

On January 15, 2009, Governor Patrick signed into law the Massachusetts Uniform Probate Code (MUPC), Articles I-VII at Chapter 190B. Article V of the Code, entitled Protection of Persons Under Disability and Their Property, and several other sections of the Code have an effective date of July 1, 2009. Simultaneously, the law repeals M.G.L. Chapter 201: Guardians and Conservators and Chapter 201B: Uniform Durable Power of Attorney Act. The MUPC Implementation Committee's Article V Working Group, convened by Chief Justice of the Probate and Family Court Paula Carey, proposes revisions to various Rules of Court in accordance with the new MUPC. Below is a summary of the proposed revisions followed by the full text of the proposed revisions **updated on May 1, 2009** to include the proposed changes to the Rules of Domestic Relations.

All proposed amendments to the **Massachusetts Rules of Civil Procedure, Rules of Appellate Procedure, Supreme Judicial Court Rules, Trial Court Rules, Rules of District & Municipal Courts, Rules of Domestic Relations and the Rules of The Superior Court and to Probate Court Standing Order 2-98 and Probate Court Rule 5** are corrective technical changes and not substantive changes. The proposed changes replace references to M.G.L. c.201 with M.G.L. c.190B, including any specific corresponding section reference. The proposed changes also supplant or supplement the phrase "incompetent" with the term "incapacitated" "protected person" and/or "disabled person" where appropriate to correctly identify the finding made by the court in order to place a person under guardianship or conservatorship. Likewise, the term "guardian" has been replaced with "conservator" when referring to the fiduciary appointed to manage a person's property.

The Committee also recommends substantive changes as follows:

Amending **Probate Court Rules 4 and 6** to indicate the correct method of service and/or notice requirements under the MUPC.

Further amending **Probate Court Rule 6** to permit counsel appointed to represent a Respondent to file an Appearance and Objection during a set period of time notwithstanding the return date of any previously issued citation.

Adoption of a new **Probate Court Rule 29C** pertaining to the appointment of counsel. The intent of the new Rule is to provide all persons interested in any guardianship and/or conservatorship matter with meaningful notice of the Respondent's right to request counsel and to have the Commonwealth pay for counsel if the Respondent is indigent. The proposed rule requires that specific notification language regarding this right be stated on all notices and citations.

Deletion of **Uniform Probate Court Practice XXII(A)** and **Standing Order 5-08** which addressed the requirements of a clinical team report and medical certificates as these requirements are now specified under the MUPC. The impoundment of the medical records will be covered by a separate forthcoming proposed Practice on impoundment.

Amending **Uniform Probate Court Practice XXII** to continue the current practice of allowing a physician, certified psychiatric nurse clinical specialist, or a licensed psychologist to complete the medical certificate.

Public comment will be solicited until the close of business on **May 15, 2009**. Written comments may be submitted by email to jennifer.rivera-ulwick@jud.state.ma.us or to:

Probate and Family Court Administrative Office
Two Center Plaza, Suite 210
Boston, MA 02108
Attn.: Jennifer M Rivera Ulwick

RULES OF CIVIL PROCEDURE

RULE 17. PARTIES PLAINTIFF AND DEFENDANT: CAPACITY

(a) Real Party in Interest.

Except for any action brought under General Laws, chapter 152, section 15 every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, [conservator](#), bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute so provides, an action for the use or benefit of another shall be brought in the name of the Commonwealth. An insurer who has paid all or part of a loss may sue in the name of the assured to whose rights it is subrogated. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Infants or ~~Incompetent~~[Incapacitated](#) Persons.

Whenever an infant or ~~incompetent~~[incapacitated](#) person has a representative, such as a ~~general~~ guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or ~~incompetent~~[incapacitated](#) person. If an infant or ~~incompetent~~[incapacitated](#) person does not have a duly appointed representative, he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or ~~incompetent~~[incapacitated](#) person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or ~~incompetent~~[incapacitated](#) person.

RULE 25 SUBSTITUTION OF PARTIES

(b) ~~Incompetency~~ [Incapacity](#).

If a party becomes ~~incompetent~~[incapacitated](#), the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against his representative.

RULE 27. DEPOSITIONS BEFORE ACTION OR PENDING APPEAL

(a) Before Action.

...

(2) Notice and Service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or without the Commonwealth in the manner provided in Rule 4 for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4, an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or ~~incompetentincapacitated~~ the provisions of Rule 17(b) apply.

RULE 55 DEFAULT

(b) Judgment.

Judgment by default may be entered as follows:

(1) Courts Other Than District Court: By the Clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due and affidavit that the defendant is not an infant or ~~incompetentincapacitated~~ person, shall enter judgment for that amount and costs against the defendant, if he has been defaulted for failure to appear.

(2) Courts Other Than District Court: By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or ~~incompetentincapacitated~~ person unless represented in the action by a general guardian, conservator, or other such representative who has appeared therein. ...

RULE 66 RECEIVERS

(c) Every receiver shall file, not later than the fifteenth day of February of each year, a detailed account under oath of his receivership to and including the last day of the preceding year, substantially in the form required for an account by a ~~guardian-conservator~~ in the probate courts, together with a report of the condition of the receivership. He shall also file such further accounts and reports as the court may order.

RULE 72. PROBATE ACCOUNTS

(a) Accounts With Written Assent. If a fiduciary files with his account: (1) the proper filing fee; (2) the written assent or waiver of every person interested in the account, including every person entitled to notice pursuant to ~~M.G.L. c.190B, §1-401 M.G.L. c. 206, § 24~~; and (3) all tax receipts or tax waivers required by law, the court may forthwith allow the account. If any interested person is either ~~incompetentincapacitated, a protected person or disabled~~ or under lawful age, the conservator or guardian, as the case may be, shall sign the assent, unless the account is his own account.

(b) Accounts Without Written Assent.

(1) Notice: Form. If the account of a fiduciary is filed for allowance with the proper filing fee and all tax receipts or tax waivers required by law but without the written assent of every person interested in the account, notice of the proceeding for allowance of a fiduciary account or the account of a common trust fund shall be served in accordance with **Rule 4(h)** on those persons required to be served by [M.G.L. c.190B, §1-401](#)~~G.L. c. 206, § 24~~. The notice in the form of a citation issued by the court shall state a return date pursuant to General Rule 6 of the Probate Courts and state that any person having an interest affected by the account:

(A) may (and, if he desires to preserve his right to file an objection, shall) file an appearance in accordance with Rule 11(b)(2) on or before the return day;

(B) may, upon written request to the accountant (fiduciary) or counsel by registered or certified mail, obtain without cost to himself, a copy of the account except that, in a proceeding for the allowance of an account of a common trust fund, the notice shall state that any person so requesting may obtain without cost to himself a copy of the annual report of said common trust fund for the period of the account, and may obtain a copy of the account on request, subject to such terms, if any, as to costs which the court may determine upon application of the accountant; and

(C) shall, if he desires to object to any item of the account, file within thirty days after the return day (or such other time as the court, on motion with notice to the accountant, may order) a written statement of each such item, together with the grounds for each objection thereto, a copy thereof to be served upon the accountant pursuant to Rule 5.

(2) Guardian Ad Litem. Whenever the court shall, conformably to law, appoint a guardian ad litem to represent any individual or class concerned in the account, the accountant shall forthwith serve upon such guardian [ad litem](#), without cost to the guardian [ad litem](#), a copy of the account and the citation. The guardian [ad litem](#) shall within ninety days after the return day file his report, serving a copy thereof upon the accountant and any person who has filed an appearance; provided that the court may upon ex parte application of the guardian [ad litem](#) extend the time for filing such report for an additional twenty days or such further time as the court, on motion with notice to the accountant and any person who has filed an appearance, may order.

(3) Failure to Object: Effect. If any person who has filed an appearance shall fail to file an objection within the time specified by par. (b)(1)(C) of this rule, the court, upon motion by the accountant, the guardian ad litem, or any person whose objection is on file (with notice, as the case may be, to the person filing the appearance, the accountant, the guardian, and any person whose objection is on file), may order the appearance struck.

(4) Objection: Effect. If, at any time, there shall have been filed either (A) an objection pursuant to par. (b)(1)(C) of this rule; or (B) a guardian ad litem's report containing an

objection, the account shall thenceforth be regarded as contested, and further proceedings shall be governed by the following rules, in addition to this rule, and none other: Rules 1, 4(h), 5, 6, 7(b)–(c), 10(a) (first sentence, except that the caption shall retain the title and docket number of the underlying Probate Court proceedings), 11(a)–(d), 15, 16, 25–37, 40, 42–46, 52–54, 56–59, 60 (except that the provisions of G.L. c.206, § 24, shall govern the granting of any relief under Rule 60(b); and Rule 60(b)(3) shall not apply); 61–65(a)–(d), 65.1, 67–72, 77–83, 85. Any reference in any of the specified rules to "plaintiff" or "defendant," or to any particular type of pleading, shall not apply to any proceeding under this rule, except that the word "pleading" as it may appear in those rules shall be taken to include account, objection, or report, as the case may be.

(5) Objection: Withdrawal; Striking.

(A) Any objection previously filed, whether by an interested person or a guardian ad litem, may be withdrawn by filing a statement to that effect, signed by the person or the guardian ad litem, as the case may be, or counsel, and served on any person (including, as necessary, the guardian ad litem) whose appearance is then on file. The conservator or guardian of an incompetent interested person or the guardian of a minor shall sign for the ward.

(B) The court, upon motion by the accountant, the guardian ad litem, or any person whose objection is on file (with notice, as the case may be, to the accountant, the guardian ad litem, and any person whose objection is on file) may order any objection struck for failure to state a valid ground of objection, for frivolity, or for any other similar reason.

(6) Contested Accounts: Hearings. The accountant, any person whose objection is then on file, or the guardian ad litem may mark a contested account for hearing, or request that the court assign a hearing date; or the court may, of its own motion, assign a hearing date.

(7) Uncontested Accounts. An account shall be regarded as uncontested if:

(A) It shall have been filed pursuant to par. (a) of this rule; or

(B) After the return day (i) either no appearance shall be on file or any appearance or objection previously filed shall have been withdrawn or struck; and (ii) the report of the guardian ad litem, if any, shall be on file and contain no objection.

Judgment on any uncontested account may be entered forthwith subject only to the provisions of Rule 60 (except that the provisions of G.L. c.206, §24, shall govern the granting of any relief under Rule 60(b); and Rule 60(b)(3) shall not apply).

Adopted Feb. 4, 1977, effective July 1, 1977.

RULES OF APPELLATE PROCEDURE
RULE 1 SCOPE OF RULES: DEFINITIONS

(c) Definitions.

As used in these rules:

...

"child welfare case" means any case that is before a court of competent jurisdiction pursuant to G.L. c. 119, s.s. 21-39J; G.L. c. ~~204~~ [190B](#), s.s. 1, 2, 6, 14; or G.L. c. 210, s.s. 1-11.

...

SUPREME JUDICIAL COURT RULES

RULE 3:07 MASS. RULES OF PROFESSIONAL CONDUCT

RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. If the lawyer represents the guardian [and/or conservator \(or legal representative\)](#) as distinct from the ward, [incapacitated person or protected person](#), and is aware that the guardian [and/or conservator \(or legal representative\)](#) is acting adversely to the ~~ward's~~ interest [of the ward, incapacitated person or protected person](#), the lawyer may have an obligation to prevent or rectify the guardian's [and/or conservator's \(or legal representative's\)](#) misconduct. See Rules 1.2(d), 1.6, 3.3 and 4.1.

RULE 1.16 DECLINING OR TERMINATING REPRESENTATION

Comment references under the Discharge heading "[i]f the client is mentally ~~incompetent~~[incapacitated](#) .."

RULE 4:01 BAR RULES

Section 13. Disability Inactive Status.

(1) Involuntary Commitment Adjudication of Incompetence, or Transfer to Disability Inactive Status. Where a lawyer has been judicially declared ~~incompetent~~[incapacitated](#) or committed to a mental hospital after a judicial hearing, or where a lawyer has been placed by court order under guardianship or conservatorship, or where a lawyer has been transferred to disability inactive status in another jurisdiction, the court, upon proper proof of the fact, shall enter an order transferring the lawyer to disability inactive status. A copy of such order shall be served, in the manner the court may direct, upon the lawyer, his or her guardian or conservator, and the director of the institution to which the lawyer is committed.

TRIAL COURT RULES

IV. UNIFORM RULE REQUIRING DISCLOSURE OF PENDING AND CONCLUDED CARE OR CUSTODY MATTERS

Effective November 1, 1983

Including Amendments Received Through January 15, 2006

Applicable to Boston Municipal, District, Juvenile, Probate and Family and Superior Court Departments

Upon the filing or issuance of any petition or complaint involving the care, custody, visitation, or change of name of a child, pursuant to G.L. c. 119 (except delinquency actions under G.L. c. 119), G.L. c. ~~204~~ 190B, G.L. c. 207, G.L. c. 208, G.L. c. 209, G.L. c. 209A, G.L. c. 209C, G.L. c. 210, or any other provision of law concerning the care or custody of a child, the plaintiff shall file an affidavit. Such affidavit shall contain relevant information concerning such child including, but not limited to, a list of all other known proceedings involving the care or custody of said child which are pending or have been concluded in any court in the Commonwealth of Massachusetts or in any court in any other state or foreign country. All other parties appearing in the action shall likewise file such affidavit. No pleading shall be accepted for filing without such affidavit unless the plaintiff or other party has already filed an affidavit, or unless the court, on written motion for good cause shown, extends the time for filing such affidavit. No such extension shall exceed 30 days. A copy of the affidavit shall be furnished by the plaintiff or other party filing it to all other parties to the action. Upon the discovery of new information subsequent to the filing of such affidavit, the plaintiff or other party shall file a revised affidavit.

X. UNIFORM RULE REQUIRING DISCLOSURE OF PRESENT OR PAST RECEIPT OF PUBLIC ASSISTANCE BENEFITS BY MINOR CHILDREN

~~Adopted Effective February 1, 1993-~~

~~Upon the filing or issuance of any petition or complaint pursuant to G.L. c. 201, G.L. c. 208, G.L. c. 209, G.L. c. 209A, G.L. c. 209C or G.L. c. 209D or any other provision of law concerning the support and maintenance of a minor child, the plaintiff in the action, should any minor child who is named in the petition or complaint be either a past or present recipient of public assistance through Aid to Families With Dependent Children, General Assistance, Medicaid, or Foster Care or any other program established pursuant to G.L. c. 117A, G.L. c. 118, or G.L. c. 118E, shall notify the Child Support Enforcement Division of the Department of Revenue of the pendency of the petition or complaint within three (3) days of its filing. The moving party must thereafter serve notice on the Child Support Enforcement Division of each hearing or trial date with respect to any such petition or complaint.~~

~~Deleted effective July 1, 2009....~~

RULES OF DISTRICT & MUNICIPAL COURTS

RULE 150. DETERMINATION OF CLAIMS FOR COMPENSATION OF VICTIMS OF VIOLENT CRIMES

(a) Filing of Claims.

Claims for compensation of victims of violent crimes pursuant to G.L. c. 258A * shall be brought in a district court in the judicial district where any one of the claimants lives. Such claims shall be set forth in plain and concise language on the form prescribed by the Chief Justice of the Municipal Court of the City of Boston for said court and the Chief Justice of the District Courts for all other district courts and shall be signed by the claimant, not by an attorney, provided that if the claimant is a minor or is incompetent/incapacitated, the claim shall be made and signed by his parent or guardian, and provided further that if the claimant is physically unable to fill out and sign the claim, these acts may be taken by a person in his behalf and this

fact shall be indicated on the claim. Each claim shall be filed in the office of the Clerk of the court in person or by mail and shall be accompanied by an entry fee of five dollars ** or by an affidavit and waiver form requesting waiver of fee based on indigence under G.L. c. 261, a. 27A. Prescribed forms for such claim shall be available at each Clerk's office.

DOMESTIC RELATIONS PROCEDURE RULES

Rule 17

...

(b) Infant, Incapacitated or Incompetent Persons.

Whenever an infant, incapacitated or incompetent person has a representative, such as a general-guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant, incapacitated or incompetent person. If an infant, incapacitated or incompetent person does not have a duly appointed representative, he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant, incapacitated or incompetent person not otherwise represented in an action or may make such other order as it deems proper for the protection of the infant, incapacitated or incompetent person.

RULE 25 SUBSTITUTION OF PARTIES

...

(b) Incapacity or Incompetency.

If a party becomes incapacitated or incompetent, the court upon motion served, may allow the action to be continued by or against his representative.

GENERAL RULES OF THE PROBATE COURT

Rule 4. Copies to Adverse Parties

When any pleading or motion is filed after the petition, ~~libel~~ or other probate proceedings, or answers to interrogatories are filed, a copy thereof shall be delivered or mailed to the adverse parties in the manner prescribed in M.G.L. c.190B and unless otherwise specified therein not later than the day of filing, in the manner provided for notices by **Rule 3**.

In case of failure to comply with this rule, the Court may entertain a motion to strike or deny such pleading, motion, or answers upon terms against the party at fault.

Rule 5. Guardians Ad Litem

In addition to making appointments of guardians ad litem in cases required by statute, whenever it shall appear that a minor, mentally retarded person, a person under disability, an incapacitated person, a person to be protected or a person not ascertained or not in being ~~or other legally incompetent person or persons unborn or unascertained,~~ are interested in any matter

pending, a guardian ad litem for ~~said person such minor, or other legally incompetent person or persons unborn or unascertained,~~ may be appointed by the Court at its discretion if notice has been given on the pending matter. No Judge of Probate and Family Court shall be appointed a guardian ad litem.

Rule 6. Return Days

All citations shall be made returnable not later than three months after the date of such citation except as otherwise provided by statute. Every day when a court session is scheduled in the city or town where the Registry is located shall be a return day for probate citations.

If it shall appear from the petition that there is anyone interested who is outside the Commonwealth in any part of the United States, its Commonwealths or territories and North America ~~the United States or territory belonging thereto East of the Pacific Ocean, except Alaska, or in Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, Quebec or Ontario,~~ service of any citation shall be given by mailing by registered or certified mail fourteen days at least before the return day; if in ~~any other part of North America, including the West India Islands, the Bahama Islands and Bermuda, or in~~ Europe, one month; in other parts or in parts unknown, two months. If all persons interested appear to be within the Commonwealth, ~~service of any citation shall be given by delivering or mailing by registered or certified mail fourteen days at least before the return day,~~ service of any citation shall be given by delivering or mailing by certified, registered or ordinary first class mail at least fourteen days before the return day or by publishing a copy of the Citation once in a newspaper designated by the Register of Probate having general circulation in the county where the proceeding is pending at least seven days before the return date.

There shall be only one return day outstanding, and no return day shall be changed or extended before the return day unless it is certified in writing by the party or his attorney that no service has been made on the original citation. Notwithstanding the foregoing, if counsel is appointed to represent an alleged or incapacitated person, person to be protected, protected person, minor or ward at any point prior to the entry of a Decree on the petition, the Court may provide a separate date by which said counsel may file an Appearance and Objection.

As amended December 15, 1986, effective January 2, 1987

Rule 29B. Temporary Conservatorships and Guardianships

Written notice of a hearing on a petition for a temporary conservatorship or guardianship shall be given at least ~~seventy two (72) hours (Saturdays, Sundays and holidays excluded)~~ seven (7) days in advance of said hearing, as follows:

(1) Temporary Guardianship of a Minor

- a. To the minor, if he is ~~above the age of~~ fourteen or more years of age; and
- b. ~~To the natural or adoptive parents of said minor; and~~

~~e. If custody of said minor has been awarded by a Court of competent jurisdiction, to the person or persons to whom custody has been awarded; and~~

~~d. To the person or persons with whom said minor child is residing. To all persons named in said petition.~~

(2) Temporary Guardianship of an Incapacitated Person ~~Mentally Ill Person~~ and Temporary Conservatorship.

~~a. To the proposed ward; and~~

~~b. To the spouse and to the children who are of legal age of the proposed ward and, if the proposed ward has no living spouse nor children of legal age, to the next of kin of legal age.~~

~~a. To the person alleged to be incapacitated or the person to be protected and his or her spouse and children, or, if none, parents, brothers and sisters, or, if none, heirs apparent or presumptive;~~

~~b. To any person who is serving as guardian, conservator, or who has the care or custody of the person or with whom the person has resided during the 60 days (exclusive of any period of hospitalization or institutionalization) preceding the filing of the petition;~~

~~c. In case no other person is notified under paragraph (1), to at least one of the nearest adult relatives, if any can be found;~~

~~d. To all other persons named in the petition;~~

~~e. To if the person is alleged to be mentally retarded, to the Department of Developmental Services;~~

~~f. To the United States Veteran's Administration or its successor, if the person is entitled to any benefit, estate or income paid or payable by or through said Administration or its successor; and~~

~~g. To any other person as directed by the Court.~~

Notice shall be given to the Respondent in hand and to all other interested persons by delivery or mail.

~~A sworn affidavit of notice shall be filed with the Court at or before the time of hearing of the petition. In the event that any person to whom notice is required is of parts unknown, such notice shall be delivered or mailed to that person's last known address and the fact of such delivery or mailing shall be recited in the affidavit of notice.~~

~~If the Court determines that a situation exists which requires the immediate appointment of a temporary conservator or temporary guardian, it may waive the notice requirements hereinbefore set forth and grant the petition, provided, however, that notice of the allowance of said petition is given, to the person or persons hereinbefore described, stating further that any such person may move to vacate the order of the Court or request that the Court take any other appropriate action~~

~~on the matter and on said motion to vacate, the Court shall hear said petition as a de novo matter, as expeditiously as possible. A sworn affidavit stating that such notice has been given shall be filed with the Court within three (3) days (excluding Saturdays, Sundays and holidays) following the date of allowance of the petition. Upon failure to file such affidavit the Court may on its own motion vacate said decree. In the event that any person to whom notice is required is of parts unknown, such notice shall be delivered or mailed to that person's last known address, and the fact of such delivery or mailing shall be recited in the affidavit of notice.~~

~~The appointment of a temporary conservator or temporary guardian shall be effective for a period of ninety (90) days from the date thereof and each certificate of appointment issued shall have, in a prominent place, the following notation:~~

~~"THE AUTHORITY OF THE CONSERVATOR GUARDIAN NAMED HEREIN IS LIMITED TO A PERIOD WHICH EXPIRES ON _____."~~

~~The Court may, for good cause shown, extend for additional ninety (90) day periods the appointment of a temporary conservator or temporary guardian provided the same procedure as outlined above is followed, and subsequent certificates of appointment shall bear the notation above specified with respect to the expiration of the period within which the temporary conservator or temporary guardian may act. No such extension may be granted unless an affidavit of notice has properly been filed.~~

~~No temporary appointment of a guardian or conservator will be allowed unless a permanent petition has been filed and is being prosecuted.~~ No extension beyond the original ninety (90) day temporary appointment of a conservator will be allowed unless an inventory and bond of the temporary fiduciary has been filed.

As amended effective February 1, 1982

Add new Rule:

Rule 29C. Notice Regarding Appointment of Counsel

- A) In all guardianship of an incapacitated person and in all conservatorship matters, all notices and all citations shall include the following language in the following format:

IMPORTANT NOTICE

The outcome of this proceeding may limit or completely take away the above-named person's right to make decisions about personal affairs or financial affairs or both. The above-named person has the right to ask for a lawyer. Anyone may make this request on behalf of the above-named person. If the above-named person cannot afford a lawyer, one may be appointed at State expense.

- B) In all guardianship of minor matters, all notices and all citations shall include the following language in the following format:

IMPORTANT NOTICE

The minor or another person on his or her behalf may ask for a lawyer for the minor. If the minor cannot afford a lawyer, one may be appointed at State expense.

UNIFORM PROBATE COURT PRACTICES

PRACTICE XXII(A). CLINICAL TEAM REPORT (GUARDIAN-CONSERVATOR OF MENTALLY RETARDED)

~~A clinical team report, when accepted, must be dated and the examinations of the team members must have taken place within one hundred and eighty (180) days prior to the filing of each petition, temporary or permanent, unless the Court for cause shown waives this requirement.~~

~~Adopted September 29, 1977, effective October 1, 1977.~~

~~Deleted effective July 1, 2009.~~

PRACTICE XXII. PHYSICIAN'S CERTIFICATE (GUARDIAN-CONSERVATOR)

~~When accepted by the court, a medical certificate of a physician, a certified psychiatric nurse clinical specialist, or a licensed psychologist, must be dated and the examination must have taken place within thirty (30) days prior to the entry of each decree, temporary or permanent.~~

~~Amended effective April 21, 2008.~~

When accepted by the court, a medical certificate shall be completed by a physician, a certified psychiatric nurse clinical specialist, or a licensed psychologist.

REPORTER'S NOTES - 2009

The practice was amended to conform with the new Medical Certificate issued by the Probate and Family Court Administrative Office.

STANDING ORDERS OF THE PROBATE & FAMILY COURT

STANDING ORDER 2-98. TRACKING OF APPOINTMENTS OF GUARDIAN AD LITEM AND PROBATION OFFICERS TO CONDUCT INVESTIGATIONS IN DOMESTIC RELATIONS AND CHILD WELFARE+ MATTERS

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

The following procedure will be followed:

...

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

...

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

* Domestic Relations refers, to: Divorce G.L. c. 208; Paternity G.L. c. 209C; Separate

Support G.L. c. 209; and Abuse Prevention G.L. c. 209A.

+Child Welfare refers to: Termination of Parental Right; G.L. c. 210, s. 3; Care and Protection G.L. c. 119, s. 23C and Guardianship of Minor G.L. c. ~~201, s. 5190B, 5-204.~~

STANDING ORDER 5-08

MEDICAL CERTIFICATES AND CLINICAL TEAM REPORTS

~~IT IS HEREBY ORDERED THAT:~~

~~1. Any party filing a petition for guardianship or a motion for temporary guardianship on the grounds of mental illness or physical incapacity or a petition for conservatorship or a motion for temporary conservatorship on the grounds of mental weakness shall file a Medical Certificate on a form approved by the Court. Petitions not accompanied by a Medical Certificate shall not be heard nor shall a citation issue thereon. Motions for temporary guardianship or conservatorship not accompanied by a Medical Certificate shall not be heard unless the Court, for good cause, determines otherwise.~~

~~2. The submission of Clinical Team Reports in guardianship and conservatorship matters involving mentally retarded persons is governed by G.L. c. 201, §§ 6A, 6B.~~

~~3. Medical Certificates and Clinical Team Reports shall be impounded and not available for public inspection. These documents shall be available for inspection to the Court, the attorneys whose appearances are entered in the case, the parties to the case, including the ward or proposed ward, any guardian *ad litem* appointed in the case and any Probation Officer assigned to the case. They may not be copied without further order of the Court, but Registry staff may scan them into an impounded computer file.~~

~~4. Parties, attorneys, guardians *ad litem*, Probation Officers and Registry docketing and scanning staff with access to a Medical Certificate are prohibited from using or disclosing the information on the form for any purpose other than the guardianship or conservatorship case for which it was filed.~~

~~5. Any physician, certified psychiatric nurse clinical specialist or licensed psychologist who has examined the ward or proposed ward, and any other covered entity, as defined in the Health Insurance Portability and Accountability Act of 1996 and regulations propounded thereunder, with health information about the ward or proposed ward is hereby authorized to disclose on a Medical Certificate form any and all protected health information necessary to complete the form, and all such persons and entities are authorized to file or have filed the completed form in guardianship or conservatorship proceedings regarding the ward or proposed ward.~~

~~6. This Standing Order shall be sufficient for the limited purposes of a) providing the health information needed for the Medical Certificate; b) filing the Medical Certificate in Court; and c) presenting evidence, whether oral or written, in any proceeding to appoint a guardian or conservator for the same person, so as to overcome any federal or state statutory or regulatory restrictions on the disclosure of confidential information relating to the ward or proposed ward by a health care provider, the release of which would otherwise require the authorization of the ward or proposed ward (including but not limited to restrictions in the Health Insurance~~

~~Portability and Accountability Act of 1996 and the regulations propounded thereunder). A completed Medical Certificate shall be used for no other purpose. This Standing Order alone shall not be deemed to waive any privilege that may apply.~~

~~7. This Standing Order shall not impair or restrict other means or methods authorizing the release of information regarding a proposed ward.~~

~~July 28, 2008 //PMC
Date Paula M. Carey
Chief Justice~~

~~Deleted effective July 1, 2009.~~

RULES OF THE SUPERIOR COURT

RULE 51. RECEIVERS

(Applicable to civil actions)

Every receiver, within thirty days after his appointment, shall file a detailed inventory of the property of which he has possession or the right to possession, with the estimated values thereof, together with a list of the encumbrances thereon; and also a list of the creditors of the receivership and of the party whose property is in the hands of the receiver, so far as known to him.

Every receiver shall file, not later than the fifteenth day of February of each year, a detailed account under oath of his receivership to and including the last day of the preceding year, substantially in the form required for an account by a guardian conservator in the probate courts, together with a report of the condition of the receivership. He shall also file such further accounts and reports as the court may order.