

**COMMONWEALTH OF MASSACHUSETTS
JUVENILE COURT DEPARTMENT
JUVENILE COURT RULES
FOR THE
CARE AND PROTECTION OF CHILDREN**

Rule 1. Scope of Rules

These rules apply to all actions in the Juvenile Court Department for the care and protection of children, including actions for guardianship of minors, child support, paternity, name change and actions seeking to dispense with parental consent to adoption, custody, guardianship or any other disposition of the child pursuant to G.L. c. 119 and c. 210.

Rule 2. Appointment of Counsel

Counsel shall be appointed in accordance with the provisions of s. 29 of c. 119 and c. 211D of the General Laws, and Rule 3:10 of the Rules of the Supreme Judicial Court in care and protection proceedings pursuant to s. 24 of c.119 or s. 3 of c. 210.

Rule 3. Process

A. Summons to Parent/Guardian; Service of Process by Publication.

1. Care and Protection Cases, G.L. c. 119, s. 24 et. seq.

Following the commencement of the case, the petitioner shall cause a summons or order of notice and a copy of the petition to be served by a court officer, constable, deputy sheriff, sheriff, police officer, or other person approved by the court on each of the parents of the subject child. The summons or order of notice shall be on a form issued or approved by the court and shall be served on each of the parents of the subject child in the following manner:

- (a) If the place of residence or whereabouts of a parent is known, service shall be accomplished on that parent by delivery in hand to the parent.
- (b) Personal service may be accomplished the first time the matter comes before the judge or at the temporary custody hearing if the parent if any, is present.
- (c) If the Department of Social Services is not the petitioner, the petitioner shall

provide notice to the department of the filing of the petition by first class mail, postage prepaid.

(d) If the place of residence or whereabouts of a parent cannot be found after diligent efforts, on a written motion of the petitioner setting forth the diligent efforts made to ascertain said place of residence or whereabouts, the court may order that service shall be accomplished on that parent, either within or without the Commonwealth, by:

(i) certified or registered mail, return receipt requested, to the last known place of residence of the parent, the mailing to be at least twenty-one days before the date of the pretrial conference, unless the court otherwise orders, and

(ii) publication in accordance with subsection (g), below.

(e) If the identity of a parent is not known, service shall be accomplished on that parent by publication in accordance with subsection (g), below.

(f) If the place of residence or whereabouts of a parent is known but the petitioner has been unable to accomplish service by delivery despite diligent efforts to do so, on a written motion of the petitioner, setting forth the diligent efforts made, the court may order service in accordance with subsection (d)(i) and (ii), above.

(g) Whenever service by publication is required in a care and protection case:

(i) The court shall, upon motion of the petitioner, other party, or *sua sponte*, issue an Order for Service by Publication, and the petitioner shall cause notice to be published in accordance with the order in the newspaper or newspapers designated by the court once in each of three successive weeks, the final publication to appear no later than the pretrial conference date unless otherwise directed by the court. Whenever the court orders Service by Publication the court shall also require the petitioner to file a Military Affidavit as to the parent to be served by Publication.

(ii) If, after the petitioner has perfected service of process by publication in accordance with this rule, no parent has appeared or can be found, a summons shall be issued to the child's legal guardian, if any, known to reside within the Commonwealth, and, if none, to the person with whom such child last resided, if known.

2. Guardianship of a Minor Cases, G.L. c. 201, s. 2 et seq.

Except as provided for in subsection (i), following the filing of a guardianship petition, the petitioner shall cause a summons or order of notice and a copy of the petition to be served by a court officer, constable, deputy sheriff, sheriff, police officer, or other person approved by the court on each of the parents of the subject child, and upon the Department of Social Services if it is the child's legal custodian. The summons or order of notice shall be on a form issued or approved by the court and shall be served with a copy of the petition in the following manner:

(a) If the place of residence or whereabouts of a parent is known, service shall be accomplished on that parent by delivery in hand to the parent. If the minor is above the age of fourteen years and has not nominated the guardian proposed in the petition in conformance with the requirements of G.L. c. 201, s. 2, then service shall be made in the same manner on the minor.

(b) Personal service may be accomplished when the matter comes before the judge if the parent is present and upon a representative of the Department of Social Services if it is the child's legal custodian.

(c) If the Department of Social Services is not the legal custodian of the child, the petitioner shall provide notice to the department of the filing of the petition by the first class mail, postage prepaid

(d) If the place of residence or whereabouts of a parent cannot be found after diligent efforts, on a written motion of the petitioner setting forth the diligent efforts made to ascertain the place of residence or whereabouts, the court may order that service shall be accomplished on that parent, either within or without the Commonwealth, by:

(i) certified or registered mail, return receipt requested, to the last known place of residence of the parent, the mailing to be at least seven days before the petition for guardianship is heard, unless the court otherwise orders, and

(ii) publication in accordance with subsection (g), below.

(e) If the identity of a parent is not known, service shall be accomplished on that parent by publication in accordance with subsection (g), below.

(f) If the place of residence or whereabouts of a parent is known but the petitioner has been unable to accomplish service by delivery despite diligent efforts to do so, on a written motion of the petitioner, setting forth the diligent efforts made, the court may order service in accordance with subsection (d)(i) and (ii), above.

(g) Whenever service by publication is required in a guardianship case:

(i) The court shall, upon motion of the petitioner, other party, or *sua sponte*, issue an Order for Service by Publication, and the petitioner shall cause notice to be published at least one time in the newspaper or newspapers designated by the court, the publication to appear at least seven days before the petition for guardianship is heard, unless otherwise directed by the court. Whenever the court orders Service by Publication the court shall also require the petitioner to file a Military Affidavit as to the parent to be served by Publication.

(h) If the minor is entitled to any benefit, estate, or income paid or payable through the United States Veterans Administration or its successor, service shall be made on the Veterans Administration or its successor in accordance with subsection (d)(i) of this rule.

(i) No notice need be given in the following circumstances: (1) to a person entitled to notice under this rule who has assented in writing to the allowance of the petition if the assent is filed in court; (2) to a parent who executes an adoption surrender in conformance with G.L. c. 210, s. 2, or (3) if the court has terminated parental rights pursuant to G.L. c. 210, s. 3.

(j) The officer or other person making service in accordance with this rule shall make a return of service on a copy of the summons or order of notice which the petitioner shall promptly file with the court.

(k) A motion for temporary guardianship may not be filed unless a permanent guardianship petition has been filed. A motion for the appointment of a temporary guardian shall be made in writing and shall be accompanied by an affidavit that sets forth the nature of the emergency requiring appointment of a temporary guardian and the particular harm sought to be avoided. If service of the summons or order of notice has not been made in accordance with Rule 3, a copy of a motion for temporary guardianship and written notice of its hearing shall be served with the summons or order of notice unless the court orders otherwise.

3. Paternity and Child Support Cases, G.L. c. 209C, s. 3(c); c. 119, s. 28; c. 201, s. 40

Following the filing of a complaint for paternity and/or for an order of child support, the plaintiff shall cause a summons or order of notice and a copy of the complaint to be served by a court officer, constable, deputy sheriff, sheriff, police officer, or other person approved by the court on each of the parents of the subject child unless a parent has assented to the filing of the complaint, and upon the Department of Social Services if it is the child's legal custodian. The summons or order of notice shall be on a form issued or approved by the court and shall be served with a copy of the complaint in the following manner:

(a) If the place of residence or whereabouts of a parent is known, service shall be accomplished on that parent by delivery in hand to the parent. If the minor is above the age of fourteen years, service shall be made in the same manner on the minor.

(b) Personal service may be accomplished when the matter comes before the judge if the parent is present and upon a representative of the Department of Social Services if it is the child's legal custodian.

(c) If the Department of Social Services is not the legal custodian of the child, the plaintiff shall provide notice to the department of the filing of the complaint by first class mail, postage prepaid.

(d) If the place of residence or whereabouts of a parent cannot be found after diligent efforts, on a written motion of the plaintiff setting forth the diligent efforts made to ascertain the place of residence or whereabouts, the court may order that service shall be accomplished on that parent, either within or without the Commonwealth, by:

(i) certified or registered mail, return receipt requested, to the last known place of residence of the parent, the mailing to be at least seven days before the complaint is heard, unless the court otherwise orders, and

(ii) publication in accordance with subsection (f), below.

(e) If the place of residence or whereabouts of a parent is known but the plaintiff has been unable to accomplish service by delivery despite diligent efforts to do so, on a written motion of the plaintiff, setting forth the diligent efforts made, the court may order service in accordance with subsection (d)(i) and (ii), above.

(f) Whenever service by publication is required in a paternity or child support case:

(i) The court shall, upon motion of the plaintiff, other party, or *sua sponte*, issue an Order for Service by Publication, and the plaintiff shall cause notice to be published at least one time in the newspaper or newspapers designated by the court, the publication to appear at least seven days before the complaint is heard, unless otherwise directed by the court. Whenever the court orders Service by Publication the court shall also require the plaintiff to file a Military Affidavit as to the person to be served by Publication.

4. Change of Name Cases, G.L. c. 201, s. 12 et seq.

Order of Notice. Except as provided for in subsection (f), following the filing of a change of name petition, the petitioner shall serve notice on each of the parents of the subject child, and upon the Department of Social Services if it is the child's legal custodian in accordance with an order of notice. An order of notice shall be on a form issued or approved by the court and shall be served with a copy of the petition in the following manner:

(a) Service shall be accomplished on the parent by certified or registered mail, return receipt requested, to the last known place of residence of the parent, the mailing to be at least fourteen days before the petition for change of name is heard, unless the court otherwise orders.

(b) Service may be accomplished by a court officer when the matter comes before the judge if the parent is present and upon a representative of the Department of Social Services if it is the child's legal custodian.

(c) If the Department of Social Services is not the legal custodian of the child, the petitioner shall provide notice to the department of the filing of the petition by first class mail, postage prepaid.

(d) If the place of residence or whereabouts of a parent is known but the petitioner has been unable to accomplish service by certified mail despite diligent efforts to do so or if the place of residence or whereabouts of a parent cannot be found after diligent efforts, on a written motion of the petitioner setting forth the diligent efforts made to ascertain the place of residence or whereabouts, the court may order that service shall be accomplished on that parent, either within or without the Commonwealth, by publication in accordance with subsection (e), below.

(e) Whenever service by publication is required in a change of name case:

(i) The court shall, upon motion of the petitioner, or *sua sponte*, issue an Order for Service by Publication, and the petitioner shall cause notice to be published at least one time in the newspaper or newspapers designated by the court, the publication to appear at least seven days before the petition for change of name is heard, unless otherwise directed by the court. Whenever the court orders Service by Publication the court shall also require the petitioner to file a Military Affidavit as to the parent to be served by Publication.

(f) No notice need be given in the following circumstances: (1) to a person entitled to notice under this rule who has assented in writing to the allowance of the petition if the assent is filed in court; (2) to a parent who executes an adoption

surrender in conformance with G.L. c. 210, s. 2, or (3) if the court has terminated parental rights pursuant to G.L. c. 210, s. 3.

(g) The officer or other person making service in accordance with this rule shall make a return of service on a copy of the summons or order of notice which the petitioner shall promptly file with the court.

B. Filing Proof of Publication. Following publication in accordance with the order, counsel for the petitioner or plaintiff, as the case may be, shall promptly complete and file in the Clerk-Magistrate's office an Affidavit of Notice of Publication on a form issued or approved by the court and shall file a completed Military Affidavit as to the person served by Publication.

C. Joint Publication. In a case involving two or more children who have the same parents, the petitioner or plaintiff, as the case may be, may accomplish service by joint publication. In all other cases, there shall be a separate publication for each child who is a subject of a case.

D. Filing of Return of Service. The officer or other person making service in accordance with this rule shall make a return of service on a copy of the summons or order of notice which the petitioner or plaintiff, as the case may be, shall promptly file with the court.

Rule 4. Filing of Birth Certificates

A. Care and Protection and Guardianship Cases. The petitioner or plaintiff, as the case may be, shall file, within sixty days of commencement of the action, a certified copy of the birth certificate issued after the date of the filing of the petition or complaint, of each child named in the petition or complaint unless waived by the judge for good cause shown. The petitioner or plaintiff may request an order from the court to produce a birth certificate pursuant to c. 46, s. 2A of the General Laws if said petitioner or plaintiff does not have custody of the child.

B. Paternity and Change of Name Cases. The petitioner or plaintiff, as the case may be, shall file along with the petition or complaint, a certified copy of the birth certificate for each child named in the petition or complaint unless waived by the judge for good cause shown. The birth certificate shall have been issued within thirty days of filing with the court. The petitioner or plaintiff may request an order from the court to produce a birth certificate pursuant to c. 46, s. 2A of the General Laws if said petitioner or plaintiff does not have custody of the child.

Rule 5. Service and Form of Papers

A. Every motion or other paper filed in court shall be promptly served by the attorney or party filing it by mailing or delivering a copy to each attorney of record, and each party appearing pro se.

B. Unless a motion is made during a hearing or trial, any request for a court order shall be made by written motion accompanied by an affidavit signed by the person with personal knowledge of

the factual basis of the motion, and shall state with particularity the grounds therefore, and shall set forth the relief or order sought, provided however, that the following types of motions are not required to be accompanied by an affidavit: motions in limine, motions to strike, motions for discovery, motions for appointment of appellate counsel and motions for continuance or change of court date. Whenever a motion is supported by an affidavit or memorandum, the affidavit or memorandum shall be served with the motion.

C. All motions other than those which do not require a hearing shall be scheduled by the court in accordance with procedures established by the court division. A written motion, other than one which may be heard ex parte, and notice of the hearing of the motion, shall be served pursuant to paragraph A of this rule, no later than seven days prior to the hearing.. When service is made by mail, three days shall be added to the seven days' notice requirement. An application for ex parte relief from the seven day notice requirement shall be by motion and supported by affidavit setting forth the nature of the emergency.

D. Every motion or other paper filed with the court, other than documents offered in evidence, shall be on 8 ½" x 11" white paper and shall have a heading which includes the name, division and county of the court; the docket number, the title of the action and a designation of the nature of the motion or paper, and shall set forth the name, address, telephone number of the attorney or pro se party filing it, and the Board of Bar Overseers registration number of the attorney; and the date on which the motion or other paper was filed with the court.

Rule 6. Appearances

All counsel shall file a notice of appearance by hand delivering or mailing a notice of appearance which shall include the name of the attorney, address, telephone number and Board of Bar Overseers number. A copy of the appearance shall be served on all parties. Court appointed counsel, upon acceptance of the appointment, must file a separate paper entitled Notice of Appearance. A Notice of Assignment of Counsel does not satisfy the requirements of this rule.

Rule 7. Investigator's Report in Care and Protection Cases

In a care and protection action, including actions in which the need for parental consent to adoption is in issue, the report of the court-appointed investigator shall be filed in the Clerk's Office within sixty days after the appointment of the investigator, unless the court otherwise orders. A request for extension of time for the filing of the court investigator's report shall be in writing, signed by the court investigator and approved by a justice of the juvenile court. The court investigator shall file a request for extension of time no later than fourteen days prior to the date the report is due, provided however, that the court may permit the filing of a request for an extension at some other time in the interests of justice. If the court approves a request for an extension, the court investigator shall provide a copy of any such approved request to all counsel of record and to any party who is not represented by counsel.

Rule 8. Assignment of Care and Protection Cases

At the conclusion of the temporary custody hearing in a care and protection case, if not before, a judge shall be assigned to that case in accordance with procedures established by the Chief Justice of the Juvenile Court Department. Nothing in this rule shall preclude changing the assignment of a case to, or matters being heard by, a different judge in the interests of justice.

Rule 9. Discovery

A. Department of Social Services or Licensed Placement Agency. In any care and protection case in which the Department of Social Services or a licensed placement agency is or becomes a party, the Department of Social Services or the licensed placement agency shall produce for each other party a copy of its entire social services file, including reports made pursuant to G.L. c. 119, s. 51A and s. 51B, within thirty days from the date the case is commenced, or within thirty days from the date the Department of Social Services or the licensed placement agency becomes a party, whichever is later. No party receiving material produced pursuant to this rule shall further duplicate or divulge the material to any person not a party to the case unless by order of court, except that counsel for a party may disclose the material to an expert retained by counsel.

When producing a copy of its social services file in compliance with this rule, the Department of Social Services or licensed placement agency may withhold therefrom privileged material and work product of its attorney, and may withhold therefrom the names, and other reasonable, identifying data, of past or present foster parents of a child who is a subject of the case or of an adoptive parent or prospective adoptive parent of a child who is a subject of the case or of the reporter on reports made pursuant to G.L. c. 119, s. 51A, subject to orders for further production.

The attorney for the Department of Social Services or licensed placement agency shall produce with the copy of the file a list of the materials and information withheld. The attorney for the Department of Social Services shall have an ongoing duty to produce for each other party on a timely basis any additions to the social services file made after initial production required in this subsection.

B. Other Discovery. Other discovery may be had only by leave of court on such terms as the court prescribes. Leave of court shall be requested by motion in accordance with Rule 5.

Rule 10. Motion/Status Conference

A. There shall be a motion/status conference within ninety days after the commencement of any proceeding governed by these rules. All pending discovery motions, if any, shall be heard at the conference. The conference shall result in a status order addressing, at the least, service of process in accordance with Rule 3; a discovery order and schedule (if further discovery is to be had); any special evidentiary issues requiring pretrial hearing and the scheduling thereof; any special issues regarding services being offered or delivered to the family pending trial requiring pretrial hearing and the scheduling thereof; the scheduling of the pretrial conference.

B. Nothing in this rule shall preclude the court from hearing the motions at other times in the interests of justice.

C. Counsel for the parties shall file written certification that mediation has been discussed pursuant to Rule 5 of Rule 1:18 of the Supreme Judicial Court.

Rule 11. Pretrial Conference in Care and Protection Cases

A. Pretrial Conference. A pretrial conference shall be scheduled at the time of the first appearance to occur no later than one hundred twenty days after the filing of the petition, provided however, that it shall be scheduled to occur after the date upon which the court investigator's report is due. All parties are required to be present with counsel at the pretrial conference, except that counsel for the child may appear without his/her client. Failure of one or more parties to appear shall not preclude the court from proceeding with the pretrial conference.

B. Pretrial Memorandum. The parties shall file with the court at the pretrial conference a joint pretrial memorandum, provided however, the Chief Justice of the Juvenile Court Department may waive the requirement of joint pretrial memoranda for a particular division upon the written request of the First Justice. In the event the Chief Justice waives the requirement that joint pretrial memoranda be filed in a particular division, each attorney shall file an individual pretrial memorandum. All pretrial memoranda, whether joint or individual, shall be signed by each counsel of record certifying that all counsel have met and discussed all of the matters set forth below which must be included in the memorandum:

1. Name, address and telephone number of trial counsel
2. Names and date and place of birth of each parent
3. Names and date and place of birth of each child named in the petition
4. Whether parents have been served [petitioner] *and the date of service*
5. Certification that discovery has been completed; and if discovery has not been completed, a list of discovery items not yet completed and the compliance date
6. Relief sought, including whether or not there will be a request for a decree dispensing with the need for parental consent to the adoption, custody, guardianship or other disposition of the child named in the petition
7. An identification of the specific contested issues to be litigated at trial [Not a restatement of statutory language]
8. A stipulation of all uncontested facts and issues
9. A numerical list of proposed exhibits (no objections) to be introduced at trial
10. An alphabetical list of pre-marked exhibits that may raise objections and detailed grounds for objections including document, page number, paragraph, and sentence
11. A list of proposed witnesses with expert witnesses clearly designated, a delineation of the issues to which the expert is expected to testify, and a copy of his or her curriculum vitae
12. An estimate of trial time
13. A procedural history of the case

14. A statement addressing such matters as may aid in the disposition of the action

The pretrial memorandum or memoranda shall also include, where applicable:

15. Whether a writ of habeas corpus is needed
16. Whether an interpreter is needed for trial
17. A statement acknowledging that the possibility of settlement has been discussed
18. A statement regarding consolidation or interdepartmental assignment including whether it has been requested
19. A statement that counsel for the parties have discussed mediation with their client(s) pursuant to Rule 5 of Rule 1:18 of the Supreme Judicial Court
20. A statement by the petitioner as to whether the Indian Child Welfare Act may apply to the proceeding

Parties shall be bound by the witness and exhibit lists set forth in the pretrial memoranda, except by leave of court for good cause shown.

Failure of counsel to appear at any scheduled pretrial conference or to meet and participate in the drafting of the pretrial memorandum or to otherwise fail to comply with the provisions of the court's order, if any, may result in the imposition of sanctions. The court may award costs against any party or attorney whose unjustified absence or lack of preparation prevented the conduct of a pretrial conference.

C. Scheduling the Hearing on the Merits. At the pretrial conference, the court shall schedule a hearing on the merits to be heard within twelve months of the filing of the petition.

Rule 12. Sanctions; Contempt

A. Sanctions: If a party, or an attorney, or both, engages in conduct that either delays the progress of litigation, wastes judicial resources or causes an unnecessary increase in expenses on a party, or otherwise impedes the full and effective administration of justice, without sufficient justification as determined by the court, the court may order the party, or the attorney, or both to pay reasonable costs and expenses. The court shall provide notice and a hearing before final imposition of costs. The court shall articulate, in writing, the reasons for the imposed sanctions.

B. Contempt: Enforcement of compliance with court orders may be sought by means of civil contempt, which shall proceed in accordance with the provisions of Mass. R. Civ. P. 65.3 (b) - (h). Proceedings for summary contempt shall be held in accordance with the provisions of Mass. R. Civ. P. 43. Prosecutions for criminal contempt shall proceed in accordance with the provisions of Mass. R. Civ. P. 44.

Rule 13. Subpoenas

Subpoenas shall be served and enforced as provided by Mass. R. Civ. P. 45 and may be issued by the office of the Clerk-Magistrate or as provided in Mass. R. Civ. P. 45.

Rule 14. Trial Judge's Order, Findings of Fact and Conclusions of Law: Notification by Clerk of Issuance of Findings of Fact and Conclusions of Law.

A. Entry of Adjudication, Order of Commitment, Order Dispensing with the Need for Consent to Adoption, Allowance or Denial of Guardianship Petition: Upon the trial judge's making an adjudication, an order of commitment, or an order dispensing with the right of the parents to receive notice of or consent to the adoption, custody, or guardianship or any other disposition of the child or an allowance or denial of a guardianship petition, the Clerk shall forthwith enter that adjudication, order, allowance or denial on the court's docket.

B. Notice. Immediately following the Clerk's entry of the above adjudication, order, allowance or denial on the docket, the Clerk shall notify all parties by mail of the entry of said adjudication, order, allowance or denial. The Clerk shall note on the docket the names of the persons to whom he/she mails such notice, with the date of the mailing. This notice shall include: 1) a copy of said adjudication, order, allowance or denial; 2) the date of the Clerk's entry, and 3) notice that each party has thirty (30) days from said date of entry within which to file a claim of appeal.

C. Order or Decree dispensing with consent to adoption. In all cases in which the court issues an order dispensing with the right of the parents to receive notice of or consent to the adoption, custody, or guardianship or any other disposition of the child, the court shall enter the order or decree on a document separate from any findings of fact and conclusions of law.

D. Trial Judge's Findings of Fact and Conclusions of Law. The trial judge, upon making an adjudication or issuing an order of commitment or an order dispensing with the right of the parents to receive notice of or consent to the adoption, custody, or guardianship or any other disposition of the child, shall file with the Clerk consistent with time standards promulgated by the Chief Justice of the Juvenile Court Department, findings of fact and conclusions of law to support said order and/or adjudication.

E. Notification to All Parties by Clerk. Immediately upon the filing of said findings of fact and conclusions of law the Clerk shall mail a copy to each party.

Rule 15. Appeal

A. Claim of Appeal. An appeal, as permitted by G.L. c. 119, s. 27, shall be governed by the Massachusetts Rules of Appellate Procedure. The claim of appeal shall be taken to constitute the "notice of appeal" for the purposes of applying the Massachusetts Rules of Appellate Procedure. The notice of appeal and any request for a transcript, if required, shall be signed by the party or

parties taking the appeal, unless the appellant is the minor subject of the action; a claim of appeal that is not so signed by the party or parties shall not be accepted for filing by the Clerk.

B. Record on Appeal. In addition to the requirements of the Rules of Appellate Procedure, the record on appeal as assembled shall include a copy of the trial judge's findings of fact and any conclusions of law.