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Massachusetts  
Supplemental  
Rules  
Probate and  
Family Court  
August 2013

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**SUPPLEMENTAL RULES OF THE PROBATE AND FAMILY COURT**

Massachusetts Probate and Family Court

Effective August 1, 2013

eBook published by the Massachusetts Trial Court Law Libraries

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Probate and Family Court **Standing Orders** are available on the web at : [Mass.gov/courts](http://Mass.gov/courts)

These rules combine the present General Rules of the Probate Court with the present Supplemental Rules of the Probate Court. 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 Rules which relate to statutes long since repealed are eliminated. Rules required by G.L. c. 190B are added. All General Rules of the Probate Court and Supplemental Rules of the Probate Court are now Supplemental Rules of the Probate and Family Court.

## **Rule 1 : EFFECT OF RULES**

The provisions of these rules shall apply to all proceedings in the Probate and Family Court unless a contrary intent appears.

Whenever a Supplemental Rule of the Probate and Family Court refers to a rule in the Massachusetts Rules of Civil Procedure, or to a rule in the Massachusetts Rules of Domestic Relations Procedure, it shall mean the rule in the Massachusetts Rules of Civil Procedure or in the Massachusetts Rules of Domestic Relations Procedure as it may be amended from time to time.

***Reporter's Notes (2012)***

The Court's name is corrected.

## **Rule 2 : APPEARANCES**

In all cases not governed by the Mass.R.Dom.Rel.P., appearances and pleadings shall be governed by Mass.R.Civ.P. 11.

If the person appearing is an attorney-at-law, the written appearance shall also include the person's Board of Bar Overseers number.

Except for joint petitions for divorce, petitions for grandparent visitation and joint petitions for modification of child support, no appearance in a case commenced by petition shall be filed after 10:00 a.m. on the return day except by leave of Court or in substitution or addition of attorneys.

An appearance may specify that it is not an objection to the petition, and such an appearance may be filed after 10:00 a.m. on the return day without leave of Court.

***Reporter's Notes (2012)***

Appearances are generally covered by Mass.R.Civ.P. 11. Not covered by Rule 11 is an appearance after 10:00 a.m. on return days of citations, which is added to this rule.

## **Rule 2A [REPEALED]**

Repealed effective January 2, 1987

## **Rule 3 : GIVING SERVICE OF NOTICE**

In all cases not governed by the Mass.R.Dom.Rel.P., service and filing of pleadings and other papers shall be governed by Mass.R.Civ.P. 5. Wherever the word "complaint" appears in said rule, it shall also mean, where applicable, "petition."

When notice of a petition has been given by service of a citation, notice of any pleading asserting new or additional claims for relief not asserted in the original petition shall be given by service of a new citation.

***Reporter's Notes (2012)***

Rule 5 of the Mass.R.Civ.P. sufficiently addresses the topic, so there is no need for a different rule.

## **Rule 4 : COPIES TO ADVERSE PARTIES [REPEALED]**

***Reporter's Notes (2012)***

Answers to interrogatories are no longer to be filed, see Mass.R.Civ.P. 5(d)(2) and Mass.R.Dom.Rel.P. 5(d)(2). Mass.R.Dom.Rel.P. 5 and Mass.R.Civ.P. 5, made applicable by [Rule 3](#) of these rules, cover this, so a separate rule is unnecessary.

## **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, intellectually disabled 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. No Judge of Probate and Family Court shall be appointed a guardian ad litem.

***Reporter's Notes (2012)***

The requirement of waiting until the return day to make an appointment is eliminated. This rule supplements MUPC § 1-404 which calls for appointment of such a GAL "upon the representation of any party . . . , or of any person interested," but not on the sole initiative of the judge.

## **Rule 6 : CITATIONS: RETURN DAYS; SERVICE; PUBLICATION**

A. 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. A return day is not a hearing date, but a date by which an interested person must file his or her Appearance to contest a probate proceeding.

B. Extension of the Return Day. 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 or her 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.

C. Service within the Commonwealth. Except where otherwise required by statute or ordered by the Court, service of a citation within the Commonwealth shall be given by delivering in hand or by mailing by certified, registered or ordinary first class mail at least fourteen (14) days before the return day.

D. Service outside the Commonwealth. Except where otherwise required by statute or ordered by the Court, 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, service of the citation shall be given by delivering in hand or by mailing by certified, registered or ordinary first class mail at least fourteen (14) days before the return day; if in other parts, one (1) month.

E. Service When Whereabouts Unknown. Except where otherwise required by statute or ordered by the Court, if it shall appear from the petition that there is anyone interested who is of parts unknown, service of the citation shall be given by delivery or mailing to the last known address at least one (1) month before the return day.

F. Service by Publication. Except where otherwise required by statute or ordered by the Court, and in addition to the service requirements above, publication shall be required if any interested person's whereabouts, address or identity is unknown. Publication shall also be required in all formal testacy and appointment proceedings. A copy of the citation shall be published once in a newspaper designated by the Register of Probate having general circulation in the county where the proceeding is pending at least seven (7) days before the return date.

***Reporter's Notes (2012)***

The rule was amended as a result of the enactment of the Massachusetts Uniform Probate Code, G.L. c. 190B and clarifies service within and without the Commonwealth as well as when publication is required.

## **Rule 7 : AMENDMENTS**

In all cases not governed by the Mass.R.Dom.Rel.P., amended and supplemental pleadings shall be governed by Mass.R.Civ.P. 15. In all cases commenced by petition, except for joint petitions for divorce, petitions for grandparent visitation and joint petitions for modification of child support, a "responsive pleading" shall include an appearance filed before 10:00 a.m. on the return day.

***Reporter's Notes (2012)***

Mass.R.Civ.P. 15 already addresses this issue. A different rule is not needed.

## **Rule 7A : TIME**

In cases not governed by the Mass.R.Dom.Rel.P., the time for acts to be performed shall be governed by Mass.R.Civ.P. 6.

### ***Reporter's Notes (2012)***

This rule replaces the second paragraph of the former Probate Court Rule 7.

## **Rule 8 : FURTHER NOTICE**

If a notice, given in accordance with the forms approved as provided by General Laws Chapter 215, Section 30, General Laws Chapter 217, Section 8, or otherwise provided by these rules, is held by the judge to be insufficient, the judge may order such further notice as the case requires.

### ***Reporter's Notes (2012)***

Language from the otherwise identical Rule 102 of the Supplemental Probate Court Rules is added. Rule 102 of the Supplemental Probate Court Rules is now repealed.

## **Rule 9 : DEPOSITIONS AND COMMISSIONS [*REPEALED*]**

### ***Reporter's Notes (2012)***

The subject matter of this rule is covered by Mass.R.Civ.P. 28, and made applicable under Rule 27A of these rules.

## **Rule 10 : DEPOSITIONS, MANNER OF TAKING [*REPEALED*]**

### ***Reporter's Notes (2012)***

See [Rule 27A](#). Rule 27A of these rules made this obsolete in 2000.

## **Rule 11 : DEPOSITIONS, FILING AND USE [*REPEALED*]**

### ***Reporter's Notes (2012)***

Rule 27A of these rules makes this obsolete; Mass.R.Civ.P. 5(d)(2) contradicts the rule and states that “[u]nless the court...shall otherwise order, the following shall not be presented or accepted for filing: notices of taking depositions, transcripts of depositions, interrogatories....”

## **Rule 12 : DEPOSITIONS OF WITNESSES TO WILL [*REPEALED*]**

### ***Reporter's Notes (2012)***

See discovery under [Rule 27A](#) of these rules in a case for probate of a will.

## **Rule 13 : EXAMINATION OF WITNESSES**

In cases not governed by the Mass.R.Dom.Rel.P., the examination of witnesses shall be governed by Mass.R.Civ.P. 43(g).

### ***Reporter's Notes (2012)***

Mass.R.Dom.Rel.P. 43(g) and Mass.R.Civ.P. 43(g) are identical to the present Rule 13, with the addition of the words “unless the court otherwise permits.”

## **Rule 14 : WRIT OF PROTECTION**

A writ of protection shall issue only upon the application of the person for whom such writ is to be issued, or some person in his behalf, and upon order of the Court, and then only if it is made to appear to the Court, by affidavit and any other evidence that the Court may require, (1) that the application is made in good faith and for the purpose of enabling such person to attend this Court as a party or witness in some specified proceeding pending, (2) if such person is a party, that such proceeding has not been brought collusively to enable him to obtain a writ of protection, and (3) if such person is a witness, that he has not been required to attend as a witness by his own request or procurement, to enable him to obtain a writ of protection.

## **Rule 15 : INTERLOCUTORY HEARINGS**

The court may hear motions and other interlocutory matters in chambers or in open court at such times, and upon such notice as may be otherwise required by law provided the proceedings are recorded as required by [Rule 201](#).

### ***Reporter's Notes (2012)***

Requirement for recording of the proceedings is eliminated.

## **Rule 16 : WILL CONTESTS**

Neither the filing nor hearing of a motion to strike objections is a prerequisite to the filing or hearing of a motion for summary judgment.

### ***Reporter's Notes (2012)***

The MUPC, at G.L. c. 190B, § 1-401(e)-(f), makes the original Rule 16 unnecessary. The remaining language is added in response to *O'Rourke v. Hunter* decided by the SJC on May 31, 2006.

## **Rule 17 : FOREIGN LAW**

In cases not governed by the Mass.R.Dom.Rel.P., the determination of foreign law shall be governed by Mass.R.Civ.P. 44.1. In addition, it shall be the duty of counsel to call to the attention of the Court such authorities or other material relating to the question as they wish the Court to consider.

### ***Reporter's Notes (2012)***

The provisions of Mass.R.Civ.P. 44.1 (which is identical to Mass.R.Dom.Rel.P. 44.1) are added to the existing rule.

## **Rule 18 : APPOINTMENT OF STENOGRAPHERS**

Request for the appointment of a stenographer to take the testimony at a trial for the purpose of reporting the testimony on appeal to the Appeals Court or the Supreme Judicial Court shall be given to the Register in writing not later than forty-eight hours before trial. If trial is cancelled at the request of either party, cost of the stenographer may be assessed by the presiding Judge unless twenty-four hours notice in writing is given to the Register to cancel the request for the stenographer.

### ***Reporter's Notes (2012)***

The rule is updated now that we have an Appeals Court.

## **Rule 19 : REPORT OF EVIDENCE**

Upon an appeal, where the Court under General Laws Chapter 215, Section 18, has appointed a stenographer to take the evidence to be reported to the Appeals Court or the Supreme Judicial Court, the appellant, unless he files with the appeal a disclaimer of any right to reply upon the transcript of the evidence, shall, within sixty days of the date of the appeal file with the Register for the use of the Court and for use in the preparation of the record on appeal one certified transcript of the stenographic notes taken by the stenographer. The time for filing the transcript may be extended by the Court at any time. The transcript shall be subject to the right of the Court, before copies thereof are prepared for the use of the Supreme Judicial Court, to direct that the transcript be submitted to it for such correction as it may direct after hearing.

When decree after rescript has been entered or after dismissal of appeal, the Register shall notify the persons supplying the transcript to call for the same within ten days, and if not so called for the transcript may be destroyed.



***Reporter's Notes (2012)***

The rule is updated now that we have an Appeals Court.

## **Rule 20 : APPOINTMENT AND COMPENSATION OF MASTERS**

In all cases not governed by the Mass.R.Dom.Rel.P., appointment and compensation of masters shall be governed by Mass.R.Civ.P. 53(a) and (c) and SJC Rule 1:07.

***Reporter's Notes (2012)***

Eliminates reference to court appointed auditors, assessors or arbitrators, which no longer exist. The rule is changed to be consistent with the Probate and Family Court Department's SJC Rule 1:07 procedures which permit an attorney to be on the list for Master appointments in up to four divisions at once.

The rule is also changed to reflect the usual practice by which the parties pay a discovery master at an hourly rate that has not been approved by a judge, and the master may re-allocate the payments if one party runs up the costs.

## **Rule 21 : HEARINGS BEFORE MASTERS**

In all cases not governed by the Mass.R.Dom.Rel.P., hearings before masters shall be governed by Mass.R.Civ.P. 53.

***Reporter's Notes (2012)***

Eliminates reference to court appointed auditors, assessors or arbitrators, which no longer exist.

## **Rule 22 : AUDITORS WHOSE FINDINGS OF FACT ARE NOT FINAL [REPEALED]**

***Reporter's Notes (2012)***

There are no longer auditors appointed by the court.

## **Rule 23 : AUDITORS WHOSE FINDINGS OF FACT ARE FINAL [REPEALED]**

***Reporter's Notes (2012)***

There are no longer auditors appointed by the court.

## **Rule 24 : MASTERS**

In all cases not governed by the Mass.R.Dom.Rel.P., proceedings involving masters shall be governed by Mass.R.Civ.P. 53.

***Reporter's Notes (2012)***

Applies Mass.R.Civ.P. 53 and Mass.R.Dom.Rel.P. 53.

## **Rule 25 : RECORDING OF PAPERS**

The Registers of Probate shall record the following documents:

Wills—when allowed

Agreement to Compromise Will

All licenses to Sell Real Estate: (Where no License Issues Record Decree)

Leave to Mortgage—Decree

Sale—Mortgage of Real Estate—Subject to Remainder—Decree

Partition cases—Warrant—Report—Decree only

Affidavits—re: Sales—if Public Auction

Adoption—Decree (To be recorded in Special Adoption Volume)

Change of Name—Decree (On petition to Change Name only)

Trusts Inter Vivos—Unless Recorded in another Registry  
Waiver of Will

It is suggested that docket entries be made in regard to the following:

Total of Schedules in Account  
Divorce and Separate Support Judgments  
Modification Judgments  
Custody Decrees and Judgments  
All Orders for Execution

The Register shall, however, record on request of any person in interest at such person's cost, to be estimated by the Register and paid in advance within a designated time, any paper or instrument not herein required to be recorded relating to any probate proceeding on file in the registry, but not including interrogatories, depositions and similar discovery matters, and papers impounded by order of the court.

***Reporter's Notes (2012)***

Reference to dower or curtesy have been removed. Updates decree to judgment where appropriate.

G.L. c. 215, § 36, appears to require a rule which instructs the Registers which papers to scan. The statute provides that: "The registers shall record in books kept therefor such judgments, decrees, orders and other proceedings in said courts and such instruments, as shall be determined by rules made from time to time under section thirty, by entering the same upon the pages thereof in fair and legible handwriting, printing, typewriting, or by photographic process, or by any combination of any two or more of such methods. They may also direct the recording of any judgments, decrees, orders, instruments and other proceedings in their offices, irrespective of the time when such judgments, decrees, orders, instruments or other proceedings were made, received or held, by means of microphotography or other similar photographic process, and, in such case need not maintain books for such records, but shall provide such filing equipment therefor as they deem proper, the cost of which shall be paid by the county. When such recording is by photographic process, registers shall keep an alphabetical index thereof, or other appropriate description of and reference to the film upon which such recording may be found."

## **Rule 26 : EXHIBITS**

Exhibits which are placed in the custody of the register shall be retained by him for one year after the final trial or hearing at which they were used, unless sooner delivered to the parties or counsel to whom they were respectively presented or introduced. If in doubt as to the party or counsel entitled to delivery, the register may require an agreement of parties or counsel or order of the Court, before delivery. The register may destroy or discard such exhibits, but not earlier than thirty days after notice by him to the party presenting or introducing such exhibits, requesting him to remove them, nor earlier than one year after such trial or hearing.

## **Rule 27 : [REPEALED]**

Repealed effective January 1, 2000.

## **Rule 27A : DEPOSITIONS AND DISCOVERY**

In all cases not governed by the Mass.R.Dom.Rel.P., depositions and discovery shall be governed by Rules 26 through 37 of the Mass.R.Civ.P.

***Reporter's Notes (2000)***

The adoption of rule 27A works a major change in probate discovery practice. Formerly, the discovery rules of the Massachusetts Rules of Civil Procedure were only applicable to probate accounts. Other contested probate proceedings required prior court approval for obtaining discovery which is clearly inconsistent with modern civil discovery rules. Now depositions and discovery in all probate matters shall be governed by the Massachusetts Rules of Civil Procedure.

***Reporter's Notes (2012)***

Adds clarification that the Mass.R.Civ.P. do not override the Mass.R.Dom.Rel.P.

## **Rule 27B : SUMMARY JUDGMENT**

In all cases not governed by the Mass.R.Dom.Rel.P., summary judgment may be granted in accordance with the provisions of Rule 56 of the Mass.R.Civ.P.

### ***Reporter's Notes (2000)***

Rule 27B makes summary judgment under Rule 56 of the Massachusetts Rules of Civil Procedure available in probate proceedings.

### ***Reporter's Notes (2012)***

Reference to Mass.R.Dom.Rel.P. added as summary judgment in those cases is limited to modifications.

## **Rule 27C : SUMMARY JUDGMENT PROCEDURE**

(a) Form of Motions for Summary Judgment and Oppositions Thereto.

(1) Motions. A moving party shall serve with the motion for summary judgment a separate memorandum stating the reasons, including supporting authorities, and why the motion should be granted. Affidavits and other documents setting forth or offering evidence of facts on which the motion is based shall be served with the motion.

(2) Oppositions to Motions. A party opposing a motion for summary judgment may serve a memorandum in opposition. The memorandum in opposition may include a statement of reasons, with supporting authorities, why the motion should not be allowed and may include a request for a hearing. Affidavits and other documents setting forth or offering evidence of facts on which the opposition is based shall be served with the memorandum in opposition.

(3) Reply and Sur-reply Memoranda. A reply memorandum may be filed only with leave of court. Such leave must be sought within 5 days of service of a memorandum in opposition. A reply memorandum shall be limited to addressing matters raised in the opposition that were not and could not reasonably have been addressed in the moving party's initial memorandum. In view of the limitations upon a reply memorandum, a sur-reply is strongly disfavored and may not be filed without leave of court sought within 5 days of service of the reply. To request leave of court, a party shall file and serve a motion setting forth the grounds to support the request and shall have the motion scheduled for hearing. If the motion is allowed granting leave, the requesting party shall serve notice of the grant of leave with its reply memorandum or sur-reply.

(4) Facts Verified by Affidavit. The court need not consider any motion for summary judgment or opposition thereto unless the facts are verified by affidavit, are apparent upon the record, or are agreed to in writing, signed by interested parties or their counsel.

(5) Format and Length. All motions, memoranda of law and other papers, except for exhibits, filed pursuant to this rule shall be filed on 8 ½" by 11" paper and, except for exhibits, shall be typed in no less than 12-point type and double-spaced, provided that the title of the case, footnotes and quotations may be single spaced. The title of each document shall appear on the first page thereof. Unless leave of court has been obtained in advance by motion with notice, all memoranda of law and the oppositions thereto shall not exceed 20 pages, and any reply memoranda shall not exceed 10 pages. Any document package permitted by Paragraph b(2) of this rule shall not be included in the page limit. To request leave of court, a party shall file and serve a motion stating the number of pages the party desires, and why the party's objective cannot be achieved within the applicable page limit. The party shall have the motion scheduled for hearing. Any leave of court obtained by a moving party shall apply to all opposing parties. The moving party shall serve notice of the grant of leave of court with the moving party's memorandum.

(6) Email Addresses. Each party or attorney filing a motion for summary judgment or opposition papers shall include his or her email address on the papers, unless he or she does not have an email address.

(b) Procedure for Serving and Filing Motions for Summary Judgment.

(1) General. All motions for summary judgment and oppositions shall be served on all parties and filed with the Register in accordance with the procedure set forth in this Paragraph (b). Compliance with this Paragraph is compliance with the "reasonable time" provisions of the first sentence of Mass. R. Civ. P. 5(d)(1) or Mass. R. Dom. Rel. P. 5(d)(1).

(2) Service and Filing of Motions for Summary Judgment and Oppositions. The moving party shall serve a copy of the motion and the other documents specified by this rule on every other party. Every opposing party shall serve on the

moving party an original and a copy, and on every other party a copy, of the opposition and the other documents specified by this rule. The opposition to a motion shall be served within (A) 21 days after service of a motion for summary judgment or (B) such additional time as is allowed by statute or order of the court. Upon receipt of the opposition and associated documents, if any, the moving party shall attach the original of the opposition and associated documents to the original motion and associated documents and within 10 days shall file with the Register the combined documents ("the document package"), unless within the same 10-day period the moving party notifies all counsel that the motion has been withdrawn. If leave to file a reply memorandum is allowed, the reply shall be served and filed within 10 days of the allowance, unless the court orders otherwise. If leave to file a reply has been allowed, or, if a motion to strike has been served in response to the opposition to a motion or a cross-motion, the period for filing the document package is extended to the time granted for serving the reply or the opposition to the motion to strike. If the party opposing a summary judgment motion serves an additional statement of material facts under Paragraph (b)(5)(iv), the moving party shall have 21 days to file the document package or to notify all counsel that the motion has been withdrawn. If the moving party does not receive an opposition within 3 business days after expiration of the time permitted for service of an opposition, then the moving party shall file with the Register the motion and other documents initially served on the other parties with an affidavit reciting compliance with this rule and receipt of no opposition in timely fashion, unless the moving party has notified all parties that the motion has been withdrawn. The moving party shall give prompt notice of the filing of the document package to all other parties by serving thereon a copy of a certificate of notice of filing on a separate document. A separate document accompanying the filing shall list the title of each document in the document package.

(3) Cross-Motions. A cross-motion for summary judgment, accompanied by the other documents specified in Paragraph (a)(1) of this rule, shall be served on the moving party with the opposition to the original motion. A party opposing a cross-motion may serve a memorandum in opposition within (A) 21 days after service of a cross-motion for summary judgment or (B) such additional time as is allowed by statute or order of the court.

(4) Motions to Strike.

(i) A motion to strike brought in response to a motion for summary judgment shall be served along with the opposition to the original motion. An opposition to the motion to strike shall be served within 10 days of service of the motion to strike. The motion to strike and the opposition thereto shall be filed with the document package relating to the original motion in the manner specified in Paragraph (b)(2) of this rule.

(ii) A motion to strike brought in response to the opposition to the original motion shall be served within 10 days of service of the opposition. An opposition to the motion to strike shall be served within 10 days of service of the motion to strike. The motion to strike and the opposition thereto shall be filed with the document package relating to the original motion in the manner specified in Paragraph (b)(2) of this rule. Compliance with the times for service contained herein shall extend the time for filing prescribed in Paragraph (b)(2) of this rule.

(iii) A motion to strike brought in response to a cross-motion shall be served along with the opposition to the cross-motion. An opposition to the motion to strike shall be served within 10 days of service of the motion to strike. The motion to strike and the opposition thereto shall be filed with the document package relating to the original motion and the cross-motion in the manner specified in Paragraph (b)(2) of this rule. Compliance with the times for service contained herein shall extend the time for filing prescribed in Paragraph (b)(2) of this rule.

(5) Statement of Material Facts and Response.

(i) A motion for summary judgment shall be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue to be tried, set forth in consecutively numbered paragraphs, with page or paragraph references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents. Failure to include the foregoing statement shall constitute grounds for denial of the motion. In addition to the service specified in Paragraph (b)(2) of this rule, the statement of material facts shall be contemporaneously sent in electronic form by email to all parties against whom summary judgment is sought in order to facilitate the requirements of the following paragraph. The statement of material facts in electronic form shall be sent as an attachment to an email and shall be in Rich Text Format (RTF) unless the parties agree to use another word processing format. The requirement to email the statement of material facts to the opposing party does not alter the date or method of service, which continues to be governed by Mass. R. Civ. P. 5(b) or Mass. R. Dom. Rel. P. 5(b). The requirement for transmission by email of the statement of material facts in electronic form shall be excused if (A) the moving or any opposing party is appearing pro se, (B) the attorney for the moving party certifies in an affidavit that he or she does not have access to email, or (C) the attorney for the moving party certifies in an affidavit that an opposing party's attorney has no email address or has not disclosed his or her email address.

(ii) An opposition to a motion for summary judgment shall include a response to the moving party's statement of facts as to which the moving party claims there is no genuine issue to be tried. To permit the court to have in hand a single document containing the parties' positions as to material facts in easily comprehensible form, in preparing this response the opposing party shall reprint the moving party's statement of material facts and shall set forth a response to each directly below the appropriate numbered paragraph. Where the obligation to send the statement of material facts in electronic form has been excused, the response to the statement of material facts may be in a separate document. For purposes of summary judgment, the moving party's statement of a material fact shall be deemed to have been admitted unless controverted as set forth in this paragraph.

(iii) Neither the statement of material facts as to which there is no genuine issue to be tried nor the response thereto shall be subject to the 20-page limitation in Paragraph (a)(5) of this rule.

(iv) An opposing party, with the response to the moving party's statement of facts, may assert an additional statement of material facts with respect to the claims on which the moving party seeks summary judgment, each to be supported with page or paragraph references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents. Such an additional statement shall be a continuation of the opposing party's response described in Paragraph (b)(5)(ii), with an appropriate heading, and shall not be a separate document. In addition to the service specified in Paragraph (b)(2) of this rule, where the party opposing summary judgment includes such an additional statement in its response, the response, including the additional statement, also shall be sent in electronic form by email to the moving party, unless excused as provided in Paragraph (b)(5)(I). The moving party shall respond to the opposing party's additional statement of material facts within the time prescribed by Paragraph (b)(2)(A), resulting in a single document for the court's consideration, unless the obligation to send the additional statement of material facts in electronic form has been excused. For purposes of summary judgment, the opposing party's additional statement of a material fact shall be deemed to have been admitted unless controverted as set forth in this paragraph.

(v) Cross-motions for summary judgment and oppositions thereto shall comply with the requirements of Paragraph (b)(5), with the result that there shall be a single consolidated document containing the respective statements of material facts and responses thereto, unless excused as provided in Paragraph (b)(5)(I).

(vi) All exhibits referred to in a motion, a cross-motion, or opposition thereto shall be filed as a joint appendix, which shall include an index of the exhibits. The initial moving party, with the cooperation of each opposing party, shall be responsible for assembling the joint appendix and the index. Unless all the pages of the joint appendix are consecutively numbered, each exhibit shall be separated by an off-set tab divider. Where such dividers are used, the exhibits in the joint appendix shall be numbered consecutively. The moving party shall serve a copy of its exhibits to each opposing party with the motion. If a party opposing the initial motion designates additional exhibits, the additional exhibits shall begin with the next consecutive designation following the last designation by the initial moving party. Where an opposing party relies upon any evidence contained in the exhibits supporting the motion for summary judgment, the opposing party in its memorandum shall cite to that evidence using the form of designation of the moving party. Where the opposing party relies upon evidence not contained in such exhibits, the opposing party shall treat such additional evidence as new exhibits. Such new exhibits, as well as an index of the new exhibits, shall be served with the opposition. The initial moving party shall certify that the joint appendix includes all exhibits served upon the initial moving party with the opposition to the summary judgment motion. If the initial moving party does not receive with the opposition an exhibit designated by the opposing party, then the moving party shall file with the Register the joint appendix of exhibits without that designated exhibit, with the certification required by this rule. The burden will then rest with the opposing party to move to file any designated exhibit not timely submitted.

(vii) The initial moving party, upon filing a motion for summary judgment, shall serve upon the opposing parties, in paper and electronic form, unless electronic form is excused, the consolidated statement of material facts and responses filed with the Register, unless the response is filed as a separate document in accordance with this rule. The moving party shall also serve upon the opposing parties the joint appendix of exhibits, including the index of the exhibits, filed with the Register, unless the parties otherwise agree. If the joint appendix of exhibits, including the index, is in electronic form, an electronic copy shall also be sent, unless the parties otherwise agree.

(6) Sanctions for Noncompliance. The court need not consider any motion for summary judgment or opposition that fails to comply with the requirements of this rule.

(7) Applicability. This rule applies to all actions in the Probate and Family Court in which motions for summary judgment are permitted.

(8) Hearing. It is the responsibility of the moving party to obtain a hearing date for the motion for summary judgment and any cross motions.

**Reporter's Notes (2009)**

The adoption of this new Rule specifies the mandatory format to be used for supporting documents in summary judgment proceedings in the Probate and Family Court.

**Reporter's Notes (2012)**

The language of Rule 27C, for summary judgment motions, is now consistent with the most recent version of Superior Court Rule 9A.

## **Rule 28 : SIGNATURES TO PLEADINGS**

In all cases not governed by the Mass.R.Dom.Rel.P., any matter that is not required to be signed under oath or under penalties of perjury by the petitioner or an interested party may be signed by counsel of record, and Mass.R.Civ.P. 11(a) shall apply to such signings.

Returns of service and military affidavits may be signed by counsel of record, and Mass.R.Civ.P. 11(a) shall apply to such signings.

**Reporter's Notes (2012)**

Makes Rule 11 certification applicable. Mass.R.Civ.P. 11 is worded differently from, but essentially makes the same provision as the MUPC at G.L. c. 190B, § 1-310.

## **Rule 28A : CERTIFICATES OF SERVICE**

The last page of every paper served in accordance with Mass.R.Civ.P. 5(a) or Mass.R.Dom.Rel.P. 5(a) shall contain a brief statement showing the date on which and manner in which service of the paper was made on each other party, with the name and address of each person served. The statement may be in the following form:

I hereby certify under the penalties of perjury that a true copy of the above document was served upon the following people at the following addresses by mail (by hand) on (date): (Names and addresses), (Signature).

**Reporter's Notes (2012)**

Although most attorneys include a certificate of service with each motion or other paper served, neither the Mass.R.Civ.P. nor the Mass.R.Dom.Rel.P. require one unless service is challenged. This rule is similar to Superior Court Rule 9B and so should already be familiar to most attorneys.

## **Rule 29 : SERVICE AND GIVING OF NOTICE**

In all cases not governed by the Mass.R.Dom.Rel.P., time for service and giving of notice shall be governed by Mass.R.Civ.P. 5 and 6. Wherever the word "complaint" appears in said rule, it shall also mean, where applicable, "petition."

**Reporter's Notes (2012)**

The subject of this rule is covered in Mass.R.Civ.P. 5 and 6. They eliminate the need for a written certificate of service or affidavit of notice unless service or notice is questioned. But see proposed new [Rule 28A](#) which will require a certificate of service.

## **Rule 29A : PROBATE ACCOUNTS [REPEALED]**

**Reporter's Notes (2012)**

This rule is repealed with changes recommended by the MUPC working group and renumbered as [Rule 72A](#).

## **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 29C : UNIFORM FORMS**

The Chief Justice of the Probate and Family Court shall prescribe and promulgate uniform probate and domestic relations forms, and shall designate the specifications under which such forms may be printed or computer generated.

### ***Reporter's Notes (2012)***

The language of the rule is updated.

## **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.

## **Rule 30 : DISMISSAL OF ABANDONED APPEALS**

If the appellant has failed to (i) file the transcript of the proceedings or the designated portions thereof or the statement of certification within the time required by Rule 8(b)(3) and Rule 9(c) of the Massachusetts Rules of Appellate Procedure (unless such time shall previously have been enlarged as permitted by Rule 10(c)); (ii) docket the appeal within the time required by Rule 10(a)(1) of the Massachusetts Rules of Appellate Procedure (unless such time shall previously have been enlarged or the late docketing allowed as permitted by Rule 10(a)(3)); or (iii) failed to file the transcript of the proceedings or the designated portion thereof within six (6) months of filing the statement of certification, the Register shall send written notice by first class mail that the appeal will be dismissed for lack of prosecution to the attorney of record for each party, or to the party at his last known address if he is not represented by an attorney. A copy of this rule shall accompany said written notice. The sending of every notice required by this rule shall be noted on the docket.

Fourteen (14) days after the date of such notice, the Register shall forthwith dismiss such appeal for lack of prosecution and shall note said dismissal on the docket, unless the Register receives a) a motion to enlarge to a date certain set forth therein the time for complying with this rule and the requirements of said Rule 8(b)(3) and Rule 9(c) and/or Rule 10(a)(1) or (3) which has been marked for hearing and b) an affidavit of the movant which shall set forth all the facts which such movant wishes to have considered by the Court which will act on such motion in accordance with the provisions of this rule and Rule 10(c).

### ***Reporter's Notes (2000)***

Rule 30 was amended to facilitate the dismissal of abandoned appeals. Pursuant to Rule 9(c)(2) of the Massachusetts Rules of Appellate Procedure, the appellant in a civil case shall deliver to the clerk of the lower court either a transcript of those portions of the transcript of the lower court proceedings which the appellant deems necessary for determination of the appeal or a signed statement certifying that the appellant has ordered such portions from the court reporter. Upon receiving the transcript, the appellant is to deliver it forthwith to the clerk of the lower court.

Under the prior version of rule 30, the appeal could not be dismissed for lack of prosecution if the appellant filed a signed statement certifying that they have ordered the transcript, despite the fact that the transcript is never produced. With the amended version of rule 30, if the appellant fails to file the transcript within six (6) months of filing the statement of certification, the appeal shall be dismissed.

Another problem with the prior version of the rule is that it allowed the appellant to stop the dismissal by filing a motion to enlarge. However, the rule required no further action on the motion. The amendment to rule 30 requires that the motion to enlarge be marked for hearing.

Rule 30 was also amended to reference Massachusetts Rule of Appellate Procedure 8(b)(3) in addition to rule 9(c) in order to include electronically recorded proceedings.

## **Rule 31 : PRE-TRIAL PROCEDURE**

In all cases not governed by the Mass.R.Dom.Rel.P., pre-trial procedure shall be governed by Mass.R.Civ.P. 16.

### ***Reporter's Notes (2012)***

Establishes a rule calling for pre-trial conferences in probate and other matters commenced by petition. Pre-trial conferences are now required by the standing order establishing Time Standards.

## **Rules 32-39: Not Used**

## **Rule 40 : ASSIGNMENT OF CASES FOR TRIAL: CONTINUANCES**

In all cases not governed by the Mass.R.Dom.Rel.P., assignment of cases for trial and granting of continuances shall be governed by Mass.R.Civ.P. 40.

### ***Reporter's Notes (2012)***

Establishes a continuance rule for probate cases. Mass.R.Civ.P. 40 and Mass.R.Dom.Rel.P. 40 are identical.



## **Rules 41-42: Not Used**

### **Rule 43 : EVIDENCE**

In all cases not governed by the Mass.R.Dom.Rel.P., taking of evidence shall be governed by Mass.R.Civ.P. 43. A judge may, in the judge's discretion, take evidence at a place other than a courthouse.

#### ***Reporter's Notes (2012)***

Cases heard in hospitals, for example, require the exception, which also appears in Mass.R.Dom.Rel.P. 43.

### **Rule 44 : PROOF OF OFFICIAL RECORDS**

In all cases not governed by the Mass.R.Dom.Rel.P., proof of official records shall be governed by Mass.R.Civ.P. 44.

#### ***Reporter's Notes (2012)***

Mass.R.Civ.P. 44 and Mass.R.Dom.Rel.P. 44 are identical.

### **Rule 45 : SUBPOENA**

In all cases not governed by the Mass.R.Dom.Rel.P., subpoenas shall be governed by Mass.R.Civ.P. 45.

#### ***Reporter's Notes (2012)***

Mass.R.Civ.P. 45 and Mass.R.Dom.Rel.P. 45 are identical.

### **Rule 46 : EXCEPTIONS UNNECESSARY**

In all cases not governed by the Mass.R.Dom.Rel.P., exceptions shall be unnecessary as provided in Mass.R.Civ.P. 46.

#### ***Reporter's Notes (2012)***

Mass.R.Civ.P. 46 and Mass.R.Dom.Rel.P. 46 are identical except that Mass.R.Dom.Rel.P. 46 applies only when a stenographer is present or the proceedings are recorded.

## **Rules 47-51: Not Used**

### **Rule 52 : FINDINGS BY THE COURT**

In all cases not governed by the Mass.R.Civ.P.,

**(a) Effect.** Except in actions to which G.L. c. 208, § 34, applies, the court shall upon written motion made prior to final argument, providing either party or the court has requested appointment of a stenographer pursuant to [Rule 18](#) or the trial was recorded electronically, find the facts specially and state separately its conclusions of law thereon. Where the court enters judgment pursuant to G.L. c. 208, § 34 it shall issue findings of fact and conclusions of law thereon within sixty (60) days of the filing of a notice of appeal. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the Trial Court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions except as provided in Mass.R.Civ.P. 41(b)(2).

**(b) Amendment.** Upon motion of a party made not later than 10 days after entry of its findings the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment.

**(c) Transcript of Proceedings Upon Request for Special Findings.** Upon a written motion under paragraph (a) of this rule, the party making such request shall order from the stenographer and file with the court the original of a transcript of such parts of the proceedings not already on file as the court may determine material to any facts essential to a determination of the case. At the time of ordering, a party shall make satisfactory arrangements with the stenographer for payment of the cost of the transcript.

***Reporter's Notes (2012)***

The amended rule makes Mass.R.Dom.Rel.P. 52 applicable in cases not governed by Mass.R.Civ.P.

## **Rules 53-58: Not Used**

### **Rule 59 : NEW TRIALS: AMENDMENT OF JUDGMENTS**

In all cases not governed by the Mass.R.Dom.Rel.P., new trials and amendment of judgments shall be governed by Mass.R.Civ.P. 59.

***Reporter's Notes – 2012***

Mass.R.Civ.P. 59 has language about cases tried to a jury and about damages which is not in Mass.R.Dom.Rel.P. 59. The language will do no harm.

### **Rule 60 : RELIEF FROM JUDGMENT OR ORDER**

In all cases not governed by the Mass.R.Dom.Rel.P., motions for relief from judgment or order shall be governed by Mass.R.Civ.P. 60.

***Reporter's Notes (2012)***

Mass.R.Civ.P. 60 and Mass.R.Dom.Rel.P. 60 are identical.

### **Rule 61 : HARMLESS ERROR**

In all cases not governed by the Mass.R.Dom.Rel.P., harmless error shall be governed by Mass.R.Civ.P. 61.

***Reporter's Notes (2012)***

Mass.R.Civ.P. 61 and Mass.R.Dom.Rel.P. 61 are identical.

## **Rules 62-69: Not Used**

### **Rule 70 : MUPC MAGISTRATES; SCOPE OF DELEGABLE DUTIES; EFFECT OF DECREE AND ORDERS ENTERED IN FORMAL PROCEEDINGS**

This rule shall govern the designation and duties of magistrates pursuant to the provisions of G. L. c. 190B.

**a) Magistrates' Designation.** The first justice of each division of the Probate and Family Court may, with the approval of the Chief Justice of the Probate and Family Court, designate one or more qualified officials of the court to act as magistrate pursuant to G. L. c. 190B, § 1-307, by a written order filed and recorded in the registry of the court.

A register of the Probate and Family Court shall be designated as magistrate pursuant to G. L. c. 190B, § 1-307, by the first justice of the division in which he or she serves, upon his or her written request to the first justice, and with the approval of the Chief Justice of the Probate and Family Court.

A first assistant register, assistant register or deputy assistant register, may be designated as magistrate, pursuant to G. L. c. 190B, § 1-307, by the first justice of the division in which he or she serves, subject to specific authorization by the register, and with the approval of the Chief Justice of the Probate and Family Court.

An official designated as magistrate by the first justice may not delegate the power, responsibilities or duties without the prior approval of the first justice.

**b) Magistrates' Removal.** An individual designated as magistrate pursuant to section (a) may be removed from that office by the first justice of the division, with the approval of the Chief Justice of the Probate and Family Court, by a written order revoking the order of designation filed and recorded in the registry of the court.

**c) Scope of Delegable Duties.** A magistrate designated pursuant to section (a) may perform the acts and issue orders as specified in G. L. c. 190B, including, but not limited to, informal proceedings and the following administrative duties, all as exercised under the supervision of the first justice of the division where he or she serves, unless otherwise ordered by the court:

1. To approve any bond of a personal representative in an informal proceeding;
2. To approve the bond of a guardian or conservator;
3. To admit a valid and unrevoked will to formal probate under § 3-409 and determine heirs, if uncontested or assented to in writing, or if there is no objection to such admission or determination by any interested person;
4. To appoint a personal representative with priority for appointment in an unsupervised administration, determine heirs and approve any bond of the personal representative in a formal proceeding, if uncontested or assented to in writing, or if there is no objection to such appointment by any interested person;
5. To enter orders and decrees on accounts, including a decree and order for complete settlement of the estate in formal proceedings, if uncontested or assented to in writing, or if there is no objection to the entering of such order by any interested person;
6. To perform such other acts as the court may authorize as necessary or incidental to the conduct of informal and uncontested formal proceedings.

**d) Effect of Decree and Orders Entered in Formal Proceedings.** A magistrate acting on an unopposed petition in a formal proceeding must indicate that the action was taken by the magistrate and not by a justice. Any interested person aggrieved by the action of a magistrate in a formal proceeding may be heard by a justice provided that a motion for a hearing is filed within five days of the date of the entry of the formal decree.

#### ***Reporter's Notes (2012)***

This rule is adopted as a result of the enactment of the Massachusetts Uniform Probate Code, G. L. c. 190B. Sections 62B and 62C of Chapter 221 of the General Laws, inserted by St.1978, c. 478, § 250, established the office of magistrate in all departments of the Trial Court and gave to that official certain quasi-judicial powers. This rule is not intended to expand or contract the powers which such statutory Trial Court magistrates may exercise in the Probate and Family Court, but rather to create the new and separate position of MUPC magistrate in that court.

Section (d) of this Rule, Effect of Decree and Orders Entered in Formal Proceedings, is intended to clarify the difference between an order entered by a magistrate in an informal proceeding and a decree or order entered by a magistrate in an unopposed formal proceeding under the Code. The denial of a petition for informal probate or appointment by a magistrate is not an adjudication and cannot be appealed. Any person aggrieved by the action of a magistrate in an informal proceeding may initiate a formal proceeding, within the time limits, so that the matter may be brought before a justice following the procedure for contested formal petitions.

## **Rule 71: Not Used**

## **Rule 72 : ALLOWANCE OF ACCOUNTS**

**(a) Scope and Applicability of Rule.** This rule shall govern the procedure for the allowance of all accounts filed in the Probate and Family Court except those for which allowance is sought pursuant to G. L. c. 215, § 6.

**(b) Accounts With Written Assent.** If a fiduciary files his or her interim or final account with: (1) the proper petition; (2) the filing fee(s); (3) the written assent or waiver of every person interested in the account; and (4) all tax receipts or tax waivers required by law, the court or magistrate may allow the account without further notice. If any interested person is, as defined in G.L. c. 190B, an incapacitated person, a protected person or a minor, then the person's conservator, or if none, the person's guardian, shall sign any assent, unless the account is the conservator's own account.

**(c) Accounts Without Written Assent.**

**(1) Notice: Form.** If the interim or final account of a fiduciary is filed for allowance with the proper petition, filing fee(s) and all tax receipts or tax waivers required by law, but without the written assent or waiver 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 the procedure set forth in G.L. c. 190B, § 1-401 on all interested persons, including the Veterans Administration, Department of Developmental Services or Attorney General, if interested. An account is deemed to be filed for allowance when it has been filed with the court along with the proper petition, filing fee(s) and a citation, as described below, has been issued by the court. The notice, in the form of a citation issued by the court, shall specify a return date as set forth in [Rule 6](#) of the Supplemental Rules of the Probate and Family Court and shall provide that any person having an interest affected by the account:

(A) may file an appearance and objection to oppose the account in accordance with the procedure set forth in G.L. c. 190B, § 1-401;

(B) may, except in a proceeding to allow an account of a common trust fund, obtain, at no cost to himself or herself, a copy of the account by sending a written request, by certified or registered mail, to the petitioner, accountant (fiduciary) or counsel. In a proceeding for the allowance of an account of a common trust fund, the notice, in the form of a citation issued by the court, shall provide that any person so requesting may obtain without cost to himself or herself 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.

**(2) Guardian Ad Litem.** If the court appoints a guardian ad litem to represent an individual or class interested in the account, the petitioner or accountant shall serve forthwith upon the guardian ad litem a copy of the petition, account and the citation. Such copies shall be without cost to the guardian ad litem. The guardian ad litem shall file his or her report within sixty days following the return date, or as otherwise allowed by the court, and shall serve a copy of the report upon the petitioner, accountant, and any person interested who has filed an appearance in the proceeding. The court may, upon ex parte application or such notice as the court may require, extend the time for the filing such report.

**(3) Objection: Effect.** If, at any time, there shall have been filed either: (A) an appearance and objection pursuant to par. (c)(1)(A) of this rule; or (B) a guardian ad litem's report containing an objection, the account shall thereafter be regarded as contested and further proceedings shall be governed, in addition to this rule, by the Supplemental Rules of the Probate and Family Court and any other rule as provided by law.

**(4) Objection: Withdrawal.** Any objection 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, or counsel, and served on any person (including, as necessary, the guardian ad litem) whose appearance is then on file. The conservator or if there is no conservator, the guardian of an interested person shall sign any withdrawal for the ward, incapacitated or protected person.

**(5) Objection: Striking.** Objections may be stricken by the court, if appropriate.

**(6) Contested Accounts: Hearings.** The petitioner, accountant, any person whose appearance and objection is then on file, or the guardian ad litem may request that the court assign a hearing date or the court may, on its own motion, assign a hearing date.

A Decree and Order entered after hearing shall be subject to the provisions of [Rule 60](#) of the Supplemental Rules of the Probate and Family Court (except that the standard governing any relief under [Rule 60](#)(b) shall be fraud or manifest error and [Rule 60](#)(b)(3) shall not apply).

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

(A) It has been filed pursuant to par. (b) of this rule; or

(B) After 10:00 a.m. on the return day (i) either no appearance and objection is filed to oppose the proceeding or any appearance and objection previously filed shall have been withdrawn or stricken; and (ii) the report of the guardian ad litem, if any, is on file and contains no objection.

A Decree and Order on any uncontested account may be entered forthwith subject only to the provisions of [Rule 60](#) of the Supplemental Rules of the Probate and Family Court (except that the standard governing any relief under [Rule 60\(b\)](#) shall be fraud or manifest error and Rule 60(b)(3) shall not apply).

**Reporter's Notes (2012)**

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. 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**

Accounts of conservators or trustees with accounting periods terminating after January 1, 1974, shall include real estate.

A personal representative, executor, administrator, conservator or trustee, with respect to assets with readily ascertainable market value shall include in his or her account, if the accounting period terminates after January 2, 1973, such market value as of the end of the accounting period or as of such date as may be chosen by the accountant prior to and not more than six months before the end of the accounting period. Market value shall be in addition to book or accounting values. Market values may be furnished by double column on schedule C or by separate schedule. For assets without readily ascertainable market values, such as real estate, patent and copyright interests, oil well interests, close corporation stock and the like, the basis of the valuation used shall be stated (e.g., appraisal on a specified date, assessed value, tax value, book value, nominal value, etc.). Such appraisal may be provided by separate schedule or in juxtaposition to book values of assets held at the end of the accounting period.

Each item or entry within the schedules of accounts shall be numbered sequentially within the schedule.

**Reporter's Notes (2012)**

Rule 29A is changed to Rule 72A to keep the account related rules together. "Content" is added to distinguish the rule from [Rule 72](#) which deals with allowance of accounts.

## **Rules 73-89: Not Used**

## **Rule 90 : RESIGNATION OF PERSONAL REPRESENTATIVE**

A justice of the Probate and Family Court may accept the resignation of a personal representative when it appears proper to do so.

**Reporter's Notes (2012)**

This rule will replace G.L. c. 195, § 13, which was repealed.

## **Rules 91-100: Not Used**

## **Rule 101 : INTERLOCUTORY HEARINGS [REPEALED]**

**Reporter's Notes (2012)**

See [Rules 15](#) and [29](#). The first paragraph of this rule is identical to [Rule 15](#), so it does not need to be repeated here. The second paragraph of this rule has contradicted Mass.R.Dom.Rel.P. 6(c) since that rule was amended in 1997 to require 7 days notice (plus 3 for mailing), unless the motion is brought *ex parte*.

## **Rule 102 : FURTHER NOTICE [REPEALED]**

**Reporter's Notes (2012)**

Rule 8 of these rules is identical to this rule.

## **Rule 103 : WRIT OF PROTECTION [*REPEALED*]**

**Reporter's Notes (2012)**

[Rule 14](#) of these rules is identical to this rule.

## **Rules 104-200: Not Used**

## **Rule 201 : RECORDING OF COURT PROCEEDINGS**

(1) In all Probate and Family Court divisions, all proceedings shall be held in a courtroom and recorded electronically, subject to the availability and functioning of appropriate recording devices. Said recording shall take place whether or not a court stenographer is present in the courtroom. Uncontested adoption hearings may be held in the lobby and need not be recorded. Proceedings, if recorded, may be held in a hospital or other location when a litigant is, for health reasons, unable to come to the courthouse or in other exigent circumstances.

(2) A copy of the original recording, or any portion thereof, may be requested by counsel or by litigants or by an agency party to the proceedings within one year of the date the proceedings are recorded, provided that failure to request said copy seasonably shall not be grounds for the delay of subsequent proceedings. Upon motion for good cause shown, the court may extend the time period within which a copy may be requested. The copy shall consist of a cassette or disk copy of the original recording, or such portion thereof as is requested, which copy shall be produced pursuant to such process and procedure as is prescribed by the Chief Justice for Administration and Management of the Trial Court and the Chief Justice of the Probate and Family Court, and which shall be playable on standard cassette or disk devices designed for home or office use. Said request for a cassette or disk copy of an original court proceeding shall be filed with the Register of the Probate and Family Court in the division in which the case was heard. Such request shall be on a form prescribed by the Chief Justice of the Probate and Family Court. Any person making such a request shall, in advance, notify all parties of the intention to make said request, to the end that multiple requests shall be made simultaneously wherever possible. The cost of said cassette or disk copy, which shall be prepaid, shall be determined by the Chief Administrative Justice pursuant to G.L. c. 262, § 4B, plus postage, except that there shall be no cost for a cassette or disk copy produced for the use of the court. Sections 27A through 27G of Chapter 261 of the General Laws shall be deemed applicable to a request by or on behalf of an allegedly indigent party and the cost of a cassette or disk copy shall be deemed an "extra cost" as defined in said section 27A.

(3) A cassette or disk copy shall, upon request as aforesaid, be made available to any party to a proceeding so recorded or to his counsel of record. A cassette or disk copy may be made available to any other interested person or interested agency in the discretion of the judge who presided over the proceedings. After the submission by said person or agency of a request in writing setting forth the basis of the request and the specific use to be made of the cassette or disk copy, said request is to be acted upon promptly, and any denial thereof or undue delay in obtaining a copy may be referred to the Chief Justice of the Probate and Family Court.

(4) A cassette or disk shall not be erased or tampered with nor its labels removed or defaced as long as the matter recorded is pending in any court or is subject to or the subject of appellate review. A cassette or disk which is thereafter erased shall be erased in its entirety. No cassette or disk shall be erased until a period of three years has expired from the date of the original recording. Duplication of a cassette or disk is expressly prohibited except where specifically authorized by the presiding justice of a Probate and Family Court, the Chief Justice of the Probate and Family Court, or the Chief Justice for Administration and Management of the Trial Court, as the case may be.

(5) A copy of a cassette or disk or a copy of any portion of the material contained in a cassette or disk shall not be used for a commercial purpose, for the purpose of public or private entertainment or amusement or for any other purpose detrimental to the administration of justice. A cassette or disk copy of an original recording of a proceeding from which the public was excluded shall be deemed confidential and subject to such additional restrictions with regard to its use as may be prescribed by the judge who presided over the session so recorded.

(6) All persons receiving a cassette or disk copy shall comply with the provisions of sections (4), (5) and (6) of this rule and shall be subject to the imposition of appropriate sanctions for non-compliance, including contempt proceedings. It shall be the responsibility of a person requesting a copy of a cassette or disk from the register of probate to take all necessary and reasonable precautions to prevent any incident of non-compliance with said

sections, including but not necessarily limited to notifying persons who are permitted to use said copy of the provisions of said sections.

***Reporter's Notes (1981)***

Supplemental Rule 201 was reserved when the Massachusetts Rules of Domestic Relations Procedure and the Supplemental Rules of the Probate and Family Court Department were promulgated in 1975.

***Reporter's Notes (2012)***

Adds references to disks as new recording systems make copies to disks, not to cassettes.

Eliminates option of lobby conferences or other proceedings outside of a courtroom absent exigent circumstances. Eliminates the subtitle "Under the Control of the Court." That line in that position did not add anything to the rule.

## **Rule 202 : APPOINTMENT OF STENOGRAPHERS [*REPEALED*]**

***Reporter's Notes (2012)***

[Rule 18](#) of these rules is identical to this rule.

## **Rule 203 : EXHIBITS [*REPEALED*]**

***Reporter's Notes (2012)***

[Rule 26](#) of these rules is identical to this rule.

## **Rule 204 : PRINTING OF FORMS [*REPEALED*]**

***Reporter's Notes (2012)***

[Rule 29C](#) of these rules is identical to this rule.

## **Rules 205-400: Not Used**

## **Rule 401 : FINANCIAL STATEMENT**

(a) Except as otherwise ordered by the court, each party to a divorce or separate support action or any other domestic relations action where financial relief is requested, shall file with the court and shall deliver to the other party within 45 days from the date of the service of the summons, a complete and accurate financial statement showing, insofar as possible, the assets, liabilities and current income and expenses of both parties and children involved in the case. The form of the financial statement which each party must complete is dependent upon his or her income. Except as otherwise ordered by the court, a party whose income equals or exceeds \$75,000.00 must complete the long form financial statement. A party whose income is less than \$75,000.00 must complete the short form financial statement.

(b) In the event a hearing on a motion for temporary orders, or a pretrial conference is scheduled by either party prior to the expiration of the 45 day period, financial statements by both parties shall be filed with the court and exchanged between the parties no later than two (2) business days prior to the hearing or the conference without the necessity of a request for such statements.

(c) The form of the financial statement shall be determined from time to time by the Probate and Family Court judges of the Commonwealth. The judges of the Probate and Family Court may require from time to time during the pendency of a separate support or divorce action, or in any action involving a financial order, a new financial statement containing current information as to the assets, liabilities, current income and expenses of the parties and any children involved in the litigation.

(d) The financial statement or new financial statement, as the case may be, shall be impounded or kept separate from other papers in the case and shall not be available for public inspection, but shall be available to the court, the attorneys (whose appearances are entered in the case), the parties to the case, the registers, assistant registers, members of the Probation Department of the probate and family courts and to employees of the Massachusetts Department of Revenue, where necessary.

(e) All financial statements shall be signed by the party filing the same and shall be subject to the penalties of perjury.

(f) Either party in a contested matter may request the other party, upon ten (10) days notice, in the form of a separate request titled "Request for a Financial Statement" to furnish a signed, current financial statement to the court with a copy of the financial statement to the requesting party. No further request may be made within ninety (90) days of a prior request except by order of the court.

(g) All sanctions available to a party under Rule 37 of the Massachusetts Rules of Domestic Relations Procedure and any other sanction that the court may deem appropriate shall be available to compel compliance with this rule and such sanctions shall be ordered by the court except for good cause shown.

***Reporter's Notes (1997)***

The amended rule 401 requires financial statements to be exchanged automatically between the parties within forty-five (45) days from the date of the service of the summons or when the matter first comes before the court. The amended rule also provides that in the event a hearing or conference is scheduled by either party before the expiration of the forty-five (45) day period, then both parties must file and exchange financial statements no later than two (2) business days prior to the hearing or conference.

The forms of the financial statement which each party must complete is now dependent upon each party's level of income. If a party's income is less than \$75,000.00 they would complete the short form financial statement. If the party's income equals or exceeds \$75,000.00 they would complete the long form financial statement. The income is based on each individual's income, and not the combined income of the parties.

The amendment to Rule 401 also requires that requests for financial statements be made through a separate pleading entitled "Request for a Financial Statement". The time allowed to produce a financial statement on demand was expanded from 48 hours to ten (10) days. Sanctions for failure to comply with the rule are now mandatory, except for good cause shown.

***Reporter's Notes (2012)***

Added limitation to "domestic relations" actions to make it clear the requirement is not automatic in equity or probate actions in which financial relief is requested. The name of the court is updated.

## **Rule 402 : ASSIGNMENT OF COUNSEL**

If any party appears in court in a matter in which the laws of the Commonwealth or the rules of the Supreme Judicial Court establish a right to be represented by counsel, the judge shall follow the procedures established in G.L. c. 211D and in Supreme Judicial Court Rules 1:07 and 3:10.

***Reporter's Notes (2012)***

Adds reference to SJC Rule 1:07.

## **Rule 403 : WAIVER OF FEES, EXPENSES AND OTHER PROVISIONS FOR INDIGENT LITIGANTS [*REPEALED*]**

***Reporter's Notes (2012)***

See G.L. c. 261, § 27A *et seq.* The determination of indigency for purposes of state payment of costs is established in G.L. c. 261, §§ 27A-G. It happens in the Registry and only comes to a judge if the indigent status is not granted in the Registry.

## **Rule 404 : CHARGES OF ADULTERY OR CRIMINAL ACTS**

Whenever adultery, any specific criminal act with a third person or allegations derogatory to the character or reputation of a third person are charged in a complaint, cross-complaint, answer, statement of objections, or other pleading, it shall be stated therein that the name of the person, hereinafter called the co-defendant, charged with committing adultery with one of the parties, is known or is not known to the pleader, but such person shall not be named.

If the name of the co-defendant is stated as known, the party making such allegation, upon the filing of such pleading, shall deliver to the register a motion to amend the pleading by inserting the name of the co-defendant, and his residence, if known, and he shall also deliver to the register at least one affidavit, other than those of counsel, or a



duly certified court record, with an affidavit of identity, supporting the allegation, or he shall present such motion to a judge at an ex parte hearing, as provided by statute.

The motion with the affidavit or affidavits and certificates shall be sealed up by the register until presented by him or by counsel to a judge, who shall inspect the same and hold such ex parte hearing, if any, as he may deem proper, and shall grant the motion if he finds probable cause has been shown that the allegation is true.

If the motion is allowed, it shall be filed and an entry shall be made on the docket, AMotion to insert name of co-defendant allowed,@ and the affidavit or affidavits and certificates shall be sealed and returned to the register to be held for the inspection of parties, including the co-defendant and counsel of record, but for no others except by order of the court.

If the motion is denied, it shall be sealed by the judge with the affidavit or affidavits and certificates and returned to the register, to be held subject to the order of the court, and the register shall enter upon the docket, AMotion to insert name of co-defendant denied.@

If the co-defendant is unknown at the time of filing the complaint or other pleading, but becomes known while the matter is pending, a motion shall thereupon be delivered to the register and further proceedings had as hereinbefore provided.

This rule shall be applicable to separate support and divorce proceedings.

## **Rule 405 : NOTICE TO PERSON CHARGED WITH ADULTERY OR CRIMINAL ACT**

When a complaint, cross-complaint, answer, or statement of objections to an absolute judgment charges adultery, any criminal act with a third person or allegations derogatory to the character or reputation of a third person, a notice of such complaint, cross-complaint, answer or statement of objections shall be mailed by registered or certified mail, return receipt requested, to such person at his last known address at least fourteen (14) days before the answer is due on such complaint, or forthwith upon the filing of such answer or cross-complaint or statement of objections, or forthwith upon the amendment of the complaint so as to name such persons after the issuance of process. Such service by mailing shall be proved by affidavit containing a particular statement thereof, accompanied if practicable by the return receipt showing receipt of the copy sent by registered or certified mail. Such person shall be entitled to appear within twenty (20) days after such return day or after the day of mailing such copy.

### ***Reporter's Notes (2012)***

The change replaces the obsolete reference to a divorce "return day of process" with reference to when the answer is due.

## **Rule 406 : ALLOWANCE FOR FEES, COSTS, AND EXPENSES**

An application by a party for an allowance from the other party to prosecute or defend a complaint shall contain a statement that the party intends in good faith to defend or prosecute such complaint, and shall be accompanied by a certificate of the party's attorney that the attorney believes such statement to be true. The judge shall review the financial statements of the parties and other relevant evidence, including affidavits, and shall order an allowance, if appropriate, for counsel fees and necessary expenses. If such allowance is granted, it shall be paid as the court may direct.

## **Rule 407. [DELETED]**

Deleted Jan. 16, 1979, Effective Feb. 12, 1979.

## **Rule 408 : DISMISSAL OF INACTIVE CASES**

(1) Not less often than twice each year, once in January and once in July , a report shall be prepared listing cases of any nature for which there has been no activity reflected on the docket for more than six (6) months and there is no next event scheduled.

(2) The register of probate shall mail notice to all persons who have entered an appearance in any matter listed as having no activity reflected on the docket for more than six (6) months. The notice in each case shall state that the matter shall be dismissed by the court in sixty (60) days unless within sixty (60) days of the sending of the notice:

(a) there are further proceedings in the case; or

(b) a motion to avoid the proposed dismissal is filed and presented to the court with an explanation of what steps will be taken for the case to proceed. The motion may be presented administratively.

(3) Unless a motion to avoid the dismissal has been allowed by the court, after the sixtieth day following the sending of the notice, the register shall enter a judgment of dismissal without prejudice and send the judgment to all parties who have entered an appearance in the matter.

(4) For cause shown the court may dismiss cases at other times.

***Reporter's Notes (2012)***

The rule is amended to provide for dismissal of any inactive case, not just divorces. The dismissal process is to be done at least twice a year. The procedure to avoid dismissal is detailed.

## **Rule 409 : CASE MANAGEMENT CONFERENCE [*REPEALED*]**

***Reporter's Notes (2012)***

The repeal of Rule 409 is necessitated by the implementation of the revised Standing Order on Time Standards in an effort to consolidate all case management related policies and procedures in one place.

***Reporter's Notes (2012)***

See Standing Order 1-06.

## **Rule 410 : MANDATORY SELF DISCLOSURE**

**(a) Initial Disclosures.**

(1) Except as otherwise agreed by the parties or ordered by the court, each party to a divorce action, each party to a complaint for separate support, and each parent who is a party to an action under Chapter 209C that includes a claim for child support where paternity has already been adjudicated or where the parents have completed a notarized voluntary acknowledgment of paternity shall deliver to the other party or parties within 45 days from the date of service of the summons the following documents:

(a) The parties' federal and state income tax returns and schedules for the past three (3) years and any non- public, limited partnership and privately held corporate returns for any entity in which either party has an interest together with all supporting documentation for tax returns, including but not limited to w- 2's, 1099's 1098's, K- 1, Schedule C and Schedule E.

(b) The four (4) most recent pay stubs from each employer for whom the party worked.

(c) Documentation regarding the cost and nature of available health insurance coverage.

(2) Except as otherwise agreed by the parties or ordered by the court, each party to a divorce action and each party to a complaint for separate support shall also deliver to the other party within 45 days from the date of service of the summons the following documents:

(a) Statements for the past three (3) years for all bank accounts held in the name of either party individually or jointly, or in the name of another person for the benefit of either party, or held by either party for the benefit of the parties' minor child(ren).

(b) Statements for the past three (3) years for any securities, stocks, bonds, notes or obligations, certificates of deposit owned or held by either party or held by either party for the benefit of the parties' minor child(ren), 401K statements, IRA statements, and pension plan statements for all accounts listed on the 401 financial statement.

(c) Copies of any loan or mortgage applications made, prepared or submitted by either party within the last three (3) years prior to the filing of the complaint.

(d) Copies of any financial statement and/or statement of assets and liabilities prepared by either party within the last three (3) years prior to the filing of the complaint.

**(b) Additional Disclosures.**

(1) Except as otherwise agreed by the parties or ordered by the court, each party to an action under Chapter 209C that includes a claim for child support where paternity has already been adjudicated or where the parents have completed a notarized voluntary acknowledgment of paternity may serve on a parent who is a party to the action a separate written request entitled "Request for Additional Rule 410 Documents," and the parent served shall, within 45 days from the date of service of the request, deliver to the other party or parties the documents set out in (a)(2)(a)-(d) above.

(2) When a request for child support is first added to an action under Chapter 209C by counterclaim or by amendment of the complaint, a party may serve on a parent who is a party to the action a separate written request entitled "Request for Rule 410 Documents," and the parent served shall, within 45 days from the date of service of the request, deliver to the other party or parties the documents set out in (a)(1)(a)-(c) above.

(3) The parties shall supplement all disclosures as material changes occur during the progress of the case. No party required to deliver documents under this rule shall be permitted to file any discovery motions prior to making the initial disclosure as described herein, and no party to a divorce or separate support action shall be permitted to file any discovery motions prior to making both the initial and the additional disclosures as described herein.

**(c) Unavailability of Documents.** In the event that any party required to deliver documents under this rule does not have any of the documents required pursuant to this rule or has not been able to obtain them in a timely fashion, he or she shall state in writing, under the penalties of perjury, the specific documents which are not available, the reasons the documents are not available, and what efforts have been made to obtain the documents. As more information becomes available there is a continuing duty to supplement.

***Reporter's Notes (2003)***

The amendment to Rule 410(a)(1) clarifies that the Rule applies to parties to a divorce action and to complaints for separate support.

***Reporter's Notes (2009)***

The amendment provides for two prongs of document disclosure. The first prong requires automatic exchange of pay stubs, tax returns and health insurance information within 45 days of service of a complaint or counterclaim for establishment of child support. Second prong documents are produced only upon serving of a Rule 410 notice for request of these documents.

## **Rule 411 : AUTOMATIC RESTRAINING ORDER**

(a) The following automatic restraining order shall apply to both parties to a complaint for divorce or separate support. This automatic restraining order shall be effective with regard to the plaintiff upon the filing of the complaint by the plaintiff or the plaintiff's counsel and with regard to the defendant upon service of the summons and complaint or any other acceptance of service by the defendant.

After service of the complaint for divorce or separate support, on two (2) days' notice to the other party or on such shorter notice as the court may prescribe, a party may appear without thereby submitting his person to the jurisdiction of the court, and move to modify or dissolve the automatic restraining order and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

The following restraining order shall remain in effect during the pendency of the action, unless it is modified by agreement of the parties or by further order of the court.

(1) Neither party shall sell, transfer, encumber, conceal, assign, remove or in any way dispose of any property, real or personal, belonging to or acquired by, either party, except: (a) as required for reasonable expenses of living; (b) in the ordinary and usual course of business; (c) in the ordinary and usual course of investing; (d) for payment of reasonable attorney's fees and costs in connection with the action; (e) written agreement of both parties; or (f) by order of the court.

(2) Neither party shall incur any further debts that would burden the credit of the other party, including but not limited to further borrowing against any credit line secured by the marital residence or unreasonably using credit cards or cash advances against credit or bank cards.

(3) Neither party shall directly or indirectly change the beneficiary of any life insurance policy, pension or retirement plan, or pension or retirement investment account, except with the written consent of the other party or by order of the court.

(4) Neither party shall directly or indirectly cause the other party or the minor child(ren) to be removed from coverage under an existing insurance policy, including medical, dental, life, automobile, and disability insurance. The parties shall maintain all insurance coverage in full force and effect.

(b) The provisions of this automatic restraining order shall be issued over the signature of the Chief Justice of the Probate and Family Court Department and a copy thereof shall be served with every complaint to which it applies, except if personal service is not made as provided in Rule 4 and service is made by publication, said notice shall include a statement that an automatic restraining order has been issued pursuant to this rule. The provisions of this automatic restraining order need not be reprinted in said public notice.

(c) The automatic restraining order provided for under this rule is automatically vacated upon the entry of a judgment of divorce or separate support.

#### ***Reporter's Notes (2000)***

Rule 411 provides for the automatic issuance of a restraining order which is applicable to both parties to a complaint for divorce or separate support. The restraining order is effective with regard to the plaintiff upon the filing of the complaint by the plaintiff or the plaintiff's counsel and with regard to the defendant upon service of the summons and complaint and any other acceptance of service by the defendant.

Said restraining order remains in effect during the pendency of the action for divorce, unless it is modified by agreement of the parties or by further order of the court. The restraining order is automatically vacated upon the entry of judgment of divorce or separate support. A party may appear on two (2) days notice to the other party or such shorter notice as the court may prescribe and move to modify or dissolve the automatic restraining order.

A copy of this automatic restraining order must be served with every complaint to which it applies, except where service is made by publication. In which case, a statement that an automatic restraining order has been issued will be included in said public notice.

## **Rule 412 : JOINT PETITION FOR MODIFICATION OF CHILD SUPPORT JUDGMENT**

In order to facilitate uncontested actions to modify a judgment or order, including, but not limited to, actions to modify child support consistent with the Child Support Guidelines, the following uniform procedure is to be followed:

(a) The parties shall file with the court a joint petition to modify a judgment or a joint motion to modify an order, on a form approved by the Probate and Family Court. The petition or motion shall be accompanied by a copy of the judgment or order to be modified and:

(1) an agreement setting forth the agreed upon modification(s), which must be notarized if modifying a judgment. If a child's primary residence or custody is being modified, the agreement must specifically state whether any terms in a prior judgment or order related to child support, health, dental, vision or life insurance coverage are also modified, or if they remain in effect. If child support is being modified and the parties deviate from the guidelines amount, the agreement must include specific facts that justify departure from the guidelines, and if the parties agreement terminates child support upon the age of 18, the agreement must acknowledge that G. L. c. 208, § 28 or G. L. c. 209C, § 9 is not applicable;

(2) complete and accurate financial statements signed by each party and counsel, if any, pursuant to Supplemental Probate and Family Court [Rule 401](#), with supporting documentation (attach W-2 and 1099 forms for prior year), if financial issues are being modified;

(3) a complete and accurate Child Support Guidelines Worksheet, if child support or medical, dental or vision insurance is being modified;

(4) a written assent from the Department of Revenue Child Support Enforcement Division as the IV-D agency when a party, and/or a dependent child, is a current recipient of public assistance or owes a past-due child support debt assigned to the Commonwealth, and any term relating to child support or medical insurance is being modified;

(5) a proposed Child Support Findings form, if child support is being modified and the parties deviate from the guidelines amount;

(6) an Affidavit Disclosing Care or Custody Proceeding form by each party, pursuant to Trial Court Rule IV, if the care, custody or visitation of a child is being modified;

(7) any other assent or document required by statute or court rule; and

(8) a proposed judgment or order on a form approved by the Probate and Family Court.

(b) Formal notice or service shall not be required.

(c) Neither party shall mark the joint petition or joint motion for hearing. In the event that the court believes that a hearing is necessary or helpful to a disposition of the matter, the court will set the time and date of the hearing and will notify the parties within twenty-one (21) days of the filing of the petition or motion. If the pleadings are deficient or incomplete, an in-person hearing will be required.

(d) A joint petition or joint motion that is not scheduled for a hearing will be decided on the papers filed in accordance with this rule within thirty (30) days of such filing.

(e) A judgment or order entered on a joint petition or joint motion involving child support will be entered in the State Case Registry pursuant to G.L. c. 119A § 4.

(f) This rule cannot be applied to actions governed by G.L. c.209A.

*Adopted June 5, 2003, effective September 2, 2003; amended December 14, 2011, effective January 2, 2012; amended June 25, 2013, effective August 1, 2013.*

**Reporter's Notes (2013)**

The Rule is expanded to allow parties to jointly request modification of a judgment or order of the Probate and Family Court where the parties are in agreement, the agreement is in writing, and all other requirements of this Rule are met. The 2013 amendments to the Rule will allow the court to handle more cases administratively. Section (d), as referenced in the 2003 Reporter's Notes, is now section (e). Section (f) allows a modification of child support to be brought under this Rule when there is an active c. 209A order, but custody or visitation changes that require the modification of a c. 209A order are prohibited. The joint pleadings approved for use by the Probate and Family Court under section (a) shall require the parties to disclose any past or present c. 209A order, or DCF involvement, in order to highlight cases that might be able to use this Rule but require additional scrutiny by the court.

**Reporter's Notes (2003)**

This new Rule allows for a simplified process by which parties may agree to modify a judgment for child support consistent with the Child Support Guidelines. Entry of the case in the State Case Registry pursuant to section (d) necessitates the filing of a State Case Registry form if the parties have not previously filed the form.