

SUPPLEMENTAL RULES OF THE PROBATE AND FAMILY COURT

Summary of changes to Probate Court Rules and Supplemental Rules of the Probate Court

The rules combine the present Probate Court Rules with the present Supplemental Rules of the Probate Court without changing the numbers of any existing rules. The name of the court is brought up to date, contradictions in the rules are eliminated, and more consistency with the Mass.R.Civ.P. and Mass.R.Dom.Rel.P. is achieved. Rules which relate to statutes long since repealed are eliminated.

- Rule 1 Effect of Rules
The court's name is corrected. A paragraph is added to clarify that references to Massachusetts Rules of Civil Procedure mean the current rule and the rules as they may be amended from time to time.
- Rule 2 Appearances
The existing rule is replaced in part by reference to Mass.R.Civ.P.11. Exceptions specific to the Probate and Family Court remain in the rule.
- Rule 3 Giving Service of Notice
Existing rule is replaced by reference to Mass.R.Civ.P. 5.
- Rule 4 Copies to Adverse Parties
Existing rule is repealed. Mass.R.Civ.P. 5, made applicable by Rule 3, covers the requirements of this rule.
- Rule 5 Guardians ad Litem
Language is updated to reflect new terminology and the requirement of waiting until the return date for the appointment of a GAL is eliminated.
- Rule 6 Citations:Return Days
The existing rule is replaced in its entirety with a new rule which conforms to the statutory requirements of sections of the MUPC effective on July 1, 2009. (G.L.c.190B).
- Rule 7 Amendments
The existing rule is replaced in its entirety. The new rule makes Mass.R.Civ.P. 15 applicable in the Probate and Family Court in all cases not governed by the Mass.R.Dom.Rel.P.
- Rule 7A Time
New rule makes Mass.R.Civ.P. 6 applicable to all cases not governed by the Mass.R.dom.Rel.P. to replace the second paragraph of current Rule 7.
- Rule 8 Further Notice
Statutory reference currently in Rule 102 is added allowing for the otherwise identical Rule 102 to be eliminated.
- Rules 9-12 All are repealed as they are covered by Mass.R.Civ.P. rules made applicable by Rule 27A of these rules.

- Rule 13 Examination of Witnesses
Existing rule is amended to reference to Mass.R.Civ.P. 43(g).
- Rule 14 Writ of Protection
No changes, but identical Rule 103 is eliminated.
- Rule 15 Interlocutory Hearings
Reference currently in Rule 101 is added allowing for Rule 102 to be eliminated.
- Rule 16 Will Contests
The MUPC at G. L. c. 190B, sec. 1-401 (e)-(f) makes the original Rule 16 unnecessary. This section of the MUPC became effective on July 1, 2009. The remaining language is added in response to *O'Rourke v. Hunter* decided by the SJC on May 31, 2006.
- Rule 17 Foreign Law
The provisions of Mass.R.Civ.P. 44.1 are added to the existing rule.
- Rules 18 Appointment of Stenographers and Report of Evidence
and 19 Updated to reflect the existence of the Appeals Court.
- Rules 20, Existing rules are replaced in their entirety with reference to Mass.R.Civ.P. 53 and
21, and 24 SJC Rule 1:07.
- Rules 22 Existing rules are repealed. They are no longer required.
and 23
- Rule 25 Recording of Papers
Existing rule is updated.
- Rule 26 Exhibits
No change, but identical Rule 203 is eliminated.
- Rule 27A Depositions and Discovery and Summary Judgment
and 27B Existing rules references to Mass.R.Civ.P. rules clarified.
- Rule 27C Summary Judgment Procedure
Existing rule changed to be more consistent with the most recent version of Superior Court Rule 9A as it applies to Summary Judgment.
- Rule 28 Signatures to Pleadings
Existing rule changed to make Rule 11 certification applicable.
- Rule 28A Certificates of Service
New rule, similar to Superior Court Rule 9B, added to require certificates of service.
- Rule 29 Service and Giving of Notice
Existing rule replaced in its entirety with reference to Mass.R.Civ.P. 5 and 6.

- Rule 29A Probate Accounts
Existing rule replaced in its entirety with new Rule 72A.
- Rule 29B Temporary Conservatorships and Guardianships
No change.
- Rule 29C. Uniform Forms
Existing rule is updated , and identical Rule 203 is eliminated.
- Rules 29D and 30 Notice Regarding Appointment of Counsel and Dismissal of Abandoned Appeals
No change.
- Rule 31 Pre-Trial Procedure
New rule added, makes Mass.R.Civ.P. 16 applicable to probate cases as there is currently no rule calling for pre-trials in probate matters.
- Rules 40, 43,44, 45,and 46 New rules added to make Mass.R.Civ.P. rules applicable to all cases not covered by the Mass.R.Dom.Rel.P.
- Rule 52 Findings by the Court
New rule added making Mass.R.Dom.Rel.P. 52 applicable in cases not covered by Mass.R.Civ.P. 52.
- Rules 59, 60, and 61 New rules added to make Mass.R.Civ.P. of same number rules applicable to all cases not covered by the Mass.R.Dom.Rel.P.
- Rule 70 Magistrate Rule
New rules required by the statutory requirements of the MUPC. (G.L. c.190B). Magistrates will not consider estate petitions until the effective date of the remaining portions of the MUPC (March 31, 2012), but there is no harm in the rule taking effect on January 2, 2012.
- Rule 72 Allowances of Accounts
New rule added. Rule 72 has been added to the Supplemental Rules of the Probate and Family Court and is intended to replace former Rule 72 of the Massachusetts Rules of Civil Procedure. Supplemental Rule 72 was drafted to be consistent with the provisions of the Massachusetts Uniform Probate Code, G. L. c. 190B ("Code"). Supplemental Rule 72 shall be applicable to all actions in the Probate and Family Court seeking the allowance of an account, except actions filed pursuant to G. L. c. 215, § 6, which shall continue to be governed by Mass.R.Civ.P. For proceedings involving the allowance of an account of a common trust fund, Supplemental Rule 72 incorporates and makes applicable the procedures set forth in Code section 1-401. (This section of the Code took effect on July 1, 2009). Rule 72 of the Supplemental Rules eliminates the prior references to specific Rules of Civil Procedure applicable in contested account proceedings, as those specific references are no longer necessary due to the adoption of the Supplemental Rules of the Probate and Family Court making the Rules of Civil Procedure more broadly applicable to probate proceedings.

- Rule 72A Content of Accounts
New rule changing Rule 29A to conform to the statutory requirements of the MUPC. (G.L. c.190B) and re-numbering Rule 29A to keep account rules together.
- Rule 90. Resignation of Personal Representative
This rule was proposed by the MUPC Working Group and would replace G.L. c. 195, § 13, which will be repealed. There is no harm in the rule taking effect before the related provisions of the MUPC.
- Rule 101 Interlocutory Hearings
Existing rule repealed. Identical to Rule 15.
- Rule 102 Further Notice
Existing rule repealed. Identical to Rule 8.
- Rule 103 Writ of Protection
Existing rule repealed. Identical to Rule 14.
- Rule 201 Recording of Court Proceedings.
Existing rule updated to reflect use of computer disks for copies of recorded hearings. Language added to clarify that all court proceedings shall be held in a courtroom and recorded, with the exception of uncontested adoption hearings.
- Rule 202 Appointment of Stenographers
Existing rule repealed. Identical to Rule 18.
- Rule 203 Exhibits
Existing rule repealed. Identical to Rule 26.
- Rule 204 Printing of Forms
Existing rule repealed. Identical to Rule 29C.
- Rule 401 Financial Statement
Existing rule revised to clarify that mandatory filing of financial statement is not automatic in equity or probate actions in which financial relief is requested.
- Rule 402 Assignment of Counsel
Existing rule revised to add reference to SJC Rule 1:07.
- Rule 403 Waiver of Fees, Expenses and Other Provisions for Indigent Litigants
Existing rule repealed in its entirety. Determination of indigency for purpose of state payment of court costs is established by statute.
- Rule 404 Charges of adultery of criminal acts
No change.
- Rule 405 Notice to Person Charged with Adultery or Criminal Act
Existing rule changed to remove obsolete reference to "return date" in divorce proceedings.

- Rule 406 Allowance for Fees, Costs, and Expenses
No change.
- Rule 408 Dismissal of Inactive Cases
Existing rule changed to provide for dismissal of inactive cases in all Probate and Family court case types, not only divorce.
- Rule 409 Case Management Conference
Existing rule changed to add reference to Time Standards Standing Order.
- Rule 410 Mandatory Self Disclosure
No change.
- Rule 411 Automatic Restraining Order
No change, except correction of punctuation.
- Rule 412 Joint Petition for Modification of Child Support Judgment
No change.