

CHAPTER 7

PATERNITY ISSUES

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General Overview.....	196
Paternity Adjudication.....	196
Motherhood Adjudication.....	197
How to Establish Paternity and Have a Father Listed on the Birth Certificate.....	197
Acknowledgments Made Out of Court Before April 14, 1994	197
Acknowledgments Made Out of Court Between April 14, 1994 and March 31, 1998.....	198
Paternity Acknowledgments Made Out of Court On or After March 31, 1998	198
Proving Paternity	199
When Paternity Can Be Established	200
Prebirth Orders	200
Cases Involving Minors or Paternity Adjudications for Adults	200
What to Consider Before Filing a Paternity Case.....	200
Where to File a Chapter 209C Case	200
Custody of the Child if the Parents Are Not Married	200
The Process.....	201
Step 1—Draft the G.L. c. 209C Complaint	201
Step 2—Fill Out a Care and Custody Disclosure Form.....	202
Step 3—File an Affidavit Disclosing Care and Custody Proceedings	202
Step 4—File an Indigency Form (If It Applies)	202
Step 5—File a Public Assistance Affidavit	202
Step 6—Make Copies	202
Step 7—Obtain a Summons.....	202
Step 8—Get a Docket Number.....	202
Step 9—Serve the Complaint, Summons, and Affidavit Disclosing Care and Custody Proceedings	202
Step 10—File Original Summons	203
Step 11—Notify the Department of Revenue if Required	203
How to Answer the Complaint if You Are the Defendant.....	203
Motions for Temporary Orders.....	203
What Temporary Orders Can the Judge Enter in Your Case?	203
Filing a Motion and Getting a Hearing Date.....	204
Emergency Motions	204
Genetic Marker Testing	204
Genetic Marker Testing Motions	205

Who Is Responsible for Child Support if the Parents Are Not Married?	206
Child Support Motions	206
Custody and Visitation	207
Preparing for the Motion Hearing	207
What to Do on the Day of the Motion Hearing	208
What Happens if You Are Referred to the Probation Department	208
Appearing Before the Judge	208
Case Management Conferences, Pretrials, and Trials	208
Modification of “Final” Orders	209
Modification by DOR	209
The Effect of Marriage on a Paternity Case	209
CHECKLIST 7.1—Checklist for a Party Filing a Complaint.....	210
CHECKLIST 7.2—Paternity Checklist for a Party Served with a Complaint	211
EXHIBIT 7A—Complaint to Rescind Paternity Acknowledgment	212
EXHIBIT 7B—Complaint to Establish Paternity	213
EXHIBIT 7C—Complaint for Custody, Support, and Parenting Time	214
EXHIBIT 7D—Public Assistance Affidavit	216
EXHIBIT 7E—Answer Admitting Paternity.....	217
EXHIBIT 7F—Answer Denying Paternity	218
EXHIBIT 7G—Motion for Custody and Child Support	219
EXHIBIT 7H—Motion for Parenting Time	221
EXHIBIT 7I—Motion for Genetic Marker Testing	223
EXHIBIT 7J—Proposed Temporary Order	225
EXHIBIT 7K—Motion to Rescind the Paternity Acknowledgement and Request Genetic Marker Testing.....	226
EXHIBIT 7L—Affidavits in Support of Motion for Genetic Marker Testing.....	228
EXHIBIT 7M—Request for a Case Management Conference.....	230
EXHIBIT 7N—Settlement Conference Memorandum.....	232
EXHIBIT 7O—Joint Agreement to Participate in the Early Case Settlement Process	236
EXHIBIT 7P—Voluntary Request for Settlement Conference.....	237
EXHIBIT 7Q—Stipulation for Voluntary Acknowledgement of Parentage.....	239
EXHIBIT 7R—Affidavit of Nonpaternity.....	241
EXHIBIT 7S—Motion for Release of Birth Certificate	242

GENERAL OVERVIEW

Paternity Adjudication

The process of having a man legally declared the father of a child is called “establishing paternity.”

A court case related to a child born to parents who have never been married to each other is called a “paternity” or “Chapter 209C” case, referring to the paternity law, G.L. c. 209C. The Probate and Family Court has the power to

enter orders for child support, health insurance, uninsured medical expenses, custody, visitation, and other issues related to a child born outside of marriage. Being declared the father of a child is a serious matter and creates legal rights and responsibilities that have long-lasting consequences for each parent and the child. It is advisable that both parents seek legal advice from an attorney to ensure that their rights are protected, especially in cases where there are some questions as to who is the father of the child.

In this chapter, the parent with whom the child resides is referred to as the “custodial parent” and the other parent is referred to as the “noncustodial parent.” The Massachusetts Department of Revenue Child Support Enforcement is referred to as “DOR.”

Motherhood Adjudication

Chapter 209C may be used to determine the existence of a mother-and-child relationship and “[i]nsofar as practicable, the provisions of this chapter applicable to establishing paternity shall apply.” G.L. c. 209C, § 21.

Chapter 209C also can apply to same-sex partners who have children together. The Supreme Judicial Court recently ruled that “[n]othing in the language of G.L. c. 209C expressly limits its applicability to parentage claims based on asserted biological ties.” *Partanen v. Gallagher*, 475 Mass. 632, 638 (2016). Chapter 209C, § 6(a)(4) provides that in all actions under Chapter 209C, “a man is presumed to be the father of a child and must be joined as a party if, while the child is under the age of majority, he, jointly with the mother, received the child into their home and openly held out the child as their child. . . .” The Supreme Judicial Court held that while this language refers only to males, the statute applies to children born to same-sex couples even if one member of the couple lacks biological ties to the child. The court noted that “courts in other jurisdictions have read comparable provisions to establish presumed parentage in the absence of biological relationships, and have done so, in part, out of concern for the welfare of children born out of wedlock.” *Partanen v. Gallagher*, 475 Mass. at 642. Thus, in *Partanen v. Gallagher*, a woman who lived with a child and the child’s parent, and together with that parent held herself out to be the child’s parent, was permitted to file a claim for adjudication of parentage under Chapter 209C.

For a more detailed discussion of adjudication of motherhood issues, see *Paternity and the Law of Parentage in Massachusetts* (MCLE, Inc. 2d ed. 2009).

HOW TO ESTABLISH PATERNITY AND HAVE A FATHER LISTED ON THE BIRTH CERTIFICATE

One way to establish paternity is to file a paternity case in court. The court can legally declare that a man is the father, and then order that the father’s name be added to the birth certificate. G.L. c. 209C, § 8; *see also* G.L. c. 46, § 13. Prior to April 14, 1994, filing a court case was the only way to establish paternity. Unmarried parents could have the father named on the birth certificate, but this only created a “presumption of paternity” and did not legally establish paternity. G.L. c. 209, § 6(a)(6). Only a court order could legally establish paternity if a child was born outside of marriage. Without a court order establishing paternity, a mother could not seek a child support order, nor could a father seek a visitation or custody order.

Paternity can now also be established outside the court process if the child’s parents are in agreement about who is the child’s father. G.L. c. 209C, § 11; G.L. c. 209C, § 5(b); G.L. c. 46, § 3C. Hospitals now provide parents the opportunity to sign a paternity acknowledgment form at the time of the child’s birth. G.L. c. 209C, § 5(b); G.L. c. 46, § 3C. If both parents sign the form at the hospital or later at the city clerk’s office in the city where the child was born, the Registry of Vital Statistics lists the father on the birth certificate. G.L. c. 46, §§ 12–13.

Acknowledgments Made Out of Court Before April 14, 1994

Acknowledgments made out of court before April 14, 1994 do not establish paternity, but they do create a presumption of paternity. G.L. c. 209C, § 6(a)(6). Nevertheless, you can sign additional acknowledgments under the current law to adjudicate paternity. G.L. c. 209C, § 11.

Acknowledgments Made Out of Court Between April 14, 1994 and March 31, 1998

If a child was less than six months old when the parents filed the voluntary acknowledgment out of court, the man is presumed to be the father, but either parent has the right to request genetic marker testing within a year of filing the acknowledgment to prove that the man is not the father. If neither party does so, the voluntary acknowledgment becomes final and has the same effect as a court judgment establishing paternity. G.L. c. 209C, § 11(a); Historical and Statutory notes to Massachusetts General Laws Annotated, G.L. c. 209C, § 11.

If a child was six months of age or older when the parents filed the voluntary acknowledgment out of court, the right to genetic marker testing was waived and the acknowledgment has the same effect as a final court judgment. G.L. c. 209C, § 11(a).

Paternity Acknowledgments Made Out of Court On or After March 31, 1998

An out-of-court acknowledgment of paternity that was not registered in court or incorporated into a judgment has a different legal effect depending on when it was executed.

The law was changed effective March 31, 1998 to provide that a parent has only sixty days to rescind (cancel) an acknowledgment of paternity made out of court on or after March 31, 1998. To rescind the acknowledgment, the mother or father must file a court case in the Probate and Family Court for the county where the child resides. A sample complaint to rescind acknowledgment is included in **Exhibit 7A**. If a complaint to rescind acknowledgment is filed, the law provides that the court must order genetic marker testing. The initial acknowledgment is a sufficient basis to order genetic testing and for admitting results of the genetic marker tests into evidence. G.L. c. 209C, § 11. The “responsibilities” of a parent (i.e., to pay support according to a support agreement) “shall not be suspended during such challenge unless the court so orders for good cause shown.” G.L. c. 209C, § 11.

In general, except for the sixty-day period, it is difficult to set aside an acknowledgment; this is due to the fact that, if it is signed in court or more than sixty days have passed since it was signed outside of court, the acknowledgment is viewed as the equivalent of a final judgment of the court.

If neither parent rescinds the out-of-court acknowledgment within sixty days, the acknowledgment has the effect of a judgment subject to challenge *within a year* for the following reasons:

- fraud (you were lied to or tricked);
- duress (you were forced against your will); or
- a material mistake of fact (you thought the man was the father but it was based on a genuine mistake about the facts, e.g., you later find out the man listed as the father is sterile).

The two leading cases on challenges to paternity judgments are *Paternity of Cheryl*, 434 Mass. 23 (2001), and *Anderson v. Anderson*, 407 Mass. 251 (1990). The Supreme Judicial Court has noted that there is a “compelling public interest in the finality of paternity judgments.” *Paternity of Cheryl*, 434 Mass. at 31. What is in a child’s best interests will often weigh more heavily than the genetic link (or lack thereof) between the parent and child. The focus of a parent pursuing an untimely challenge to paternity is often on the concerns of adults, but children’s lives are at the center of any paternity dispute. Thus, an adjudicated father’s interest in no longer paying support does not trump a child’s rights and interests. “As a general matter . . . challenges to paternity under rule 60(b) should not be permitted beyond ‘a relatively brief passage of time.’” *Paternity of Cheryl*, 434 Mass. at 31.

The rules about setting aside a judgment are technical, so it is best to consult a lawyer and to do so as soon as you discover any reason why the acknowledgment or judgment should be set aside. In addition, if paternity was adjudicated in a court case and you did not participate in the court case (i.e., you did not file an answer and did not appear in court for hearings, etc.), there may be other grounds to reopen the judgment. G.L. c. 209C, § 8; Mass. R. Dom. Rel. P. 60(b).

Practice Note

If the mother was married to another man when she became pregnant or the child was born within 300 days of her divorce, her husband is presumed to be the father of the child. G.L. c. 209C, § 6. To have the biological father listed on the birth certificate, the parents must also obtain the notarized signature of the

mother's husband (or former husband) on a form denying paternity or a court order declaring that the husband is not the father. G.L. c. 46, § 13; G.L. c. 209C, § 11(a). Paternity acknowledgements are invalid unless all three parties sign the required forms. In *D.H. v. R.R.*, 461 Mass. 756 (2012), the Supreme Judicial Court held that an acknowledgment of paternity is invalid as a matter of law when the child is presumed to be a child of a marriage and the mother's spouse did not execute a Denial of Paternity form that was jointly signed by the mother. Where the mother died without executing the required form with her husband, the acknowledgment was invalid although (1) the putative father who signed the acknowledgment did not know the mother was married when he executed the acknowledgment, and (2) the husband later signed the Denial of Paternity form.

For a more detailed discussion of paternity issues, see *Paternity and the Law of Parentage in Massachusetts* (MCLE, Inc. 2d ed. 2009).

Proving Paternity

Paternity is rarely disputed after genetic marker testing is performed. However, if a party still contests paternity after receipt of genetic testing results, the mother or father trying to prove paternity should be ready to offer testimony regarding sexual intercourse with the other party during the probable period of conception. The putative father may try to allege that another man is the father despite the testing results. However, testimony about sex with unknown men at any time or sex with other men at any time other than the probable period of conception is not allowed unless the mother offers it. G.L. c. 209C, § 16; *see also G.E.B. v. S.R.W.*, 422 Mass. 158 (1996) (evidence of alleged prostitution outside probable period of conception held inadmissible).

The mother's testimony of sexual intercourse with a putative father during the probable period of conception has been held to be enough, by itself, to establish paternity by clear and convincing evidence. *Department of Revenue v. Spinale*, 406 Mass. 1007 (1990). However, in cases where paternity is contested, it is advisable to obtain genetic marker testing to ensure that any doubts are more likely to be resolved in favor of establishing paternity. Likewise, a falsely accused putative father could use the results to prove that he is not the child's father.

The putative father will have to overcome "presumptions" that he is the father of the child at trial in the following circumstances:

- if genetic marker testing results indicate a probability of paternity of at least 97 percent (G.L. c. 209C, § 17);
- if he is listed as the father on the child's birth certificate (G.L. c. 209C, § 6(a)(6));
- if he lived with the child and the mother and held himself out to others as the child's father (G.L. c. 209C, § 6(a)(4));
- if he married the mother after the child was born and agreed to support the child under a written voluntary agreement or "engaged in any other conduct which can be construed as an acknowledgment of paternity" (G.L. c. 209C, § 6(a)(3));
- if he was married to the mother while the mother was pregnant or when the child was born, or if the child was born within 300 days of their divorce (G.L. c. 209C, § 6(a)(1)).

At a minimum, at most paternity trials, a parent trying to prove paternity should ask the court to accept trial exhibits, which include a certified copy of the child's birth certificate (self-authenticating pursuant to G.L. c. 46, § 19 and Mass. R. Dom. Rel. P. 44(a)(1)) and the properly certified genetic marker testing report showing the putative father to be the father. A plaintiff or defendant wanting to use a testing report to prove or disprove paternity should make arrangements to get the original or a properly certified copy of the report from the lab or should subpoena the laboratory's report for the trial. G.L. c. 209C, § 17. If either party has letters or other documents that reflect admissions of paternity by the other party and can authenticate the signatures because he or she is familiar with the other party's signature, these can be offered into evidence. If either party has witnesses who can offer evidence of admissions of paternity or otherwise help prove or disprove paternity, their testimony may be relevant. Likewise, documents obtained in "discovery" may be helpful in proving paternity.

See chapter 2, Overview of the Probate and Family Court, for information on discovery.

When Paternity Can Be Established

Paternity cannot be legally established until the child is born even though the father and the mother-to-be have agreed verbally or in writing that she is pregnant with his child. G.L. c. 209C, § 14. Once the child is born, paternity can be established voluntarily or by court order.

Prebirth Orders

The mother, but not the father, is allowed to file a court case while she is pregnant. G.L. c. 209C, § 14. In 1998, the law was amended to allow the court to enter temporary orders for support or health insurance while the mother is pregnant, and pending a final judgment of paternity. G.L. c. 209, § 14. A court, however, might limit support orders entered before the birth of a child to cases where paternity is not contested or it is clear that the putative father is the child's father. If a child support order is made, the support payments might be ordered into an escrow account.

Practice Note

Chapter 209C has always permitted a mother to recover health-care costs attributable to the child or associated with childbirth or resulting from the pregnancy. G.L. c. 209C, § 9.

Section 14 of Chapter 209C, which provides for prebirth support, has yet to be interpreted by Massachusetts appellate courts apart from cases involving advanced reproductive technology (formerly referred to as artificial insemination). For example, the Supreme Judicial Court cited Section 14 and indicated that a judge could enter orders to establish paternity after the death of the father where the paternity action was commenced during a pregnancy that resulted from the wife using the frozen gametes of her deceased spouse with his consent. *Woodward v. Comm'r of Soc. Sec.*, 435 Mass. 536, 551 n.20 (2002).

Cases Involving Minors or Paternity Adjudications for Adults

Age is not a bar to paternity. Paternity can be acknowledged and established even if one or both of the parents is under the age of eighteen. G.L. c. 209C, § 5(b). Likewise, an adult child over the age of majority may file a complaint to establish paternity. G.L. c. 209C, § 5(a).

What to Consider Before Filing a Paternity Case

Once paternity is established, the father has a legal obligation to support his child and can be ordered by the court to pay support. He also has the right to seek court orders for custody or visitation of the child. A child whose paternity has been established is in a better position to receive an inheritance or to obtain Social Security benefits in the event that the father passes away. A child who knows his or her father may have an easier time tracking the father's medical history, which might be important if the child has medical problems.

Where to File a Chapter 209C Case

The Probate and Family Court, the District Court, and the Boston Municipal Court have jurisdiction over cases under Chapter 209C to establish paternity, support, and health insurance for a child, but only the Probate and Family Court can enter orders for visitation or custody of the child. G.L. c. 209C, § 3(a). The case must be filed in the county or judicial district where the child resides. G.L. c. 209C, § 4.

Practice Note

Actions to adjudicate paternity were decriminalized in 1986 and, since that time, it is unheard of to file a Chapter 209C action in the District Court or Boston Municipal Court.

Custody of the Child if the Parents Are Not Married

If you are the mother of a child born outside of marriage, Chapter 209C provides that you have custody of your child unless a court enters an order taking custody away from you. G.L. c. 209C, § 10. If you are the father of a child born outside of marriage, you can seek an order for custody of your child as well as visitation from the Probate and Family Court once you have been legally declared the father. G.L. c. 209C, § 10. Without a court order for custody or visitation of the child, a father has no legally enforceable right to see or take the child unless the mother agrees.

THE PROCESS

Step 1—Draft the G.L. c. 209C Complaint

Your first step in filing a Chapter 209C complaint is to fill out a complaint form. These forms are readily available at the Probate and Family Court's register's office and on the Probate and Family Court website at <http://www.mass.gov/courts/forms/pfc/pfc-forms-gen.html>.

A sample complaint to establish paternity is included as **Exhibit 7B**. If your situation involves more than one child, you must fill out a separate complaint for each child. The types of relief that a party can request under Sections 8, 9, 10, and 15 of Chapter 209C include the following:

- adjudication of paternity;
- listing of the father's name on the birth certificate;
- payment of child support and provision of health, dental, and optical insurance for the child;
- retroactive child support payments dating back to the child's date of birth;
- payment of health, dental, and optical insurance for the child;
- payment of health coverage and birth expenses related to the mother's pregnancy and birth of the child;
- child custody and parenting time; and
- vacate, restraining, or no-contact orders to protect a party or child from abuse.

If you are unable to fit all your requests onto the court form, you can add a second page, but be sure to write "see second page" on the first page. All pages of the complaint will have to be "served" on the other party.

The person who files the court case is the "plaintiff" and the other party is the "defendant." If you are a mother who was married at the time you became pregnant or at the time you gave birth and your current or former husband is not the father, you have to list him as a second defendant if you file a paternity case. G.L. c. 209C, § 6(a). The only exception to joining him as a party is if the court in a divorce or other case has already made a written finding that he is not the father of your child. G.L. c. 209C, § 6(b).

If you are the father of a child whose mother was married to someone else at the time of your child's birth or when the child's mother became pregnant, you are not permitted to bring a court case under Chapter 209C. G.L. c. 209C, § 5. This is because there is a public policy in favor of protecting the so-called legitimacy of a child born to married parents. *C.C. v. A.B.*, 406 Mass. 679 (1990). However, you may be able to bring an "equity complaint" if you have a substantial relationship with your child. *M.J.C. v. D.J.*, 410 Mass. 389 (1991); *C.C. v. A.B.*, 406 Mass. 679 (1990). Information about filling an equity complaint is beyond the scope of this book. Consult an attorney if you are a father wanting to establish paternity in this situation and the mother is unwilling to file a paternity complaint.

Practice Note

The paternity law permits excluding an address from a complaint for "good cause." G.L. c. 209C, § 13. If listing your address or phone number will jeopardize the safety of you or your child, seek legal help and talk to someone in the register's office about filing a motion to file the complaint without disclosure of your address or phone number. The law permits exclusion of an address and like information from a complaint for "good cause." G.L. c. 209C, § 13. Most courts have "Lawyer for the Day" programs that provide free help to low-income people who need to draft motions and related court paperwork. You will need to come up with a way that the court can contact you, such as using a Post Office box or a relative's address as your mailing address.

If paternity was already adjudicated by a court or through completion of an acknowledgment of paternity form at the hospital or later on, you would file a complaint for custody, support, and parenting time. This form is included as **Exhibit 7C**.

Step 2—Fill Out a Care and Custody Disclosure Form

In addition to the complaint, you will have to complete a Care and Custody Disclosure form. All the forms you need are available at the Probate and Family Court.

Step 3—File an Affidavit Disclosing Care and Custody Proceedings

Next, you must file an affidavit disclosing care and custody proceedings listing which, if any, courts have entered orders for custody of the child or have cases pending involving the child. This includes Chapter 209A restraining order cases in the District Court.

Sample Affidavit Disclosing Care or Custody Proceedings forms are included as **Exhibit 5H**.

Step 4—File an Indigency Form (If It Applies)

You can file an Affidavit of Indigency form to request that the Commonwealth waive the filing fee and surcharge of \$115 and pay for the cost of having the papers served on the other party by a deputy sheriff or constable. File the affidavit of indigency only if you receive public assistance or cannot afford to pay these expenses. See chapter 2, Overview of the Probate and Family Court. A sample affidavit is included as **Exhibit 2A**.

Step 5—File a Public Assistance Affidavit

You must file a public assistance affidavit with the complaint that you file to indicate whether you or the child has ever received public assistance in the form of Medicaid (MassHealth) or T-AFDC. A sample affidavit is included as **Exhibit 7D**.

Step 6—Make Copies

Be sure to make at least two copies of the papers you file in court since you will need one copy for yourself and one copy for the other party.

Practice Note

Keep a file with copies of any papers filed in your case, along with other relevant papers, so that you have these available for any court hearings.

Step 7—Obtain a Summons

You must file the paternity complaint in the Probate and Family Court in the county where the child resides or in the District or Municipal Court for the town or city where the child resides. When you file the complaint and the affidavit disclosing care and custody proceeding, you should obtain a summons from the Probate and Family Court and fill it out.

Step 8—Get a Docket Number

You will receive a docket number for your case that you should write down, as it is used to identify and find your court file. Whenever you go to court, have the docket number with you, and write it on any additional papers that you file in court.

Step 9—Serve the Complaint, Summons, and Affidavit Disclosing Care and Custody Proceedings

You must “serve” the other party with copies of the complaint, summons, and affidavit disclosing care and custody proceedings. Mass. R. Dom. Rel. P. 4(d).

Practice Note

Be sure that you serve the other party with a copy of the summons instead of the original summons. The original summons must be filed in court after the papers are served.

You serve the papers by having a deputy sheriff, a constable, or a “disinterested person” (someone who is at least eighteen years old and not involved in your case) leave copies of the complaint, summons, and affidavit disclosing care and custody proceedings at the other party’s home in addition to mailing copies of each form to the same address. Mass. R. Dom. Rel. P. 4(d)(2).

Another method is to have the individual serving the papers simply hand copies of the papers to the defendant in person. Mass. R. Dom. Rel. P. 4(d)(1).

Whoever serves the papers must sign the back of the original summons and write exactly how the papers were served as proof that they were delivered.

Practice Note

If you apply for services with the Department of Revenue (DOR) Child Support Enforcement Division, they will serve the complaint for you.

The other party can also “accept service” by signing the front page of the original summons (not the copy) in front of a notary public, and then sending the original summons back to you. Notice to your husband or former husband who is required to be joined as a party can be made by mail requiring a receipt or, if actual notice cannot be given, by publishing it in a newspaper designated by the court. G.L. c. 209C, § 6(c).

Step 10—File Original Summons

After the papers are served, make a copy of both sides of the original summons for your own records. You must file the original summons with the court to prove that the other party has notice of the court case.

The court will schedule a case management conference within thirty days of the filing of the original summons in court that shows that the defendant in the case was served with the complaint.

Step 11—Notify the Department of Revenue if Required

If the child or a party is a present or past recipient of public assistance, the law requires that the party filing the complaint must “join” DOR as a party to the case. G.L. c. 209C, § 8; G.L. c. 209C, § 9. The parties must send DOR a copy of the complaint and notice of any trial or hearing dates. You can ask the court clerk staff for the DOR’s address. If DOR has an office at the courthouse, you also can drop off the paperwork at that office.

HOW TO ANSWER THE COMPLAINT IF YOU ARE THE DEFENDANT

After the complaint and summons are served, the defendant must file a written “answer” to the complaint within twenty days. Your written answer should indicate whether you admit or deny each paragraph of the complaint. You must send a copy of your answer to the other party when you file your original answer with the court. Also make copies of your answer for your own files.

A sample answer admitting paternity is included as **Exhibit 7E**, while a sample answer denying paternity is included as **Exhibit 7F**.

MOTIONS FOR TEMPORARY ORDERS**What Temporary Orders Can the Judge Enter in Your Case?**

The judge can enter temporary orders for custody, child support, visitation, health insurance, uninsured medical expenses, or other matters related to the child while the case is pending. If genetic marker testing has been done and

the probability of paternity is 97 percent or higher, the court is required to issue a temporary support order upon motion from a party. G.L. c. 209C, § 17. If paternity was acknowledged outside of court, the court may also enter a temporary order. G.L. c. 209C, § 11.

Filing a Motion and Getting a Hearing Date

After you serve the complaint and summons, you can file motions for temporary orders related to child support, custody, visitation (also called parenting time), and genetic marker testing, or other matters. G.L. c. 209C, § 15; G.L. c. 209C, § 14. A sample motion for support and custody is included as **Exhibit 7G**; a motion for parenting time is included as **Exhibit 7H**; and a motion for genetic marker testing is included as **Exhibit 7I**. Blank motion forms are available at the Probate and Family Court.

After you fill out a motion form, file it with the court and get a hearing date. Depending on the particular court's caseload, your hearing can be scheduled anywhere from two weeks to two months after you file the motion.

You are required to give the other party advance notice, in writing, of the date, time, and place of the hearing, as well as copies of any motions and other papers that you file. If service of the motion is by mail, the papers must be mailed at least ten days before the hearing, including weekends and holidays. Mass. R. Dom. Rel. P. 6(c). If the notice of hearing and copies are not properly served, the judge can refuse to hear the motion. Giving the other party at least fourteen days' advance notice of any motion is a good way to make sure that you comply with the rules regarding advance notice of a motion.

Your motion must be filed with a proposed temporary order that tells the judge exactly what you want the court to order. Mass. R. Dom. Rel. P. 6(c). A sample proposed temporary order is included as **Exhibit 7J**.

Emergency Motions

If an emergency arises and you need to see a judge immediately, you are permitted to seek emergency orders without notice to the other party, but there must be extreme circumstances and good reasons why you are unable to give the other party notice of the hearing. Your motion must be accompanied by a proposed temporary order and an affidavit (a sworn, written statement explaining what the emergency is and why the court should make orders without notice to the other party).

GENETIC MARKER TESTING

If paternity is disputed, the court can order that the parties and the child submit to genetic marker testing. G.L. c. 209C, § 17. This testing will provide the court with the "probability of paternity." In some cases, the testing may "exclude" a man as the child's father. For example, the testing may indicate that the alleged father has certain genetic traits that prove that it is impossible for the man to be the child's father. Parties can have this testing done voluntarily or by court order.

If DOR is involved in a paternity case, it can set up the testing for the parties. DOR has a contract with a testing laboratory for genetic marker testing and can assist custodial parents on public assistance in establishing paternity. Custodial parents who are not on public assistance may receive DOR services by completing an application for services. Laboratory staff under contract with DOR are available at some courthouses and at other locations. They collect tissue samples for testing using the "buccal swab" method, which involves scraping the inside of the mouth with a swab rather than drawing blood.

The DOR Child Support Enforcement Division also has its own administrative power to order that a mother, a child, and an alleged father (also called a putative father) undergo genetic marker testing. G.L. c. 119A, § 3A. However, DOR may only do so if two conditions are met. First, the mother or the alleged father must provide DOR with an affidavit alleging that the mother and the alleged father had sex during the probable period of time when the mother became pregnant with the child. Second, DOR can only order testing if no other man is legally presumed to be the child's father. G.L. c. 119A, § 3A.

Notice of the testing orders can be served by mail and by leaving a copy at the parties' homes. *See* G.L. c. 119A, § 3A; Mass. R. Dom. Rel. P. 4(d)(2). If a party fails to appear for testing, refuses to be tested, or disputes the jurisdiction (authority) of DOR to order testing, DOR is required to file an action in court to establish paternity. G.L. c. 119A, § 3A.

If the results of the genetic marker tests indicate that the alleged father is the child's father, DOR gives the parents the opportunity to acknowledge paternity voluntarily; if they fail to do so, DOR may file a case in court to establish paternity under Chapter 209C, G.L. c. 119A, § 3A.

If the party requesting the testing is unable to afford the cost of the genetic marker testing, the judge may order the Commonwealth or the other party to pay the costs. G.L. c. 209C, § 17. If the putative father is later proven to be the father, the law requires that the court must order the father to reimburse DOR or the other party for the testing. G.L. c. 209C, § 17. If copies of the bills are given to the other party at least ten days before the trial, the copies are admissible into evidence to prove the costs of the testing. G.L. c. 209C, § 16. If any party fails to comply with an order for blood and genetic marker testing, the judge can hold that party in contempt of court and order sanctions or punishments. The judge has the authority to establish paternity when an alleged father or the mother refuses to have genetic marker testing. *Department of Revenue v. B.P.*, 412 Mass. 1015 (1992). The judge can draw an "adverse inference," meaning that the testing results would work against the party, if the party refuses to be tested. G.L. c. 209C, § 17.

Many cases settle after the results of the genetic marker testing are available. In some cases, parties may be required to testify at a trial before a judge. Genetic marker tests, by themselves, do not prove paternity. If paternity is contested at a trial, the judge cannot establish paternity unless he or she finds that the mother and the alleged father had sexual intercourse during the probable period of time when the mother became pregnant. If a party or other witness refuses to testify at trial, the judge can draw an adverse inference from such a refusal. G.L. c. 209C, § 16.

Practice Note

Unless the party or witness is properly subpoenaed or ordered to attend, he or she is not required to be present at a trial.

Genetic marker testing by itself does not prove paternity. G.L. c. 209C, § 17. However, a properly authenticated or notarized genetic marker testing report is admissible as evidence at trial. G.L. c. 209C, § 17. If the other party wants to object to the genetic marker testing going into evidence, he or she must object in writing thirty days prior to the hearing or as soon as he or she gets notice of the hearing (whichever is shorter). However, the report only will be allowed into evidence provided there is evidence given that the parties had sexual intercourse during the probable period of conception for the child. G.L. c. 209C, § 17. Thus, to prove paternity, the party must testify that he or she had sexual intercourse with the other parent during the probable period of conception for the child. Then, if testing results indicating a probability of paternity of 97 percent or more are admitted into evidence, a rebuttable presumption that the putative father is the child's father is created. G.L. c. 209C, § 17.

Genetic Marker Testing Motions

How the court deals with your request for genetic marker testing depends on whether there has been prior acknowledgment of paternity. If paternity was acknowledged, outside of court on or after March 31, 1998, and you or the other party files a court case to rescind the acknowledgment within sixty days of signing it, the court is required to order genetic marker testing. G.L. c. 209C, § 11. A sample motion to rescind the paternity acknowledgement and request genetic testing is included as **Exhibit 7K**.

In cases to establish paternity where there has not been a prior acknowledgment, the court may order genetic marking testing, if you file a motion for genetic marker testing with an "affidavit," a statement signed "under penalties of perjury."

The court will order genetic marker testing only if there is "probable cause" to believe that the parties had sexual intercourse during the probable time of conception for the child. An affidavit of the mother or father alleging sexual intercourse during this relevant period of time is sufficient for the court to order the testing. G.L. c. 209C, § 17. See *Commonwealth v. Beausoleil*, 397 Mass. 206 (1986), for discussion of "probable cause" needed to order blood and genetic marker testing. See also *A.R. v. C.R.*, 411 Mass. 570 (1992) (overcoming the presumption of legitimacy and ordering blood testing when parties are married); *R.R.K. v. S.G.P.*, 400 Mass. 12 (1987).

The court recognizes and takes "judicial notice" that a normal pregnancy is nine months, or about 280 days. *Silke v. Silke*, 325 Mass. 487 (1950); *Commonwealth v. Kitchen*, 299 Mass. 7 (1937); *Negus v. Foote*, 228 Mass. 375 (1917); *Commonwealth v. Fanciullo*, 11 Mass. App. Ct. 64 (1980). Medical records may be helpful in establishing when the mother became pregnant especially if the baby was premature. Certified medical records are admissible in court as

evidence (G.L. c. 233, § 79) and may be useful if there are problems figuring out the probable period of conception for the child.

Sample affidavits are included as **Exhibit 7L**. A sample motion is included as **Exhibit 7I**. At a minimum, the affidavit should indicate the name of the child, the child's date of birth, and the approximate dates that the mother and alleged father had sexual intercourse with each other. If the party who opposes testing has admitted who is the father in the past to you or others, you can also include such information in your affidavit. Likewise, an offer to pay for an abortion can be considered an admission of paternity. *Commonwealth v. Kennedy*, 389 Mass. 308 (1983).

WHO IS RESPONSIBLE FOR CHILD SUPPORT IF THE PARENTS ARE NOT MARRIED?

Parents are responsible for support of their child from the date of the child's birth. G.L. c. 209C, § 1. The court can order a father to pay support for his child if he has voluntarily acknowledged paternity or has been declared the father. G.L. c. 209C, § 11; G.L. c. 209C, § 9. In addition, the judge may enter temporary orders for support while the paternity case is pending. G.L. c. 209C, § 15; G.L. c. 209C, § 14.

If a noncustodial parent fails to support his or her child before entry of a court order for support, the custodial parent (or any other party who brought the paternity case) may seek an order for retroactive child support dating back to the date of the child's birth, and for expenses related to the birth of the child. G.L. c. 209C, § 9; *see also* G.L. c. 209C, § 1; *A.B. v. C.D.*, 44 Mass. App. Ct. 331 (1998); *Flynn v. Connors*, 39 Mass. App. Ct. 365 (1995); *Department of Revenue v. Roe*, 31 Mass. App. Ct. 924 (1991); *Department of Revenue v. Roe*, 29 Mass. App. Ct. 967 (1990).

Child Support Motions

You are permitted to file a motion for a temporary order of child support before a trial or final "judgment" enters in your case. A sample motion for child support is included in **Exhibit 8A**. As described above, you must file the motion with the court, get a court date, and serve the other party with a copy of the motion and a proposed temporary order with notice of the court date.

You and the other party must each file a financial statement with the court and exchange financial statements at least two days before the hearing on the motion. Supp. Prob. Ct. R. 401(b). Your financial statement is one of the most important documents in your case. Fill out the financial statement before you go to court for the hearing so that you will have all the information that you need to fill it out completely and accurately.

For information on requesting a financial statement from the other party before the hearing, see chapter 2, Overview of the Probate and Family Court.

In making child support orders in paternity cases, the courts use a formula called the Child Support Guidelines, which is based on the income of each party as well as the ages and the number of children. G.L. c. 209C, § 9(a). Parties can obtain Child Support Guidelines worksheet forms at the Probate and Family Court. Chapter 2 of this book, in the section entitled "What Is a Financial Statement and What Are the Rules Governing Them?," explains how to fill out a financial statement, and the section entitled "How Much Child Support Will I Get for My Child?," in chapter 8, explains how the Child Support Guidelines work.

If paternity is contested, the judge may make you wait until the genetic marker tests results come back before entering an order for child support. However, you can later request that the court order retroactive child support going as far back as the child's birth if the defendant has failed to adequately support the child prior to entry of a support order. G.L. c. 209C, § 9; *Flynn v. Connors*, 39 Mass. App. Ct. 365 (1995); *Department of Revenue v. Roe*, 31 Mass. App. Ct. 924 (1991); *Department of Revenue v. Richard Roe*, 29 Mass. App. Ct. 967 (1990); *A.B. v. C.D.*, 44 Mass. App. Ct. 331 (1998).

CUSTODY AND VISITATION

The mother of a child born outside of marriage has custody of the child unless a court enters an order awarding it to someone else. G.L. c. 209C, § 10. A father of a child born outside of marriage can seek an order for custody of the child or “parenting time” (formerly known as visitation) from the Probate and Family Court once he has been legally declared the father. G.L. c. 209C, § 10. Without a court order for custody or visitation of the child, the father has no legally enforceable right to see or take the child unless the mother agrees.

If you desire a child custody or parenting time order, you can file a motion for these orders using the same procedures to get a hearing on a motion described above. In awarding physical custody (meaning whom the child lives with) “the court shall to the extent possible, preserve the relationship between the child and the primary caretaker parent.” G.L. c. 209C, § 10. Likewise, the court will consider where the child lived during the six months before the case was filed and whether the parent has a relationship with the child and has taken responsibility for the child in the past. G.L. c. 209C, § 10.

If a parent seeks an order of shared legal custody (meaning that both parents must jointly make decisions about the child’s medical care, schooling, religion, and others issues relating to the child’s upbringing), the court will not award shared custody unless

- both parents agree to it or
- the parents have a history of sharing responsibility for the child and they have the ability to communicate with each other.

G.L. c. 209C, § 10; *see K.J.M. v. M.C.*, 35 Mass. App. Ct. 456 (1993).

For example, in *Custody of Kali*, 439 Mass. 834 (2003), the Probate and Family Court awarded sole legal and primary physical custody of child to the mother with visitation to the father. The father appealed, but the order was affirmed as within the discretion of the judge based on the statutory factors under Chapter 209C and the child’s best interests. The Supreme Judicial Court noted the importance of continuity and stability to a child’s best interest.

In most cases . . . if the child has been living with one parent for some time, the child’s needs are being adequately met under that parent’s care, and that parent is capable of continuing to care for the child, it is not in the child’s best interests to disrupt that successful arrangement. Rather, it is in the child’s best interests to preserve it. Belief that the other parent might be a little better in some areas ought not suffice to disrupt a child’s satisfactory home life with the caretaker parent.

Custody of Kali, 439 Mass. at 844.

If a parent has a history of domestic violence, the court must enter written findings of fact explaining the effects of the abuse on the children if the court awards shared legal custody or physical custody to the abusive parent. *Custody of Vaughn*, 422 Mass. 590 (1996). If the judge finds that a parent has committed a pattern or serious incident of abuse, the court will presume that the abusive parent should not be awarded custody of the child. G.L. c. 209C, § 10.

Sample custody and parenting time motions are included in the exhibits at the end of this chapter. For more information about custody and parenting time, see chapter 9 of this book.

If you have been abused by your child’s other parent and need protective orders, you can seek a temporary or permanent restraining order as part of your paternity case (G.L. c. 209C, § 15) using the same procedures described above for emergency motions. You can also seek a restraining order under Chapter 209A, the Abuse Prevention Act. For detailed information about abuse prevention, restraining orders, and planning around your safety, see chapter 3.

PREPARING FOR THE MOTION HEARING

You may spend several hours or more in court. If you have children, arrange for a babysitter and do not bring your children to court unless it is absolutely necessary. The children might distract you and the judge, or they may be put in the middle of a disagreement.

Before the hearing, organize your papers, think about what you want the judge to order, and plan what you will say to the judge.

What to Do on the Day of the Motion Hearing

Dress in a dignified way for the hearing. Some courtrooms have signs stating that shorts, jeans, tank tops, miniskirts, and t-shirts are not appropriate attire. You are not allowed to smoke, chew gum, eat or drink, or read newspapers in the courtroom.

On the day of the hearing of the motion, you go to the “ex-parte motion” courtroom. Try to arrive at least a half hour early. If you are late, the court may enter orders against you. If you are lost, go to the register’s office for assistance or ask one of the uniformed court officers for help.

Once you find your courtroom, check in with the courtroom clerk. If you have obtained a restraining order against the other party, or if there is a history of abuse, tell the courtroom clerk. After you check in, you will be expected to sit quietly until your case is called.

What Happens if You Are Referred to the Probation Department

Once you check into the courtroom, it is likely that your case will be referred to the Probation Department. The staff in the Probation Department meet with parties to figure out what the issues are and to try to settle the case. What you say can be repeated to the judge and the judge may ask the probation officer about the facts of your case or for ideas about how to resolve any dispute.

If you have a restraining order or if there is a history of abuse, you are not required to meet in the same room with the other party to settle your case. As soon as you check in with the Probation Department, let them know about any history of abuse. The probation officer can meet with each party separately, or your case may be sent back to the courtroom.

The probation officer is not a lawyer or judge, nor can he or she give you legal advice. However, the probation officer may suggest a written agreement for settlement of particular issues or the whole case. This agreement is sometimes called a stipulation. Be sure any written agreement reflects your understanding of what has been agreed upon and ask for a copy of it. Do not sign any agreement unless you agree with what it says. If you do not reach an agreement on your case with the probation officer, a judge will decide your case.

Appearing Before the Judge

The judge is called “Your Honor.” When you appear before a judge, listen carefully to his or her questions and keep your answers focused and to the point.

Be prepared to tell the judge clearly and precisely what you want ordered and why. Usually, the party who filed the motion speaks first and then the other party is given a chance to reply. Wait until it is your turn to speak and do not interrupt the other party or the judge.

The judge may tell you what is ordered before you leave the courtroom. Sometimes the judge takes your case “under advisement,” which means that he or she wants more time to decide the case. The court will mail you the judge’s decision once it is made.

CASE MANAGEMENT CONFERENCES, PRETRIALS, AND TRIALS

The court will schedule a case management conference within thirty days of the filing of the summons that shows the defendant in the case was served with the complaint.

If your case was not scheduled for a case management conference, you can fill out and file a form to request such a conference along with a Case Conference Memorandum form. These forms are included as **Exhibits 7M–7P**.

Every time you go to court, you should be given the date and time of the next hearing or event in your case until your case is completed and a final judgment is entered.

If you and the other party reach an agreement, you can present the agreement, sometimes called a stipulation, to the judge for approval as a temporary order or final judgment of the court. If the judge finds your agreement to be fair and reasonable, he or she will approve it. See chapter 2, Overview of the Probate and Family Court.

If your case does not settle, the court may schedule a “pretrial” before it gives you a date for a contested trial. The purpose of the pretrial is for the judge to determine what issues are still in dispute, to have each party indicate what witnesses, documents, and other proof will be presented at trial, and to try to settle the case.

The case management conference or pretrial notice may include an order that you meet with the other party to try to settle the case. This face-to-face meeting requirement can be waived if you have a restraining order or there is a history of abuse.

At any hearing, court appearance, or trial, you should be prepared to tell the judge what you want ordered by the court. For example, a mother may want a party declared the father and listed on the birth certificate and she may want custody, health insurance, payment of the hospital birth expenses, weekly child support, and retroactive child support going back to the child’s date of birth. A man may want to be declared the father and may want custody, parenting time, health insurance coverage, and support for the child paid by the mother. Alternatively, a man who has been excluded by genetic marker testing will probably want the court to enter a finding that he is not the child’s father. The case file will be impounded from all public view, except for the parties and the child, if the defendant is found not to be the father. G.L. c. 209C, § 13.

MODIFICATION OF “FINAL” ORDERS

Judgments under Chapter 209C may be modified if there is a substantial change in circumstances or if the change would be in the child’s best interest or if the noncustodial parent’s support order is inconsistent with the Child Support Guidelines. G.L. c. 209C, § 22. For example, if the noncustodial parent’s income has tripled since the judgment and he or she is now paying support below the recommended amounts of the Child Support Guidelines, there are likely to be grounds for modification. Likewise, if a change in the visitation schedule would be in the child’s best interest, the court could modify visitation.

Modification by DOR

DOR now has the power to administratively review support orders at least every three years in cases where the parent receiving support has signed an application for DOR services or where he or she receives public assistance. G.L. c. 119A, § 3B. The review is based on the Child Support Guidelines and financial information available through DOR data systems. DOR will issue proposed orders to modify the support order and, if the parties sign the proposed order within thirty days, DOR will file in court. Such a proposed order is sufficient basis for the court to modify the existing order. G.L. c. 119A, § 3B.

See chapter 16 for more detailed information on modification of judgments.

THE EFFECT OF MARRIAGE ON A PATERNITY CASE

If the parents get married while the case is pending, but before a judgment is entered by the court, the court can enter only a judgment on the issue of paternity. G.L. c. 209C, § 23. However, the court can enter orders relating to support or other matters in a divorce, separate support, abuse prevention, or other actions relating to married parties.

If the parents of the child get married after a judgment of paternity, the paternity adjudication remains in effect, but any orders relating to custody, visitation, support, and abuse prevention which entered as part of the paternity judgment become null and void. G.L. c. 209C, § 23.

✓ CHECKLIST 7.1

Checklist for a Party Filing a Complaint

- ☐ Consult with and obtain an attorney if possible.
- ☐ File Paternity Complaint and Affidavit of Care and Custody Disclosure form.
- ☐ File Affidavit of Indigency if you cannot afford fees to serve the papers. (The summons is free in paternity and contempt actions.)
- ☐ Obtain and fill out the Summons form.
- ☐ Properly serve copy of the Complaint and Summons.
- ☐ File Original Summons with proof of service in court.
- ☐ File motion, obtain hearing date, and serve other party with copy of Motion, Proposed Order, and notice of hearing date. Sample Motions, Affidavits, and Proposed Orders include:
 - ☐ Motion for Temporary Support Order,
 - ☐ Motion for Temporary Order of Custody,
 - ☐ Motion for Temporary Order of Parenting Time,
 - ☐ Motion for Genetic Marker Testing,
 - ☐ Affidavit in Support of Genetic Marker Testing, and
 - ☐ Proposed Temporary Order.
- ☐ If applicable, have genetic marker testing.
- ☐ Fill out Financial Statement.
- ☐ Prepare for your hearing.
- ☐ Attend hearing:
 - ☐ Find your courtroom.
 - ☐ Check in with the courtroom clerk.
 - ☐ Go to the Probation Department if referred there.
 - ☐ Get a copy of any agreement that you sign.
 - ☐ File your Financial Statement or other paperwork.
 - ☐ Tell the court what you want ordered and why.
 - ☐ Make sure that you get a copy of the court orders.
- ☐ Conduct discovery as appropriate.
- ☐ Update Financial Statement. Prepare for and appear at trial hearing.
- ☐ Tell the court what you want, present evidence if case not settled.
- ☐ Present certified copies of birth certificate and certified genetic marker testing report.
- ☐ Present testimony regard sexual intercourse during probable period of conception.
- ☐ Present other evidence as appropriate.

✓ CHECKLIST 7.2

Paternity Checklist for a Party Served with a Complaint

- ☐ Read Complaint to determine what the other party is alleging and what he or she is seeking from you.
- ☐ Consult with and obtain an attorney if possible.
- ☐ Within 20 days of receiving the Complaint, file an Answer to the Complaint admitting or denying each paragraph and responding to what the other party requests.
- ☐ File Motion, obtain hearing date, serve other party with copy of Motion, Proposed Temporary Order and notice of hearing date. Sample Motions, Affidavits, and Proposed Temporary Orders include:
 - ☐ Motion for Temporary Support Order,
 - ☐ Motion for Temporary Order of Custody,
 - ☐ Motion for Temporary Order of Parenting Time,
 - ☐ Motion for Genetic Marker Testing,
 - ☐ Affidavit in Support of Genetic Marker Testing, and
 - ☐ Proposed Temporary Order.
- ☐ If applicable, have genetic marker testing.
- ☐ Fill out Financial Statement.
- ☐ Prepare for your hearing.
- ☐ Attend hearing:
 - ☐ Find your courtroom.
 - ☐ Check in with the courtroom clerk.
 - ☐ Go to the Probation Department if referred there.
 - ☐ Get a copy of any agreement that you sign.
 - ☐ File your Financial Statement or other paperwork.
 - ☐ Tell the court what you want ordered and why.
- ☐ Make sure that you get a copy of the court orders.
- ☐ Conduct discovery as appropriate.
- ☐ Update Financial Statement. Prepare for and appear at trial hearing.
- ☐ Tell court what you want, present evidence if case not settled.
- ☐ If you disagree with the genetic marker testing report, object in writing within 30 days of the trial or as soon as you get the hearing date, whichever is shorter.

EXHIBIT 7A—Complaint to Rescind Paternity Acknowledgment

COMMONWEALTH OF MASSACHUSETTS

[____], ss.

Probate and Family Court Dept.
Docket No. 000000

_____,
Plaintiff
v.
_____,
Defendant

COMPLAINT TO RESCIND PATERNITY ACKNOWLEDGMENT PURSUANT TO CHAPTER 209C, SECTION 11

1. The plaintiff resides at _____.
(See an Assistant Register if listing this puts you in danger of abuse)
2. The defendant resides at _____
3. The plaintiff and the defendant executed an acknowledgment of paternity on _____ for the minor child: _____
[child's complete name] born on _____ at _____.
(Attach a copy of the acknowledgment).
4. The minor child resides at _____.
(See an Assistant Register if listing this puts you in danger of abuse)
5. Check all that apply:
 - ☐ The child has not received public assistance.
 - ☐ The child has received public assistance. (A copy of this Complaint must be sent to the Department of Revenue if the child currently or previously received public assistance).
6. The plaintiff/defendant represents that not more than 60 days have passed since the parties (*Cross out plaintiff or defendant above to indicate whether you are the plaintiff or defendant*) executed the acknowledgment of paternity and hereby, rescinds the acknowledgment of paternity.

Signature

Name

Street Address

City State Zip Code

Telephone _____

Date _____

(This complaint is to be served the same way as a Complaint to Establish Paternity).

EXHIBIT 7B—Complaint to Establish Paternity

COMPLAINT TO ESTABLISH PATERNITY		Docket No.	Commonwealth of Massachusetts The Trial Court Probate and Family Court
<u>Mary</u> First Name	<u>Smith</u> Last Name	Plaintiff	
v.		Defendant	
<u>John</u> First Name	<u>Paul</u> Last Name	Defendant	
Suffolk		Division	

1. Plaintiff, who resides at 24 Jump St. #2 Boston MA 02114, is
 (Address) (Apt, Unit, No. etc.) (City/Town) (State) (Zip)

- ☒ the ☒ mother ☐ father of a child born out of wedlock.
☐ a child born out of wedlock.
☐ the ☐ guardian ☐ custodian of a child born out of wedlock.
☐ the ☐ parent ☐ personal representative of the ☐ mother ☐ father of a child born out of wedlock.

Plaintiff is: ☐ Department of Children and Families ☐ an agency licensed under G. L. c. 28A ☐ Department of Revenue

2. The child who is the subject of this complaint is:

George J. Smith 7 10-31-2010
 First Name M.I. Last Name Current age Date of Birth
 (Address) (Apt, Unit, No. etc.) (City/Town) (State) (Zip)

3. Defendant, who resides at 41 Next Door St. #4 Boston MA 02114
 (Address) (Apt, Unit, No. etc.) (City/Town) (State) (Zip)

is the ☐ mother ☒ father of the above-named child who was born out of wedlock.

4. The plaintiff and defendant are not married.
 5. The mother of the child was not married at the time of the child's birth and was not married within three hundred days before the birth of the child.
 6. Wherefore, the plaintiff requests that the Court:

- ☒ adjudicate the ☐ plaintiff ☒ defendant to be the father of the child.
☒ order a suitable amount of support for the child.
☒ order the ☐ plaintiff ☒ defendant to ☒ maintain ☒ provide health insurance for the benefit of the child.
☒ prohibit the defendant from imposing any restraint on the personal liberty of the ☒ plaintiff and/or ☐ the child.
☒ grant the ☒ plaintiff ☐ defendant custody of the child and add the defendant's name to child's Birth Certificate.
☐ grant the ☐ plaintiff ☐ defendant parenting time with the child.

Date 10-31-2017

Mary Smith
 Signature of Attorney or Plaintiff, if pro se

Mary Smith
 Print name

24 Jump St. #2
 (Address Line) (Apt, Unit, No. etc.)

Boston MA 02114
 (City/Town) (State) (Zip)

Primary Phone #: 012-345-6789

BBO No.: _____

EXHIBIT 7C—Complaint for Custody, Support, and Parenting Time

COMPLAINT FOR CUSTODY-SUPPORT-PARENTING TIME PURSUANT TO G. L. c. 209C		Docket No. 17W0000	Commonwealth of Massachusetts The Trial Court Probate and Family Court
<u>TINA</u> First Name	<u>T</u> M.I.	<u>TIM</u> Last Name	Plaintiff v. Defendant
<u>TY</u> First Name	<u>T</u> M.I.	<u>HIM</u> Last Name	

1. Plaintiff, who resides at 1234 Jump St. #1234 Boston MA 02114, is
 (Address) (Apt. Unit, No. etc.) (City/Town) (State) (Zip)

- ☒ the ☒ mother ☒ father of a child born out of wedlock.
☐ a child born out of wedlock.
☐ the ☐ guardian ☐ custodian of a child born out of wedlock.
☐ the ☐ parent ☐ personal representative of the ☐ mother ☐ father of a child born out of wedlock.

Plaintiff is: ☐ Department of Children and Families ☐ an agency licensed under G. L. c. 28A ☐ Department of Revenue

2. The child who is the subject of this complaint is:

TIMOTHY T TIM 7 1-1-2010
 First Name M.I. Last Name Current age Date of Birth
1234 Jump St. #1234 Boston MA 02114
 (Address) (Apt. Unit, No. etc.) (City/Town) (State) (Zip)

3. Defendant, who resides at 987 Next Door St. #987 Boston MA 02114
 (Address) (Apt. Unit, No. etc.) (City/Town) (State) (Zip)

is the ☐ mother ☒ father of the above-named child who was born out of wedlock.

4. The plaintiff and defendant are not married.
5. The mother of the child was not married at the time of the child's birth and was not married within three hundred days before the birth of the child.
6. The ☐ plaintiff ☒ defendant ☒ signed a voluntary acknowledgement of paternity ☐ was adjudicated the father on 1-1-2010, a copy of which is attached to this complaint.
 (date)

7. Wherefore, plaintiff requests that the Court:

- ☒ order a suitable amount of support for the child.
☒ order the ☐ plaintiff ☒ defendant to ☐ maintain ☒ provide health insurance for the benefit of the child.
☐ prohibit the defendant from imposing any restraint on the personal liberty of the ☐ plaintiff and/or ☐ the child.
☒ grant the ☒ plaintiff ☐ defendant custody of the child.
☐ grant the ☐ plaintiff ☐ defendant parenting time with the child.
☒ order support retroactive to the child's date of birth and
 add the defendant's name to the child's birth certificate to reflect he is the father.

Date: 10-31-17Tina Tim
Signature of Attorney or Plaintiff, if pro seTINA TIM
(Print name)1234 Jump St.
(Address)#1234
(Apt. Unit, No. etc.)Boston
(City/Town)MA
(State)02114
(Zip)Primary Phone #: 012-345-6789

B.B.O. # _____

EXHIBIT 7D—Public Assistance Affidavit

**Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department**

Suffolk Division Docket No: _____

Case Name: Mary Smith v. John Paul

Public Assistance Affidavit

1. I, Mary Smith petitioner/plaintiff, hereby declare that I have made inquiry and, to the best of my knowledge, information and belief all of the information on this form is true, accurate and complete.

2. The name(s) and address(es) of the child(ren) who is/are the subject of this complaint or petition:

Name (s)	Address
<u>George Smith</u>	<u>24 Jump St Boston MA 02114</u>
_____	_____
_____	_____
_____	_____

3a. I am receiving public assistance. ☒ Yes ☐ No

b. I have received public assistance in the past. ☒ Yes ☐ No

If the response is yes to either 3a or 3b, please specify the type of public assistance received:

- ☒ Department of Transitional Assistance (Public Welfare)
- ☐ Department of Social Services
- ☒ Department of Medical Assistance (Medicaid)
- ☐ Other (Please Specify) _____

4a. The child(ren) listed is/are receiving public assistance. ☒ Yes ☐ No

b. The child(ren) listed has/have received public assistance in the past. ☒ Yes ☐ No

If the response is yes to either 4a or 4b, please specify the type of public assistance received:

- ☒ Department of Transitional Assistance (Public Welfare)
- ☐ Department of Social Services
- ☒ Department of Medical Assistance (Medicaid)
- ☐ Other (Please Specify) _____

This affidavit must be personally signed by the petitioner/plaintiff listed in Section 1. If the petitioner/plaintiff is under the age of 18 years and is represented by an attorney, the attorney must also sign this affidavit. A revised affidavit must be filed with the Court if new information is discovered subsequent to this filing.

Signed this 31st day of October 2017

Signature: Mary Smith Printed Name: Mary Smith

Attorney: _____ Printed Name: _____

c.g.f.

EXHIBIT 7E—Answer Admitting Paternity

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Probate and Family Court Dept.
Docket No. 000000

Jane Doe,
Plaintiff
v.
Richard Doe,
Defendant

)
)
)
)
)
)
)
)
)
)

ANSWER ADMITTING PATERNITY

The defendant answers the plaintiff's complaint as follows:

1. I admit Paragraph 1.
2. I admit Paragraph 2.
3. I admit Paragraph 3.
4. I admit Paragraph 4.
5. I admit Paragraph 5.
6. I admit Paragraph 6.
7. I ask the court to grant me visitation with my child and to enter such other orders as the court deems appropriate.

Richard Roe
43 Jupiter Street
Cambridge MA 02141
(617) 444-4444

Date: May 9, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this Answer upon Jane Doe, 100 Cambridge Street, Apt 16, Cambridge, MA, 02141 by mailing (postage prepaid) on May 9, 2008.

Richard Roe

EXHIBIT 7F—Answer Denying Paternity

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Probate and Family Court Dept.
Docket No. 000000

Jane Doe,
Plaintiff
v.
Richard Doe,
Defendant

ANSWER DENYING PATERNITY

The defendant answers the plaintiff's complaint as follows:

1. I admit Paragraph 1.
2. I admit Paragraph 2.
3. I deny Paragraph 3.
4. I admit Paragraph 4.
5. I admit Paragraph 5.
6. Not applicable because we did not sign an acknowledgment of paternity.
7. I ask the court to order genetic marker testing, to dismiss the complaint, and to order the plaintiff to pay for the genetic marker testing if I am found not to be the father. If I am declared the father of the child by the court after genetic marker testing, I ask the court to grant me visitation.

Richard Roe
43 Jupiter Street
Cambridge MA 02141
(617) 444-4444

Date: May 9, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this Answer upon Jane Doe, 100 Cambridge Street, Apt 16, Cambridge, MA, 02141 by mailing (postage prepaid) on May 9, 2008.

Richard Roe

Commonwealth of Massachusetts		
The Trial Court		
Division <u>Suffolk</u>	Probate and Family Court Department	Docket No. <u>17W0000</u>
MOTION FOR		
<u>Mary Smith</u> Plaintiff/Petitioner		<u>Custody and Child Support</u>
V.		
<u>John Paul</u> Defendant/Respondent		
Now comes <u>Mary Smith</u> , <input checked="" type="radio"/> Plaintiff <input type="radio"/> Defendant <input type="radio"/> Petitioner <input type="radio"/> Respondent , (name of moving party)		
in this action who requests:		
That the Court order the defendant to pay child support and award me custody of the minor child.		
Date <u>October 31, 2017</u>		
<div style="text-align: center;">NOTICE OF HEARING</div> This motion will be heard at the Probate and Family Court In <u>Boston</u> (city) on <u>Nov 28 2017</u> (month/day/year) at <u>9 A.M.</u> (time of hearing)		
		<u>Mary Smith</u> (Signature of attorney or plaintiff, if pro se)
		<u>Mary Smith</u> (Print name)
		<u>2 Jump St</u> (Street address)
<u>Boston</u> (City/Town)	<u>MA</u> (State)	<u>02114</u> (Zip)
Tel. No. <u>012-345-6789</u>		
B.B.O. # _____		
The within motion is hereby <input type="radio"/> ALLOWED <input type="radio"/> DENIED		
_____ _____ _____		
Date	JUSTICE OF PROBATE AND FAMILY COURT	

<p>Commonwealth of Massachusetts The Trial Court Probate and Family Court Department</p>		<p>Docket No. <u>17W0000</u></p>
<p>Division <u>Suffolk</u></p>		
<p>MOTION FOR</p>		
<p><u>Custody and Child Support</u></p>		
<p>Dated: <u>October 31, 2017</u></p>		
<p>CERTIFICATE OF SERVICE</p>		
<p>I hereby certify that I have delivered a copy of this motion to:</p>		
<p><u>John Paul</u> <small>(name of party or attorney of record)</small></p>		
<p><u>41 Next Door St. #4</u> <small>(Street address)</small></p>	<p><u>Boston</u> <small>(City/Town)</small></p>	<p><u>MA</u> <small>(State)</small></p>
		<p><u>02114</u> <small>(Zip)</small></p>
<p>By <input type="radio"/> delivery in hand _____ at _____ <input type="radio"/> AM <input checked="" type="radio"/> PM <small>(date of delivery) (time)</small></p>		
<p><input checked="" type="radio"/> mailing (postage paid on) <u>Oct 31, 2017</u> <small>(date of mailing)</small></p>		
<p><u>May Smith</u> <small>(signature)</small></p>		

EXHIBIT 7H—Motion for Parenting Time

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department

Division Suffolk Docket No. 17W0000

MOTION FOR

Mary Smith
 Plaintiff/Petitioner

V.

John Paul
 Defendant/Respondent

Parenting Time

Now comes John Paul, ☐ Plaintiff ☒ Defendant ☐ Petitioner ☐ Respondent ,
 (name of moving party)

in this action who requests:

that this court order that I may visit my son, George Smith, every other weekend from Friday to Monday morning, every Thursday from 5pm to 8pm., and on holidays to be alternated with his mother.

Date 11-2-17

NOTICE OF HEARING

This motion will be heard at the Probate and Family Court

In Boston
 (city)

on Nov. 28 2017
 (month/day/year)

at 9 A.M.
 (time of hearing)

John Paul
 (Signature of attorney or plaintiff, if pro se)

John Paul
 (Print name)

41 NextDoor St.
 (Street address)

Boston
 (City/Town)

MA
 (State)

02114
 (Zip)

Tel. No. 987-654-3210

B.B.O. # _____

The within motion is hereby ☐ **ALLOWED** ☐ **DENIED**

Date _____

JUSTICE OF PROBATE AND FAMILY COURT

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department

Division Suffolk Docket No. 17W0000

MOTION FOR

Parenting Time

Dated: 11-2-2017

CERTIFICATE OF SERVICE

I hereby certify that I have delivered a copy of this motion to:

Mary Smith
(name of party or attorney of record)

24 Jump St. Boston MA 02114
(Street address) (City/Town) (State) (Zip)

By ☐ delivery in hand _____ at _____ ☐ AM ☐ PM
(date of delivery) (time)

☒ mailing (postage paid on) 11-2-2017
(date of mailing)

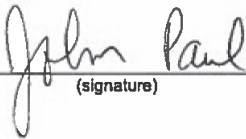

(signature)

EXHIBIT 7I—Motion for Genetic Marker Testing

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department

Division Middlesex Docket No. 17W12345678910

MOTION FOR

Alice Salt
Plaintiff/Petitioner

V.

Peter Pepper
Defendant/Respondent

Genetic Marker Testing

Now comes Alice Wonderland, ☒ Plaintiff ☐ Defendant ☐ Petitioner ☐ Respondent ,
(name of moving party)

in this action who requests:

that the court order genetic marker testing of the defendant and the minor child, Sandy Salt, so as to determine paternity of the child.
Under penalties of perjury, I swear that I had sexual relations with the defendant approximately nine months before birth of the child.

Date October 30, 2017

NOTICE OF HEARING

This motion will be heard at the Probate and Family Court

In Cambridge
(city)

on 11-28-17
(month/day/year)

at 9 A.M.
(time of hearing)

Alice Salt
(Signature of attorney or plaintiff, if pro se)

Alice Salt
(Print name)

22 Pumpkins Lane, #999
(Street address)

Cambridge MA 02141
(City/Town) (State) (Zip)

Tel. No. 999-999-9999

B.B.O. # _____

The within motion is hereby ☐ ALLOWED ☐ DENIED

Date _____ JUSTICE OF PROBATE AND FAMILY COURT

Docket No. 17W12345678910

Genetic Marker Testing

EXHIBIT 7J—Proposed Temporary Order

COMMONWEALTH OF MASSACHUSETTS THE TRIAL COURT PROBATE AND FAMILY COURT		Docket No: _____
Suffolk	Division	
Mary Smith, Plaintiff		Plaintiff's PROPOSED ORDER
vs.		
John Paul, Defendant		
Upon the Motion for <u>child support and custody</u> dated: <u>10-31-2017</u> and filed with this court on <u>10-31-</u> 20 <u>17</u>		
After hearing and pending further order or judgment of this Court, IT IS ORDERED THAT (Describe in detail the relief order you seek.)		
<input type="checkbox"/> 1) <u>Plaintiff</u> shall have <u>legal</u> custody of: _____ the minor child/ren of the parties, _____ shall have physical custody of said child/ren.		
<input type="checkbox"/> 2) _____ shall have the following visitation rights: _____ _____		
<input type="checkbox"/> 3) <u>Defendant</u> shall pay, as child support, the sum of \$ _____ each and every _____ hereafter, beginning _____ 20 _____ to the _____ by _____		
<input type="checkbox"/> 4) <u>Defendant</u> shall obtain <u>medical, dental and optical</u> insurance coverage for said child/ren and for the _____		
<input type="checkbox"/> 5) <u>Defendant</u> shall pay to the <u>plaintiff</u> <u>50</u> % of the uninsured medical, dental, hospital and optical expenses of the child/ren.		
<input type="checkbox"/> 6) Other - Please specify _____		

TEMPORARY ORDER

The Court hereby adopts this proposed order,
the parties shall comply with the terms and
provisions thereof.

Date

Justice of the Probate Court

(Signature)

Mary Smith

(Print Name)

24 Jump St #2

(Street Address)

Boston

MA

02114

(City or Town)

(State)

(Zip Code)

Tel. No. 012-345-6789

c.g.f.

EXHIBIT 7K—Motion to Rescind the Paternity Acknowledgement and Request Genetic Marker Testing

Commonwealth of Massachusetts
The Trial Court
Division Suffolk Probate and Family Court Department Docket No. 16W0000

MOTION FOR

Mary Moe Doe
Plaintiff/Petitioner

v.

Samuel Smith
Defendant/Respondent

Genetic Marker Testing

Now comes Samuel Smith, ☐ Plaintiff ☒ Defendant ☐ Petitioner ☐ Respondent ,
(name of moving party)

in this action who requests:

that this court order the plaintiff, myself, and the minor child, Drew M. Doe to submit to genetic marker testing arranged through the Department of Revenue Child Support Enforcement so as to ascertain paternity of the minor child because the plaintiff has filed a complaint to establish paternity which alleges I am the father of this minor child. I have never acknowledged paternity.

Date 11-2-17

NOTICE OF HEARING
This motion will be heard at the Probate and Family Court

In Boston
(city)

on Nov 28 2017
(month/day/year)

at 9 AM
(time of hearing)

Samuel Smith
(Signature of attorney or plaintiff, if pro se)

Samuel Smith
(Print name)

41 Next Door St.
(Street address)

Boston MA 02114
(City/Town) (State) (Zip)

Tel. No. 987-654-3210

B.B.O. # _____

The within motion is hereby ☐ ALLOWED ☐ DENIED

Date _____ JUSTICE OF PROBATE AND FAMILY COURT

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department

Division Suffolk Docket No. 16W0000

MOTION FOR

Parenting Time

Dated: 11-2-2017

CERTIFICATE OF SERVICE

I hereby certify that I have delivered a copy of this motion to:

Mary Smith
(name of party or attorney of record)

24 Jump St. Boston MA 02114
(Street address) (City/Town) (State) (Zip)

By ☐ delivery in hand _____ at _____ ☐ AM ☐ PM
(date of delivery) (time)

☒ mailing (postage paid on) 11-2-2017 .
(date of mailing)


(signature)

Family Law Advocacy for Low and Moderate Income Litigants, 3rd Edition 2018

229

EXHIBIT 7M—Request for a Case Management Conference

Commonwealth of Massachusetts
The Trial Court
Division _____ Probate and Family Court Department Docket No. _____
REQUEST FOR A CASE MANAGEMENT CONFERENCE

_____, Plaintiff
V.
_____, Defendant

The undersigned party(ies) request(s) the Court to order a Case Management Conference in the above entitled action.

Plaintiff and Defendant have complied with the requirements of Supplemental Rule 410 regarding Mandatory Self Disclosure and Supplemental Rule 401 regarding Financial Statements. [Supplemental Rule 401 only applies if the action seeks a financial order.]

The reason for this request is _____

It is requested that at the conference, the Court: (check all appropriate boxes)

- ☐ Identify or formulate the principal issues in contention
- ☐ Explore the possibility of settlement
- ☐ Establish deadlines for filing motions and a time framework for their disposition
- ☐ Prepare a discovery schedule
- ☐ Other _____

THE PARTY(IES) MAKING THIS REQUEST MUST PROVIDE THE FOLLOWING INFORMATION: (please print)

Plaintiff

Name: _____
Attorney or Plaintiff if *pro se*

(PRINT name)

Address: _____

Tel. No. _____

B.B.O # _____

Date of filing this request _____

SIGNATURE(S) OF PERSON(S) FILING THIS REQUEST

(PRINT name)

Defendant

Name: _____
Attorney or Defendant if *pro se*

(PRINT name)

Address: _____

Tel. No. _____

B.B.O # _____

(PRINT name)

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department

Division _____ Docket No. _____

REQUEST FOR A CASE MANAGEMENT CONFERENCE

Certificate of Service

I hereby certify that I have served a copy of this request upon: _____

(name and address of party or name and address of attorney of record; including, street address, city/town, zip code)

By ☐ delivery in hand _____ ☐ mailing (postage paid on) _____
(date of delivery) (date of mailing)

Signature _____

It is **ORDERED** that the within request:

- ☐ be presented before a justice of this court upon notice to the opposing party.
- ☐ is hereby **DENIED**.
- ☐ is hereby **ALLOWED**. It is further **ORDERED** that the parties and their attorney(s), if applicable, shall appear before a justice of the Probate and Family Court on _____ at _____ ☐ AM ☐ PM
(date) (time)
for a Case Management Conference.

It is further **ORDERED** that counsel for the parties confer prior to the Case Management Conference for the purpose of preparing a joint statement. This statement shall be filed with the Court no later than five (5) business days prior to the Case Management Conference, and shall include the following information:

1. An agenda of matters that one or both parties seek to have addressed at the conference.
2. A proposed schedule of discovery deadlines, dates for presenting motions up to the time of trial, and for the scheduling of a pretrial conference. If no agreement is reached on said schedule, each party shall submit a proposed schedule.
3. Certifications signed by counsel and/or the parties affirming that each party and their counsel if represented, have conferred with a view to outlining the costs of conducting the full course-and any alternative course-of the litigation.
4. _____

Date _____

JUSTICE OF PROBATE AND FAMILY COURT

EXHIBIT 7N—Settlement Conference Memorandum

*** THIS DOCUMENT IS NOT FILED WITH THE COURT ***

SETTLEMENT CONFERENCE MEMORANDUM Pursuant to Standing Order 2-17	Docket No. _____	Commonwealth of Massachusetts The Trial Court Probate and Family Court
Plaintiff _____ <div style="text-align: center; margin: 5px 0;">v.</div> Defendant _____ (Complaint for _____ filed _____)	<div style="border: 1px solid black; padding: 2px; display: inline-block;"> Division </div>	

*The purpose of this document is to provide the Probate and Family Court with information to assist in the management and resolution of your case. **This document shall NOT be filed with the court or used at trial.***

1. BACKGROUND

- a) The following information is provided by: ☐ Plaintiff ☐ Defendant
- b) Is there a **no contact order** for one party against the other and the order is still in effect? ☐ No ☐ Yes
- ALERT:** If any court has issued a **no contact order** for one party against the other and the order is still in effect, then a settlement conference will not be held. The parties or any lawyers **shall be responsible for immediately notifying this court** to cancel any scheduled settlement conference.
- c) Names and birth dates of the parties' children: ☐ N/A-The parties do not have any children together.
- | | |
|---------------------|---------------------|
| Name and Birth Date | Name and Birth Date |
| Name and Birth Date | Name and Birth Date |
| Name and Birth Date | Name and Birth Date |
- d) Do any of your children have special needs? ☐ No ☐ Yes If yes, please describe:
- e) Are there any juvenile or other court proceedings that involve your children? ☐ No ☐ Yes If yes, please describe:

2. CUSTODY/PARENTING RIGHTS AND RESPONSIBILITIES ☐ N/A

- A) Legal Decision Making (Legal Custody)** ☐ N/A
- ☐ We agree on who will make the legal decisions for our child(ren). *See attached agreement.*
- ☐ We disagree on who will make the legal decisions for our child(ren). *See my attached proposal.*
- ☐ We disagree on who will make the legal decisions for our child(ren), and at the settlement conference, I am going to bring the following information to support what I am asking for:

B) Child(ren)'s Primary Residence (Physical Custody) ☐ N/A

- ☐ We agree on our child(ren)'s primary residence. *See attached agreement.*
- ☐ We disagree about our child(ren)'s primary residence. *See my attached proposal.*
- ☐ We disagree about our child(ren)'s primary residence, and at the settlement conference, I am going to bring the following information to support what I am asking for:

C) Parenting Time ☐ N/A

- ☐ We agree on all or some of the issues related to parenting time for our child(ren). *See attached agreement.*
- ☐ We disagree on all or some of the issues related to parenting time for our child(ren). *See my attached proposal.*
- ☐ We disagree on all or some of the issues related to parenting time for our child(ren), and at the settlement conference, I am going to bring the following information to support what I am asking for:

D) Child Support ☐ N/A**a) Amount, Health/Dental/Vision Insurance and Uninsured Medical Costs**

- ☐ We agree on the amount of child support for our child(ren), including who will pay for health/dental/vision insurance, including any uninsured medical costs. *(See attached agreement, a Child Support Guidelines Worksheet, and if applicable, a Child Support Findings (Deviation) form to support any requested deviation.)*
- ☐ We disagree about the amount of child support for our child(ren), including who will pay for health/dental/vision insurance, including any uninsured medical costs. *(See my attached proposal.)*
- ☐ We disagree about the amount of child support for our child(ren), including who will pay for health/dental/vision insurance, including any uninsured medical costs, and at the settlement conference, I am going to bring the following information to support what I am asking for:

b) Tax Exemptions ☐ N/A

- ☐ We agree on who will claim each child on our taxes in which years as a dependent and if applicable, any other child-related tax issue (e.g., Earned Income Credit, etc.) *See attached agreement.*
- ☐ We disagree about who will claim each child on our taxes in which years as a dependent and if applicable, any other child-related tax issue (e.g., Earned Income Credit, etc.) *See my attached proposal.*
- ☐ We disagree about who will claim each child on our taxes in which years as a dependent and if applicable, any other child-related tax issue (e.g., Earned Income Credit, etc.), and at the settlement conference, I am going to bring the following information to support what I am asking for:

c) Other Child-Related Costs ☐ **N/A**

- ☐ We agree on who will pay for all or part of other child-related costs (e.g., day care, extracurricular activities, private school, etc.) *See attached agreement.*
- ☐ We disagree about who will pay for all or part of other child-related costs (e.g., day care, extracurricular activities, private school, etc.) *See my attached proposal.*
- ☐ We disagree about who will pay for all or part of other child-related costs (e.g., day care, extracurricular activities, private school, etc.), and at the settlement conference, I am going to bring the following information to support what I am asking for:

3. SPOUSAL MAINTENANCE ISSUES ☐ **N/A**

A) Alimony (*complaints for divorce only*) ☐ **N/A**

- ☐ We agree on all or part of the amount, frequency, and duration of alimony. *See attached agreement.*
- ☐ We disagree about either the amount, the frequency, or the duration of alimony. *See my attached proposal.*
- ☐ We disagree about either the amount, the frequency, or the duration of alimony, and at the settlement conference, I am going to bring the following information to support what I am asking for:

B) Spousal Support (*complaints for separate support only*) ☐ **N/A**

- ☐ We agree on spousal support. *See attached agreement.*
- ☐ We disagree about spousal support. *See my attached proposal.*
- ☐ We disagree about spousal support, and at the settlement conference, I am going to bring the following information to support what I am asking for:

C) Health Insurance and Uninsured Medical Costs ☐ **N/A**

- ☐ We agree on who will pay for health insurance, including any uninsured medical costs. *See attached agreement.*
- ☐ We disagree about who will pay for health insurance, including any uninsured medical costs. *See my attached proposal.*
- ☐ We disagree about who will pay for health insurance, including any uninsured medical costs, and at the settlement conference, I am going to bring the following information to support what I am asking for:

4. DIVISION OF PROPERTY ☐ **N/A**

(Includes real estate, personal property such as bank accounts, motor vehicles, furniture, etc., pension/retirement accounts, and any business interest)

- ☐ We agree on all or part of how to divide our property. *See attached agreement.*
- ☐ We disagree about all or part of how to divide our property. *See my attached proposal.*
- ☐ We disagree about all or part of how to divide our property, and at the settlement conference, I am going to bring the following information to support what I am asking for:

5. DIVISION OF DEBTS ☐ N/A

- ☐ We agree on all or part of how to divide our debts. *See attached agreement.*
- ☐ We disagree about all or part of how to divide our debts. *See my attached proposal.*
- ☐ We disagree about all or part of how to divide our debts, and at the settlement conference, I am going to bring the following information to support what I am asking for:

6. OTHER DISAGREEMENTS**7. DISCLOSURE AND DISCOVERY**

All necessary disclosure has been completed and no discovery remains outstanding.

8. ESTIMATED LENGTH OF TRIAL

If the case cannot be settled at the settlement conference, it is estimated that a trial will consume _____ days/hours.

I hereby certify that I have provided a copy of this memorandum to the opposing attorney or party if unrepresented and to the court at least five (5) days prior to the date of the settlement conference. I understand that witnesses are not allowed at the settlement conference and that only I, the other party, and our attorneys, if we have them, will be allowed to speak at the settlement conference.

Date: _____

Signature _____

(Print name)

(Address)

(Apt, Unit, No. etc.)

(City/Town)

(State)

(Zip)

Primary Phone #: _____

Email: _____

Reset Form

EXHIBIT 70—Joint Agreement to Participate in the Early Case Settlement Process

JOINT AGREEMENT TO PARTICIPATE IN THE EARLY CASE SETTLEMENT PROCESS Pursuant to Standing Order 2-17	Docket No. _____	Commonwealth of Massachusetts The Trial Court Probate and Family Court
Plaintiff _____ <div style="text-align: center;">v.</div> Defendant _____ (Complaint for _____ filed _____)	<div style="border: 1px solid black; padding: 2px; display: inline-block;"> Division </div>	

We understand and agree that:

1. It has been sixty (60) days or less since the filing of the complaint in this matter:
2. Our participation in the early case settlement process is **VOLUNTARY** and at any point, either party may "opt out" of the process by filing a Notice to Opt-Out of the Early Case Settlement Process (CJD 452) with the court.
3. We must limit our discovery as outlined in section III of the standing order.
4. If applicable, we must participate in an Alternative Dispute Resolution ("ADR") screening pursuant to section V of the standing order.
5. Once discovery is completed, either party or both must request a settlement conference by filing a Voluntary Request for Settlement Conference (CJD 98) with the court. At least five (5) days prior to the settlement conference, each party shall provide the court and the other party or his or her attorney, if any, a settlement conference memorandum.
6. Neither of us can file **more than two motions** (if necessary) prior to the settlement conference.

Requested by (attorney for or party if not represented)

Date _____	Date _____
Signature of Attorney or party if not represented <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	Signature of Attorney or party if not represented <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
_____ (Print Name)	_____ (Print Name)
_____ (Address) (Apt. Unit. No. etc.)	_____ (Address) (Apt. Unit. No. etc.)
_____ (City/Town) (State) (Zip)	_____ (City/Town) (State) (Zip)
Primary Phone #: _____	Primary Phone #: _____
BBO #: _____	BBO #: _____
Email: _____	Email: _____

Reset Form

EXHIBIT 7P—Voluntary Request for Settlement Conference

VOLUNTARY REQUEST FOR SETTLEMENT CONFERENCE Pursuant to Standing Order 2-17	Docket No. _____	Commonwealth of Massachusetts The Trial Court Probate and Family Court		
Plaintiff _____ <div style="text-align: center; margin: 5px 0;">v.</div> Defendant _____ (Complaint for _____ filed _____)	<div style="text-align: right; margin-top: 20px;"> Division </div>			
<p>1. STATUS OF PARTIES:</p> <p>a) The Defendant has been served and/or a responsive pleading filed.</p> <p>b) There is no court order prohibiting contact between the parties.</p> <p>2. MANDATORY REQUIREMENTS:</p> <p>a) Discovery is completed.</p> <p>b) If applicable, the parties have complied with Rule 410 or Limited Discovery.</p> <p>c) The Plaintiff has attended the parenting education class? <input type="checkbox"/> N/A <input type="checkbox"/> Waived <input type="checkbox"/> Unknown <input type="checkbox"/> Yes*</p> <p>d) The Defendant has attended the parenting education class? <input type="checkbox"/> N/A <input type="checkbox"/> Waived <input type="checkbox"/> Unknown <input type="checkbox"/> Yes*</p> <p>e) The parties have attended alternative dispute resolution (ADR) screening? <input type="checkbox"/> N/A <input type="checkbox"/> Waived <input type="checkbox"/> Yes*</p> <p>Practice Alert: * Proof must be filed or on file with the court prior to any settlement conference.</p> <p>3. CONTESTED SETTLEMENT ISSUES (<i>check all that apply</i>):</p> <table style="width: 100%;"> <tr> <td style="vertical-align: top;"> <input type="checkbox"/> Custody/Parenting Rights and Responsibilities: <input type="checkbox"/> Legal Decision Making (legal custody) <input type="checkbox"/> Primary Residence (physical custody) <input type="checkbox"/> Parenting Time <input type="checkbox"/> Child Support </td> <td style="vertical-align: top;"> <input type="checkbox"/> Property Division: <input type="checkbox"/> Real Estate <input type="checkbox"/> Personal Property <input type="checkbox"/> Pension/Retirement Assets <input type="checkbox"/> Business Interests </td> </tr> </table> <p> <input type="checkbox"/> Division of Debts <input type="checkbox"/> Spousal Support/Alimony <input type="checkbox"/> Health Insurance <input type="checkbox"/> Tax Exemptions <input type="checkbox"/> Grounds <input type="checkbox"/> Other: _____ </p> <p>4. GUARDIAN AD LITEM:</p> <p>a) A guardian ad litem ("GAL") was appointed in this case? <input type="checkbox"/> N/A <input type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>b) GAL report was filed by _____</p> <p>5. SCHEDULING ISSUES:</p> <p>a) Dates unavailable for a settlement conference: _____</p> <p>b) Translator needed for <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant Language: _____</p>			<input type="checkbox"/> Custody/Parenting Rights and Responsibilities: <input type="checkbox"/> Legal Decision Making (legal custody) <input type="checkbox"/> Primary Residence (physical custody) <input type="checkbox"/> Parenting Time <input type="checkbox"/> Child Support	<input type="checkbox"/> Property Division: <input type="checkbox"/> Real Estate <input type="checkbox"/> Personal Property <input type="checkbox"/> Pension/Retirement Assets <input type="checkbox"/> Business Interests
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6. CHECK THE APPROPRIATE BOX:

- ☐ I have contacted by telephone, email, text, facsimile, or mail the opposing attorney or party if unrepresented who agrees that the settlement conference may be set on the earliest available date after: _____.
- ☐ I have contacted by telephone, email, text, facsimile, or mail the opposing attorney or party if unrepresented and I have received no response or no agreement on a settlement conference date. The court is requested to set the settlement conference on the earliest available date.
- ☐ This is a joint request. Each attorney or party if unrepresented agrees that the settlement conference may be set on the earliest available date after: _____.

I/We hereby represent to the court that this case is ready for a settlement conference. If the case is not settled at the settlement conference, the court is requested to schedule a pretrial conference and then, if necessary, a trial as to the issues remaining in dispute.

Unless this is filed jointly, the person making this request certifies that a copy of this Request has been provided to the opposing attorney or party if unrepresented prior to filing with the court.

Requested by (attorney for or party if not represented)

Date _____

Signature of Attorney or party if not represented

☐ Plaintiff

☐ Defendant

[click to add](#)

[click to remove](#)

FOR ALL FILERS, PLEASE PROVIDE THE FOLLOWING INFORMATION *(please print):*

PLAINTIFF:

DEFENDANT:

(Attorney or party if not represented)

(Attorney or party if not represented)

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

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

(City/Town) (State) (Zip)

(City/Town) (State) (Zip)

Primary Phone #: _____

Primary Phone #: _____

Email: _____

Email: _____

[Reset Form](#)

FOR REGISTRY/COURT USE ONLY

☐ Settlement Conference Notice and Order sent on: _____ by _____
(date)

EXHIBIT 7Q—Stipulation for Voluntary Acknowledgement of Parentage



COMMONWEALTH OF MASSACHUSETTS STIPULATION FOR VOLUNTARY ACKNOWLEDGMENT OF PARENTAGE

THIS IS A LEGAL DOCUMENT. PLEASE PRINT OR TYPE IN BLACK INK

We acknowledge that we are the biological parents of the following child: *(Name of child as it appears on the birth certificate)*

First Middle Last Sex (M/F)
who was born in _____ on _____
(Place of Birth) City/Town/State (Date of Birth) Month - spelled out Day Year

We sign this acknowledgment to establish the paternity of this child. We understand that this acknowledgment is a legal document and that it will have the same binding effect as a judgment of paternity. This acknowledgment may be filed with a court and can form the basis of a judgment for the support of the child named above. G.L. c. 209C, Section 11. This acknowledgment also may be used to amend the birth certificate to reflect the names of both parents of this child. G.L. c. 46, Section 13.

(Name of mother as it appears on the birth certificate.)

MOTHER

Name _____ First Middle Last Maiden			
Residence _____ No. & Street Name City State Zip		Social Security # <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	
Place of Birth _____ City or Town State Country		Date of Birth _____ Mo. Day Yr.	
Check one: <input type="checkbox"/> I state under oath that when this child was born or conceived, I was not married. <input type="checkbox"/> I state under oath that when this child was born or conceived, I was married to someone other than the father of this child. I understand that this form will not be effective unless it is accompanied by an <i>Affidavit Of Denial of Paternity</i> signed by the man to whom I was married or unless the court has determined that the man to whom I was married is not the father of this child.			
I understand that signing this form establishes paternity. I have been informed of my right to request blood or genetic marker tests but I am giving up that right or I have taken and received the results of the blood or genetic marker tests. The information above is true to the best of my knowledge and belief. I have read and understand the information on both sides of this form.			
_____ Signature of Mother			
Then personally appeared before me the above-named _____ and being duly sworn under penalties of perjury acknowledged the foregoing to be her free act and deed this _____ day of _____, 20____			
Notary Public: _____		My Commission Expires: _____	
		FORM READ IN _____ LANGUAGE	

(Name of father as it will appear on the birth certificate.)

FATHER

Name _____ First Middle Last My Mother's Maiden Name			
Residence _____ No. & Street Name City State Zip		Social Security # <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	
Place of Birth _____ City or Town State Country		Date of Birth _____ Mo. Day Yr.	
I understand that signing this form establishes paternity. I have been informed of my right to request blood or genetic marker tests but I am giving up that right or I have taken and received the results of the blood or genetic marker tests. The information above is true to the best of my knowledge and belief. I have read and understand the information on both sides of this form.			
_____ Signature of Father			
Then personally appeared before me the above-named _____ and being duly sworn under penalties of perjury acknowledged the foregoing to be his free act and deed this _____ day of _____, 20____			
Notary Public: _____		My Commission Expires: _____	
		FORM READ IN _____ LANGUAGE	

WHAT DOES IT MEAN IF YOU SIGN THIS FORM?

By signing this acknowledgment of parentage, you are establishing your child's legal paternity. Paternity means fatherhood. For parents who are not married to one another, paternity may be established legally only by signing this form or by going to court. Otherwise, your child will have no legal father.

Signing this form is voluntary. Since this form has legal consequences, you may want to consult an attorney before signing.

- **Paternity is established on the date both parents sign this form.** You cannot request blood or genetic marker tests later. If you want to have a blood or genetic marker test to verify paternity, **do not** sign this form until you have received the results of the test. Once signed by both parents and notarized, this form will have the same binding effect as a court judgment of paternity.

This acknowledgment allows a parent to seek a child support order without further court proceedings to establish paternity. This acknowledgment may be filed in court and serve as the basis for orders of custody or visitation.

Since you did not sign this form in the hospital, the father's name will not appear on the birth certificate until the birth certificate is amended. If you want to add the father's name to the birth certificate, you must complete this *Stipulation for Voluntary Acknowledgment of Parentage*. You must file the completed form with the court. You must then get a certified copy of this form from the court and file it with the city or town clerk's office where the child was born to amend the child's birth certificate. The court will send this form to the Registry of Vital Records and Statistics.

This acknowledgment is not a public record. It will be available only to the parents and child named on this form, the child's legal guardian or legal representative, or government officials in the conduct of their official duties.

If another man's name is already on the birth certificate and you want to amend the birth certificate to include the father named on this form, you must file this form with the court.

WHAT ARE YOUR RIGHTS AND RESPONSIBILITIES AS PARENTS?

Both parents are required by law to support their child from birth. If your child does not live with you, you may be ordered by the court to pay child support until the child's eighteenth birthday, or beyond in some circumstances.

A parent who does not live with the child may have the right to visit and establish a relationship with the child as you both agree or as ordered by the court.

For children born of unmarried parents, the mother has custody of the child unless otherwise ordered by the court.

HOW WILL YOUR CHILD BENEFIT IF YOU SIGN THIS FORM?

Every child has the right to know his or her mother and father and benefit from a relationship with both parents.

Your child has a right to financial support from both of you until age eighteen, or beyond in some circumstances.

It will be easier for your child to learn the medical histories of both parents and to benefit from health care coverage available to you.

It will be easier for your child to receive benefits such as dependent or survivor's benefits from the Veteran's Administration or from the Social Security Administration.

It will be easier for your child to inherit through you. Mother's Initials _____ Father's Initials _____

Questions regarding the birth registration process should be directed to the Registry of Vital Records and Statistics at 617-727-
Questions regarding child support should be directed to the MA Dept. of Revenue, Child Support Enforcement Division at
1-800-332-2733.

EXHIBIT 7R—Affidavit of Nonpaternity

R-134-00

**COMMONWEALTH OF MASSACHUSETTS****AFFIDAVIT OF NONPATERNITY***THIS IS A LEGAL DOCUMENT. PRINT OR TYPE IN PERMANENT BLACK INK.*

We acknowledge that the husband at the time of the child's birth or within 300 days of conception is not the father of the following child:
(Child's name as it appears on the birth certificate.)

First Name Middle Name Last Name Sex (M/F)
who was born in _____ on _____
(Place of Birth) City/Town/State (Date of Birth) Month - spelled out Day Year

Affidavit of Mother and Presumed Father (husband at time of child's birth or within 300 days of the birth):**MOTHER**

First Name Middle Name Last Name Social Security #

PRESUMED**FATHER**

First Name Middle Name Last Name Social Security #

Born in _____ on _____
City/State/Country Month - spelled out Day Year

CHECK ONE:

- ☐ We, _____ and _____ are married,
(name of mother) (name of presumed father)
and we were married at the time of this child's birth.
- ☐ We, _____ and _____ were divorced
(name of mother) (name of presumed father)
from each other on _____ but we were legally married when the child was born or within 300 days prior to the birth.

We acknowledge that the presumed father is not the father of the above-named child. We understand that we may consult an attorney. We understand that by signing this affidavit we may both be giving up certain rights if the presumed father is not named the father of the above-named child. We do not want his name to appear on the child's birth certificate. We understand that his name will appear on the birth certificate unless the mother and the child's biological father complete a Voluntary Acknowledgment of Parentage or a court judgment is issued declaring that someone else is the father.

We do not object to this affidavit being filed with the court even if either of us is not present. We understand and agree that the court, based on this affidavit, may enter a judgment declaring that another man is the child's father. The information above is true to the best of our knowledge and belief. We have read and understand the information on both sides of this form.

MOTHER: Signature: _____ Date: _____

Residence: _____
No. & Street Address City/Town State Zip

Then personally appeared before me the above named _____ and affirmed under penalties of perjury that the foregoing is her free act and deed this _____ day of _____.

Notary Public: _____ My Commission Expires: _____ **FORM READ IN** _____
LANGUAGE

PRESUMED

FATHER: Signature: _____ Date: _____

Residence: _____
No. & Street Address City/Town State Zip

Then personally appeared before me the above named _____ and affirmed under penalties of perjury that the foregoing is his free act and deed this _____ day of _____.

Notary Public: _____ My Commission Expires: _____ **FORM READ IN** _____
LANGUAGE

This affidavit must be filed with the child's birth certificate at the office of the city or town clerk located in the city or town where the child was born.

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department

Division Middlesex Docket No. _____

John Doe

Plaintiff/Petitioner

V.

Mary Roe

Defendant/Respondent

**AFFIDAVIT IN SUPPORT OF
MOTION FOR CITY/TOWN
CLERK TO RELEASE A
COPY OF THE CHILD'S
BIRTH CERTIFICATE**

In support of my motion for the city/town clerk to release a copy of a child's birth certificate, John Doe states:

I am unable to obtain the child's birth certificate for the following reason(s).

I am the father of the minor child, Johnnie Roger Roe

(Name of Minor Child)

in the above entitled case. My name is not listed on the birth certificate and the City /Town Clerk will not release it to me.

I ask the court to permit me to file a paternity complaint without it and order the City Clerk to provide it to me.

Signed under the pains and penalties of perjury.

Date 10-27-17

John Doe

(Signature of attorney or plaintiff, if pro se)

Affidavit in Support Release Birth Certificate

C.G.F.

