

CHAPTER 2

OVERVIEW OF THE PROBATE AND FAMILY COURT

CHERYL L. GARRITY, ESQ.
Burlington

How the System Works 9

 What Are the Powers of the Probate and Family Court to Handle Family Law Problems? 9

Sources of Law 9

 How to Behave in Court 10

 The Probation Department (Formerly the Family Service Office) 10

 Parent Education Program 11

Income, Accessibility, and Language Issues..... 12

 What Do You Do if You Cannot Afford to Pay the Filing Fee or Other Costs Associated with Litigation? 12

 What Do You Do if You Want an Attorney Appointed to Represent You or Your Child? 12

 What Do You Do if You Want to Try to Settle Your Case? 13

 What Do You Do if You Have a Hearing Impairment or Language Issue that May Interfere with Communication with the Court? 13

Pleading and Pretrial Preparation 14

 How Does a Case Get Started? 14

 Selecting the Proper Action and Complaint 14

 Divorce (G.L. c. 208, §§ 1, 1A, 1B)..... 14

 Complaint for Separate Support (G.L. c. 209, § 32)..... 14

 Complaint for Support (G.L. c. 209, § 32F)..... 14

 Complaint to Establish Paternity (G.L. c. 209C)..... 15

 Complaint for Support, Custody, or Parenting Time (G.L. c. 209C)..... 15

 Complaint from Abuse (G.L. c. 209A)..... 15

 Complaint for Modification (G.L. c. 208, §§ 28, 37; G.L. c. 209, § 37; G.L. c. 209C, § 20)..... 15

 Complaint for Contempt (G.L. c. 215, §§ 34, 35)..... 15

 Complaint for Grandparent Visitation (G.L. c. 119, § 39D)..... 15

 Complaint for Guardianship or Conservatorship of a Minor (G.L. c. 190B)..... 15

 Serving the Complaint 15

 Answers and Counterclaims 16

 Time Standards 16

 Financial Statements and Other Required Forms 17

 What Is a Financial Statement and What Are the Rules Governing Them? 17

 Motions and Temporary Orders 18

What Is a Motion?	18
How to Make a Motion and Schedule a Hearing.....	18
How Do You Respond to a Motion?.....	19
What Happens at the Motion Hearing?.....	19
Final Judgment	19
Discovery	19
Compelling the Presence of Witnesses and Documents:The Subpoena	20
Selected Evidentiary Issues.....	21
Use of Witnesses.....	21
Expert Witnesses	21
Subpoena Witnesses	21
Guardians ad Litem and Their Reports	22
How to Challenge a GAL's Report	22
Medical Records	23
Privileges	23
Religious Privilege.....	24
Attorney-Client Privilege.....	24
Spousal Privilege	24
Privilege Against Self-Incrimination	25
Mediator Privilege	25
Social Worker–Client Privilege.....	25
Allied Mental Health Professional Privilege	25
Psychiatrist, Psychotherapist, and Psychologist Privilege.....	25
Exceptions in Child Custody Cases.....	26
Marital Therapist Privilege.....	26
Sexual-Assault Counselors and Domestic-Violence Counselors	26
Procedure for Obtaining Access to Therapy Records	26
EXHIBIT 2A—Affidavit of Indigency and Request for Waiver, Substitution, or State Payment of Fees and Costs.....	28
EXHIBIT 2B—Supplement to Affidavit of Indigency	34
EXHIBIT 2C—Request for Counsel.....	38
EXHIBIT 2D—Answer to Complaint for Divorce.....	39
EXHIBIT 2E—Counterclaim for Divorce Action.....	41
EXHIBIT 2F—Request for Financial Statement	43
EXHIBIT 2G—Plaintiff’s Motion for Temporary Orders	44
EXHIBIT 2H—Proposed Temporary Orders.....	46
EXHIBIT 2I—Affidavit in Support of Motion for Temporary Orders	47
EXHIBIT 2J—Pretrial Notice and Order.....	48
EXHIBIT 2K—Plaintiff’s Pretrial Memorandum	50
EXHIBIT 2L—Interrogatories Propounded by the Defendant to Be Answered by the Plaintiff.....	56
EXHIBIT 2M—Request for Production of Documents	59
EXHIBIT 2N—Subpoena to Obtain Documents for Court	60
EXHIBIT 2O—Motion to Strike Portions of the Guardian ad Litem’s Report	63

HOW THE SYSTEM WORKS

What Are the Powers of the Probate and Family Court to Handle Family Law Problems?

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

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

- to grant divorces, G.L. c. 208;
- to grant judgments of separate support and maintenance of spouses and their children, G.L. c. 209;
- to make orders to prevent domestic violence and abuse, G.L. c. 208, §§ 18, 34B; G.L. c. 209, § 32; G.L. c. 209A; G.L. c. 209C, § 15;
- to make orders for the support of children, as temporary orders pending a final judgment (G.L. c. 208, §§ 19, 20; G.L. c. 209, § 32F; G.L. c. 209A, § 3; G.L. c. 209C, § 15; G.L. c. 215, § 6C) and as part of a judgment (G.L. c. 208, § 28; G.L. c. 209, §§ 32, 37; G.L. c. 209C, § 15);
- to make orders and judgments for the support for spouses both during a marriage, upon divorce, and after divorce (G.L. c. 208, §§ 17, 34; G.L. c. 209, § 32), and for abused persons (G.L. c. 209A, § 3);
- to divide marital property, G.L. c. 208, § 34;
- to order conveyances of real estate from one spouse to the other, G.L. c. 208, § 34A; G.L. c. 209, § 32D;
- to make orders and judgments relative to child custody and visitation, G.L. c. 208, §§ 19, 28, 28A, 31A; G.L. c. 209, §§ 32, 38; G.L. c. 209A, § 3; G.L. c. 209C, §§ 10, 15;
- to make decisions about the guardianship and conservatorship of minors, G.L. c. 190B;
- to order investigations and reports to it of matters involving the care, custody, or maintenance of minor children by appointing a guardian ad litem (G.L. c. 215, § 56A) or, in a divorce case, an attorney (G.L. c. 208, § 16), and it can order that the cost of these investigations be paid by the Commonwealth;
- to order probation officers (who are also known in the Probate and Family Court as family service officers) to conduct investigations, G.L. c. 276, § 85A;
- to enforce custodial rights by issuing writs of habeas corpus to bring a child before it, G.L. c. 208, § 32;
- to make judgments establishing the paternity of children born out of wedlock and to make orders and judgments relative to the custody and support of those children, G.L. c. 209C;
- to modify and revise its judgments and orders, G.L. c. 208, §§ 28, 28A; G.L. c. 209, § 37; G.L. c. 215, § 6C; and
- to secure support and maintenance of spouses and children by attachment (G.L. c. 208, §§ 12, 33; G.L. c. 209, § 33) and by trustee process (G.L. c. 208, § 36A; G.L. c. 209, § 33), as well as the power to enforce its orders by contempt (i.e., fining or imprisoning the disobedient party until he or she complies) (G.L. c. 215, § 34).

SOURCES OF LAW

For the primary sources of law relating to family law matters, refer to the following chapters of the Massachusetts General Laws:

G.L. c. 208	Divorce
G.L. c. 209	Husbands and Wives
G.L. c. 209A	Abuse Prevention
G.L. c. 209B	Massachusetts Child Custody Jurisdiction Act
G.L. c. 209C	Children Born Out of Wedlock (Paternity)
G.L. c. 209D	Uniform Interstate Family Support Act

■ CHAPTER 2: OVERVIEW OF THE PROBATE AND FAMILY COURT

G.L. c. 119A	Child Support Enforcement
G.L. c. 190B	Guardianship and Conservatorship of Minors
G.L. c. 215	Probate Courts

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

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

How to Behave in Court

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

It is also important that you be prepared. Before your court date, review any pleadings filed, outline your key thoughts, and list the specific actions you want the court to take. Know what you want to say and how you want to say it. It is important to state your case clearly and concisely. The forms and documents you prepare, using the samples included in this book, can be used to help get your thoughts in order.

When you go before a judge or meet with a probation officer, you will have a turn to speak and state your case. Do not interrupt the other person, the attorney, or the judge; you will have the opportunity to respond in due time. It may be helpful to bring a pen and paper to write down your comments as the other person speaks, so that you remember the points you want to make. Before speaking, take a moment to organize your key points.

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

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

The Probation Department (Formerly the Family Service Office)

When you come to the Probate and Family Court for a hearing, you may be referred to the Probation Department by the court. The Probation Department used to be called the Family Service Office, and sometimes people still refer to it that way. The Probation Department in the Probate and Family Court provides different services than the probation departments in other courts that monitor people who have committed crimes. The probation officers in the Probation Department in the Probate and Family Court handle civil matters such as child custody or support and are not involved in court-ordered sanctions or monitoring of people who have committed a crime.

Cases are referred to the Probation Department when court documents show that certain issues are in dispute—for example, custody, visitation, or child support. There are two types of Probation Department responsibilities in family court cases: “dispute intervention” and “investigation.”

If the parties disagree over material facts, the court may refer them to the Probation Department for investigation (for example, where one of the parties is alleged to be a substance abuser or to obtain information from another agency). However, if the parties dispute over how often one person can visit the children (the parenting plan), the

case is usually referred for dispute intervention. There is no ironclad rule; sometimes disputes over who should have custody get referred for dispute intervention and other times for investigation.

The dispute intervention process is a “same day” duty where the court refers the case to the Probation Department on the day of the hearing, and the Probation Department completes its intervention that day, probably reporting back to the judge that same day.

Dispute intervention involves meeting with a probation officer to assess issues and, if possible, to come to an agreement on one or more of the issues involved in the motion hearing. In the dispute intervention process, the probation officer does the following:

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

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

The Probation Department procedure is to put in writing any agreement (sometimes called a “stipulation”) produced in the Probation Department. This agreement is then signed by the parties and presented to a judge who reviews and “approves” the agreement by making an order that the parties comply with the agreement.

Investigation is a longer process in which the probation officer makes a written report back to the court after completing interviews of the parties and other people involved with the children, reviewing documents, and making firsthand observations. Remember that the probation officer is the “eyes and ears” of the court, so be respectful and understand that your conversations with him or her are not kept private.

Practice Note

Probation officers are not judges. They do not have the authority or power to make decisions or court orders. They cannot force you to accept an agreement, but they can make suggestions to you in an attempt to resolve your case.

Parent Education Program

Standing Order 2-16, Parent Education Program Attendance, requires that both parties to a divorce attend a program to educate parents involved in divorce cases about their children’s emotional needs, and the effects of divorce on child behavior and development. The court can order other parties in cases involving parenting time, custody, or support to attend a program as well. Under this order, the court will not hold a pretrial conference or trial unless the court receives a certificate of attendance from both parties or waives the requirement.

A parent can ask the court for permission to be excused from attending the program. The court can grant the request or allow the person to watch a DVD instead if the parent shows one of the following:

- that there has been chronic and severe abuse, which rules out safe parental communication;
- that there are language barriers;
- that the spouse is unavailable (for example, he or she is institutionalized);
- that a program is not available in the county where the parent lives; or
- where justice otherwise indicates.

Standing Order 2-16.

The fee for attendance and the DVD is \$80 per party, reducible by the court to \$5 if the claimant has submitted an affidavit of indigency or an allowed motion to waive the fee. See “What Do You Do if You Cannot Afford to Pay the Filing Fee or Other Costs Associated with Litigation,” below. A sample affidavit of indigency is included as **Exhibit 2A**; a sample supplement to the affidavit of indigency is included as **Exhibit 2B**. The court has a list of approved programs. You must attend one of those programs. While there are other parenting programs available,

they do not satisfy this requirement. To obtain the list of available approved programs, ask the court clerk for a copy, or go to <https://www.mass.gov/service-details/parent-education-programs>.

INCOME, ACCESSIBILITY, AND LANGUAGE ISSUES

What Do You Do if You Cannot Afford to Pay the Filing Fee or Other Costs Associated with Litigation?

There are fees and costs associated with legal cases. For example, the courts charge fees for filing complaints and deputy sheriffs and constables charge fees when they serve summonses and subpoenas. Under the provisions of G.L. c. 261, § 27A et seq. and Supp. Prob. Ct. R. 403, these fees can be waived or paid for by the Commonwealth if the claimant is indigent. To apply for these waivers and costs, you have to fill out an Affidavit of Indigency and Request for Waiver, Substitution or State Payment of Fees and Costs form; a sample is included as **Exhibit 2A**.

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

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

There are two kinds of fees and costs: “normal fees and costs” and “extra fees and costs.” Normal fees and costs include filing fees and service of summonses and subpoenas. In Section 2 of the Affidavit of Indigency and Request for Waiver, Substitution or State Payment of Fees and Costs form, you must list the normal fees and costs that you want waived or paid for by the Commonwealth. Extra fees and costs include the cost of the parent education course and a certified copy of your decree. You must request that these fees be waived in the section for “extra fees and costs.”

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

Once approved, court personnel will file complaints without requiring the filing fee. Get a copy of the affidavit with the signature of the assistant register of probate on it so you can take it to the deputy sheriff or constable who is to serve the complaint and summons. Using the signed and approved affidavit, the deputy sheriff or constable can bill the Commonwealth directly for the costs of serving the summons.

Practice Note

The court regularly updates its forms. Check the website to make sure you have the most current form before you go to file it with the court. See <http://www.mass.gov/courts/forms/pfc/pfc-forms-gen.html>.

What Do You Do if You Want an Attorney Appointed to Represent You or Your Child?

There are very few times when the court can appoint an attorney to represent a person in the Probate and Family Court. There are limited number of programs that may be able to assist you in finding a pro bono attorney. See chapter 20, Resources, of this book.

In some cases the court may appoint an attorney to represent minor children in a matter before the court through a program known as Attorneys Representing Children (ARC). These attorneys represent the child, not the parent, and do not charge for their services. You need to request an ARC attorney by bringing a motion.

If someone has sought guardianship of your child, both you and your child are entitled to the appointment of separate attorneys to represent you. If you have a meritorious claim to either modify a guardianship or to remove a

guardian, the court will also appoint an attorney to represent you. Complete the Request for Counsel form and file it with the court. See **Exhibit 2C**.

The courts also have “Lawyer for the Day” programs to assist you in completing paperwork, although you should arrive at the court early as they are not always there in the afternoon. You may want to telephone the court in advance to make sure they have a lawyer for the day you plan to go to court. The information for each court is found at <http://www.mass.gov/courts/programs/legal-assistance/lf-d-pfc.html>.

What Do You Do if You Want to Try to Settle Your Case?

Provided there is no issue of domestic violence, the courts have developed various mediation programs, some at the courthouse and some through local bar associations. If you feel your case could settle with the assistance of a neutral third party, ask the clerk at your court what programs are currently available.

The court can refer your case to conciliation through the local bar association. If the court does this, an attorney experienced in family law matters will arrange to meet with both parties and any attorneys representing them. They will ask to see the court papers and any financial statements that have been filed with the court. They will allow each side to present their case, and they will try to help you resolve your case based on their experience on what is fair and reasonable to expect the court to do if your case were to go to trial. They do not charge for their time, but the bar associations will often charge each party \$50 as an administrative fee to participate.

The court will schedule a settlement conference if all the discovery is completed in a divorce, divorce modification, or separate support case. Standing Order 2-17. Either one party or both parties together can request a settlement conference. The court can also mandate a settlement conference. File a memorandum, available online, to outline your case and your position on any contested issues. If a settlement conference is scheduled and you do not feel it is appropriate for your case, you can file a form to opt out.

If you have a limited issue in your case, such as the amount of child support that should be ordered, you can request that your case be assigned for a limited issues settlement conference. Any type of case can be heard, but at least one party has to have an attorney, you have to have been to court at least once on the case, and you have to bring a working agreement to the hearing. It does not matter what county your case is from, but the hearings all occur on the first Friday of each month at the Norfolk Probate and Family Court in Canton. A sitting or retired judge will work with you and the other party for up to one hour in an attempt to resolve the case. If you do reach a full agreement, a decree or judgment that concludes the matter can enter.

What Do You Do if You Have a Hearing Impairment or Language Issue that May Interfere with Communication with the Court?

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

Non-English speakers have a right, throughout a court proceeding, to the assistance of a trained and certified interpreter, appointed by the court. G.L. c. 221C, § 2. Non-English speakers are defined as people who cannot speak or understand English, or who have difficulty speaking or understanding English because they use or primarily use a language other than English.

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

The court provides an interpreter, without cost to you, for court proceedings. Unfortunately, if you need an interpreter to speak to your lawyer outside of court, you need to fill out the affidavit of indigency and request that the court have the state pay the costs to provide one for you. It is advisable to request that the court provide you with funds to have a court-certified interpreter at meetings with your lawyer, rather than a friend or relative. Court-certified interpreters receive special training on “legal speak” and are usually better able to translate the technicalities of a legal proceeding.

■ CHAPTER 2: OVERVIEW OF THE PROBATE AND FAMILY COURT

Each court has a clerk who has the responsibility to arrange for court interpreters, and it is important to notify that clerk in advance so that the proper arrangements can be made. Try to notify the court as soon as you have a court date if you require an interpreter so that it can be arranged. Interpreters go to many different courts and it can be difficult to schedule one for certain languages.

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

Practice Note

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

PLEADING AND PRETRIAL PREPARATION

How Does a Case Get Started?

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

If you want the court to consider your case, begin by deciding which particular legal action to bring (divorce, paternity, guardianship, etc.), and then file the appropriate complaint. For each legal action there is a corresponding complaint or petition form. A complaint or petition is the document you use to bring a legal “action.” The person who files the complaint is called the “plaintiff” and the opposing party is called the “defendant.” Many forms are available online through the court websites, listed in chapter 20, Resources. Courts generally have a “Lawyer for the Day” during the morning hours to assist you with completing the forms. Many courts no longer have copies of the forms readily available and will direct you to the website, so print out the forms you believe you will need and bring them with you.

Selecting the Proper Action and Complaint

Divorce (G.L. c. 208, §§ 1, 1A, 1B)

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

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

Both the complaint for divorce and the joint petition for divorce bring the basic issues before the court. These issues include child custody, child support, visitation, alimony, division of marital property, and protection from abuse. For more information, see chapter 5, Divorce.

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

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

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

A complaint for support can be filed by a married person living apart from his or her spouse in order to seek support for himself or herself, or his or her children. This complaint cannot be used to divide up marital property.

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

A complaint to establish paternity can be filed by a person seeking a court determination (adjudication) that he is the father of a child born out of wedlock; it can also be brought by the mother seeking to establish that a particular man is the father of her child born out of wedlock. It can include a request for support, custody, and parenting time, as well. For same-sex couples, it can establish the parental rights of the nonbiological parent if he or she is not listed on the birth certificate. See chapter 7, Paternity Issues.

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

A complaint for support, custody, or parenting time can be filed by the mother or the father of a child born out of wedlock, when there has been either a voluntary acknowledgment of paternity signed by both parents (both parents' names will be on the birth certificate) or when there has already been a determination of paternity by a court. In either of those two situations, you would file this form of complaint to obtain a child support or health insurance order for the child, a custody or parenting time order, or an order protecting the child or parent from abuse. See chapter 8, Child Support, and chapter 9, Child Custody.

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

See chapter 3, Safety and Protection Issues.

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

If there is a final judgment in any of the kinds of action described in this book, and if there has been a significant and material change of circumstances since the court entered that judgment, a person can file a complaint for modification to ask the court to modify or change the prior judgment. See chapter 16, Modifications.

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

If you have received an order or judgment from the court and you believe that the other party has not followed the terms of the order or judgment, you can file a complaint for contempt asking that the court hold the other party in contempt for refusing to follow the orders. The action for contempt is a serious and important way for the Probate and Family Court to enforce its orders and judgments. See chapter 17, Contempt.

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

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

Complaint for Guardianship or Conservatorship of a Minor (G.L. c. 190B)

If the parents are not available or are not capable of caring for their child, another person can petition the court to be guardian of a minor child. If the child has income or assets, then he or she can petition the court to take care of his or her financial assets and needs. See chapter 13, Guardianship of Minor Children.

Serving the Complaint

Before you can proceed with the complaint you have filed, the other party (the “defendant”) must be served with a domestic relations summons or citation. These are forms provided by the court after you file your complaint.

When you file a complaint, get the summons form from the clerk and fill it out. The complaint and summons must be served by a disinterested person (preferably a constable or deputy sheriff), sometimes in person, by handing the defendant copies of the complaint and summons. Some complaints can be left by the sheriff or constable at the defendant's last known address and then mailed to that address. The constable or sheriff then fills out the original summons and returns it to you. It is then your responsibility to return the original summons to the court for filing (an action that is referred to as return of service). If you cannot locate the defendant, you may ask the court for alternate service, which requires that you publish a notice in a newspaper and mail it to the defendant's last known address.

Have the sheriff or constable try to serve the defendant if you can, because some forms of relief will not be available to you if you publish the notice.

Practice Note

Remember to file the original summons with the officer's return of service attached to it (often a sticker on the back of the form) with the court. You must file the original, as a photocopy is not acceptable. If this is not on file at the time of a motion or contempt hearing, the court will not hear your case and you will have to come back on another date. You have ninety days to serve the divorce summons, but should serve it at least seven days before a motion date or contempt hearing. If you do not serve the summons, your case can be dismissed. You can ask for an extension of time to serve the summons, but you need to bring a motion and provide a good reason for the court to give you more time (for example, the other party is avoiding service and the sheriff has been unable to serve it).

Answers and Counterclaims

If you have been served with a summons and a complaint that names you as the defendant, the summons will say that you have twenty days from the date of service in which to file your answer. It is important to do this. There are Answer and Counterclaim forms available on the court's website. You must respond to each allegation in the complaint by admitting to it, denying it, or saying that you do not have the information to admit or deny it. You must sign the answer and date it. You must also put your address and telephone number on your answer. You then file the original answer with the court, send a copy to the other party (or his or her attorney if there is one), and keep a copy for yourself.

If the summons is issued pursuant to an order for service by publication and mailing, there is a date on the summons by which you must file your answer.

If the summons is a contempt summons, there is a date on the summons on which you must appear in court.

In some modification of support actions, you do not have to file an answer. There is a date on the notice when you need to appear in court and bring a completed financial statement. If you file one of these actions, you also do not have to serve the summons by sheriff or constable; you can mail a copy of the documents to the defendant.

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

Time Standards

All courts, including the Probate and Family Court, now have time standards that provide a timeline for each type of case. Time standards were developed so that cases will be resolved in an efficient and timely way. The time standards provide a goal; they do not guarantee how quickly your case will be completed. Under the time standards, a paternity case is expected to be finished in eight months, while a contested divorce is expected to be completed in fourteen months. Standing Order 1-06.

When you file your case, it will be assigned a "track" that determines how long the case should take, as well as the name of the judge assigned to your case. If you have not filed a motion for temporary orders, a case management conference will be scheduled. At this conference, both parties have to provide the court with an outline of how much time they need to get the information they require (discovery), and when they expect they will be ready for a pretrial conference. At the case management conference, the clerk will provide you a form where both parties will

- determine whether the matter could be settled or referred to mediation or another form of alternative dispute resolution;
- identify what the parties cannot agree on;
- set a date when discovery has to be finished;
- set a date when all motions must be filed; or
- if neither party disagrees with what is being asked, they can file an agreement and have the court hear the case that day; otherwise, the court will schedule the pretrial conference date.

Any requests to change the dates set by the court at the case management conference must be in writing and the judge must decide whether or not to give you more time.

Before the pretrial conference, you are to meet with the other party and try to settle your case or at least such parts of the case that you can agree upon. You should then write out what you agree to and both sign it to bring to court. If you have not reached a full agreement, be sure to bring a written pretrial memorandum that answers the questions listed in the pretrial order that was issued by the court.

At the pretrial conference, if you have not reached an agreement, the court will first try to assist you in narrowing the issues, and perhaps try to assist in reaching an agreement, or refer you to an alternate dispute resolution service such as a mediation lawyer at the courthouse, or a conciliation program run by the local bar association. If no agreement is possible, the court will schedule dates for a trial and issue an order to be followed to prepare for the trial. The court needs to know how many days of trial you need, because they try to give you dates that are together for the trial. Be prepared to tell the judge the exhibits you think you will introduce at trial and the names of the witnesses you plan to have testify at trial.

Financial Statements and Other Required Forms

What Is a Financial Statement and What Are the Rules Governing Them?

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

- Each party to a divorce, separate support, modification of support, contempt, or other action in which financial relief is requested must file a financial statement and deliver a copy to the other party within forty-five days of the date the summons is served.
- If there is a hearing on a motion for temporary orders or a pretrial conference prior to the expiration of the forty-five-day period, financial statements must be filed in court and exchanged between the parties no later than two business days before the hearing or conference.
- Each party is required to fill out and file a current financial statement whenever the court is asked to enter a financial order such as a child support order or an alimony order.
- Each party must provide the other party with a copy of his or her financial statement.
- Financial statements are signed “under penalties of perjury.” They are serious documents and must be filled out with care.
- Financial statements require that income and expense information be given on a weekly basis. If your information is in terms of monthly figures, divide by 4.3 to determine the weekly amount.
- All income and expenses must be declared on the financial statement. If the spaces on the form are not sufficient, attach additional pages.
- The financial statement must be accurate as of the time when it is presented to a judge. If a previously filed financial statement is not up-to-date, it is the duty of the person making the financial statement to provide the judge with one that is up-to-date and accurate.
- Every line on the financial statement form must be filled in. If you do not receive a type of income or have an expense that is listed, put a zero on the line. If you do not have an asset that is listed on the form, put “none” and a zero to the right, for a value.
- For a hearing on a request for a temporary order for financial support or at a final hearing or trial involving support, you must file your financial statement. Some courts require that you file your financial statement at the time you file your request for the hearing, not at the time you actually see the judge about your request for support.
- A party may formally request that the other party file a financial statement in court and send the requesting party a copy on ten days’ notice. The notice is in the form of a separate request entitled Request for Financial Statement. No further request may be made within ninety days of a prior request except by order of the court. See **Exhibit 2F** for a sample notice to furnish financial statement.

Practice Note

Financial statements are not public records. They are to be printed on pink paper (available at copy and office supply stores) so that they are easily identified and removed from the public papers. Financial statements are not filed with the other papers in your court; they are kept separate to ensure your privacy. Financial statements are only available to the parties, their attorneys, Probate and Family Court personnel, and the Massachusetts Department of Revenue (DOR) if a party receives public assistance or support collected by DOR.

Motions and Temporary Orders

What Is a Motion?

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

Examples of temporary orders include

- temporary custody orders,
- temporary child support or alimony orders,
- temporary orders concerning parenting time, and
- temporary restraining orders.

Practice Note

One difference between a motion and a complaint is that the court decides on the relief you request in your complaint at the hearing on the complaint during the *trial session* of the court. The court decides the relief that you request in a motion in a *motion session* of the court. The court provides limited time for motions and usually listens to what each party has to say without an evidentiary hearing (where people take the stand and testify).

How to Make a Motion and Schedule a Hearing

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

1. Fill out the motion form or type up a motion and state exactly what you want the court to order. Be clear so that after hearing your motion the court knows exactly what you want the judge to order. See **Exhibit 2G**.
2. Prepare a proposed order either on a proposed order form or on a document that you create yourself. See **Exhibit 2H** for a sample proposed order.
3. Speak to a court scheduling clerk to pick a court date for your motion to be heard. Your case will be assigned to a judge based on the number it is given. That judge will usually hear motions on a set day each week, and they are usually booked for many weeks. You need to find out from the scheduling clerk when the judge assigned to your case can hear your motion.
4. Make a copy of your motion *with* a notice of the court date and time of the hearing on it.
5. File your motion in the clerk's office. The motion should be filed with any supporting documents, such as your affidavit stating important facts, occurrences and events that, if true, would show that you are entitled to the relief requested in the motion and your proposed order. See **Exhibit 2I**.
6. Serve a copy of the motion, affidavit, and proposed order together with notice of the date, time, and place of the hearing. This is done by mailing a copy of everything to the other party.

Practice Note

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

How Do You Respond to a Motion?

A motion will notify you of the date on which the motion is to be heard or considered by the court. It is important that you are present in court when the motion is heard. If you have objections to the motion, you can file a written opposition to the motion. The opposition should say which parts of the motion you are opposed to and the reasons for your opposition. It should be accompanied by an affidavit signed by you with the facts that support your position. In your opposition you can also raise your own responses or request for what you want the judge to do. If you raise an opposition motion, be sure to prepare and serve a copy of your proposed order with your opposition. The opposition should say which parts of the motion you do not agree with and the reasons you do not agree.

What Happens at the Motion Hearing?

At the hearing, you will have the opportunity to present your case to the judge. If you have already reached an agreement with the other party, write the agreement and both of you should sign it, then you can present the agreement to the judge for his or her approval. If you cannot reach an agreement, you must tell your story to the judge and ask for what you want the judge to decide. The judge may tell you right at the end of the hearing what his or her decision is, or he or she may consider the case and make a decision after you have left. This delay in decision is called “taking the matter under advisement.” The judge’s decision is called a court order. All court orders are made in writing and signed by the judge. The court mails copies of court orders to both parties. The court will provide you with an envelope that you need to write your name and address on. This is the envelope that they use to mail you the decision, so make sure it is accurate.

If the motion concerns child support, custody, parenting time, or similar family matters, you will probably be referred to the Probation Department before you see a judge. If appropriate, the probation officer will work with both parties to help reach an agreement. For more information on this, see “The Probation Department,” above.

Final Judgment

Motions are a way of asking the court to enter an order through a temporary order on things that cannot wait for a full trial. You cannot obtain a final judgment or permanent relief through motions. Final judgments can only be made after a trial on the complaint. Only the relief requested in the complaint itself is subject to final judgment; so make sure that you include in your complaint all the issues that you want resolved.

After the return of service is filed, or after the first motion on a case is heard, the court will schedule a pretrial conference date. If the case is an uncontested one, the court will schedule a trial date. If the case is contested, then the court will most likely schedule and give notice of an assignment for pretrial conference. The notice of assignment for pretrial conference the court’s requirements for the conference to the parties. Be sure to read the notice and follow the requirements as to what is expected of you. Prior to the pretrial conference, the parties and their lawyers are required to meet in person to see if the case, or at least part of the case, can be settled; the parties must exchange and file a pretrial memorandum and updated financial statements on any matters that cannot be settled. A copy of a pretrial notice and order is provided as **Exhibit 2J**, and a sample pretrial memorandum is included as **Exhibit 2K**.

Practice Note

In cases where there is domestic violence, the parties do not have to meet or discuss the case prior to the pretrial, but you still have to file a pretrial memorandum.

Discovery

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

The financial statement is a form of discovery, and it is a form of discovery that is required in every case, even if you settle the case.

Another mandatory form of discovery in divorce cases is Mass. R. Dom. Rel. P. 410, Mandatory Self-Disclosure. Under this rule, each party is required to deliver to the other person, within forty-five days of service of the summons, copies of the following documents:

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

Because the financial statement is a generic form and the mandatory self-disclosure refers to a specific list of documents, the information you obtain on the other party's financial statement and through mandatory self-disclosure may not be suited to the actual questions you may have about the other party's financial condition. Questions you might have concerning nonfinancial matters are altogether outside the scope of the financial statement and mandatory self-disclosure. As a result, the Massachusetts Rules of Domestic Relations Procedure create a broad range of discovery options. The most common forms of discovery are depositions (i.e., recorded testimony) (Mass. R. Dom. Rel. P. 30, 31), interrogatories to parties (i.e., lists of written questions that require written answers) (Mass. R. Dom. Rel. P. 33), and production of documents and items (Mass. R. Dom. Rel. P. 34), though the latter two forms are far more common than the first, primarily because they are less expensive. If you want to know what types of things you can ask for in discovery, the law library and MCLE have a variety of books for you to review.

Samples of interrogatories are included as **Exhibit 2L**, and requests to produce documents are included as **Exhibit 2M**.

Compelling the Presence of Witnesses and Documents: The Subpoena

The subpoena is a powerful tool to require the presence of witnesses at hearings. With a subpoena, a witness can be compelled both to give testimony and to bring documentary evidence with him or her to court. For example, at a hearing on child support, you might need to subpoena the other party's employer to bring payroll records to prove income. That sort of subpoena is directed to the "keeper of the records" of the employer, and must be specific about which payroll records need to be brought to court. See **Exhibit 2N**.

Subpoenas may be issued by clerks of court, notaries public, and justices of the peace. G.L. c. 233, § 1 et seq. They are servable "in any county by an officer qualified to serve civil process [e.g., deputy sheriffs and constables] or by a disinterested person by exhibiting and reading it to the witness, by giving him a copy thereof or by leaving such copy at his place of abode."

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

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

SELECTED EVIDENTIARY ISSUES

Use of Witnesses

During the presentation of your case, witnesses will testify before the judge. When you are questioning witnesses, you must follow the rules of evidence. There are numerous books available in local law libraries that outline both direct and cross-examination of witnesses. If possible, look at some of these books and watch a trial in the Probate and Family Court to observe the form of questions. See chapter 20, Resources, for a list of local law libraries.

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

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

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

Expert Witnesses

Most witnesses are “lay witnesses”—that is, ordinary people testifying about what they saw or heard. Witnesses with specialized knowledge are known as “expert witnesses.” These include accountants, real estate appraisers, business appraisers, doctors, or psychologists. Expert witnesses not only testify about what they saw or heard, but can provide the court with an opinion on a subject. There are specific procedures that you must follow in order to have the court qualify someone as an expert. You must ask their name, their educational background, and their professional experience. You must then ask the court to recognize this person as an expert in their field. If you do not want the other side’s witness to be considered an expert by the court, you must object and state why that person is not an expert in his or her particular field. If you plan to call an expert, you should review a book from the law library on the questions to ask and how to get the expert opinion into evidence; or if you want to prohibit the other person’s expert from giving their opinion, you can review how to challenge their credentials.

Experts will charge a substantial fee for both their testimony and their preparation and investigation. If you do not have enough money to hire your own expert, you may bring a motion before the court asking for the state to pay the expert’s fees. See “Income, Accessibility, and Language Issues,” above.

Subpoena Witnesses

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

Practice Note

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

In order to subpoena a witness, you need to complete a form. These forms can be found at <http://www.masslegalhelp.org/children-and-families/forms#subpoenas>. If you are looking to just get documents, such as employment payroll records, you send the subpoena to the keeper of the records of the corporation and have to serve the registered agent. Go to the Corporations Division of the secretary of state website and look up the corporation for this information

and the address. See <http://corp.sec.state.ma.us/corpweb/CorpSearch/CorpSearch.aspx>. Once the form is completed, you will need a notary public or justice of the peace to notarize it. After it has been notarized, bring the form to a sheriff, constable, or process server who will then deliver a copy to the witness or leave it at his or her residence. These forms can also be served by any person over the age of eighteen who does not have an interest in the case. For crucial witnesses, you will want them served by hand—that is, have the server personally give the subpoena to the witness. You can request on the form that the witness bring books, papers, or documents with him or her. Each subpoena must include a fee for one days attendance at court and mileage. The court can modify your subpoena if it finds it to be oppressive or unreasonable. A sample subpoena is included as **Exhibit 2N**. If you cannot afford the costs of a subpoena, you can request that the court have the state pay the costs. See “Income, Accessibility, and Language Issues,” above.

Practice Note

You must always subpoena guardians ad litem or court investigators if you want to cross-examine them regarding their reports. If you do not subpoena the guardian ad litem or investigator, he or she will not come to court for the trial.

Guardians ad Litem and Their Reports

The Probate and Family Court may appoint a person known as a “guardian ad litem” (GAL) to investigate and make a recommendation to the court. A GAL can be appointed for various reasons; the two most common reasons are to investigate and make recommendations in a contested custody matter, and to make a judgment for a disabled or incapacitated person. A person can be found disabled or incapacitated because he or she has a clinically diagnosed condition that results in an inability to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance, or because he or she is under the age of eighteen. G.L. c. 190B, § 5-101; see Ruth Mattson, ed., *Massachusetts Guardianship and Conservatorship Practice Under the Massachusetts Uniform Probate Code* (MCLE, Inc. 5th ed. 2017). The court has authority to appoint a GAL for an incapacitated person under G.L. c. 190B, § 5-106(b): “The court may appoint as guardian ad litem, an individual or any public or charitable agency to investigate the condition of the ward, incapacitated person or person to be protected and make appropriate recommendations to the court.” See chapter 10 of this book regarding the appointment of a GAL in a child custody case.

Depending on the type of case, an attorney or a mental health professional is appointed as the GAL. The GAL will file a written report of his or her findings and make recommendations to the court. The court usually gives great weight to the GAL’s recommendations regarding custody or parenting time. Ultimately, however, the judge makes his or her own conclusions based on all of the evidence. *Delmolino v. Nance*, 14 Mass. App. Ct. 209, 212 (1982). If you have questions about the GAL’s report or believe that the GAL may have been biased, you should subpoena him or her to testify at trial.

The GAL must be paid. Often the parties are ordered to share the cost of the GAL. Sometimes one party is ordered to pay the full cost of the GAL. If both parties have a low income, the GAL may be paid by the state.

How to Challenge a GAL’s Report

If you want to challenge some or all of the GAL’s report, you can do the following:

- Challenge the GAL’s biases and/or credibility.
- Move to strike hearsay information (i.e., an out-of-court statement being admitted to the court for its truth; in order to include hearsay, the GAL must identify the person who made the statement—otherwise it must be excluded) or privileged information (i.e., a statement made to a certain type of person—for example, a clergy member or a social worker—that cannot be admitted into court because of your relationship with that person; statements made to such people must meet certain requirements to be privileged. See “Privileges,” below.).
- Challenge the GAL’s report on the grounds that the GAL failed to give a “*Lamb* warning.” *Commonwealth v. Lamb*, 365 Mass. 265 (1974). A “*Lamb* warning” requires the GAL to explain that nothing said to the GAL is confidential and that you have the right to refuse to speak with the GAL; if the GAL failed to provide a “*Lamb* warning,” you should object to the information.

See **Exhibit 20** for a sample motion to strike.

Practice Note

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

Medical Records

Medical records that relate to treatment are admissible in court under G.L. c. 233, § 79. In order to introduce the records into evidence, you do not need to call the doctors and nurses who provided treatment. General Laws c. 233, § 79G provides the procedure to follow. You must notify the other side by sending a written notice by certified mail, return receipt requested, with a copy of the medical records. This written notice must be sent at least ten days before the hearing. You need to file an affidavit with the court stating that you did notify the other side.

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

Practice Note

Hearsay (i.e., out-of-court statements) and other statements or observations that are not related to treatment, but may be within the medical records, are not admissible. *Commonwealth v. Olszewski*, 416 Mass. 707 (1993).

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

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

Alcohol or drug abuse treatment records, however, are not considered medical records and cannot be admitted under G.L. c. 233, § 79G. The release of alcohol or drug abuse treatment records requires a judicial order or written consent of the patient. You cannot subpoena another person's treatment records without first obtaining a judicial order for their release. See G.L. c. 111B, § 11 (alcohol treatment); G.L. c. 111E, § 18 (substance abuse treatment). If the person will not provide you with written consent, you must bring a motion to the court requesting that the court order the facility to provide you with a copy of the records. You must give notice of this motion to the patient and to the person or facility that has the records that you seek. There will either be a hearing with oral arguments or a hearing in the judge's chamber on your motion. The judge must find that good cause exists for releasing the records, that there is no other way to effectively obtain the information and that the public interest and need for disclosure outweighs the potential injury to the patient. The court may order that certain sections are to be released and that those sections are to be subject to safeguards to prevent further disclosure. 42 U.S.C. § 290dd-2.

Privileges

Communications between you and a particular type of person, such as a clergy member or a therapist, may be privileged. Communications includes conversations, correspondence, actions, observations, and anything relating to treatment. Privileges may be applied differently in other types of cases, especially in criminal cases. The privileges are found in various statutes and cases, including but not limited to the following:

G.L. c. 233, § 20A	Religious Privilege
G.L. c. 112, §§ 135A, 135B	Licensed Social Worker / Government Social Worker Privilege
G.L. c. 112, § 172	Allied Mental Health Professional Privilege
G.L. c. 233, § 20	Spousal Privilege
G.L. c. 233, § 23C	Mediation Privilege

■ CHAPTER 2: OVERVIEW OF THE PROBATE AND FAMILY COURT

G.L. c. 233, § 20B	Psychiatrist, Psychotherapist, and Psychologist Privilege
G.L. c. 112, § 135	Marital Therapist Privilege
G.L. c. 233, § 20J	Sexual-Assault Counselors
G.L. c. 233, § 20K	Domestic-Violence Counselors Privilege
Case law	Attorney-Client Privilege
Fifth Amendment to the U.S. Constitution	Privilege Against Self-Incrimination

The major objections based on privilege are discussed below. These objections are further discussed in evidence books available at law libraries; review these as they relate to your case. If you are seeking access to evidence of the other parties' information, or are trying to admit such information into evidence, be prepared to argue why the privilege does or does not apply to your case. For more information on issues of privilege, see *Massachusetts Guide to Evidence* (MCLE, Inc. 2017); *A Practical Guide to Introducing Evidence in Massachusetts* (MCLE, Inc. 4th ed. 2013 & Supp. 2015, 2017); and *Massachusetts Evidence: A Courtroom Reference* (MCLE, Inc. 2017). These books are routinely updated, so look for the most recent editions. The state has also provided information on the court websites that may be of assistance in determining whether a privilege is applicable in your case. See <http://www.mass.gov/courts/case-legal-res/guidelines/mass-guide-to-evidence/article-v-privileges-and-disqualification.html>.

Practice Note

If you do not want information that you think is privileged to be heard by the judge, you must state "objection" each and every time the other side attempts to present the evidence to the judge. Otherwise, the judge feels you do not want to protect your privileged information.

Religious Privilege

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

Attorney-Client Privilege

Communications between an attorney and a client are privileged. This includes an initial consultation; it applies even if the attorney no longer represents you, and regardless of whether you paid a fee for the services. Be careful though, because if a third party, who is not an interpreter, is present while you talk with your attorney, your communications will not be privileged. *Suffolk Constr. Co., Inc. v. Div. of Capital Asset Mgmt.*, 449 Mass. 444 (2007). The attorney-client privilege does not apply to communications relating to seeking assistance for a future crime or fraud. *In re Grand Jury Investigation*, 453 Mass. 453 (2009).

Spousal Privilege

A spouse is disqualified from testifying in criminal proceedings about private conversations with his or her spouse. G.L. c. 233, § 20. In civil cases (i.e., noncriminal cases), one spouse may object to the other spouse testifying about their private conversations. This privilege requires that the parties be married at the time of the conversation, that no one else was present while they spoke, and only applies to oral conversations, not written communications. Abusive or threatening words are not privileged. *Commonwealth v. Burnham*, 451 Mass. 517 (2008). The privilege does not apply in child abuse cases, including civil cases. *Commonwealth v. Winfield*, 76 Mass. App. Ct. 716 (2010). If an eavesdropper hears a private conversation between husband and wife, that person can testify about what he or she heard. A spouse can testify about any agreement made with the other spouse. *Lima v. Lima*, 30 Mass. App. Ct. 479, 482 n.2 (1991). This privilege does not apply in actions for divorce, paternity, or other Probate and Family Court matters between the spouses. If a party has married another person, the communications between that spouse are privileged.

Privilege Against Self-Incrimination

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

Mediator Privilege

A mediator's work product, files, and any communications made during mediation are confidential and cannot be admitted into evidence. G.L. c. 233, § 23C. In order for this privilege to apply, the mediator must be appointed by a court to mediate a dispute or must have a written contract with the parties to assist in resolving their dispute, and must be qualified as a professional mediator. If you tried to mediate your dispute before going to court, but were unable to resolve it, any communication made during mediation or about the mediation are not admissible in court.

Social Worker–Client Privilege

Communications between a licensed social worker or social worker employed by a government agency and a client are confidential. G.L. c. 112, §§ 135, 135A, 135B. This privilege applies to any communication, wherever it is made, but it must relate to the diagnosis or treatment of a mental or emotional condition. This privilege does not apply in child custody, care and protection, or adoption proceedings; nor does it apply to a social worker's investigation of child abuse, or if it is necessary to protect someone's safety. G.L. c. 112, § 135B. If you want to use evidence from a social worker, you must either get a signed release from the person who spoke to the social worker, or you must bring a motion before the judge. If you bring a motion, the judge will hold a hearing to determine if the social worker has evidence bearing significantly on the client's ability to provide suitable child care or custody, and if the welfare of the child requires disclosure. In adoption cases, communications with a social worker can only be admitted into evidence if the party was told by the social worker that the communications would not be privileged. Social workers with the Department of Children and Families (DCF) can and will testify in an adoption proceeding, and any communications with them are not privileged.

Allied Mental Health Professional Privilege

Communications with a licensed marriage and family therapist, a licensed rehabilitation counselor, a licensed mental health counselor, or a licensed educational psychologist are also privileged under G.L. c. 112, § 163.

Psychiatrist, Psychotherapist, and Psychologist Privilege

This privilege can get complicated and is being tested all the time, particularly in criminal cases for rape or domestic violence. It is strongly suggested that you hire an attorney if you wish to keep your psychiatric or psychotherapeutic information confidential, or if you want access to your spouse's records.

All communications between a psychologist and client are confidential. G.L. c. 233, § 20B. You must be the patient in order to assert this privilege; you cannot assert the privilege on someone else's behalf. In order for this privilege to apply, the therapist must be one of the following:

- a licensed psychologist who provides counseling,
- a licensed physician who practices psychiatry,
- a licensed psychologist with a doctoral degree in psychology, or
- a registered psychiatric nurse.

Ask for the person's qualifications to determine if they are one of the people listed under this privilege. A therapist can disclose your communications under three circumstances:

- if you provide a written release;
- if you present a clear and present danger to yourself but refuse to voluntarily accept appropriate treatment; or

■ CHAPTER 2: OVERVIEW OF THE PROBATE AND FAMILY COURT

- if you have stated you will kill or inflict serious bodily harm on an identified person and have the apparent intent and ability to carry out the threat.

If you have been ordered by a court to undergo an evaluation, or if you have been provided with a warning that the information would not be confidential, your communications are not privileged. In such situations, you need to decide whether to provide information and participate in the evaluation that can be presented to the judge, or to refuse to answer the questions.

This privilege does not protect facts, such as admission to a hospital or psychiatric facility, the date of admission or the purpose of admission, if it does not implicate communications between the patient and psychotherapist. *Commonwealth v. Clancy*, 402 Mass. 664 (1988).

Practice Note

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

Exceptions in Child Custody Cases

There are exceptions to the therapy privilege in child custody cases that, after a hearing in the judge's chambers, can result in the judge determining that the evidence significantly relates to whether you can provide suitable care or custody for the child, and that "it is more important to the welfare of the child that the communication be disclosed than that the relationship between patient and psychotherapist be protected." G.L. c. 233, § 20B; *see* G.L. c. 112, § 129A. Just because this is a child custody case, your privilege is not automatically waived; there must be a hearing and the judge must make a determination before your therapy records can be considered as evidence. *Usen v. Usen*, 359 Mass. 453 (1971). While the privilege can be ignored in child custody cases, it cannot be ignored in termination of parental rights cases. G.L. c. 233, § 20B(e); *Petition of Catholic Charitable Bureau of Archdiocese, Inc. to Dispense with Consent to Adoption*, 392 Mass. 738 (1984).

You have no privilege if the psychotherapist reports suspected child abuse to the state under G.L. c. 119, § 51A. *Commonwealth v. Souther*, 31 Mass. App. Ct. 219, 222–24 (1991).

Marital Therapist Privilege

Both adult patients to the therapy must waive the privilege before a marital therapist may testify. G.L. c. 112, § 135A(i).

Sexual-Assault Counselors and Domestic-Violence Counselors

Counselors under these sections are more broadly defined than under the other sections of therapy privilege. A domestic-violence victims' counselor must work or volunteer at a victims' program and have undergone twenty-five hours of training. *See* G.L. c. 233, § 20K. A sexual-assault counselor is a person employed or volunteering at a rape crisis center, has thirty-five hours of training, and reports to a licensed social worker, nurse, psychiatrist, psychologist, or psychotherapist. G.L. c. 233, § 20J.

Procedure for Obtaining Access to Therapy Records

If you want access to someone's therapy records and that person will not give you the records, you first must request a court hearing and prove that the records are likely to contain relevant evidence to your case. The judge will then review the records in his or her chambers. Those portions of the records that the judge decides are relevant to your case can then be released and used in the court proceeding. Note that guardians ad litem are often given free access to privileged information. If you want to keep your records confidential, prepare an argument for the judge showing that they are not relevant to the case. While there is an exception in child custody cases, review that statute to be sure it applies clearly to your case.

For any privilege, you need to follow a three-step thinking process:

1. **Is it privileged?** If you do not want your records submitted to the court, you must object. Prepare a brief outline of why the records are privileged. If you are looking to admit privileged records, prepare a brief outline about how the exceptions to the privilege apply in your case.
2. **Is it relevant?** Present your theory about whether the documents are relevant. If the information is irrelevant to your case, the court should not admit the documents.
3. **What portions of the material can be disclosed?** Often part of a record will be admissible while other parts are not. The judge can decide to allow only part of the record into evidence, and cannot consider the other parts in making his or her decision.

As stated before, the privileges are extremely complicated. At the very least, you should review a book on Massachusetts evidence before trying your own case, check the court's website for information, and observe a trial if you can. If you want to protect your own privileged information or if you want to introduce the other person's privileged information, you probably should hire an attorney.

MCLE and the author are grateful to Jeffrey L. Wolf, Esq., for his contribution to a previous version of this chapter.

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

Commonwealth of Massachusetts

AFFIDAVIT OF INDIGENCY

AND REQUEST FOR WAIVER, SUBSTITUTION

OR STATE PAYMENT OF FEES & COSTS

*(Note: If you are **currently confined in prison or jail** and are not seeking immediate release under G.L. c. 248 §1, but you are suing correctional staff and wish to request court payment of “normal” fees (for initial filing and service), **do not use this form**. Obtain separate forms from the clerk.)*

Suffolk Probate and Family Court	David Parent v. Lisa Parent SU 17D2017DR		
_____	_____		
Court	Case Name and Number (if known)		
Name of applicant:	David Parent		
Address:	123 Main Street, Apt. 3	Boston	MA 02101
_____	_____	_____	_____
(Street and number)	(City or town)	(State and Zip)	

SECTION 1: Under the provisions of General Laws, Chapter 261, Sections 27A-27G, I swear (or affirm) as follows:

I AM INDIGENT in that (*check only one*):

- (A) I receive public assistance under (*check form of public assistance received*):
- Transitional Aid to Families w/ Dependent Children (TAFDC) Medicaid (Mass Health)
- Emergency Aid to Elderly, Disabled or Children (EAEDC) Supplemental Security Income (SSI)
- Massachusetts Veterans Benefits Programs; **or**
- (B) My income, less income deducted from my pay, is \$ _____ per week biweekly month year

(check the period that applies)

for a household of _____ persons, consisting of myself and _____ dependents;

which income is at or below the court system’s poverty level; (*Note: The court system’s poverty levels for households of various sizes must be posted in this courthouse. If you cannot find it, ask the clerk or check online at:*

<http://www.mass.gov/courts/sjc/docs/povertyguidelines.pdf>.. *The court system’s poverty level is updated each year.*)

(List any other available household income for the above period on this line: \$ _____); or

- (C) I am unable to pay the fees and costs of this proceeding, or I am unable to do so without depriving myself or my dependents of the necessities of life, including food, shelter and clothing.

IF YOU CHECKED (C), YOU MUST ALSO COMPLETE THE SUPPLEMENT TO THE AFFIDAVIT OF INDIGENCY.

SECTION 2: *(Note: In completing this form, please be as specific as possible as to fees and costs known at the time of filing this request. A supplementary request may be filed at a later time, if necessary.)*

I request that the following **NORMAL FEES AND COSTS** be waived (not charged) by the court, or paid by the state, or that the court order that a document, service or object be substituted at no cost (or a lower cost, paid for by the state): *(Check all that apply and, in any "\$_____" blank, indicate your best guess as to the cost, if known.)*

- Filing fee and any surcharge. \$ 220.00 _____
- Filing fee and any surcharge for appeal. \$ _____
- Fees or costs for serving court summons, witness subpoenas or other court papers. \$ 65 _____
- Other fees and costs of \$ 80 for (specify): Parent Education Course _____
- _____
- Substitution (specify): _____
- _____

SECTION 3: I request that the following **EXTRA FEES AND COSTS** either be waived (not charged), substituted or paid for by the state:

- Cost, \$ _____ of expert services for testing, examination, testimony or other assistance (specify): _____
- Cost, \$ _____ of taking and/or transcribing a deposition of (specify name of person): _____
- Cassette copies of tape recording of trial or other proceeding, needed to prepare appeal for applicant **not** represented by Committee for Public Counsel Services (CPCS-public defender).
- Appeal bond

■ CHAPTER 2: OVERVIEW OF THE PROBATE AND FAMILY COURT

Cost, \$ _____, of preparing written transcript of trial or other proceeding

Other fees and costs of \$ _____ for (specify): _____

Substitution (specify): _____

Date signed	Signed under the penalties of perjury
	x _____
By order of the Supreme Judicial Court, all information in this affidavit is CONFIDENTIAL. Except by special order of a court, it shall not be disclosed to anyone other than authorized court personnel, the applicant, applicant's counsel or anyone authorized in writing by the applicant.	
This form prescribed by the Chief Justice of the SJC pursuant to G.L. c. 261 §27B. Promulgated March , 2003	

DETERMINATION REGARDING FEES AND COSTS

	David Parent v. Lisa Parent	
Court	Case Name and Number	
Name of Applicant	David Parent	
Address	Boston	MA 02101
(Street and number)	(City or town)	(State and Zip)

FORTHWITH DETERMINATION BY CLERK (Register, Recorder)

ALLOWED FORTHWITH. The applicant’s affidavit appears regular and complete on its face, indicates that the applicant is indigent, and requests waiver, substitution or payment by the Commonwealth of normal fees and costs only. Pursuant to G.L. c. 261, §2C(2), the application is therefore **ALLOWED** forthwith without hearing, and the normal fees and costs indicated in the application are:

waived in full to be paid by the Commonwealth in the amount of \$_____

REFERRED TO A JUDGE. The applicant’s affidavit does not satisfy all the conditions of §27C(2), and is therefore referred to a judge pursuant to §27C(3), because:

The affidavit is not regular and complete on its face.

The affidavit does not indicate that the applicant is indigent within the meaning of §27A.

The affidavit requests waiver, substitution or payment by the Commonwealth or **extra** fees and costs.

Comments:

Describe fees and costs waived:

Date Clerk-Magistrate/ Assistant Clerk (register, recorder/assistant)

X

DETERMINATION BY JUDGE after hearing without hearing

NORMAL FEES AND COSTS

The application is **ALLOWED** with respect to the normal fees and costs indicated in the application, and they are ordered:

waived in full. to be paid by the Commonwealth in the amount of \$_____.

waived in part. I find that it is within the applicant's limited financial means to pay a reduced amount of \$_____.

to be avoided by the provision of _____ to the applicant, pursuant to §27F, as an alternative which is available at lower or no cost, is substantially equivalent and does not materially impair the rights of any party.

The application is **DENIED** with respect to the normal fees and costs indicated in the application, because I find that:

The applicant is not indigent within the meaning of §27A.

Other:

Describe normal fees and costs waived:

EXTRA FEES AND COSTS

The application is **ALLOWED** with respect to the extra fees and costs indicated in the application, and they are ordered:

waived in full. to be paid by the Commonwealth in the amount of \$_____.

waived in part. I find that it is within the applicant's limited financial means to pay a reduced amount of \$_____.

to be avoided by the provision of _____ to the applicant, pursuant to §27F, as an alternative which is available at lower or no cost, is substantially equivalent and does not materially impair the rights of any party.

The application is **DENIED** with respect to the extra fees and costs indicated in the application, because I find that:

The applicant is not indigent within the meaning of §27A.

The document, service or object is not reasonably necessary to assure the applicant as effective a prosecution, defense or appeal as if the applicant were financially able to pay.

Other:

Describe extra fees and costs waived:

Date

Judge

X

The applicant may appeal denial of this application by filing a notice of appeal with the clerk (register, recorder) of this court within 7 days from notice of denial.

EXHIBIT 2B—Supplement to Affidavit of Indigency

Commonwealth of Massachusetts

SUPPLEMENT TO AFFIDAVIT OF INDIGENCY

AND REQUEST FOR WAIVER, SUBSTITUTION

OR STATE PAYMENT OF FEES & COSTS

(Note: If you checked (C) on the AFFIDAVIT OF INDIGENCY, you must complete this form.)

Court	Suffolk	David Parent v. Lisa Parent SU 17D2017DR	
Name of applicant	David Parent		
Address	123 Main Street, Apt. 3	Boston	MA 02101
	(Street and number)	(City or town)	(State and Zip)

Under the provisions of General Laws, Chapter 261, Sections 27A-27G, I swear (or affirm) as follows:

1. **PERSONAL INFORMATION:**

- (a) Date of Birth: _____
Highest Grade Attained in _____
- (b) School: _____
Special _____
- (c) Training: _____
List any physical or mental disabilities which you wish to reveal and which affect your earning capacity _____
or living expenses: _____
- (e) Number of Dependents: _____

2. **INCOME AFTER TAXES (monthly):**

(a) If from employment, list your occupation and your employer's name and address:

(b) Source of income, if not from employment:

(c) My gross annual income for the past twelve months was:

\$ _____

(d) Gross Income (monthly):

\$ _____

(e) Taxes Deducted (monthly):

Federal Tax	\$	_____
State Tax	\$	_____
Social Security	\$	_____
Medicare	\$	_____
Other Taxes (specify)	\$	_____

Total Taxes Deducted \$ _____

(f) Total Income After Taxes (*subtract 2(e) from 2(d)*):

\$ _____

(g) If any other member of your household is employed, list occupation and name and address of his/her

employer and monthly income after taxes:

3. **NET INCOME (monthly):**

(a) Income After Taxes (from Line 2(f)):

\$ _____

(b) Expenses (monthly):

Rent or Mortgage	\$	_____	Uninsured Medical Expenses	\$	_____
Food	\$	_____	Child Care	\$	_____
Electricity	\$	_____	Education Expenses for	\$	_____

■ CHAPTER 2: OVERVIEW OF THE PROBATE AND FAMILY COURT

	_____	Children	_____
Gas	\$ _____	Child Support	\$ _____
Oil	\$ _____	Clothing	\$ _____
Water	\$ _____	Laundry/Cleaning	\$ _____
Telephone	\$ _____	Car Insurance	\$ _____
Health Insurance	\$ _____	Transportation Expenses	\$ _____
Other (<i>specify</i>):	\$ _____		

Total Expenses: \$ _____

Income After Taxes Minus Expenses (monthly) (*subtract 3(b)*
 (c) *from* _____

3(a)):

\$ _____

4. ASSETS:

(a) Own home? _____ Market Value \$ _____

Balance owed \$ _____

(b) Own Car? _____ Year & Make _____

Market Value \$ _____ Balance owed \$ _____

(c) Bank Accounts (specify type and balance) _____

(d) Other Property Including Real Estate (specify type and value) _____

5. DEBTS:

(a) Specify _____

: _____

6. MISCELLANEOUS:

- (a) Other facts which may be relevant to your ability to pay fees and costs?

Signed under the penalties of perjury:

Signature:

Type/Printed

Name:

David Parent

Address:

123 Main Street, Apt. 3, Boston, MA 02101

Date:

11/3/2017

By order of the Supreme Judicial Court, all information in this affidavit is CONFIDENTIAL. Except by special order of a court, it shall not be disclosed to anyone other than authorized court personnel, the applicant, applicant's counsel or anyone authorized in writing by the applicant.

This form prescribed by the Chief Justice of the SJC pursuant to G.L. c. 261, §27B. Promulgated March, 2003.

EXHIBIT 2C—Request for Counsel

REQUEST FOR COUNSEL	Docket No. SU 17D2017DR	Commonwealth of Massachusetts The Trial Court Probate and Family Court						
In the Interests of:	Suffolk Division							
<table style="width: 100%; border: none;"> <tr> <td style="text-align: center; width: 33%;">Jane</td> <td style="text-align: center; width: 33%;">Child</td> <td style="text-align: center; width: 33%;">Parent</td> </tr> <tr> <td style="text-align: center; font-size: small;">First Name</td> <td style="text-align: center; font-size: small;">Middle Name</td> <td style="text-align: center; font-size: small;">Last Name</td> </tr> </table>	Jane	Child	Parent	First Name	Middle Name	Last Name	<hr/> <hr/> <hr/> <hr/> <hr/>	
Jane	Child	Parent						
First Name	Middle Name	Last Name						
RESPONDENT								

NOTICE: Massachusetts General Law c. 190B, § 5-106 provides that an attorney shall be appointed for the Respondent upon request of any person. "If the ward, incapacitated person or person to be protected has adequate resources, his or her counsel shall be compensated from the estate, unless the court shall order that such compensation be paid by the petitioner. Counsel for any indigent ward, incapacitated person or person to be protected shall be compensated by the Commonwealth."

I, David Parent hereby request the Court
First Name Middle Name Last Name appoint

an attorney for:

Me as I am the person named above as RESPONDENT.

(optional) I am 14 or more years of age and I request the Court consider appointing the following attorney to represent me:

The person named above as RESPONDENT.

My relationship to the
RESPONDENT is

_____ Father _____

Date _____

Signature of Requesting Party

123 Main Street Apt. 3

(Address) (Apt, Unit, No. etc.)

Boston MA 02101

(City/Town) (State) (Zip)

Primary Phone # _____
617-123-4567

EXHIBIT 2D—Answer to Complaint for Divorce

ANSWER TO COMPLAINT FOR DIVORCE	Docket No. SU 17D 2017 DR	Commonwealth of Massachusetts The Trial Court Probate and Family Court
Plaintiff David Parent	Suffolk	<input checked="" type="checkbox"/> Division
V.		
Defendant Lisa Parent		
Complaint for Divorce filed on: June 1, 2017		

1. The Defendant admits all allegations in paragraph 1.
 The Defendant denies all allegation in paragraph 1.
 The Defendant admits _____
but denies/doesn't know: _____
 2. The Defendant admits all allegations in paragraph 2.
 The Defendant denies all allegation in paragraph 2.
 The Defendant admits _____
but denies/doesn't know: _____
 3. The Defendant admits all allegations in paragraph 3.
 The Defendant denies all allegation in paragraph 3.
 The Defendant admits _____
but denies/doesn't know: _____
 4. The Defendant admits all allegations in paragraph 4.
 The Defendant denies all allegation in paragraph 4.
 The Defendant admits _____
but denies/doesn't know: _____
 5. The Defendant admits all allegations in paragraph 5.
 The Defendant denies all allegation in paragraph 5.
 The Defendant admits _____
but denies/doesn't know: _____
- 6. Wherefore, the Defendant requests that the Court:**
- grant the divorce.
- deny relief requested in paragraph 6 of the Complaint for Divorce filed on: _____ (date)
- dismiss the Complaint for Divorce filed on: _____ (date)
- grant the relief requested in the attached counterclaim for divorce.

Date: _____ Signature of Defendant, if pro se

Lisa Parent
(Print name)

456 Main Street
(Address)

Apt. 8
(Apt, Unit, No. etc.)

Dorchester
(City/Town)

MA
(State)

02000
(Zip)

Primary Phone #: **617-123-4567**

Email, if any: **LisaParent@gmail.com**

■ CHAPTER 2: OVERVIEW OF THE PROBATE AND FAMILY COURT

Plaintiff <u>David Parent</u> V. Defendant <u>Lisa Parent</u>	Docket No. SU 17D 2017 DR
---	-------------------------------------

Information on Attorney for Defendant, if any

Signature of Attorney

(Print name)

(Address) _____ (Apt, Unit, No. etc.)

(City/Town) _____ (State) _____ (Zip)

Primary Phone #: _____

B.B.O. # _____

Email: _____

CERTIFICATE OF SERVICE

I, _____, hereby certify that I served a copy of the above Answer as
(name)
specified below:

To: _____ by first-class mail hand delivery
at: _____ On: _____
(address) (date)

Date: _____ Signature _____

Reset Form

EXHIBIT 2E—Counterclaim for Divorce Action

<p>COUNTERCLAIM FOR DIVORCE ACTION</p> <p>FILED ON: June 1, 2017 <small>(date)</small></p>	<p>Docket No. Su 17D 2017 DR</p>	<p>Commonwealth of Massachusetts The Trial Court Probate and Family Court</p>
<p>Plaintiff-in-counterclaim David Parent</p> <p style="text-align: center;">V.</p> <p>Defendant-in-counterclaim Lisa Parent</p>	<p>Suffolk ▼ Division</p>	

1. Plaintiff-in-counterclaim, who resides at 456 Main Street Apt. 8 Dorchester MA 02000
(Address) (Apt. Unit, No. etc.) (City/Town) (State) (Zip)
was lawfully married to the Defendant-in-counterclaim who resides at
123 Main Street Apt. 3 Boston MA 02101
(Address) (Apt. Unit, No. etc.) (City/Town) (State) (Zip)

2. The parties were married in Boston, MA on January 1, 2010
city/town, state (date)
and last lived together in Boston, MA on June 1, 2017
city/town, state (date)

3. The minor or dependent child(ren) of this marriage is/are:
Jane Child Parent, born 6/1/2014 (name of child and date of birth)
(name of child and date of birth)
Joseph Child Parent, Born 10/1/2015 (name of child and date of birth)
(name of child and date of birth)

4. Plaintiff-in-counterclaim certifies that no previous action for divorce, annulment or affirmation of marriage, separate support, custody of child(ren), support, or protection from abuse has been brought by either party against the other except:
 the Complaint for Divorce filed in this Court on June 1, 2017 and
(date)

5. On or about June 1, 2017, the parties suffered an irretrievable breakdown of marriage as
(date)
defined by G. L. c. 208, § 1B and the breakdown continues to exist.
AND/OR
 On or about _____, as described in G. L. c. 208, § 1, the Defendant-in-counterclaim
(date)

6. **Wherefore, the Plaintiff-in-counterclaim requests that the Court:**
 grant a divorce for irretrievable breakdown of this marriage (see G. L. c. 208, § 1B).
 grant a divorce for (see G. L. c. 208, § 1) _____
 grant plaintiff-in-counterclaim defendant-in-counterclaim custody of the above-named child(ren).
 prohibit defendant-in-counterclaim from imposing any restraint on plaintiff-in-counterclaim's personal liberty.
 order a suitable amount for support of plaintiff-in-counterclaim and/or above-named child(ren)
with suitable provision for health insurance.
 order conveyance of the real estate located at _____ standing in the name of _____
as recorded with the _____
Registry of Deeds, Book _____ Page _____

■ CHAPTER 2: OVERVIEW OF THE PROBATE AND FAMILY COURT

Plaintiff-in-counterclaim <u>David Parent</u>	Docket No.
V.	Su 17D 2017 DR
Defendant-in-counterclaim <u>Lisa Parent</u>	

allow Plaintiff-in-counterclaim to resume former name of _____
 Such further relief as the court deems just

Date: _____ Signature of Plaintiff-in-counterclaim, if pro se

Lisa Parent
(Print name)

Primary Phone #: **617-123-4567**

Email, if any: **LisaParent@gmail.com**

Information on Attorney for Plaintiff-in-counterclaim, if any

Signature of Attorney

(Print name)

(Address)

(Apt, Unit, No. etc.)

(City/Town)

(State)

(Zip)

Primary Phone #: _____

B.B.O. # _____

Email: _____

CERTIFICATE OF SERVICE

I, _____ (name), hereby certify that I served a copy of the above Counterclaim as specified below:

To: _____ by first-class mail hand delivery

at: _____ (address) On: _____ (date)

Date: _____ Signature

Reset Form

EXHIBIT 2F—Request for Financial Statement

Commonwealth of Massachusetts
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

SUFFOLK DIVISION

DOCKET #SU 17D2017DR

David Parent,
 PLAINTIFF

v.

Lisa Parent,
 DEFENDANT

PLAINTIFF’S REQUEST FOR FINANCIAL STATEMENT OF DEFENDANT

NOW COMES Plaintiff, David Parent, in the above-captioned matter and, pursuant to Rule 401, Supplemental Rules of the Probate Court, requests that Defendant furnish Plaintiff with a Financial Statement within 10 days of this Request, the original of same to be submitted to the Court and a true copy to Plaintiff in this matter.

Dated:

Respectfully submitted.
 David Parent,

David Parent, Pro Se
 123 Main Street, Apt. 3
 Boston, MA 02101
 Phone: 617-123-4567
 Email: DavidParent@gmail.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the within Plaintiff’s Request for Financial Statement of Defendant, pursuant to Rule 401, Supplemental Rules of the Probate Court, was this day served upon Lisa Parent by mailing same, first class postage prepaid, to Lisa Parent, of 456 Main Street, Apt. 8, Dorchester, MA 02000.

SIGNED under the penalties of perjury.

Dated:

David Parent

EXHIBIT 2G—Plaintiff’s Motion for Temporary Orders

Commonwealth of Massachusetts
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

SUFFOLK DIVISION

DOCKET #SU 17D2017DR

David Parent,
PLAINTIFF

v.

Lisa Parent,
DEFENDANT

PLAINTIFF’S MOTION FOR TEMPORARY ORDERS

NOW COMES Plaintiff, David Parent, in the above-captioned matter and respectfully moves this Honorable Court to enter the following Temporary Orders pending a final hearing and judgment in this action:

1. That Defendant be prohibited from imposing any restraint on the personal liberty of Plaintiff, provided that neither party intends that any alleged violation of such a provision shall be treated as a criminal matter;
2. That Plaintiff be granted temporary legal custody of the minor children born of this marriage;
3. That Plaintiff be granted temporary physical custody of said minor children and a Parenting Plan be established;
4. That Defendant be ordered to pay Plaintiff a suitable amount of temporary child support for the benefit of the minor children in accordance with the Child Support Guidelines, said payments to be made as follows: _____;
5. That Plaintiff be ordered to maintain existing health insurance, dental insurance and life insurance, if any, for the benefit of Defendant and the minor children;
6. That both parties be responsible for and ordered to pay the reasonable uninsured medical and dental expenses of the minor children;
7. That Plaintiff shall have the temporary use and occupancy of the marital residence located at 123 Main Street Apt. 3, Boston, MA, and shall be responsible for and shall pay the operating expenses in connection therewith;
8. That this Honorable Court issue such other and further orders and grant such relief as it may deem meet and just.

Dated:

Respectfully submitted.
David Parent,

David Parent
123 Main Street, Apt. 3
Boston, MA 02101
Phone: 617-123-4567
Email: DavidParent@gmail.com

NOTICE OF HEARING ON MOTION

To: Lisa Parent

Please take notice that the undersigned will present for hearing the within Plaintiff's Motion for Temporary Orders before the Suffolk Division of the Probate and Family Court holden in **Boston** on **December 1, 2017**, at **8:30 am**, or as soon thereafter as counsel can be heard.

Dated:

David Parent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the within Plaintiff's Motion for Temporary Orders was this day served upon Lisa Parent by mailing same, first class postage prepaid, to Lisa Parent, of 456 Main Street, Apt. 8, Dorchester, MA 02000, together with notice of the place, date and time of hearing thereon.

SIGNED under the penalties of perjury.

Dated:

David Parent

EXHIBIT 2H—Proposed Temporary Orders

Commonwealth of Massachusetts
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

SUFFOLK DIVISION

DOCKET #SU 17D2017DR

David Parent,
PLAINTIFF

v.

Lisa Parent,
DEFENDANT

**Proposed TEMPORARY ORDERS
On Complaint for Divorce filed June 1, 2017**

PENDING A HEARING on the merits of this action or until further order of the Court, it is hereby ordered that:

1. Defendant is prohibited from imposing any restraint on the personal liberty of Plaintiff, and no alleged violation of this order shall be treated as a criminal matter;
2. Plaintiff shall have temporary legal custody of the minor children born of this marriage;
3. Plaintiff shall have temporary physical custody of said minor children;
4. Defendant is ordered to pay Plaintiff a suitable amount of temporary child support for the benefit of the minor children in accordance with the Child Support Guidelines, said payments to be made as follows: \$100 per week via wage assignment;
5. Plaintiff shall maintain existing health insurance, dental insurance and life insurance, if any, for the benefit of Defendant and the minor children;
6. Plaintiff shall have the temporary use and occupancy of the marital residence located at 123 Main Street Apt. 3, Boston, MA, and shall be responsible for and shall pay the operating expenses in connection therewith;
7. Defendant shall have parenting time with the children as follows: Every Wednesday after school until 8 p.m.; every other weekend from Friday after school until the start of school on Monday.

8. _____

Dated: _____

Justice
Probate and Family Court

EXHIBIT 2I—Affidavit in Support of Motion for Temporary Orders

Commonwealth of Massachusetts
The Trial Court

Probate and Family Court
Department

Suffolk Division

Docket No. SU 17D2017DR

AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY ORDERS

I, David Parent, of 123 Main Street Apt. 3 Boston, MA 02101, of my own personal knowledge, on oath depose and state as follows:

1. I am a Petitioner in a Divorce action entitled: David Parent v. Lisa Parent.
2. I reside at 123 Main Street, Apt. 3, Boston, MA 02101.
3. Lisa Parent resides at 456 Main Street, Dorchester, MA 02000.
4. We have two minor children, Jane Child Parent born 6/1/14; and Joseph Child Parent born 10/1/15.
5. I have been the primary caretaker for the children and the children are currently physically living with me.
6. Defendant left our home on June 1, 2017 and moved to her Mother's home. She currently is not able to care for the children on a daily basis.
7. Defendant works at Employment earning \$### per week and is able to contribute to the financial support of the minor children.
8. I provide health, dental, and vision insurance through my work for the benefit of family.

Signed under the penalties of perjury,

Dated:

David Parent, Plaintiff

Docket No. SU 17D2017DRPre-Trial Notice and Order
Domestic Relations/Equity

Page 2 of 2

7. The memorandum shall include:
- A. The date, time and place that the in-person meeting was held, and who was present at the meeting.
 - B. A comprehensive written stipulation or statement of all facts the parties agree are true.
 - C. A statement of contested issues of fact and law and progress towards agreement, if any.
 - D. A statement that all discovery has been completed. If discovery has not been completed, an explanation of why it was not completed and a list of what remains to be done.
 - E. If child custody is an issue, a statement of reasons why each party should, or should not, have custody.
 - F. A list of all people each party intends to call as witnesses at the trial, including for each person a brief statement identifying the person (for example, 'sister of the wife' or 'the children's dentist').
 - G. A list of all exhibits which each party intends to offer in evidence at the trial.
 - H. Depositions each party intends to use at trial.
 - I. (*Divorce, property division and original alimony cases and equity cases involving property claims only.*) A stipulation (written agreement) of the current values and costs of all real estate and personal property in issue. If the parties are unable to agree as to current values, each party shall submit an opinion of fair market value.
 - J. (*Divorce, property division and original alimony cases only.*) If there are issues of alimony and/or division of property, a written offer of proof (a written statement) of the evidence each party intends to produce at the trial with respect to each of the factors mentioned in G.L. c. 208, § 34 (a section of the Massachusetts General Laws).
 - K. A realistic estimate of the number of hours or days that will be needed for the trial.
 - L. If there are financial issues in the case, copies of current **Financial Statements**, with all required Schedules and attachments, and any other pertinent financial data, shall be attached to the memorandum.
 - M. If child support is an issue, a completed **Child Support Guidelines Worksheet** shall be attached to the memorandum.

Date _____
(P&FC 12/04)

JUSTICE OF THE PROBATE AND FAMILY COURT

EXHIBIT 2K—Plaintiff’s Pretrial Memorandum

Commonwealth of Massachusetts
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

SUFFOLK DIVISION

DOCKET #SU 17D2017DR

David Parent

PLAINTIFF / HUSBAND

v.

Lisa Parent

DEFENDANT / WIFE

**PRE-TRIAL MEMORANDUM
OF
PLAINTIFF**

THIS PRE-TRIAL MEMORANDUM is submitted by David Parent, Husband and Plaintiff in the above-captioned matter (hereinafter “Husband”), in accordance with the Pre-trial Notice and Order of the Court assigning this matter for Pre-trial Conference to be held on December 15, 2017, at 9 a.m. at Suffolk Probate and Family Court holden in Boston, before Judge _____.

PARTIES AND COUNSEL

Names, addresses and telephone numbers of Parties and Counsel are as follows (If a party’s address has been impounded or made confidential by Court order, it need not be listed below.):

Name of Plaintiff / Husband

David Parent

Name of Defendant / Wife

Lisa Parent

Address of Husband:

123 Main Street, Apt. 3
Boston, MA 02101

Address of Wife:

456 South Main Street, Apt. 8
Dorchester, MA 02000

GENERAL DESCRIPTION OF CLAIMS AND DEFENSES OF THE PARTIES

1. The following pleadings were filed:

The plaintiff filed a complaint for divorce on 6/1/2017, in the Suffolk Division of the Probate and Family Court Department, Docket Number SU 17D2017DR. The defendant duly filed an answer on 7/14/2017.

The defendant filed a counterclaim/complaint for divorce on 7/14/2017 in the Suffolk Division of the Probate and Family Court Department, Docket Number SU 17D2017DR.

2. The grounds for the original Complaint are:

Irretrievable breakdown of the marriage

3. The Complaint requests the following relief:

A divorce

An order prohibiting the wife from imposing restraint on the husband's personal liberty

Custody of the minor child(ren) of the marriage

4. The grounds for the Counterclaim or Cross-Complaint are:

Irretrievable breakdown of the marriage

5. The Counterclaim or Cross-Complaint is requesting the following relief:

A divorce

Custody of the minor child(ren) of the marriage

An equitable division of marital assets pursuant to G.L. c. 208, section 34

6. Restraining Orders: None

UNCONTESTED FACTS

It is anticipated that the following facts will NOT be contested at trial:

1. The parties were married at Boston, Suffolk County, MA, on January 1, 2010.
2. This was the first marriage for the Husband.
3. This was the first marriage for the Wife.
4. Two children have been born of this marriage.
5. The children live with Husband.
6. The children’s vital statistics are as follows:

Child 1

Name: Jane Child Parent
 Date of birth: October 10, 2014
 Age: 3

Child 2

Name: Joseph Child Parent
 Date of birth: June 10, 2016
 Age: 1

7. The Husband and the Wife last lived together at 123 Main Street, Apt. 3, Boston, Suffolk County, MA 02101 on January 1, 2017.
8. The Husband now lives at 123 Main Street, Apt. 3, Boston, Suffolk County, MA 02101.
9. The Wife now lives at 456 South Main Street, Apt. 8, Dorchester, Suffolk County, MA 02000.

CONTESTED ISSUES OF FACT

The parties are unable to agree on the following issues of fact:

The suitability of each party as legal and physical custodial parent of the minor child(ren)

The amount of support needed for the benefit of the minor child(ren) and the amount to be contributed by each party

The current value of the marital assets

The contribution by each party to the acquisition, preservation and appreciation in value of the marital estate

The contribution of each party as a parent and homemaker

The educational, employment, vocational skills and employability of each party

The present and future needs of the child(ren)

CONTESTED ISSUES OF LAW

What custody/parenting/visitation arrangements should be entered for the parties in keeping with the best interest of the child(ren) pursuant to G.L. c 208, section 31?

What amount of support should be provided by each of the parties for the benefit of the minor child(ren) pursuant to G.L. c. 208, section 28?

Shall alimony be required by either party in consideration of the provisions of G.L. c. 208, sections 34, 48-55?

What share of the marital assets shall be awarded to each party in consideration of the provisions of G.L. c. 208 sections 34, 48-55?

STATUS OF DISCOVERY

The Parties have exchanged financial documents pursuant to Rule 410, Financial Statements pursuant to Rule 401, and are not requesting additional discovery.

SCHEDULE OF EXHIBITS

The Husband intends to introduce the following exhibits at trial:

Financial statement(s) of the husband

Financial statement(s) of the wife

Federal and state income tax returns of the parties for the past 3 years

Documents relating to and reflecting the parties segregation and use of their respective earned income during the marriage

Documents relating to all pension, retirement and profit sharing plans in which the Husband and Wife both participated

Documents relative to the value of real estate held by the respective parties

Reports of:

Guardian ad litem

The Husband reserves the right to introduce additional exhibits.

LIST OF WITNESSES

The Husband intends to call the following witnesses at trial:

Lisa Parent, Opposing party

Other witnesses, excluding expert witnesses:

Jane Doe, Maternal Grandmother

John Moe, Neighbor

The Husband reserves the right to call rebuttal witnesses at trial as necessary.

LIST OF EXPERT WITNESSES

The Husband intends to retain and call the following expert witnesses at trial:

Social worker/psychologist/psychiatrist/guardian ad litem/Family Services Officer

The Husband reserves the right to call additional expert witnesses at trial as necessary.

CURRENT FINANCIAL STATEMENT

A current Financial Statement of the Husband is submitted herewith pursuant to Rule 401 of the Supplemental Rules of the Probate Court.

ESTIMATE OF TRIAL TIME

The Husband anticipates that the trial of this matter will take 1 day.

WRITTEN OFFER OF PROOF REGARDING FACTORS PURSUANT TO G.L. c. 208, §§34, 48-55

1. Length of the marriage

The parties were married at Boston, Suffolk County, MA, on January 1, 2010, and have been married to each other for _____. Length of marriage is defined herein as the number of years and months from the date of the marriage until the date of service of the Complaint for Divorce or Complaint for Separate Support

2. Conduct of the parties during the marriage

Both parties assisted each other with the children and homemaking.

3. Ages of the parties

- a. The Husband is 38 years old.
- b. The Wife is 36 years old.

4. Health of the parties and children

- a. The Husband’s health is as follows: Husband has high blood pressure, which is treated with a prescription.
- b. The Wife’s health is as follows: Wife has no known health concerns at this time.
- c. The children’s health is as follows:

Their daughter has severe food allergies and requires monitoring around meal times. Their son has no known health concerns

5. Station in life of the parties

The parties lived a blue collar lifestyle, earning a lower amount of income but have been able to provide a stable home for their children.

6. Amount and sources of parties’ income

Refer to Financial Statements of the respective parties, submitted herewith pursuant to Rule 401 of the Supplemental Rules of the Probate Court.

7. Educational and vocational skills of the parties

Husband attended a vocational school after high school and is currently employed as a mechanic. Wife has an associate’s degree in marketing and business administration.

8. Employment and employability of the parties

- a. Husband: Works for A&B auto repair as a mechanic.
- b. Wife: Works at CDE in their social media department.

■ **CHAPTER 2: OVERVIEW OF THE PROBATE AND FAMILY COURT**

9. The retirement ages of the respective parties is anticipated to be as follows:

Both parties current full retirement age is 67.

10. Estates of the respective parties and the marital estate

Refer to Financial Statements of the respective parties, submitted herewith pursuant to Rule 401 of the Supplemental Rules of the Probate Court.

11. Liabilities and needs of the respective parties

Refer to Financial Statements of the respective parties, submitted herewith pursuant to Rule 401 of the Supplemental Rules of the Probate Court. In summary:

- a. The Husband's weekly expenses are \$1,000.
- b. The Wife's weekly expenses are \$750.
- c. Health insurance:
 - 1) is provided by the Husband; and
 - 2) if an employee policy, can it continue following divorce? [X] Yes [] No.

12. Opportunity of the respective parties for future acquisition of capital assets and income.

Given their current education, skills, and employment, both parties have limited ability to acquire future assets other than small contributions to their retirement accounts.

13. Present and future needs of the dependent children of the marriage

The children are young, but both parents are hopeful they will attend college in the future. The children are involved in soccer and dance.

14. Contribution of the parties in the acquisition, preservation and appreciation in value of their respective estates

Both Parties worked hard, contributed to their retirement accounts, and contributed to a small savings account during the marriage.

15. Contribution of each party as a homemaker, parent and contributor to the family unit

The parties shared in all family responsibilities, and both have been actively involved in their children's education and extracurricular activities. The Wife was primarily responsible for managing the family calendar, housework, and shopping for the families' needs. The Husband was primarily responsible for repairing the automobiles, and making repairs around the home. Both parties shared responsibility for preparing meals and cleaning up afterwards.

REPRESENTATION OF GOOD FAITH NEGOTIATION

The parties have negotiated in good faith but have been unable to reach a settlement agreement. They are unable to agree upon a parenting schedule and an appropriate amount of Child Support.

Dated:

Respectfully submitted.
David Parent,
Plaintiff / Husband

David Parent
123 Main Street, Apt. 3
Boston, MA 02101
617-123-4567
DavidParent@gmail.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the within Plaintiff / Husband's Pre-Trial Memorandum was this day served upon Defendant / Wife by mailing same, first class postage prepaid, to Lisa Parent of 456 Main Street, Dorchester, MA 02000.

SIGNED under the penalties of perjury.

Dated: _____, _____, _____

David Parent

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

Commonwealth of Massachusetts
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

SUFFOLK DIVISION

DOCKET #SU 17D2017DR

David Parent

PLAINTIFF

v.

Lisa Parent

DEFENDANT

**FIRST SET OF INTERROGATORIES PROPOUNDED BY PLAINTIFF
TO BE ANSWERED UNDER OATH BY DEFENDANT**

Please take notice that, pursuant to Rules 26 and 33 of the Massachusetts Rules of Domestic Relations Procedure, and to the Instructions and Definitions set forth below, you are hereby required to submit, under oath and subject to the pains and penalties of perjury, written responses to the following Interrogatories propounded by Plaintiff, David Parent, the same to be filed with Plaintiff, within thirty (30) days from the date hereof.

**I. INTERROGATORIES PROPOUNDED BY THE DEFENDANT
TO BE ANSWERED BY THE PLAINTIFF**

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

1. Please state your name, address and date and place of birth.
2. Please state the name and address of each employer you have had from January 1, 1997 to the present, and for each such employer, the dates of such employment, your duties, the days and hours of employment and your gross weekly pay.
3. Please state fully and in detail your gross income for each of the last five calendar years, indicating the source of each component thereof. In answering this interrogatory, please understand the term income to be as defined in the United States Internal Revenue Code.
4. If you have been self-employed at any time since January 1, 1997, please state fully and in detail the nature of such self-employment, the names and addresses of those persons or entities with whom you transacted business, the method by which you determined the profit you earned thereby and the amount of such profit for each calendar year since January 1, 1997.
5. As to any savings accounts maintained by you or over which you had a power of signature from January 1, 1997 to the present, please state: (a) the name of and address of the banking institution; (b) account numbers; (c) the date the account was opened; (d) the name under which the account is or was maintained; (e) if any changes were made in the account, please state the change made and the date of the change; (f) if the account is closed, the date of the closing; (g) please list all deposits, withdrawals and transactions made since January 1, 1997, setting forth the date and amount of each such deposit, withdrawal or transaction. You may respond to

this Interrogatory by producing copies of account statements to the extent that they answer the propounded Interrogatory.

6. As to any and all checking accounts maintained by you or over which you had power of signature since January 1, 1997, please set forth: (a) the name and address of the bank; (b) account number; (c) the date the account was opened; (d) the name(s) under which the account is or was maintained; (e) the date the account was closed if no longer open; (f) the name and address of any other person who had power of signature on any such account; and (g) the date and amount of each deposit, withdrawal or transaction. You may respond to this Interrogatory by producing copies of account statements to the extent that they answer the propounded Interrogatory.
7. As to each and any such checking account, please set forth the total monthly deposits for each month since January 1, 1997, specifying the date of the deposit, the amount of the deposit and the source of the funds for the deposit. You may respond to this Interrogatory by producing copies of account statements to the extent that they answer the propounded Interrogatory.
8. Please state, for the period January 1, 1997 to the present, any income or assets you have received and not included in your responses to previous interrogatories and, for each such income or asset, please state the source of the income or asset, the amount of the income or asset, and the date of receipt of the income or asset.
9. Please state whether you presently own or have an interest in, or, during the period January 1, 1997 to the present, have owned or had an interest in, any life insurance policy. If so, please state, for each such policy: (a) the name and address of the insurance company; (b) the number of the policy; (c) the type of policy; (d) the date the policy was issued; (e) the face amount of the policy; (f) the amount of the annual premium; (g) the total amount of the premiums paid on the policy during the past five years and the names and addresses of the persons making the payments; (h) the name and address of the owner of the policy; (i) the name and address of each beneficiary named in the policy; (j) the date of any change of beneficiary and the name and address of any beneficiary added or deleted; (k) if applicable, the date of assignment of the policy and the name and address of each assignee; (l) the name and address of the insurance agent or broker for the policy, if any; and (m) the current cash surrender value of the policy.
10. Please state whether you filed a federal or state income tax return for the calendar years 2006 and/or 2007, and if so, please include a copy thereof together with W-2 forms as part of your response to this interrogatory.
11. Please set forth a detailed description of any automobile presently owned by you, indicating make, model, year and current value of said automobile.
12. Please state fully and in detail the exact location by street, number, city or town, and state of each parcel of real estate in which you have owned any legal or equitable interest in your name or in the name of your nominee since January 1, 1997.
13. If your answer to the preceding interrogatory is that you have so owned any real estate, please describe whether any such real estate has been sold or conveyed during the period January 1, 1997 to the present by setting forth the name of the person to whom said real estate has been sold or conveyed, the date of said sale or conveyance, and the consideration therefore received by you.
14. As to all financial assets owned by you during the period January 1, 1997 to the present, including but not limited to, stocks, bonds or other securities, accounts receivable, loans receivable, real estate and claims and causes of action, please (a) describe the asset; (b) estimate its current fair market value; (c) state the purchase price; and (d) state, if sold during the period January 1, 1994 to the present, the price and date of sale.
15. If since the date of your marriage to Marie Moe you have received any gift, legacy, devise or inheritance, or, if you are, have been or become during said period the beneficiary of any trust, estate, please state: (a) the value of each such gift, legacy, devise or inheritance; (b) the source of each such gift, legacy, devise or inheritance; (c) the date when each such gift, legacy, devise or inheritance was received; and (d) the name of the donor, settlor, testator or intestate who created each such trust or estate.

■ CHAPTER 2: OVERVIEW OF THE PROBATE AND FAMILY COURT

16. If during the period January 1, 1998 to the present you have received any medical, psychiatric, psychological, alcohol or substance abuse treatment services in the nature of evaluation, diagnosis or treatment, please state the name and address of the doctor, psychiatrist, psychologist or other medical, mental health, alcohol or substance abuse treatment service provider who provided said services and the nature of the services provided.
17. For each service provided in connection with the preceding Interrogatory, please state the period of time during which you used the service and the frequency with which you used the service.
18. For each service provided in connection with Interrogatories (6) and (7), please state whether you were told the results of any evaluation, the content of any diagnosis, or the results of any treatment, and if the answer is in the affirmative, please state, for each such service, what you were told.
19. If the services provided in connection with Interrogatories (6) through (8) were provided at an institution or health facility, please state the name and address of the institution or facility and the dates during which you received services at the facility.
20. For each such medical, psychiatric, psychological, alcohol or substance abuse treatment service you received, please produce and attach copies of any and all records, documents or letters which you possess concerning said services.
21. During the period January 1, 1996 to the present, please state whether you have ever taken, ingested, smoked or otherwise used any controlled substance within the meaning of G.L. c. 94C. If the answer is in the affirmative, please state the name of the controlled substance, the date or dates of use, the period of use and the frequency of use. If the answer is in the affirmative, please state whether you have ever received any treatment related to the use of said controlled substance, and if so the name and address of the person from whom and place where you received said treatment.

Dated:

Respectfully submitted.
David Parent,
Plaintiff / Husband

David Parent
123 Main Street, Apt. 3
Boston, MA 02101
617-123-4567
DavidParent@gmail.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the within Interrogatories to Be Answered Under Oath was this day served upon Defendant by mailing same, first class postage prepaid, to Lisa Parent of 456 Main Street, Dorchester, MA 02000.

SIGNED under the penalties of perjury.

Dated: _____, _____

David Parent

EXHIBIT 2M—Request for Production of Documents

Commonwealth of Massachusetts
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

SUFFOLK DIVISION

DOCKET #SU 17D2017DR

David Parent

PLAINTIFF

v.

Lisa Parent

DEFENDANT

**PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS
PURSUANT TO MASS. R. DOM. REL. P. 34**

NOW COMES PLAINTIFF, David Parent, in the above-captioned matter and, in accordance with the provisions of Mass. R. Dom. Rel. P. 34, requests that Defendant, Lisa Parent furnish Plaintiff with the documents hereinafter described, and permit Plaintiff to inspect and to copy such of them as may be desired.

DOCUMENTS AND RECORDS REQUESTED

1. Documentation of any health problems that you currently have that would interfere with our ability to parent the children or work full-time.
2. Copies of any documents that relate to your parenting of the children including photographs, written or electronic communications, or other documents.
3. Copies of all written or electronic communications to the Plaintiff since you left the marital home.
4. Copies of any documents you intend to introduce at trial.

Plaintiff further requests that the foregoing documents and records be made available for inspection and copying at the Plaintiff's home, as set forth below, within 30 days from the date of service hereof.

Dated:

Respectfully submitted.
David Parent,
Plaintiff / Husband

David Parent
123 Main Street, Apt. 3
Boston, MA 02101
617-123-4567
DavidParent@gmail.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the within Plaintiff / Husband's First Request for Production of Documents was this day served upon Defendant / Wife by mailing same, first class postage prepaid, to Lisa Parent of 456 Main Street, Dorchester, MA 02000.

SIGNED under the penalties of perjury.

Dated: _____, _____

David Parent

EXHIBIT 2N—Subpoena to Obtain Documents for Court

Commonwealth of Massachusetts
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

SUFFOLK DIVISION

DOCKET #SU 17D2017DR

David Parent

PLAINTIFF

v.

Lisa Parent

DEFENDANT

SUBPOENA DUCES TECUM
AND
PROOF OF SERVICE

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION OR OBJECTS

To: Keeper of Records
(Name of person to whom this subpoena is directed)

YOU ARE COMMANDED to produce at the place, date and time set forth below the following documents, electronically stored information or objects and to permit inspection, copying, testing or sampling thereof:

All employment records including payroll, bonuses, compensation, paid time off, and benefits. **In lieu of appearance, documents may be delivered to David Parent on or before November 23, 2017.**

Place:

Date and Time:

Suffolk Probate and Family Court
Edward Brooke Court House
24 New Chardon Street
Boston, MA 02114

November 20, 2017 at 9 a.m.

The provisions of Mass. R. Dom. Rel. P. 45 are attached relating to the place of compliance, your protection as a person subject to a subpoena and your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____
David Parent signature

The name, address, e-mail address (where applicable) and telephone number of the attorney representing the aforesaid party who issues or requests this subpoena, are:

David Parent
123 Main Street, Apt. 3
Boston, MA 02101
617-123-4567
DavidParent@gmail.com

PROOF OF SERVICE

I received this subpoena for *(name of individual and title, if any)* _____ on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States or the Commonwealth or a political subdivision thereof, or an officer, or agency of either, I have also tendered to the witness the fees for one day's attendance and the mileage allowed by law in the amount of \$_____.

My fees are \$_____ for travel and \$_____ for services, for a total of \$_____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Domestic Relations Procedure Rule 45: Subpoena

(b) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(d) Subpoena for Taking Deposition; Place of Examination.

(1) No subpoena for the taking of a deposition shall be issued prior to the service of a notice to take the deposition.

The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by these rules, but in that event the subpoena will be subject to the provisions of Rule 26(c) and subdivision (b) of this rule.

A deposition subpoena upon a party which commands the production of documents or things must give the party deponent at least thirty days for compliance after service thereof. Such subpoena shall not require compliance of a defendant within 45 days after service of the summons and complaint on that defendant. The court may allow a shorter or longer time.

The person to whom the subpoena is directed may within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) Unless the court orders otherwise, a resident of this Commonwealth shall not be required to attend an examination at a place more than 50 airline miles distant from either his residence, place of employment, or place of business, whichever is nearest to the place to which he is subpoenaed. A non-resident of the Commonwealth when served with a subpoena within the Commonwealth may be required to attend only in that county wherein he is served, or within 50 airline miles of the place of service, or at such other convenient place as is fixed by an order of court.

(e) Subpoena for a Hearing or Trial. At the request of any party subpoenas for attendance at a hearing or trial shall be issued by any of the persons directed in subdivision (a) of this rule. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the Commonwealth.

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court in which the action is pending.

EXHIBIT 20—Motion to Strike Portions of the Guardian ad Litem’s Report

Commonwealth of Massachusetts
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

SUFFOLK DIVISION

DOCKET #SU 17D2017DR

David Parent

PLAINTIFF

v.

Lisa Parent

DEFENDANT

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

Now comes David Parent, Plaintiff in the above-captioned matter and objects to the following portions of the guardian ad litem report filed on March 27, 2017.

1. HEARSAY

Plaintiff objects to the following:

1. Page 10, fourth paragraph, second sentence to end of paragraph. (“During this period of time. . . .”)
2. Page 10, fifth paragraph in its entirety (“Staff from the Fitzgerald school”)
3. Page 11, fourth paragraph, in its entirety (“Over the course of the 2005–2006 academic year”)
4. Page 12, third paragraph in its entirety (“On August 16, 2006”)
5. Page 15, second paragraph, third sentence (“Extended family members”)
6. Page 16, fourth paragraph in its entirety (“During the course of”)

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

2. IRRELEVANT MATERIAL

Plaintiff objects to the following irrelevant material:

1. Page 4, second paragraph in its entirety (“Child has an older sister”)
2. Page 4, third paragraph (“When Child was a young child”)

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

3. SUMMARIES, OPINIONS AND RECOMMENDATIONS

Plaintiff objects to the following:

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

■ **CHAPTER 2: OVERVIEW OF THE PROBATE AND FAMILY COURT**

2. Page 16 to 18, entire section entitled “Summary and Recommendations.”
3. Page 18 to 19, entire section entitled “Recommendations.”

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

Dated: _____ Respectfully submitted.
David Parent,

David Parent
123 Main Street, Apt. 3
Boston, MA 02101
Phone: 617-123-4567
Email: DavidParent@gmail.com

NOTICE OF HEARING ON MOTION

To: Lisa Parent

Please take notice that the undersigned will present for hearing the within Plaintiff’s Motion to Strike Portions of GAL Report before the Suffolk Division of the Probate and Family Court holden in **Boston** on **December 1, 2017**, at **8:30 am**, or as soon thereafter as counsel can be heard.

Dated: _____
_____ David Parent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the within Plaintiff’s Motion to Strike Portions of GAL Report was this day served upon Lisa Parent by mailing same, first class postage prepaid, to Lisa Parent, of 456 Main Street, Apt. 8, Dorchester, MA 02000, together with notice of the place, date and time of hearing thereon.

SIGNED under the penalties of perjury.

Dated: _____
_____ David Parent