produced by _____. Such release shall be made notwithstanding G.L. c. 119, §§ 51E and 51F, G.L. c. 66A, and G.L. c. 112, §§ 135-135B.

_____ _____

Date Justice
Probate and Family Court

Credits
Adopted effective June 1, 2011.
Probate and Family Court Standing Order 2-11, MA R PROB AND FAM CT Order 2-11
Current with amendments received through November 1, 2017.

Standing Order 3-11. Modification Pilot Program for IV-D Cases Filed in the Probate and Family Court

In an effort to explore the possibility of streamlining the modification process in the Probate and Family Court, the following procedures will be implemented for all IV-D cases that seek a modification of child support and/or medical support.

A. Application

These procedures apply to all IV-D cases filed in the Probate and Family Court, including those filed by private counsel, parties on a pro se basis and/or by DOR, that involve a request for modification of child and/or medical support only.

These procedures do not apply to complaints for modification that seek a change in custody and/or visitation, nor can these procedures be used to address the issues of custody and/or visitation.

B. Forms and Procedures

For cases that have previously gone to judgment:

1. A unified, one-page form that combines a complaint for modification and motion for temporary orders for child or medical support only may be filed. The unified complaint and temporary motion form will be accompanied by a summons establishing a hearing date on the return day. The hearing date will be set by the Court when issuing the summons.

OR

2. A complaint for modification of child or medical support only (no motion) may be filed. Those parties who choose not to use the unified form, may use the simplified complaint form. The summons for this complaint will establish a date for a case management conference. The date of the case management conference will be no earlier than 45 days from the date the complaint was filed. The case management conference date will be set by the Court when issuing the summons.

For cases where there is an open complaint and a support order has previously been established:

1. A simplified form for a motion for further temporary orders is available. The hearing date will be set by the Court and included on the motion.

C. Service

Notwithstanding the form filed, service by first-class mail will be used on a routine basis for all IV-D cases seeking a modification of child or medical support only. When serving a Complaint for Modification with Motion for Temporary Orders form or a Complaint for Modification form, service shall be made on the party no later than 10 days prior to the date of the hearing or case management conference. When serving a motion for further temporary orders, service shall be made on the party, or attorney, if applicable.

D. Proof of Notice for Complaint for Modification with Motion for Temporary Orders and Complaint for Modification only

1. A certificate of service must be filed with the Court on or before the date of the hearing or case management conference. The certificate of service shall include who was served, the address to which service was mailed, and the date service was mailed. If the defendant is served in hand, the certificate of service must also be filed. The certificate of service shall include who was served, and the date, time and place service was made.

2. If the defendant does not appear for the hearing or case management conference in response to first-class mail service, a judge may still proceed if there is proof of actual notice. Proof of actual notice, includes, but is not limited to, (a) the responding party filed an answer to the complaint for modification; (b) the responding party called DOR to inquire about the upcoming hearing/matter; or (c) the filing party testifies that the responding party contacted him or her in response to the complaint. A judge may decline to go forward and hear the case if not satisfied that actual notice occurred.

3. If proof of actual notice is not established at the hearing or case management conference, the Court shall then require service under the existing Massachusetts procedures for domestic relations cases. See Mass. R. Dom. Rel. P. 4 (d). A new summons shall be issued on the date of the hearing or case management conference by the Registry or a judicial case manager.

E. Effect of Non-attendance

1. If one party does not attend the hearing or case management conference, and the other party does attend but the matter cannot go forward, upon receipt of information verifying the amounts, the judge may require the non-attending party to pay the costs and/or lost wages of the attending party.

2. If the plaintiff/requesting party or, after proof of actual notice, the responding party does not attend the hearing or case management conference, the judge may enter a default support and/or medical support order.

3. If, in a case where the Department of Revenue is not providing assistance with the modification to the plaintiff, the plaintiff does not attend the hearing or case management conference but the defendant does, and the plaintiff has not filed a Motion to Continue, the Court may dismiss the Complaint for Modification with Motion for Temporary Orders or Complaint for Modification.

4. If, in a case where the Department of Revenue is not providing assistance with the modification to the plaintiff, neither party appears for the hearing or case management conference, and neither party has filed a Motion to Continue, the Court may dismiss the Complaint for Modification with Motion for Temporary Orders or Complaint for Modification.

F. Reissuance of Initial Summons

There may be circumstances where judicial or Registry staff may determine that it is appropriate to reissue an initial summons that may be mailed. These circumstances include, but are not limited to, if (a) the plaintiff did not have the defendant's correct address and now has it, and/or (b) the plaintiff requests a new hearing or case management conference date, prior to the scheduled date.

G. Implementation Dates

These procedures, as revised, will remain in effect in the Bristol Division.

As of May 15, 2013, these procedures will be implemented in the Barnstable Division.

As of July 1, 2013, these procedures will be implemented in the Hampshire and Norfolk Divisions.

As of August 1, 2013, these procedures will be implemented in the Dukes, Franklin, Nantucket and Plymouth Divisions.

As of September 3, 2013, these procedures will be implemented in the Berkshire, Middlesex, and Worcester Divisions.

As of October 1, 2013, these procedures will be implemented in the Essex and Hampden Divisions.

As of November 1, 2013, these procedures will be implemented in the Suffolk Division.

Credits
Adopted effective May 11, 2011. Amended effective May 15, 2013.
Probate and Family Court Standing Order 3-11, MA R PROB AND FAM CT Order 3-11
Current with amendments received through November 1, 2017.

Standing Order 1-15. Application of Rule 13 (b) of the Uniform Rules of Impoundment Procedure to the Probate and Family Court

Rule 13 (b) of the Uniform Rules of Impoundment Procedure provides as follows:

Notice to the Clerk. The filer of a document containing impounded information shall simultaneously file a notice that shall (i) notify the clerk that impounded information is included within the document being filed; (ii) identify the specific legal authority requiring impoundment of the identified information; and (iii) identify the precise location of the impounded information within the document being filed. The clerk shall docket the notice and designate the referenced document as impounded. The cover page of the document containing the impounded information shall identify that it is impounded.

As written, the filer of a document shall file the notice even if the information or document is impounded by statute, court rule, standing order, or case law.

In the Probate and Family Court, the filer of the documents listed below is exempt from filing the Rule 13 (b) notice:

a. affidavit of indigency—by order of the SJC;

b. financial statement—Supplemental Probate and Family Court Rule 401 (d);

c. qualified domestic relations order, domestic relations order, and Mangiacotti order—Probate and Family Court Standing Order 3-08;

d. guardian ad litem report—Probate and Family Court Standing Order 2-08;

e. medical certificate, clinical team report, treatment plan and medical affidavit—Probate and Family Court Standing Order 1-09 and G.L. c. 190B;

f. all filings in an adoption case—G.L. c. 210, § 5C;

g. all filings in a child welfare case—G.L. c. 119; and

h. all filings in a paternity case after there has been a judgment of non-paternity—G.L. c. 209C, § 13.

The exemption applies only when the documents are filed in the Probate and Family Court. If any of the documents listed above are filed in connection to a case in another court department, the Rule 13 (b) notice is required, unless that court department has a standing order exempting the filer.

Credits
Adopted effective October 1, 2015.
Probate and Family Court Standing Order 1-15, MA R PROB AND FAM CT Order 1-15
Current with amendments received through November 1, 2017.

Standing Order 2-16. Parent Education Program Attendance

This Court finds that the best interests of the minor children of pat lies appearing before it would be well served by educating their parents about children's emotional needs and the effects of divorce on child behavior and development.

IT IS HEREBY ORDERED THAT:

1. All parties to a divorce action in which there are minor children are ordered to attend and participate in an approved Parent Education Program. In addition, a judge, in his or her discretion, of this Court may require the parties in an action to establish paternity, complaints for modification or contempt, or in any other case involving parenting time, custody, or support of minor children to attend a Parent Education Program.

2. All parties to a divorce action in which there are minor children must register with an approved program within thirty (30) days of service of the original complaint upon the original defendant. Other parties ordered to attend a parent education program must register for a program within thirty (30) days of the order. Sanctions for failure to register or complete a program may be imposed by the Court. Upon registering for a program, parties shall complete the "Affidavit Confirming Registration at Parent Education Program" and file with the Court.

3. For divorcing parents, and parents in other cases when specifically ordered by the Court, attendance at a program is mandatory unless waived. Parties must file their Certificates of Attendance with the Court no later than thirty (30) days after completing the program.

4. If a party seeks to waive attendance at a Parent Education Program, the party must file a "Motion to Waive Attendance at a Parent Education Program" with notice to the other party. The motion must include the reason the party is alleged to be unable to attend a Parent Education Program. Waivers may be granted upon a demonstrable showing of: chronic and severe violence which negates safe parental communication; language barriers; institutionalization or other unavailability of a party; or where justice otherwise indicates. The Court may elect to deny the "Motion to Waive Attendance at a Parent Education Program" and may, instead, permit use of a five-hour DVD or online program entitled *KidCare for Co-Parents: An Educational Program for Divorcing Families* to satisfy the Parent Education Program requirement. Waiver for one parent does not automatically apply to the other parent.

5. If a party is not able to attend an in person Parent Education Program, the party may file, with notice, a "Motion to Permit Completion of Parent Education Program via DVD". The motion must include the reason the party is

alleged to be unable to attend a Parent Education Program in person. Approval to participate in a Parent Education Program through use of the DVD or online program may be granted upon a demonstrable showing of: significant health or financial issues, significant geographic and transportation issues, or other significant barriers to in person participation; or where justice otherwise indicates. If allowed, the party must complete the interactive program and obtain the Certificate of Attendance. This Certificate must be provided by the party to the Court no later than 30 days after completion of the program. Approval for one parent does not automatically apply to the other parent.

6. Unless the Court orders otherwise, the parties must attend programs currently approved by the Chief Justice of the Probate and Family Court. Program vendors will ensure that parties to an action do not attend the same session of any program unless the Court orders otherwise. Lists of currently approved programs (including *KidCare for Co-Parents: An Educational Program for Divorcing Families*) are available at http://www.mass.gov/courts/programs/parent-child/.

7. A copy of this Standing Order shall be provided by the Registry to the plaintiff or his/her attorney upon the filing of a complaint for divorce involving minor children. The plaintiff or his/her attorney shall serve a copy of this Standing Order along with the complaint and summons to the person authorized to make service pursuant to Mass.R.Dom.ReI.P. 4(c).

8. The parties shall each pay $ 80.00 to the provider in advance of the program to offset cost of materials, facilitators, and program administration. The same fee applies to participation via DVD or online in the program entitled *KidCare for Co-Parents: An Educational Program for Divorcing Families*.

9. If a party is unable to afford the $80.00 course fee, the party may be eligible to pay a reduced fee of $5.00 to the provider. The party must submit to the Court an "Affidavit of Indigency and Request for Waiver, Substitution or State Payment of Fees and Costs." This form is promulgated by the Chief Justice of the Supreme Judicial Court pursuant to G.L. c. 261 sec. 27B and is available on the Court's website (mass.gov/courts) and at the Registries of the Probate and Family Court. If the waiver of the fee is allowed by the Court, the party must submit a copy of the approved waiver to the Parent Education provider when seeking to attend a program for the $5.00 reduced fee.

10. An uncontested divorce hearing may be scheduled pending attendance if the parties file an affidavit confirming their registration with the Court and so long as both parties complete the program prior to the hearing. A Pre-trial Conference in a contested case may be similarly scheduled so long as the parties complete the program prior to the Pre-trial Conference. No Trial will be held by the Court until the Court receives a Certificate of Attendance from an approved program for each party, or waives the requirement.

Changes enumerated in this Standing Order are effective as of May 1, 2016 and shall apply to all cases referenced in paragraph (1) filed thereafter.

Credits
Adopted April 11, 2016, effective May 1, 2016.
Probate and Family Court Standing Order 2-16, MA R PROB AND FAM CT Order 2-16
Current with amendments received through November 1, 2017.

Standing Order 1-17. Parenting Coordination

(1) Applicability

(a) This standing order applies to:

(i) the appointment of a parenting coordinator pursuant to an agreement by the parties to engage a parenting coordinator that is approved by the court and incorporated into an order or incorporated and merged into a judgment; and

(ii) the appointment of a parenting coordinator by a court order or judgment without agreement of the parties.

(b) This rule does not apply to an agreement to use a parenting coordinator that is not incorporated into an order or incorporated and merged into a judgment.

(c) A parenting coordinator may be appointed in cases filed pursuant to G.L. c. 208, 209, 209C and in other actions relating to the care and custody of a minor child or children, provided that there is an order or judgment establishing a parenting plan, custody and/or parenting time.

(d) A parenting coordinator shall not be appointed in actions filed pursuant to G.L. c. 209A.

(e) The appointment of a parenting coordinator does not divest the court of its exclusive jurisdiction to determine fundamental issues of care and custody and/or parenting time and support, and the authority to exercise management and control of the case, even where the parties have agreed to binding decision-making authority of the parenting coordinator.

(2) Definitions

In all sections of this standing order, the following definitions apply:

(a) "Parenting coordination" is a child-focused process in which the parties work with a parenting coordinator in an effort to reduce the effects or potential effects of conflict on the child or children involved in the parenting plan. Although parenting coordination may draw upon alternative dispute resolution techniques, parenting coordination is not governed by SJC Rule 1:18.

(b) "Parenting coordinator" means a court-appointed, third-party provider of parenting coordination services.

(c) "Related professional experience" includes direct or supportive professional work with families involved in custody or parenting time disputes, or family therapy or child therapy.

(3) Qualifications of a Parenting Coordinator

(a) To be approved by the court as a parenting coordinator, an individual shall:

(i) be an attorney who is licensed in Massachusetts, or be a licensed psychiatrist, licensed psychologist, licensed independent clinical social worker, licensed marriage and family therapist, or licensed mental health counselor who is licensed in Massachusetts; and

(ii) if an attorney, have at least four years of related professional experience undertaken after licensure in Massachusetts; if a licensed psychiatrist or licensed psychologist or licensed independent clinical social worker, have at least two years of related professional experience undertaken after licensure in Massachusetts; or if a licensed marriage and family therapist or licensed mental health counselor, have at least four years of related professional experience undertaken after licensure in Massachusetts; and

(iii) have professional liability insurance coverage of $100,000 or more.

(b) A parenting coordinator candidate shall complete the following training as approved by the Administrative Office of the Probate and Family Court prior to submitting an application:

(i) at least 30 hours of training in a mediation training program; and

(ii) at least 6 hours of training in intimate partner abuse and family violence dynamics to be established by the Probate and Family Court in conjunction with the Trial Court; and

(iii) at least 35 hours of accredited specialty training in topics related to parenting coordination, including, but not limited to, any mandatory training established by the Administrative Office of the Probate and Family Court, the role of the parenting coordinator in Massachusetts, the role of a parenting coordinator generally, communication, conflict management and dispute resolution skills, developmental stages of children, dynamics of high-conflict families, parenting skills, problem-solving techniques, and parenting in separate households.

(c) Within each calendar year, a parenting coordinator shall complete a minimum of six hours of continuing education approved by the Administrative Office of the Probate and Family Court in one or more of the topics listed in subsection 3 (b)(iii) of this standing order and in relevant domestic relations case law and statutes or in a training topic established by the Administrative Office of the Probate and Family Court. This continuing education

requirement is separate and distinct from the continuing education requirements for other fee generating appointment categories.

(4) In accordance with SJC Rule 1:07, an individual who has the qualifications listed in section 3 of this standing order and seeks court appointment as a parenting coordinator shall submit an application to the Administrative Office of the Probate and Family Court to be included on the Category V—Parenting Coordination list. The application shall document that the individual meets the qualifications required in subsections 3 (a) and (b) of this standing order. If satisfied that the applicant meets the qualifications, the Administrative Office of the Probate and Family Court shall place the applicant's name on the list of qualified parenting coordinators.

(5) Approval of a Parenting Coordinator Engaged by Agreement of the Parties

(a) In any action in which the custody and/or parenting time of a child or children of the parties is or was at issue, the parties, by agreement, may engage a parenting coordinator to assist them in dealing with existing or future conflicts regarding their access to and responsibilities for their child or children.

(b) For the agreement to be enforceable by the court, the parties shall file a Joint Petition/Motion to Change a Judgment/Order (Form CJD 124) with the court to request that their agreement be incorporated into an order or incorporated and merged into a judgment. The court shall enter such an order or judgment if it finds that the parenting coordinator has the qualifications set forth in section 3 of this standing order, or is otherwise qualified to be the parenting coordinator, and that the agreement:

(i) is in writing and signed by the parties and the parenting coordinator; and

(ii) indicates whether the parenting coordinator is on the Category V list, and if not on the Category V list, how he or she is qualified to be the parenting coordinator; and

(iii) states the duties of the parenting coordinator, including whether the parties agree that the parenting coordinator shall have binding decision-making authority, and if so, the scope of said authority; and

(iv) states the period of time that the parenting coordinator will serve in the role; and

(v) states the amount or rate of compensation to be paid to the parenting coordinator, how the fees and expenses of the parenting coordinator are allocated between the parties, and the maximum expenditure for each party during the period of appointment as provided in subsection 5 (b)(iv) of this standing order; and

(vi) is otherwise consistent with the best interests of the child or children.

(c) Before incorporating the agreement into an order or incorporating and merging the agreement into a judgment, the judge shall inquire of the parties as to whether they understand that:

(i) if incorporated into an order, the agreement cannot be changed by the court without the filing of a motion and a showing of good cause and a showing that such change is in the best interests of the child or children; or

(ii) if incorporated into a judgment, cannot be modified by the court without the filing of complaint for modification and a showing of a material change in circumstances and a showing that such modification is in the best interests of the child or children; and

(iii) the parties have the right to access the court so that the court can determine fundamental issues of care and custody and/or parenting time and support, even where the parties have agreed to binding decision-making authority of the parenting coordinator; and

(iv) the court will not draw any adverse inference if the party does not agree to use a parenting coordinator.

(6) Appointment of a Parenting Coordinator by Court, Without Agreement of the Parties

(a) In any action in which the custody and/or parenting time of a child or children of the parties is or was at issue and the court determines that the level of conflict between the parties with respect to that issue so warrants, the court may appoint a parenting coordinator in accordance with this section if the court finds that:

(i) it is in the best interests of the child or children involved in the parenting plan; and

(ii) the parties have failed to successfully implement the parenting plan; or

(iii) the level of parental conflict is, or may become, detrimental to the child or children involved in the parenting plan.

(b) During the pendency of an action, by motion of a party or on the court's own initiative, and after notice and hearing, the court may appoint a parenting coordinator for the pendency of that action. Unless sooner terminated in accordance with this standing order, the appointment shall terminate upon the entry of a judgment in that action.

(c) Upon entry of a judgment establishing or modifying a parenting plan, custody and/or parenting time, the court, after notice and hearing, may appoint a parenting coordinator. The court may appoint the individual who served as a parenting coordinator during the pendency of the underlying action. Unless sooner terminated in accordance with this standing order, the appointment of a post-judgment parenting coordinator shall not exceed two years.

(d) An order or judgment appointing a parenting coordinator without the agreement of the parties shall include:

(i) written findings as to why a parenting coordinator is being appointed pursuant to subsection 6 (a) of this standing order;

(ii) the name, business address, e-mail address, and telephone number of the parenting coordinator; and

(iii) the duties of the parenting coordinator; and

(iv) the period of time that the parenting coordinator will serve in the role; and

(v) written findings regarding parenting coordination fees pursuant to subsection 15 (b) of this standing order and how the fees and expenses of the parenting coordinator are allocated between the parties.

(e) Notwithstanding any other provisions of this standing order, "a judge may not require the parties to use the services of a parent[ing] coordinator if the order would require one or both parents to pay for the services without his or her consent." Bower v. Bournay-Bower, 469 Mass. 690 (2014). If neither party agrees to pay to use the services of a parenting coordinator, the court is not permitted to enter an order or judgment requiring the use of a parenting coordinator.

(7) Permitted Duties of All Parenting Coordinators

As appropriate, and as determined by the order incorporating an agreement, the judgment incorporating and merging an agreement, an order or a judgment, a parenting coordinator may:

(a) assist the parties in amicably resolving disputes and in reaching agreements about the implementation of and compliance with the order regarding the child or children in their care including, but not limited to, the following types of issues:

(i) minor changes or clarifications of the existing parenting plan;

(ii) exchanges of the child or children including date, time, place, means of and responsibilities for transportation;

(iii) education or daycare including school choice, tutoring, summer school, before and after school care, participation in special education testing and programs, or other educational decisions;

(iv) enrichment and extracurricular activities including camps and jobs;

(v) the child or children's travel and passport arrangements;

(vi) clothing, equipment, and personal possessions of the child or children;

(vii) means of communication by a party with the child or children when they are not in that party's care;

(viii) role of and contact with significant others and extended families;

(ix) psychotherapy or other mental health care including substance abuse or mental health assessment or counseling for the child or children;

(x) psychological testing or other assessments of the children; and

(xi) religious observances and education.

(b) educate the parties about making and implementing decisions that are in the best interest of the child or children;

(c) assist the parties in developing guidelines for appropriate communication between them;

(d) suggest resources to assist the parties; and

(e) assist the parties, where appropriate, in identifying and addressing patterns of behavior and in developing parenting strategies to manage and reduce opportunities for conflict in order to reduce the impact of any conflict upon their child or children.

(8) Required Duty of All Parenting Coordinators

Whenever the parties come to an agreement with the assistance of the parenting coordinator that modifies an existing order or judgment, the parenting coordinator must inform the parties that the agreement is not enforceable unless it is submitted for approval and incorporated into an order or incorporated and merged into a judgment by the court.

(9) Duties Not Permitted of All Parenting Coordinators

A parenting coordinator may not:

(a) except as permitted by section 10 of this standing order, communicate orally or in writing with the court or any court personnel regarding the substance of the action;

(b) testify in the action as an expert witness;

(c) facilitate an agreement by the parties that would change legal custody from one party to the other or that would change the physical custody or parenting plan in a way that may result in a change of child support;

(d) offer legal advice, representation, therapy or counseling;

(e) delegate any portion of the parenting coordination process to anyone else, as the appointment is personal in nature; and

(f) make any binding decisions for the parties without the parties' express written agreement that has been incorporated into an order or judgment.

(10) Permissible Court Activities of All Parenting Coordinators

A parenting coordinator may:

(a) produce documents and testify in the action as a fact witness in response to a subpoena issued at the request of a party or an attorney for a child of the parties, or upon action of the court;

(b) if concerned that a party or child is in imminent physical or emotional danger, file a motion or complaint to request an immediate hearing; and

(c) file a motion or complaint for the appointment of a guardian to assert or waive a child's privilege.

(11) Confidential and Privileged Information

(a) The parenting coordinator shall have access to all non-impounded case records in the action. If a document or any information contained in a case record is impounded, the court shall determine whether the parenting coordinator may have access to it and shall specify any conditions to that access. Only the court may address access to an impounded document.

(b) A parenting coordinator may not require the parties or an attorney for the child to release any confidential or privileged information that is not included in the case record.

(c) Information acquired in the course of a parenting coordination appointment is confidential. The parenting coordinator shall use such information only for the benefit of the parties or the child or children involved in the

parenting plan. Such information may be disclosed by the parenting coordinator to a party or parties, to an attorney for the child, to an attorney for a party, and in court pursuant to section 10 of this standing order.

(d) A party may release to the parenting coordinator his or her own educational, medical, and other third-party information and such information of the child or children involved in the parenting plan. However, a child's psychotherapy, counseling or social worker privilege may be waived only by a guardian appointed specifically by the court to investigate and assert or waive the child's privilege. A party or the parenting coordinator may at any time file a motion or complaint for the appointment of a guardian to assert or waive the child's privilege. The request shall specify the scope of the information sought and the reasons for seeking the waiver. The parties and all attorneys involved in the matter must be provided a copy of the request and notice of hearing.

(12) Conflict of Interest

The court may not appoint an individual as a parenting coordinator if the person has served or is serving in a professional capacity of any sort with either party, or both parties, or the child or children in the case, including, but not limited to, therapist, guardian ad litem, attorney or attorney for the child or children. After appointing a person pursuant to this standing order as a parenting coordinator in a case, the court may not subsequently appoint the person as a guardian ad litem or attorney for the child in the same case, or any other case, involving the parties or children.

(13) Domestic Violence

If there are credible allegations or findings of domestic violence committed by a party, against a party or a child or children involved in the action, the court:

(a) shall offer each party an opportunity to consult with an attorney or domestic violence advocate of his or her choosing before accepting an agreement pursuant to section 5 of this standing order; and

(b) shall not appoint a parenting coordinator over the objection of a party.

(14) Extension and Early Termination of Parenting Coordination Appointment During the Pendency of a Parenting Coordination Appointment; Replacement and Resignation of a Parenting Coordinator During the Pendency of a Parenting Coordination Appointment; Modification During the Pendency of a Parenting Coordination Appointment

(a) *Extension of Parenting Coordination Appointment During the Pendency of a Parenting Coordination Appointment*

> *(i)* The parties and the parenting coordinator may agree in writing to an extension of the appointment. To be enforceable by the court, the agreement must be submitted for approval and incorporated into an order or judgment in accordance with the provisions of section 5.
>
> *(ii)* If there is an action pending, a party may file a motion asking to extend the appointment. In making its determination, the court must consider the provisions of subsections 6 (a) and 15 (b) and enter the required findings. The court may extend the appointment for good cause shown and upon a showing that such extension is in the best interests of the child or children involved in the parenting plan. The first extension, and any subsequent extension, if allowed, shall not be for more than one year.
>
> *(iii)* If there is no action pending, a party may file a complaint for modification asking to extend the appointment. In making its determination, the court must consider the provisions of subsections 6 (a) and 15 (b) and enter the required findings. The court may extend the appointment if there has been a material change in circumstances and upon a showing that such extension is in the best interests of the child or children involved in the parenting plan. The first extension, and any subsequent extension, if allowed, shall not be for more than one year.

(b) *Early Termination of Parenting Coordination Appointment During the Pendency of a Parenting Coordination Appointment*

(i) The parties may agree to terminate the parenting coordination appointment. To be enforceable by the court, the agreement must be submitted for approval and incorporated into an order or judgment in accordance with the provisions of section 5.

(ii) If there is an action pending, a party may file a motion asking to terminate the appointment. The court may terminate the appointment for good cause shown and upon a showing that such termination is in the best interests of the child or children involved in the parenting plan.

(iii) If there is no action pending, a party may file a complaint for modification asking to terminate the appointment. The court may terminate the appointment if there has been a material change in circumstances and upon a showing that such termination is in the best interests of the child or children involved in the parenting plan.

(c) *Replacement of a Parenting Coordinator During the Pendency of a Parenting Coordination Appointment*

(i) The parties may agree to replace the parenting coordinator with a different parenting coordinator. To be enforceable by the court, the agreement must be submitted for approval and incorporated into an order or judgment in accordance with the provisions of section 5.

(ii) If there is an action pending, a party may file a motion asking to replace the parenting coordinator with a different parenting coordinator. The court may order such replacement for good cause shown and upon a showing that such replacement is in the best interests of the child or children involved in the parenting plan.

(iii) If there is no action pending, a party may file a complaint for modification asking to replace the parenting coordinator with a different parenting coordinator. The court may order such replacement if there has been a material change in circumstances and upon a showing that such replacement is in the best interests of the child or children involved in the parenting plan.

(d) *Resignation of Parenting Coordinator During the Pendency of a Parenting Coordination Appointment*

(i) A parenting coordinator may resign at any time by written notice sent by first- class mail to each party and any attorney for the party, the child or children. The notice shall state the effective date of the resignation and inform the parties that they may ask the court to appoint a different parenting coordinator. The notice shall be sent at least 15 days before the effective date of the resignation. Promptly after mailing the notice, and at least seven days before the effective date of resignation, the parenting coordinator shall file a copy of the notice with the court.

(ii) The parties may agree to the appointment of a different parenting coordinator. To be enforceable by the court, the agreement must be submitted for approval and incorporated into an order or judgment in accordance with the provisions of section 5.

(iii) If an action is pending, a party may file a motion seeking the appointment of a different parenting coordinator. The court may order such appointment for good cause shown and upon a showing that such replacement is in the best interests of the child or children involved in the parenting plan.

(iv) If there is no action pending, a party may file a complaint for modification seeking the appointment of a different parenting coordinator. The court may order such appointment if there has been a material change in circumstances and upon a showing that such replacement is in the best interests of the child or children involved in the parenting plan.

(e) *Modification*

(i) For issues other than those listed in subsections 14 (a) through (d), during the pendency of a parenting coordination appointment, the parties may agree to modify the parenting coordination appointment. To be enforceable by the court, the agreement must be submitted for approval and incorporated into an order or judgment in accordance with the provisions of section 5.

(ii) For issues other than those listed in subsections 14 (a) through (d), during the pendency of a parenting coordination appointment, if an action is pending, a party may file a motion to change the provisions of a parenting coordination appointment. In making its determination, the court must consider the provisions of subsections 6 (a) and 15 (b) and enter the required findings. The court may order such change for good cause shown and upon a showing that such change is in the best interests of the child or children involved in the parenting plan.

(iii) For issues other than those listed in subsections 14 (a) through (d), during the pendency of a parenting coordination appointment, if there is no action pending, a party may file a complaint for modification to modify the provisions of a parenting coordination appointment. In making its determination, the court must consider the provisions of subsections 6 (a) and 15 (b) and enter the required findings. The court may order such modification upon a showing of material change in circumstances and a showing that such modification is in the best interests of the child or children involved in the parenting plan.

(15) Fees

(a) Where the parties have entered into an agreement that has been incorporated into an order or judgment pursuant to section 5 of this standing order, the agreement must include the amount or rate of compensation to be paid to the parenting coordinator and how the fees and expenses of the parenting coordinator are allocated between the parties.

(b) If the court orders parties to parenting coordination, the court must enter written findings that one or both of the parties consent to the allocation of fees and expenses of the parenting coordinator and the party or parties have the financial means to make such payment. The court shall enter an order allocating the fees and expenses of the parenting coordinator in accordance with the party's or the parties' consent. "[A] judge may not require the parties to use the services of a parent[ing] coordinator if the order would require one or both parents to pay for the services without his or her consent." Bower v. Bournay-Bower, 469 Mass. 690 (2014). If neither party agrees to pay to use the services of a parenting coordinator, the court is not permitted to enter an order or judgment requiring the use of a parenting coordinator.

(16) Effect of Standing Order 1-17 on Existing Parenting Coordination Appointments

Section 14 applies to all parenting coordination appointments, regardless of whether the appointment was prior to the effective date of this standing order.

Credits
Adopted effective July 1, 2017.
Probate and Family Court Standing Order 1-17, MA R PROB AND FAM CT Order 1-17
Current with amendments received through November 1, 2017.

Standing Order 2-17. Family-Centered Case Resolution and Case Management in the Probate and Family Court Department

Preamble

The Probate and Family Court is committed to providing child-centered and family-centered opportunities for case resolution. Consistent research finds that children are harmed when they are exposed to conflict between their parents. The case resolution opportunities set forth below are designed to reduce conflict in the resolution of disputes between parents and other caregivers about children. In issuing this Standing Order, the Probate and Family Court affirms the importance of case resolution without a trial.

I. General Provisions

A. This Standing Order applies in all divisions of the Probate and Family Court Department. The mandatory provisions of this Standing Order apply to all contested custody divorce and contested custody divorce modification cases as defined below. The voluntary provisions apply to any divorce, divorce modification or separate support case.

B. Nothing in this Standing Order alters the requirement that all divorcing parents attend an approved Parent Education program as required by Standing Order 2- 16: Parent Education Program Attendance.

C. A contested custody divorce case or contested custody divorce modification case is a case where the parties are not in agreement as to all terms of any parenting plan, including legal and physical custody, parenting time, as well as to the amount of a child support order.

D. The limited discovery provisions in Section III must be followed for all cases participating in the Early Case Settlement Process. Parties in any initial divorce or divorce modification or separate support case may, by written agreement, agree to follow the limited discovery provisions in Section III.

E. The case settlement conference provisions below must be followed for all cases participating in the Early Case Settlement Process. The case settlement conference provisions below must also be followed in all contested custody divorce cases and contested custody divorce modification cases, unless otherwise ordered by the Court or where an order prohibiting contact between the parties is in place. In any other action in which discovery is complete, at the request of both parties, the Court shall, except for good cause shown, direct the parties, and their attorneys, if any, to participate in a settlement conference or conferences before trial for the purpose of facilitating resolution on some or all of the contested issues in the case. If one party requests, the Court may schedule a settlement conference. The Court may also schedule a settlement conference on its own initiative.

II. Early Case Settlement Process

A. The Early Case Settlement Process is a voluntary process that parties to any divorce, divorce modification, or separate support case may elect to participate in by agreement. At any point in the Early Case Settlement Process, either party may "opt-out" of the process by filing a notice with the Court that includes a short summary of the status of the case and the date of the next scheduled event.

B. The Early Case Settlement Process includes three mandatory requirements:

1. Compliance with the limited discovery provisions of this Standing Order;

2. A limit of filing no more than two motions per party prior to the settlement conference; and

3. Participation in a case settlement conference.

C. To participate in the Early Case Settlement Process, the parties must complete the Early Case Settlement Process Opt-In form and file the form with the Court no later than 60 days after the filing of the divorce, divorce modification, or separate support complaint. The form requires that the parties acknowledge and understand that:

1. They have voluntarily agreed to participate in the Early Case Settlement Process;

2. They must complete all discovery required by Rule 410 of the Supplemental Rules of the Probate and Family Court and the limited discovery provisions in Section III;

3. No more than two motions per party may be filed prior to the settlement conference;

4. The Court will schedule a settlement conference no later than 60 days after the date set for discovery to be completed; and

5. As part of the settlement conference procedure, they must submit a completed settlement conference form to the Court and to the other party or his or her attorney if the other party is represented by an attorney.

III. Limited Discovery

The limited discovery provisions below must be followed for all cases participating in the Early Case Settlement Process. Parties in any initial or modification divorce or separate support case may, by written agreement, agree to follow the limited discovery provisions below.

A. In addition to the documents that are exchanged in accordance with Rule 410 of the Supplemental Rules of the Probate and Family Court, the parties shall exchange the following documents within 120 days of service of the summons:

1. Summary plan descriptions for qualified plans held by either party currently or at any time during the marriage;

2. All deeds and mortgages on which the name of either party currently appears or appeared at any time during the marriage;

3. Vehicle certificates of title and registration, and loan and lease documents on which the name of either party currently appears or appeared during the 12 months preceding the filing of the complaint;

4. All loan applications or personal financial statements submitted to any institution by either or both parties during the 5 years preceding the filing of the complaint;

5. All appraisals, valuations and opinions of value of all assets owned by either or both parties prepared during the 5 years preceding the filing of the complaint;

6. A complete copy of all credit card statements on which the name of either or both parties appears on which there has been any activity during any of the 12 months preceding the filing of the complaint;

7. Documentation and an inventory of the contents of any safe deposit box and/or vault on which the name of either party currently appears or appeared at any time during the marriage;

8. Copies of all insurance policies in effect at any point during the 3 years preceding the filing of the complaint, including without limitation, life insurance, homeowner's insurance, collectible or personal property insurance, personal liability insurance (umbrella), automobile insurance or any other insurance of any kind;

9. Documentation evidencing beneficiary designations and changes to beneficiary designations for all assets, IRAs, 401K plans, annuities, pension plans, profit sharing plans, insurance policies, etc., for either party during the 3 years preceding the filing of the complaint;

10. Documentation for any liability, debt, personal loan or charitable pledge in effect at any time during the 12 months preceding the filing of the complaint and the most recent statement evidencing the balance owed;

11. Documentation for any UTMA accounts, UPLAN, or 529 plans in existence during the 3 years preceding the filing of the complaint, including the most recent statement;

12. Documentation of any existing student loans for a child of the marriage;

13. The most recent credit report for each party;

14. Copy of the most recent Social Security Statement prepared by the Social Security Administration;

15. For self-employed parties filing a Schedule C, all documents evidencing business income and expenses for the 3 years preceding the filing of the complaint; and

16. Pay stubs or summaries of earnings of each party for the 12 months preceding the filing of the complaint.

B. In complaints for modification, parties shall exchange all documents listed above as they relate to the time period from the date of the judgment that is seeking to be modified to the filing of the complaint for modification, unless they agree otherwise.

C. Each party shall attach an "Affidavit of Full Disclosure" when submitting their discovery, signed under the penalties of perjury and signed by his or her attorney, if any.

D. No discovery outside of the provisions of Section III (A) is permitted, unless ordered by the Court upon motion of either party or by written agreement of the parties.

E. If any party required to deliver documents under the provisions of Section III (A) does not have any of the documents required or has not been able to obtain them in the required time frame, he or she shall state in writing, under the penalties of perjury, the specific documents which are not available, and what efforts have been made to obtain the documents. The statement shall be provided to other parties and/or their attorneys within 120 days of the service of the summons.

F. Each party has a continuing obligation to supplement discovery if and when such discovery becomes available.

IV. Settlement Conferences

The case settlement conference provisions below must be followed for all cases participating in the Early Case Settlement Process.

A. The case settlement conference provisions below must also be followed in all contested custody divorce cases and contested custody divorce modification cases, unless otherwise ordered by the Court or where an order prohibiting contact between the parties is in place.

B. In any other action in which discovery is complete, at the request of both parties, the Court shall, except for good cause shown, direct the parties, and their attorneys, if any, to participate in a settlement conference or conferences before trial for the purpose of facilitating settlement. If one party requests, the Court may schedule a settlement conference. The Court may also schedule a settlement conference on its own initiative.

C. A settlement conference is an in-person meeting with all parties, their attorneys, if any, and the judge on the case or another assigned judge. Attendance at a settlement conference must be in-person unless other arrangements have been approved by the Court in advance of the scheduled date for the settlement conference.

D. At the settlement conference, all parties shall make a good faith effort to fully discuss all unresolved issues in dispute.

E. In all contested custody divorce cases and contested custody divorce modification cases, the Court shall not schedule a pre-trial conference date or trial date until a settlement conference has been scheduled and held.

F. Unless scheduled by the Court on its own initiative, to obtain a date for a settlement conference, either party may file a "Request for Case Settlement Conference" form certifying that all interested parties have filed responses to the complaint, that all discovery requests and responses are completed, that the alternative dispute resolution (ADR) screening as required by Section V of this Standing Order has been attended or waived by the Court, and that the parent education class as required by the Court has been attended or waived. The Court shall assign the earliest available date for the settlement conference, but the date shall be no later than 60 days from the filing of the "Request for Case Settlement Conference" form.

G. At least 5 days prior to the settlement conference, each party shall provide the Court and the other party or his or her attorney, if any, a completed settlement conference form including:

1. An outline of agreed upon issues;
2. A general description of the contested issues, and the positions of each party with respect to each issue;
3. A brief, general description of the information that will be presented by each side with respect to each issue;
4. An assessment by each party of the length of trial; and
5. Any other information each party believes will be helpful to the settlement process.

H. The settlement conference form may not be submitted as evidence at trial.

I. If child support is a disputed issue, at least 5 days prior to the settlement conference, each party shall provide proposed child support guidelines worksheets, together with any required documents for determination of a deviation from the calculated amount of child support, including completed financial statements.

J. After settlement conference forms are provided, the parties are encouraged to negotiate and exchange any other necessary documents. Any party may file and serve supplemental settlement conference forms prior to the scheduled settlement conference if the party's analysis or proposal to resolve the issues has changed after reviewing the other party's settlement conference form. If the parties resolve all issues prior to the settlement conference, they should appear at the scheduled settlement conference prepared to submit their written agreement and place the settlement on the record and/or enter final orders resolving the action. If the parties resolve some, but not all, of the issues in dispute, they should be prepared to discuss the remaining contested issues at the settlement conference.

K. At the conclusion of the settlement conference, if the parties reach a full agreement and have executed the necessary paperwork, the Court shall hear the case for finalization at that time.

L. If the parties do not reach a complete agreement of all the issues in dispute, and the parties desire to continue discussing the issues, the Court may schedule a further settlement conference if warranted and time is available.

M. If the parties do not reach a complete agreement of all the issues in dispute and no further settlement conference dates are scheduled, the matter shall proceed to a pre-trial conference and then, if necessary, trial as to the issues remaining in dispute. As long as the parties participated in a settlement conference, no "four-way" meeting of the parties and any attorneys shall be required prior to the pre-trial conference. Up to the date of trial, the parties are encouraged to continue to resolve their disputes.

V. Alternative Dispute Resolution

A. All contested custody divorce cases and contested custody divorce modification cases will be referred by the Court for screening to an approved provider of court-connected dispute resolution services unless otherwise ordered by the Court, or when an order prohibiting contact between the parties is in place. See Rule 2 and Rule 6(b) of S.J.C. Rule 1:18: Uniform Rules on Dispute Resolution. The referral will be made prior to the scheduling of a settlement conference or pre-trial date. This requirement will begin in the Norfolk division on June 1, 2017 and in the remaining divisions on a schedule to be later promulgated by the Chief Justice of the Probate and Family Court.

B. When appropriate, any other disputed matters may be referred

1. To Probation Officers for dispute intervention services in contested matters at any court event; or

2. For screening to other approved providers of court-connected dispute resolution services as defined in Rule 2 of S.J.C. Rule 1:18: Uniform Rules on Dispute Resolution.

Credits
Adopted effective June 1, 2017.
Probate and Family Court Standing Order 2-17, MA R PROB AND FAM CT Order 2-17
Current with amendments received through November 1, 2017.

PART 3—2017 CHILD SUPPORT GUIDELINES

THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS TRIAL COURT
EXECUTIVE OFFICE OF THE TRIAL COURT
BOSTON, MASSACHUSETTS

CHILD SUPPORT GUIDELINES

The attached CHILD SUPPORT GUIDELINES supersede any previous Guidelines and are effective September 15, 2017.

Paula M. Carey
Chief Justice of the Trial Court

July 18, 2017
Date

Preamble

These child support guidelines shall take effect on September 15, 2017 and shall be applied to all child support orders and judgments entered as of the effective date. In recognition of the priority of the interests of the children of the Commonwealth, these guidelines are formulated to be used by all of the justices of the Trial Court. There shall be a rebuttable presumption that these guidelines apply in all cases establishing or modifying a child support order, regardless of whether the parents of the child are married or unmarried, the order is temporary or final, or the Court is deciding whether to approve an agreement for child support. There shall also be a rebuttable presumption that the amount of the child support order calculated under these guidelines is the appropriate amount of child support to be ordered. These guidelines are based on various considerations, including, but not limited to, each parent's earnings, income, and other evidence of ability to pay. These guidelines are intended to be of assistance to attorneys and to litigants in determining what level of payment would be expected given the relative income levels of the parties. In all cases where an order for child support may be established or modified, a guidelines worksheet must be filled out, regardless of the income of the parties.

Commentary 2017 – Preamble

The Child Support Guidelines Task Force for the 2016-2017 review ("Task Force") was convened by Chief Justice of the Trial Court Paula M. Carey in the spring of 2016 to undertake the quadrennial review of the Massachusetts child support guidelines ("guidelines") as required by federal regulations. See 45 C.F.R. § 302.56. In January 2017, amendments to § 302.56 became effective. The Task Force for this quadrennial review was not required to implement the January 2017 amendments, and thus did not do so in this review. However, where appropriate and constructive, the Task Force considered the policies underlying the 2017 amendments when making its recommendations.

The comprehensive review of the Task Force included reviewing each section of the guidelines, line by line, as a whole and in subcommittees. In formulating its recommendations, the Task Force considered public comments, relevant research, information from economic consultants, and the comments and experience of Task Force members. The Task Force was cognizant that child support in Massachusetts seeks to reflect the incremental cost of raising a child, separate and distinct from expenses of other household members. The Task Force recommended edits for simplification, clarification, and policy considerations. These guidelines include commentary to indicate the reasoning and intent behind the

recommendations of the Task Force. Trial Court departments, litigants and attorneys may use the commentary to resolve questions of interpretation or application of the guidelines.

The changes made in the Preamble reflect that the guidelines apply to child support orders entered as of September 15, 2017. The fifth sentence of the Preamble was added for clarification and is consistent with the January 2017 changes to 45 C.F.R. § 302.56 (c). The Task Force further clarified that the guidelines worksheet must be completed in all cases where a child support order may be established or modified. A guidelines worksheet is necessary for the Court to determine whether there is a deviation from the presumptive child support order such that findings must be completed. See Section IV.

Principles

In establishing these guidelines, due consideration has been given to the following principles:

1. promoting parental financial responsibility for children;
2. meeting the child's survival needs in the first instance, but, to the extent either parent enjoys a higher standard of living, allowing the child to enjoy that higher standard;
3. minimizing negative changes to the child's standard of living;
4. protecting a basic subsistence level of income of parents;
5. recognizing that deviations should be used when appropriate to tailor a child support order to the unique circumstances of a particular family;
6. recognizing that parents should bear any additional expenses resulting from the maintenance of two separate households;
7. recognizing the non-monetary contributions and involvement of both parents;
8. recognizing the monetary and/or in-kind contributions of both parents in addition to the child support order;
9. recognizing the importance, availability, and cost of health care coverage for the child;
10. promoting simplicity and consistency in establishing and modifying child support orders; and
11. streamlining administration and minimizing problems of proof.

Commentary 2017 – Principles

The Task Force refined and reorganized the Principles section for clarification. The Task Force included Principle 5 regarding deviation to highlight that, where appropriate, the Court should deviate from the presumptive child support order amount and that attorneys and litigants should offer reasons as to why a deviation may be warranted. In making this change, the Task Force acknowledged the sentiments expressed by attorneys and litigants that there may be hesitation by the Court to deviate from the presumptive child support order. The Principles section has also been revised to reflect the January 2017 changes to 45 C.F.R. § 302.56 (c) by adding "basic" in Principle 4 of the Principles and changing "health insurance coverage" to "health care coverage" in Principle 9 of the Principles.

I. INCOME DEFINITION

A. Sources of Income

For purposes of these guidelines, income is defined as gross income from whatever source, regardless of whether that income is recognized by the Internal Revenue Code or reported to the Internal Revenue Service or state Department of Revenue or other taxing authority. However, income derived from a means-tested public assistance program (for example: TAFDC, SNAP, veterans' benefits and SSI benefits) shall not be counted as income for either parent.

Sources of income include, but are not limited to, the following:

1. salaries, wages, overtime and tips,

2. income from self-employment;

3. commissions;

4. severance pay;

5. royalties;

6. bonuses;

7. interest and dividends;

8. income derived from businesses/partnerships;

9. social security excluding any benefit due to a child's own disability[1];

[1] If a parent receives social security benefits or SSDI benefits and the children of the parties receive a dependency benefit derived from that parent's benefit, the amount of the dependency benefit shall be added to the gross income of that parent. This combined amount is that parent's gross income for purposes of the child support calculation.

If the dependency benefit derives from the payor's benefit and the amount of the dependency benefit exceeds the child support obligation calculated under the guidelines, then the payor shall not have responsibility for payment of current child support in excess of the dependency benefit. However, if the guidelines are higher than the dependency benefit that derives from the payor's benefit, the payor must pay the difference between the dependency benefit and the weekly child support amount under the guidelines. See *Rosenberg v. Merida*, 428 Mass. 182 (1998); *Schmidt v. McColluch-Schmidt*, 86 Mass. App. Ct. 902 (2014).

10. non means-tested veterans' benefits;

11. military pay, allowances and allotments;

12. insurance benefits, including those received for disability and personal injury, but excluding reimbursements for property losses;

13. workers' compensation;

14. unemployment compensation;

15. pensions;

16. annuities;

17. distributions and income from trusts;

18. capital gains in real and personal property transactions to the extent that they represent a regular source of income;

19. spousal support received from a person not a party to this order;

20. contractual agreements;

21. perquisites or in-kind compensation to the extent that they represent a regular source of income;

22. unearned income of children, in the Court's discretion;

23. income from life insurance or endowment contracts;

24. income from interest in an estate, either directly or through a trust;

25. lottery or gambling winnings received either in a lump sum or in the form of an annuity;

26. prizes or awards;

27. net rental income;

28. funds received from earned income credit; and

29. any other form of income or compensation not specifically itemized above.

B. Overtime and Secondary Jobs

1. The Court may consider none, some, or all overtime income or income from a secondary job. In determining whether to disregard none, some or all income from overtime or a secondary job, due consideration must first be given to the history of the income, the expectation that the income will continue to be available, the economic needs of the parties and the children, the impact of the overtime or secondary job on the parenting plan, and whether the overtime work is a requirement of the job.

2. If after a child support order is entered, a payor or recipient begins to work overtime or obtains a secondary job, neither of which was worked prior to the entry of the order, there shall be a presumption that the overtime or secondary job income should not be considered in a future child support order.

C. Self-Employment and Other Business Income

Income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely-held corporation is defined as gross receipts minus ordinary and necessary expenses required to produce income. In general, income and expenses from self-employment or operation of a business should be carefully reviewed to determine the appropriate level of gross income available to the parent to satisfy a child support obligation. In many cases, this amount will differ from a determination of business income for tax purposes.

D. Imputation of Income

1. When the Court finds that a parent has, in whole or in part, undocumented or unreported income, the Court may reasonably impute income to the parent based on all the evidence submitted, including, but not limited to, evidence of the parent's ownership and maintenance of assets, and the parent's lifestyle, expenses and spending patterns.

2. Expense reimbursements, in-kind payments or benefits received by a parent, personal use of business property, and payment of personal expenses by a business in the course of employment, self-employment, or operation of a business may be included as income if such payments are significant and reduce personal living expenses.

3. In circumstances where the Court finds that a parent has unreported income, the Court may adjust the amount of income upward by a reasonable percentage to take into account the absence of income taxes that normally would be due and payable on the unreported income.

E. Attribution of Income

1. Income may be attributed where a finding has been made that either parent is capable of working and is unemployed or underemployed.

2. If the Court makes a determination that either parent is earning less than he or she could earn through reasonable effort, the Court should consider potential earning capacity rather than actual earnings in making its child support order.

3. The Court shall consider the age, number, needs and care of the children covered by the child support order. The Court shall also consider the specific circumstances of the parent, to the extent known and presented to the Court, including, but not limited to, the assets, residence, education, training, job skills, literacy, criminal record and other

employment barriers, age, health, past employment and earnings history, as well as the parent's record of seeking work, and the availability of employment at the attributed income level, the availability of employers willing to hire the parent, and the relevant prevailing earnings level in the local community.

F. Non-Parent Guardian

The income of a non-parent guardian shall not be considered for purposes of calculating a child support obligation.

Commentary 2017 – Section I. – Income Definition

A. Sources of Income

Although the Task Force did not recommend any substantive changes to Section I. A., Sources of Income, it considered whether to do so in light of emerging areas of income-producing activities such as transportation networking companies, crowd funding, domain site flipping, and inconsistent, short-term home rentals. The Task Force determined that these income-producing activities were encompassed by the existing list of sources of income.

The Task Force received public comment regarding means-tested and non means-tested veterans' benefits and, in response, clarified that means-tested veterans' benefits are a type of income that is not included as income for child support calculation purposes. Due to the complexity of determining whether a veteran's benefit is means-tested, the Task Force strongly recommended that the Court should inquire regarding the benefit.

If the Court determines that there has been misrepresentation of income to a taxing authority or on a court-filed financial statement and/or guidelines worksheet, the Court may be required to report the information to the appropriate authority. See Rule 2.15(B) of SJC Rule 3:09: Code of Judicial Conduct.

B. Overtime and Secondary Jobs

The Task Force recommended continuation of the presumptive exclusion of certain overtime and secondary job income from the calculation of gross income for child support purposes. The Task Force rewrote and moved for clarification the sentence that previously read, "The Court may consider none, some, or all overtime income even if overtime was earned prior to the entry of the order." The Task Force also determined that the language in this section applies to payors and recipients since the income of both parents is considered in setting a child support order.

C. Self-Employment and Other Business Income

The Task Force renamed, reorganized and refined this section to focus on issues related to self-employment and the operation of a business. The Task Force moved the language regarding imputing income to the newly created Section I. D. entitled, "Imputation of Income". Because the Task Force felt it was redundant, it deleted from the guidelines the sentence, "The calculation of income for purposes of this section may increase gross income by certain deductions or other adjustments taken for income tax purposes.". The Appeals Court noted in *Whelan v. Whelan*, 74 Mass. App. Ct. 616, 626-27 (2009), "in determining income from self-employment, a judge must determine whether claimed business deductions are reasonable and necessary to the production of income, without regard to whether those deductions may be claimed for Federal or State income tax purposes." As further direction, the Appeals Court noted in an unpublished decision, *Zoffreo v. Zoffreo*, 76 Mass. App. Ct. 1105 (2010), "[t]he fact that [a parent] is permitted under the tax laws to deduct an amount for depreciation does not mean that those funds, which are not out of pocket expenses, are not available to pay child support."

For additional decisional guidance regarding calculating gross income, the Supreme Judicial Court held "that a determination whether and to what extent the undistributed earnings of an S corporation should be deemed available income to meet a child support obligation must be made based on the particular circumstances presented in each case." *J.S. v. C.C.*, 454 Mass. 652, 662-63 (2009). The Supreme Judicial Court included a non-exhaustive list of relevant factors to consider when making this determination, such as "a shareholder's level of control over corporate distributions", "the legitimate business interests justifying corporate earnings", the "affirmative evidence of an attempt to shield income by means of retained earnings", and "the allocation of burden of proof in relation to the treatment of an S corporation's undistributed earnings for purposes of determining income available for child support[.]" *J.S. v. C.C.*, 454 Mass. 652, 662-65 (2009).

In *Fehrm-Cappuccino v. Cappuccino*, 90 Mass. App. Ct. 525 (2016), the Appeals Court addressed the appropriateness of including rental income when determining income for child support purposes. The

decision notes that "there is no risk of double counting, where 'neither the value of [the father's interest in [the asset]] nor the [father's] ability to earn income is diminished by treating the [father's interest in [the asset]] as a marital asset as well as a source of income by which [the father] can meet his support obligations.'" *Fehrm-Cappuccino v. Cappuccino*, 90 Mass. App. Ct. 525, 528 (2016) (quoting *Champion v. Champion*, 54 Mass. App. Ct. 215, 221 (2002)).

D. Imputation of Income

The Task Force renamed, reorganized and refined the section previously entitled, "Unreported Income" to focus on issues related to the imputation of income. Income may be imputed when there are actual resources available to the parent that are not reported for tax purposes.

In general terms, undocumented income is income that does not result in the issuance of a tax reporting form. Unreported income is any income that is received and required to be reported that the taxpayer does not report on his or her taxes.

The Appeals Court decision in *Crowe v. Fong*, 45 Mass. App. Ct. 673 (1988) is instructional regarding Section I. D. 2. In Crowe, the payor earned $275 per week working at a business owned by his mother, lived rent-free in a home owned by his father, and had use of a vehicle. The Appeals Court upheld the trial judge's "characterization of [the payor's] free use of the home as 'perquisite or in-kind income' for purposes of calculating his support obligation under the guidelines[.]" *Crowe v. Fong*, 45 Mass. App. Ct. 673, 680-81 (1988).

E. Attribution of Income

The Task Force reorganized and refined this section for clarification and to distinguish attributed income from imputed income. Income is attributed to a parent when the Court determines a parent is capable of earning more than is currently being earned and assigns a hypothetical amount of income to the parent. The Task Force, in consideration of the January 2017 changes to 45 C.F.R. § 302.56 (c) (2017), revised the factors to be considered when attributing income to a parent.

In *P.F. v. Department of Revenue*, 90 Mass. App. Ct. 707 (2016), the Appeals Court addressed attribution of income where the payor is incarcerated. "'Income may be attributed where a finding has been made that [the payor] is capable of working and is unemployed or underemployed,' . . . or where the payor owns 'substantial assets.'" *P.F. v. Department of Revenue*, 90 Mass. App. Ct. 707, 710 (2016) (quoting *Wasson v. Wasson*, 81 Mass. App. Ct. 574, 581 (2012), quoting from Flaherty v. Flaherty, 40 Mass. App. Ct. 289, 291 (1996)). However, where there is "no income or assets from which to pay child support", the Court may not attribute income to the payor based on the payor's prior earning capacity, even if the payor is incarcerated due to committing a crime against the child for whom child support is being paid. *P.F. v. Department of Revenue*, 90 Mass. App. Ct. 707, 710-11 (2016).

F. Non-Parent Guardian

The Task Force did not recommend any changes to this section.

II. FACTORS TO BE CONSIDERED IN SETTING THE CHILD SUPPORT ORDER

A. Relationship to Alimony or Separate Maintenance Payments

1. These guidelines were developed with the understanding that alimony is for the support of a spouse, while child support is for the support of children.

2. These guidelines were developed with the understanding that child support is non-deductible by the payor and non-taxable to the recipient. These guidelines do not preclude the Court from deciding that any support order be designated in whole or in part as alimony or unallocated support without it being deemed a deviation, provided that the tax consequences are considered in determining the support order and the after-tax support received by the recipient is not diminished. The parties have the responsibility to present to the Court the tax consequences of proposed orders.

3. Chapter 124 of the Acts of 2011, entitled, "An Act Reforming Alimony in the Commonwealth", amended G. L. c. 208 and prohibits the use of gross income which the Court has already considered in making a child support order from being used again in determining an alimony order. See G. L. c. 208, § 53 (c) (2). The parties may consider preparing alternate calculations of alimony and child support to determine the most equitable result for the children

and the parties. Depending upon the circumstances, alimony may be calculated first, and in other circumstances child support may be calculated first. Judicial discretion is necessary and deviations shall be considered.

B. Claims of Personal Exemptions for Child Dependents

In setting a support order, the Court and the parties shall consider the allocation of personal exemptions for child dependents between the parties to the extent permitted by law.

C. Minimum and Maximum Levels

1. These guidelines are intended to protect a minimum subsistence level for those parents obligated to pay child support whose gross income is $115 per week or less. However, it is the obligation of all parents to contribute to the support of their children. To that end, a minimum order of $25 per week should enter. This minimum should not be construed as limiting the Court's discretion to set a higher or lower order, should circumstances warrant, as a deviation from the guidelines. See Section IV.

2. These guidelines are calculated up to a maximum combined available annual gross income of the parties of $250,000. In cases where combined available income is over $250,000,the guidelines should be applied on the first $250,000 in the same proportion as the recipient's and payor's actual income as provided on Line 2h of the guidelines worksheet. In cases where income exceeds this limit, the Court should consider the award of support at the $250,000 level as the minimum presumptive order. The child support obligation for the portion of combined available income that exceeds $250,000 shall be at the discretion of the Court.

D. Parenting Time

1. These guidelines recognize that children should enjoy parenting time with both parents to the greatest extent possible consistent with the children's best interests. The basic calculations under these guidelines are based upon the children having a primary residence with one parent and spending approximately one-third of the time with the other parent.

2. Where the children have a primary residence with one parent and spend approximately one-third of the time with the other parent, the guidelines worksheet is calculated and there is a rebuttable presumption that the amount calculated is the child support order.

3. Where two parents expect to or do share equally, or approximately equally, the financial responsibility and parenting time for the children, the child support order shall be determined by calculating the guidelines worksheet twice, first with one parent as the recipient, and second with the other parent as the recipient. The difference in the calculations shall be paid to the parent with the lower weekly support amount.

4. Where parenting time is substantially less than one-third for the parent who is not the residential parent, the Court may consider deviation by an upward adjustment to the amount calculated under the guidelines worksheet. See Section IV. B. 8.

5. Where there is more than one child covered by the order being calculated and each parent provides a primary residence for one or more of these children, the child support order shall be determined by calculating the guidelines worksheet twice, first with one parent as the recipient using the number and ages of the children in his or her care, and second with the other parent as the recipient using the number and ages of the children in his or her care. The difference in the calculations shall be paid to the parent with the lower weekly support amount.

E. Child Care Costs

1. Reasonable child care costs for the children covered by the child support order and due to gainful employment of either parent are to be deducted from the gross income of the parent who pays the cost. The guidelines worksheet makes an adjustment so that the parents share the burden of the cost proportionately. The adjustment involves a two-step calculation. First, a parent who is paying the child care deducts the out-of-pocket cost from his or her gross income. Second, the parties share the total child care costs for both parents in proportion to their income available for support. The combined adjustment for child care and health care costs is capped at fifteen percent of the child support order.

2. In appropriate circumstances, child care costs may include those due to training or education reasonably necessary to obtain gainful employment or enhance earning capacity. The Court may consider a deviation where the child care cost is disproportionate to income. See Section IV. B. 7.

F. Child Support for Children Between the Ages of 18 and 23

1. By statute, the Court has discretion either to order or to decline to order child support for children age 18 or older. If the Court exercises its discretion to order child support for children age 18 or older, the guidelines formula reduces the amount of child support in accordance with Table B of the guidelines worksheet. For the guidelines calculation to account for families with children both under age 18 and age 18 or older, the guidelines worksheet requires the input of information regarding the number of children age 18 or older and under age 18.

2. A child age 18 or older who is enrolled in and attending high school shall be deemed to be under age 18 for purposes of the guidelines and Table B, absent deviation.

3. In determining whether to order child support for a child age 18 or older, the Court shall consider the reason for the child's continued residence with and principal dependence on the recipient, the child's academic circumstances, the child's living situation, the available resources of the parents, and each parent's contribution to the costs of post-secondary education for the child and/or other children of the family. The Court may also consider any other relevant factors.

G. Contribution to Post-secondary Educational Expenses

1. By statute, the Court has discretion either to order or to decline to order a parent to contribute to post-secondary educational expenses. Contribution to post-secondary educational expenses is not presumptive.

2. In determining whether to order contribution to post-secondary educational expenses, the Court shall consider the cost of the post-secondary education, the child's aptitudes, the child's living situation, the available resources of the parents and child, and the availability of financial aid. The Court may also consider any other relevant factors.

3. No parent shall be ordered to pay an amount in excess of fifty percent of the undergraduate, in-state resident costs of the University of Massachusetts-Amherst, unless the Court enters written findings that a parent has the ability to pay a higher amount. Costs for this purpose are defined as mandatory fees, tuition, and room and board for the University of Massachusetts-Amherst, as set out in the "Published Annual College Costs Before Financial Aid" in the College Board's Annual Survey of Colleges. This section applies to all orders requiring parental contribution to post-secondary educational expenses, regardless of where the child resides or attends school.

4. When exercising its discretion to order child support for a child over age 18 and contribution to the child's post-secondary educational expenses, the Court shall consider the combined amount of both orders.

H. Health Care Coverage

1. a. Each parent may deduct from gross income the reasonable cost of individual or family health care coverage actually paid by that parent. If there is an additional cost to insure a person not covered by this order, and the Court determines that such additional cost would unreasonably impact the amount of child support, then some or all of such additional cost shall not be deducted.

b. The guidelines worksheet makes an adjustment so that the parents share the burden of the cost proportionately. The adjustment involves a two-step calculation. First, a parent who is paying the health care deducts the out-of-pocket cost from his or her gross income. Second, the parties share the total health care costs for both parents in proportion to their income available for support. The combined adjustment for child care and health care costs is capped at fifteen percent of the child support order.

2. When the Court makes an order for child support, the order shall include an order of health care coverage unless the payor and recipient agree in writing that such coverage will be provided by other means.

3.a. The Court shall determine whether health care coverage that may be extended to cover the child is available through an employer or otherwise available at a reasonable cost. Healthcare coverage shall be deemed available to the payor at reasonable cost if it is available through an employer.

b. If health care coverage is available at a reasonable cost, the Court shall then determine whether the cost of such coverage creates an undue hardship on the payor, and, if that determination is made, the payor shall not be required to provide such coverage. In determining whether the cost of health care coverage creates an undue hardship for the payor, the Court may consider whether the cost of maintaining health care coverage would prevent payment of some or all of the child support order, whether the available coverage lacks the comprehensiveness to meet the health care needs of the child such that significant uninsured medical expenses will be incurred, whether the payor's gross income is less than 300% of the federal poverty guidelines for the payor's household, and any other relevant factors.

c. When such health care coverage is available at a reasonable cost and does not cause an undue hardship, the Court shall include in the child support order a requirement that such insurance for the child be obtained or maintained.

d. If the Court determines that health care coverage is not available at a reasonable cost or that ordering health care coverage creates an undue hardship for the payor and the IV-D agency is providing services, the Court shall enter an order requiring the payor to notify the IV-D agency if access to health care coverage for the child becomes available. If the Court determines that health care coverage is not available at a reasonable cost or that ordering health care coverage creates an undue hardship for the payor and the IV-D agency is not providing services, the Court shall enter an order requiring the payor to notify the recipient if access to health care coverage for the child becomes available.

I. Dental/Vision Insurance

1. Each parent may deduct from gross income the reasonable cost actually paid by that parent of dental/vision insurance insuring the children covered by this order.

2. If there is an additional cost to insure a person not covered by this child support order, and the Court determines such additional cost would unreasonably reduce the amount of child support, then some or all of such additional cost shall not be deducted from gross income.

3. The cost of dental/vision insurance insuring the children covered by this order is included on the guidelines worksheet in the combined child care and health care costs adjustment.

J. Routine Uninsured Medical and Dental/Vision Expenses and Extraordinary Uninsured Medical and Dental/Vision Expenses

1. The recipient shall be responsible for payment of the first $250 each year in combined routine uninsured medical and dental/vision expenses for all the children covered by this child support order. For amounts above that limit, at the time of entry of an order establishing or modifying the child support order, the Court shall allocate expenses between the parties without adjustment to the child support order.

2. The payment of extraordinary uninsured medical and dental/vision expenses incurred for the children, absent agreement of the parties, shall be treated on a case-by-case basis (for example: orthodontia, psychological/psychiatric counseling, etc.). Where the Court makes a determination that such medical and dental/vision services are necessary and are in the best interests of the children, the Court shall allocate such expenses between the parties.

K. Existing Support Obligations and Responsibility for Children Not in the Case under Consideration

1. When an initial order or a modification of an existing order is sought for a child covered by the order in the case under consideration, the amount actually paid by a parent pursuant to a pre-existing support order for a child or spouse not in the case under consideration shall be deducted from the gross income of that parent where that parent provides sufficient proof of the order and payments made. Payments on arrearages shall not be deducted from gross income.

2. When an initial order or a modification of an existing order is sought for a child covered by the order in the case under consideration, the amount of voluntary payments actually paid to support a child not in the case under consideration and with whom the parent does not reside shall be deducted from the gross income of that parent, but only to the extent the Court determines the payments to be reasonable. The parent who seeks the deduction must provide sufficient proof of the legal obligation to support the child and of actual payments made to the other parent or guardian.

3. When an initial order or a modification of an existing order is sought for a child covered by the order in the case under consideration, a hypothetical amount of child support for a child with whom the parent resides but for whom no child support order exists shall be deducted from the gross income of the parent. The parent seeking the deduction must provide sufficient proof of the legal obligation to support the child and of the gross income of that child's other parent. The hypothetical child support amount shall be calculated according to the guidelines worksheet using the gross incomes of both parents of the child for whom the hypothetical child support amount is being calculated.

4. Obligations to a subsequent family may be used as a defense to a request to modify an order seeking an increase in the existing order, but such obligations should not be considered a reason to decrease an existing order.

L. Families with More than Five Children

The guidelines formula applies to families with one to five children. For more than five children, the order should be at least the amount ordered for five children.

M. Contribution to Other Child-Related Expenses

In cases where the Court makes a determination that there are additional child-related expenses such as extra-curricular activities, private school, or summer camps, which are in the best interest of the child and which are affordable by the parties, the Court may allocate costs to the parties on a case-by-case basis.

Commentary 2017–Section II –Factors to Be Considered in Setting the Child Support Order

A. Relationship to Alimony or Separate Maintenance Payments

The Task Force discussed the challenges related to the tax consequences of unallocated support. The Task Force recommended that the Court, especially in cases involving parties with disparate levels of income, consider an unallocated support order. By designating some, or all, of a payor's support obligation as tax-deductible to the payor and a taxable payment to the recipient, a significant tax benefit may be achieved.

Under *Fechtor v. Fechtor*, 26 Mass. App. Ct. 859 (1989), it is the responsibility of the parties to bring the tax implications of a support order to the attention of the Court. Parties and attorneys should familiarize themselves with the applicable provisions of I.R.C. § 71, which provides specific rules that must be followed in order to fashion support orders that will be deemed tax-deductible under the Internal Revenue Code.

The relationship between alimony and child support remained an issue during this review as it was during the 2012 review. When issuing an alimony order, "the court shall exclude from its income calculation gross income which the court has already considered for setting a child support order." G. L. c. 208, § 53 (c) (2). However, the converse is not stated in the statute.

Since the 2012 review and report, the Massachusetts appellate courts have not issued any decisions on point, nor has there been a statutory change. The Task Force discussed this conundrum and determined that, despite the desire to provide more instruction, no changes to this section were recommended at this time. The Task Force recommended that this issue be reviewed again during the next quadrennial review.

B. Claims of Personal Exemptions for Child Dependents

The Task Force refined this section to emphasize the importance of considering the allocation of the dependency exemptions.

C. Minimum and Maximum Levels

The Task Force considered whether the minimum support order required adjustment. The minimum support order has not changed since 2002 when it was established at $18.46 per week. After discussion,

the Task Force recommended that the minimum support order be increased to $25 per week. This increase is consistent with economic data on the increase in the overall cost of living in Massachusetts since 2002. The guidelines chart has been adjusted to reflect that the minimum support order applies to combined available income up to $115 per week.

For informational assistance with regard to child support when the parents' combined gross income is over $250,000, section 6 of the guidelines worksheet calculates the amount by which each parent's available income exceeds $250,000. Child support based on income above $250,000 is discretionary. The excess income information in section 6 of the guidelines worksheet may be considered on a case-by-case basis.

D. Parenting Time

The Task Force discussed at length the consequences of the changes that were incorporated by the 2012 Task Force with regard to when parenting time is more than one-third but less than fifty percent. The Task Force agreed that the provision relating to these circumstances needed to be eliminated. The Task Force considered public comment, attorney and judicial experience, the 2008 Report of the Child Support Guidelines Task Force, and the Final Report of the 2012 Task Force when making this determination. The 2012 change increased litigation and acrimony between parents, shifted the focus from a parenting plan that is in the best interests of the children to a contest about a parenting plan that attempts to reduce a child support order, and failed to create the consistency in child support orders that it sought to create.

The Task Force suggested that the first step in determining a child support order is actually creating a parenting plan that is best for the children, recognizing that children should enjoy parenting time with both parents to the greatest extent possible consistent with the children's best interests. Child support should not be driving the parenting plan. Once the parenting plan is established, then calculations may occur. It is important to note again here that the Task Force specifically created a principle regarding the appropriate use of a deviation where the circumstances of a family require one. See Principles, Principle 5.

The Task Force recommended deleting the provisions inserted in the 2009 guidelines that limited the deduction of other support orders from gross income when making certain calculations related to parenting time. This Task Force was unable to determine why the provisions were included, and thus determined that equity required their deletion.

E. Child Care Costs

The Task Force discussed at length how to address the concerns raised by many people regarding the significant costs of child care. The Task Force recommended a proportional adjustment to the child support order based on child care and health care costs. The proportional adjustment for the costs is not dollar-for-dollar because the significant costs of child care and health care coverage could unfairly skew a child support order. Instead, the adjustment is capped, either up or down, at fifteen percent of the child support order.

F. Child Support for Children Between the Ages of 18 and 23

The Task Force renamed and restructured the section previously entitled, "Age of the Children". The Task Force clarified that these guidelines apply in all cases where a child support order is established or modified and not just in cases involving children under age 18. See 45 C.F.R. § 302.56 (a) (2017). That Massachusetts by statute allows for, but does not require, child support until age 23 does not negate the federal requirement that the guidelines must apply in all cases. However, the C.F.R. does not mandate that the guidelines be identical for children of all ages. For dependent children between 18 and 21, child support may be ordered if the dependent child is domiciled with a parent and is principally dependent on that parent. See G. L. c. 208, § 28, G. L. c. 209C, § 9 and G. L. c. 209, § 37.

For dependent children between 21 and 23, child support may be ordered if the dependent child is domiciled with a parent and is principally dependent on that parent due to enrollment in an educational program, as long as the program is not beyond an undergraduate degree. See id. Although the Task Force received public comment suggesting that child support end at age 18, the Task Force did not amend the provision retaining discretion in entering child support orders for children between the ages of 18 and 23 because this discretion is statutory. The Task Force strongly recommended that, until or unless the Massachusetts Legislature amends the child support statutes to clarify that child support is mandatory through graduation of high school, the Court consider child support orders for those children who have turned 18 but are still in high school as mandatory rather than permissive.

Because these guidelines apply to all child support orders, including those for children up to age 23, the Task Force discussed whether the application of the guidelines through the guidelines worksheet should result in a reduction in the base amount of child support for children who are age 18 or older and not attending high school, but nevertheless eligible for child support pursuant to Massachusetts law. The Task Force agreed that a twenty-five percent reduction is appropriate as it takes into consideration factors typical of this age group. For example, the child may be living away at school thereby reducing some of the household expenses for the recipient or the child may be living at home and is not enrolled in a post-secondary educational program and should be working and contributing to the household expenses. The reduction balances the requirement imposed by federal regulation that all child support orders are the product of a formula established by guidelines, while also considering important factors unique to children between the ages of 18 and 23. See *M.C. v. T.K.*, 463 Mass. 226, 231 (2012) ("The Chief Justice of the Trial Court is authorized to promulgate guidelines establishing presumptive child support awards, based on articulated principles and calculated according to specified mathematical formulas.") Nothing in this section limits the ability of the Court to deviate from the presumptive order where appropriate. For example, the child may be living at home and commuting to a post-secondary educational program.

This section shall not be construed to change the rule set forth in *Feinberg v. Diamant*, 378 Mass. 131 (1979) allowing the Court to require a financially able parent to "contribute to the support of an adult child who by reason of mental or physical infirmity incurs expenses that he or she is unable to meet." *Feinberg v. Diamant*, 378 Mass. 131, 134 (1979). These matters are addressed in equity actions.

G. Contribution to Post-secondary Educational Expenses

The Task Force created a new section to address the complexity of contributions to post-secondary educational expenses. Post-secondary educational expenses have increased exponentially since 1976 when the Massachusetts Legislature amended statutes to permit the Court to order parents to pay for educational expenses. Overall, both public and private four-year college expenses for fees, tuition, room and board, have increased approximately 250%, as adjusted for inflation. See College Board, Annual Survey of Colleges, 2017. The Task Force shared the pervasive concern that many parents cannot pay post-secondary educational expenses from their income, while meeting other expense obligations. The Task Force intended to discourage orders requiring parents to incur liability for loans in excess of state university costs unless the parents agree to accept such liabilities. The Task Force also intended an expense limitation to provide general uniformity in court-ordered, post-secondary educational expenses contributions.

The limitation on post-secondary educational expenses orders is recommended for most cases, but it is not mandatory. The Task Force does not intend the limitation to apply to children already enrolled in post-secondary education before the effective date of these guidelines or to parents who are financially able to pay educational expenses using assets or other resources.

The University of Massachusetts-Amherst was designated as the benchmark for maximum orders because it was the flagship, and most expensive, Massachusetts state college when these guidelines became effective.

H. Health Care Coverage

The Task Force renamed, reorganized, and revised this section. The phrase "health care coverage" was changed from "health insurance" to reflect recent changes in federal law, which now references both private and public health care coverage. Under federal regulations, child support guidelines must "[a]ddress how the parents will provide for the child's health care needs through private *or public health care* coverage and/or through cash medical support." 45 C.F.R. § 302.56 (c) (2) (2017) (emphasis added). Under 45 C.F.R. § 303.31 (a) (3), "[c]ash medical support or the cost of health insurance is considered reasonable in cost if the cost to the parent responsible for providing medical support does not exceed five percent of his or her gross income or, at State option, a reasonable alternative income-based numeric standard defined in State law, regulations or court rule having the force of law or State child support guidelines adopted in accordance with § 302.56(c) of [Chapter 45]." The Massachusetts Legislature has not amended G. L. c. 119A to reflect the federal definition of reasonableness or to grant the authority to order cash medical support. Nor does G. L. c. 119A allow the Court to order either parent to provide health care coverage. See G. L. c. 119A, § 12 (b) (5). The Task Force strongly recommended that the Massachusetts Legislature amend G. L. c. 119A to be consistent with the federal regulations.

The Task Force also made revisions that more clearly reflect the statutory requirements relating to orders for health care coverage. Before requiring a payor to obtain health care coverage, the Court must

determine that such coverage is available at reasonable cost, "provided that the cost of such coverage does not create an undue hardship upon the [payor]." G. L. c. 119A, § 12 (b) (5). Because "undue hardship" is not defined by statute or case law, factors relating to determining whether an order of health care coverage creates an undue hardship on the payor are included in these guidelines. There are circumstances where the combined child support order and the cost to the payor for obtaining and maintaining health care coverage exceed the amount allowed under law to be ordered withheld from a payor's income. If health care coverage is ordered in these circumstances, and the costs for the health care coverage are deducted from the payor's income before the child support order is paid, the child support order is not paid in full and the payor accrues child support arrears. For purposes of this section, an undue hardship may occur if the combined health care coverage and child support order exceeds statutory garnishment limits. The Task Force determined that it was appropriate to adopt the percentage of poverty level that MassHealth's Children's Health Insurance Program (CHIP) uses for eligibility screening. See http://children.massbudget.org/masshealth. The Court retains the discretion to consider other relevant factors in making the determination regarding undue hardship.

If health care coverage is not currently available at a reasonable cost or the payment of health care coverage causes an undue hardship, the Task Force removed the requirement that the Court enter an order requiring the payor to obtain and maintain health care coverage for the child if and when the parent has access to such coverage. Instead, the Task Force added a provision that requires the payor to notify the IV-D agency or the recipient if health care coverage becomes available. If health care coverage becomes available, a modification of the child support order may be appropriate to reflect the cost of such coverage, as well as to determine whether there is any undue hardship.

In addition to child care costs, the Task Force also discussed at length how to address the concerns raised by many people regarding the significant costs of health care coverage. The Task Force recommended a proportional adjustment to the child support order based on child care and health care costs. The proportional adjustment for the costs is not dollar-for-dollar because the significant costs of child care and health care coverage could unfairly skew a child support order. Instead, the adjustment is capped, either up or down, at fifteen percent of the child support order.

The Task Force recommended that, where appropriate, the Court should examine whether the parent who seeks to deduct the total amount of health care coverage is including in that total amount the cost for covering persons not covered by the order under consideration. In that circumstance, the Court may determine that some or all of the additional cost should not be deducted from gross income on the guidelines worksheet.

I. Dental/Vision Insurance

The Task Force reorganized this section. The Task Force determined that the costs of the dental and vision insurance covering children under this order shall be included as a component of the child care and health care adjustment.

J. Routine Uninsured Medical and Dental/Vision Expenses and Extraordinary Uninsured Medical and Dental/Vision Expenses

The Task Force reorganized the sections previously entitled, "Routine Uninsured Medical and Dental Expenses" and "Uninsured Extraordinary Medical and Dental Expenses" into one section without any substantive changes.

K. Existing Support Obligations and Responsibility for Children Not in the Case under Consideration

The Task Force recommended changes to this section to clarify the different circumstances that may result in a deduction from gross income when a parent has a legal responsibility to support a child not part of the case currently being considered. The Task Force clarified that where applicable either parent may seek the deductions from gross income and that sufficient proof must be provided. The Task Force reviewed language from the New Jersey, North Carolina, Ohio, and Tennessee child support guidelines to assist in drafting the clarifications.

In Department of Revenue v. Mason M., the Supreme Judicial Court endorsed the use of deducting a hypothetical support order from a parent's gross income where that parent had multiple children to support. Department of Revenue v. Mason M., 439 Mass. 665, 671-72 (2003). However, to calculate a hypothetical amount of child support, the gross incomes of both parents of that child must be used. This calculation can be difficult to compute because the Court does not have the non-party parent's gross income. The burden

is on the parent who seeks to deduct a hypothetical amount to provide to the Court the information necessary for calculating the hypothetical amount, including the non-party parent's gross income.

L. Families with More than Five Children
The Task Force did not recommend any substantive changes to this section.

M. Contribution to Other Child-Related Expenses
The Task Force renamed this section for consistency. "Post-secondary education" was deleted from this section only because the Task Force created a new section that addresses contribution to post-secondary educational expenses. See Section II. G.

III. MODIFICATION

A. A child support order may be modified if any of the circumstances listed below exist.

1. There is an inconsistency between the amount of the existing order and the amount that would result from the application of the guidelines.

2. Previously ordered health care coverage is no longer available.

3. Previously ordered health care coverage is still available but no longer at a reasonable cost or without an undue hardship.

4. Access to health care coverage not previously available to a parent has become available.

5. Any other material and substantial change in circumstances has occurred.

B. Upon a request for modification of an order that deviated from the guidelines at the time it was entered, the Court shall apply the existing deviation to the modification action if:

1. the facts that gave rise to deviation still exist; and

2. deviation continues to be in the child's best interest; and

3. the guidelines amount would be unjust or inappropriate under the circumstances.

C. Section III. B. does not preclude deviations based on other grounds set forth in Section IV. or grounds for modification as set forth in Section III. A.

Commentary 2017 – Section III. – Modification

The Task Force deleted Paragraph B of the 2013 guidelines because it was premised on the assumption that Massachusetts law provides for a separate standard to be used by the Court when the Department of Revenue is providing IV-D services in a case where the order is less than three years old. While the Department of Revenue is not required to use the inconsistency standard when determining whether to provide IV-D services to seek a modification of an order that is less than three years old, the Court must apply the inconsistency standard once any complaint for modification is filed and is before the Court. See 57 Fed. Reg. 61559, 61577 (1992). See also G. L. c. 208, § 28, G. L. c. 209C, § 20 and G. L. c. 209, § 37.

The Department of Revenue's review process does not prohibit an individual from filing a complaint for modification on his or her own, regardless of whether the case is receiving IV-D services.

The Task Force refined the language to clarify that if circumstances that resulted in a deviation are still in existence during a modification action, those circumstances shall be considered to remain even though it may be appropriate to modify the existing order. For example, a child may have a medical condition that results in ongoing, extraordinary medical expenses and the existing child support order deviates from the guidelines amount. The recipient is now unemployed and files a complaint for modification. The underlying circumstances for the existing deviation remains; however, the Court also considers the additional circumstances.

IV. DEVIATION

A. The Court, or the parties by agreement approved by the Court, may deviate from these guidelines and overcome the presumptive application of these guidelines, provided the Court enters specific written findings stating:

1. the amount of the order that would result from application of the guidelines;

2. that the guidelines amount would be unjust or inappropriate under the circumstances;

3. the specific facts of the case which justify departure from the guidelines; and

4. that such departure is consistent with the best interests of the child.

B. Circumstances which may support deviating, above or below the presumptive guidelines amount, including the minimum order amount, are as follows:

1. the parties agree and the Court determines the agreement to be fair and reasonable and approves their agreement;

2. a child has ongoing special needs or aptitudes with financial consequences;

3. a child has ongoing extraordinary mental, physical, or developmental needs with financial consequences;

4. a parent has ongoing extraordinary mental, physical, or developmental needs with financial consequences;

5. a parent has extraordinary expenses for health care coverage;

6. a parent has extraordinary travel or other expenses related to parenting;

7. a parent is absorbing a child care cost that is disproportionate in relation to his or her income;

8. a parent provides substantially less than one-third of the parenting time for a child or children;

9. the payor is incarcerated and has insufficient financial resources to pay support;

10. application of the guidelines, particularly in low income cases, leaves a parent without the ability to self support;

11. application of the guidelines would result in a gross disparity in the standard of living between the two households such that one household is left with an unreasonably low percentage of the combined available income;

12. application of the guidelines may adversely impact reunification of a parent and child where the child has been temporarily removed from the household in accordance with G.L. c. 119; and

13. absent deviation, application of the guidelines would lead to an order that is unjust, inappropriate or not in the best interests of the child, considering the Principles of these guidelines.

Commentary 2017 – Section IV. – Deviation

The Task Force refined and clarified the circumstances where deviation may be appropriate. The Task Force reordered this section for clarification purposes only and not to prioritize any one factor over another. The Task Force emphasized that a deviation may be appropriate for a family and encourages the Court to deviate where circumstances require it.

The Task Force clarified in the first phrase of Section IV. B. that it is permissible to deviate to an amount below the presumptive guidelines amount. Because the deviation circumstances affect an ongoing child support award, rather than a one-time or occasional allocation, the Task Force emphasized that certain circumstances must be ongoing and with financial consequences for them to be considered appropriate for a deviation. In Section IV. B. 8., the Task Force added “substantially” to emphasize as it did it Section II. D. that a parenting plan that is in the best interest of the child is the first step in determining a child support order. The inclusion of “substantially” provides a parameter with the goal of reducing acrimony and litigation between parents regarding the interaction of the parenting plan and the amount of the child support order.

APPENDIX

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