



Trial Court of the Commonwealth District Court Department

Administrative Office
Edward W. Brooke Courthouse
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Paul C. Dawley
Chief Justice

TRANSMITTAL NO.	1281
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First Justices	1280
Other Judges	1280
Clerk-Magistrates	1280
Assistant Clerk-Magistrates	1280
CPOs	1280

MEMORANDUM

TO: District Court Judges, Clerk-Magistrates, Assistant Clerk-Magistrates, and Chief Probation Officers
FROM: Hon. Paul C. Dawley, Chief Justice
DATE: March 19, 2020
SUBJECT: **Clarification on Issues Related to District Court Standing Order 2-20**

As a result of numerous questions raised regarding the implantation of District Court Standing Order 2-20, I am writing to clarify and provide guidance on the following issues.

1. Suggested Procedure For Walk-in Defaults

The following is a suggested procedure regarding individuals who walk into court seeking to address an outstanding warrant for their arrest:

The individual coming into court should inform a court officer that they are seeking to address a warrant for their arrest. The court officer should take the person's information and tell the person to wait outside the courthouse or to come back at a certain time. The court officer should provide the person's information to the Clerk's Office. The Clerk's Office should access the person's file, provide the information to the judge, and alert the District Attorney. The judge should review the file and permit the District Attorney to take a position by videoconference or telephonically. The judge may then take action as necessary on the warrant, including recalling it, ordering that court officers take the person into custody (court security is staffed and prepared to take people into custody at this time), or directing the Clerk's Office to contact the police. If the person is taken into custody by court officers, the court should conduct a bail hearing consistent with the procedures set forth in Standing Order 2-20, in which the judge has the discretion to conduct the hearing in person in the courtroom or by videoconference or telephonically with the person in lock-up.

2. GPS as Condition of Release Under G.L. c. 276, § 58

On March 17, 2020, the Supreme Judicial Court held in *Commonwealth v. Norman*, SJC-12744 (March 17, 2020), that, on the facts of that case, the imposition of GPS monitoring as a condition of pretrial release pursuant to G.L. c. 276, § 58 violated art. 14 (A legal bulletin on this

case was issued by the Administrative Office on March 19, 2020). Please note that, pursuant to Mass. R. App. P. 23(b), the rescript (which is the equivalent at the appellate level of a judgment in the trial court) shall issue to the lower court 28 days after the date of the decision unless shortened or enlarged by order. There has not been an order shortening the time period for the issuance of the rescript. As a result, should a motion for emergency removal of the GPS device be filed in your court, it should not be acted on until April 15, 2020.

3. Availability of Department of Mental Health Clinicians

The Department of Mental Health (DMH) has informed the Administrative Office of the District Court that all courts have clinician coverage for G.L. c. 123 evaluations. Clinicians have been instructed not to conduct in-person evaluations at police stations, emergency departments, jails or other locations outside of a courthouse; in such circumstances, they are conducting evaluations via videoconference. Clinicians will conduct in-person evaluations in courthouses, but may also do so by videoconference if circumstances required.

DMH has also informed the Administrative Office that Clinicians will be available to participate in all necessary G.L. c. 123 hearings by videoconference, except for G.L. c. 123, § 35 hearings, in which they may participate in court or by videoconference.

4. Further Clarification on Handling Protection Orders

A. Scope of Standing Orders Extending Expiration Dates of Protection Orders

The automatic extension of protection orders to a date beyond the listed expiration date only applies to orders that were issued after a hearing after notice. Orders that were issued *ex parte* and scheduled for a 10 day hearing will remain in effect until a telephonic hearing after notice can be scheduled, but that hearing should be scheduled as soon as possible.

- ***ex parte* orders that had 10 day hearing scheduled this week and next**
These orders are extended by the SJC Order until the matter can be rescheduled and heard by the court. They are not, however, to be extended beyond the time necessary to set up a telephonic two party hearing. MassCourts notices are being developed to issue to the parties to notify them of the rescheduled hearing, and conference call information, and notifying the parties that the order will remain in effect until the matter is heard by the court. (A draft copy of that notice is attached).
- **orders that issued after a hearing after notice with the next hearing date scheduled this week and next**
The authority to extend orders beyond April 21, 2020 applies only to orders that were issued after a hearing after notice. As the defendant may not be on notice of the automatic extension, some courts have actually modified the order and re-served it on the defendant utilizing the following language:

“Automatic extension without hearing due to COVID-19 emergency court closure. Call the clerk’s office at [PHONE NUMBER] the day before the next scheduled hearing date for instructions on how the hearing will be conducted.”

- **orders scheduled for a two party hearing in three weeks**

MassCourts users will be asked to begin generating notices for hearings scheduled in three weeks to alert the parties to the hearing be held telephonically and instructions on how to call in for the hearing.

B. Suggested Procedure for Ex Parte Protection Orders Sought by Telephone by Plaintiff not at the Court

1. The plaintiff should call the clerk’s office of the court where the plaintiff is residing. Upon calling the clerk’s office, all initial intake information shall be obtained by the clerk, including the plaintiff and defendant information forms (i.e., names of parties, addresses, phone numbers, email addresses, dates of birth of both parties, relationship, and any additional information that will assist the court in identifying the parties and any relevant history). Telephone numbers and email addresses should be collected as well and the clerk should confirm with the plaintiff that it would be safe to contact the plaintiff at that number and/or email address.
2. The plaintiff should be given advocate information (a list of advocates and their cell phone numbers is being compiled and will be distributed), and be directed to the information available on mass.gov.
3. After collecting the information, the plaintiff should be told that the court will call back shortly. If the plaintiff expresses immediate concern about their safety, they should be referred to their local police department for emergency assistance.
4. Information provided by the plaintiff is forwarded to the probation department for a record check.
5. The restraining order application is prepared by the clerk’s office.
6. Plaintiff should then be called from the courtroom and the hearing recorded on FTR. The plaintiff is sworn and testifies as though physically present at the hearing.
7. The judge takes notes in the affidavit section of relevant information pertaining to the application, initials and dates it (making clear that it is the judge recording this information). If the plaintiff has the ability to access the polycom utilizing the polycom app, the judge can consider utilizing this video option.
8. If the judge issues the ex parte order, the plaintiff is to be informed of the return date with instructions on calling in for the two party hearing. Because the conference call line is an

open line, the hearings should be scheduled for a specific time and staggered with other court events scheduled for a hearing on the conference line.

9. The next hearing date should note the date and time for the 10 day hearing and should include the conference call and password information consistent with the information that will be going out on the notice. This can be written in the space for the next modification (C), and crossing out the modification language (unless using the pdf fillable order which should have enough room to include this information).
10. The clerk should then email the order to the appropriate police station(s) with the defendant information form and a copy of the court event notice that has the directions for the 10 day telephonic hearing for in-hand service. The clerk should also email the order to the defendant (if an email address was given), and the plaintiff (if the plaintiff confirms it is safe to do so), as well as mail hard copies. The plaintiff can also be mailed the complaint paperwork to fill out and submit by either email or mail to the court prior to the 10 day hearing, but providing the paperwork is not required to hold the 10 day hearing. Email addresses for each court will be set up to receive filings.
11. Probation is to enter the information in CARI.
12. If the police are refusing to serve the Order in-hand, that should be noted on the return and the date notice was mailed should be noted as well.

C. Suggested Procedure for Telephonic Hearing After Notice

On the date and time that the hearing after notice is scheduled, the clerk should confirm that the parties are on the line. The call should be on speaker in the courtroom for recording on FTR. The judge may continue the hearing for a hearing by videoconference utilizing the Polycom system if the judge determines that such a procedure is necessary.

If the judge issues an order after the hearing after notice, the order should not be for the full year, consistent with the SJC's requirement that any order issued without an in-person hearing may only be issued for the period of time until an in-person hearing can be held. The parties should be told on the phone what orders will be issued and copies of the order should be emailed and mailed to the parties, as well as emailing and mailing copies to the appropriate police departments.

Please do not hesitate to contact this office with any questions.