

## **DOMESTIC RELATIONS PROCEDURE RULES**

### **Rule 17**

**(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) Infant or Incompetent Persons or Incapacitated Persons.** Whenever an infant or incompetent person, or an incapacitated person as defined in G.L. c.190B has a representative, such as a guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person, or an incapacitated person as defined in G.L. c.190B. If an infant or incompetent person, or an incapacitated person as defined in G.L. c.190B 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 person, or an incapacitated person as defined in G.L. c.190B not otherwise represented in an action or may make such other order as it deems proper for the protection of the infant or incompetent person, or an incapacitated person as defined in G.L. c.190B.

## **RULE 25 SUBSTITUTION OF PARTIES**

**(a), (c), (d)** [ Deleted.]

**(b) Incompetency or Incapacity.** If a party becomes incompetent or incapacitated as defined in G.L. c.190B, 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 or other probate proceedings, or answers to interrogatories are filed, a copy thereof shall be delivered or mailed to the adverse parties 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 is interested in any matter pending, a guardian ad litem for said person 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 service of any citation shall be given by mailing by registered or certified mail fourteen days at least before the return day; if 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 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 incapacitated person, 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.

**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 seven (7) days in advance of said hearing, as follows:

(1) Temporary Guardianship of a Minor

- a. To the minor, if he is fourteen or more years of age; and
- b. To all persons named in said petition.

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

- 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 (a), to at least one of the nearest adult relatives, if any can be found;
- d. To all other persons named in the petition;
- e. 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.

No extension of a temporary appointment of a conservator will be allowed unless an inventory and bond of the temporary fiduciary has been filed.

**Rule 29D. 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.