

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

Kimberly S. Budd  
Chief Justice

- 
1. Court Submitting Rules for Approval:

Juvenile Court

2. Date Rules Submitted for Approval:

January 9, 2025, revised February 28, 2025

3. Date Approved & Promulgated by the Supreme Judicial Court:

May 1, 2025

4. Rule or Rules, or Amendments Thereto, Approved and Promulgated:

Amendment to the Juvenile Court Rules for the Care and Protection of Children, as described in the enclosed letter dated January 9, 2025 from Chief Justice Dana M. Gershengorn.

5. Effective Date:

August 4, 2025

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)



## THE TRIAL COURT OF MASSACHUSETTS JUVENILE COURT DEPARTMENT

1 Center Plaza, Seventh Floor  
Boston, MA 02108

**Dana M. Gershengorn**  
Chief Justice of the Juvenile Court

**Thomas R. Capasso**  
Deputy Court Administrator

January 9, 2025

Hon. Frank M. Gaziano, Chair  
Supreme Judicial Court Rules Committee  
John Adams Courthouse  
One Pemberton Square  
Boston, MA 02108

RE: PROPOSED JUVENILE COURT RULES FOR THE CARE AND PROTECTION OF  
CHILDREN

Dear Justice Gaziano:

Enclosed please find proposed Juvenile Court Rules for the Care and Protection of Children (“Rules”), which I am submitting to the Rules Committee for approval by the Supreme Judicial Court.

The purpose of these revisions and additions to the current Rules is to incorporate uniform best practices regarding the scheduling of hearings in care and protection cases, and to address concerns raised by the Executive Office of the Trial Court’s Permanency Working Group. As you may be aware the Permanency Working Group has been working diligently to assist the Juvenile Court in identifying those aspects of the care and protection process that contribute to the delays in achieving necessary permanence for children. We are excited to submit these revisions and additions for the SJC’s consideration as we believe they are crucial to achieving efficient permanency for the children and families who appear before us.

Notable changes to the Rules include the following:

### **Rule 6. Filing of Birth Certificates**

- Adds adoption cases to Rule 6.
- Allows for a copy of the birth certificate that is on file in the care and protection to be filed in an adoption, guardianship, parentage, or name change case without a restriction regarding the timing of the filing of the birth certificate in the care and protection. The Department of Children and Families cited the lack of guidance on this issue as a reason for delay with adoption cases.

**Rule 7. Service and Form of Papers**

- Requires that all motions be in writing regardless of when the motion is made in the proceeding and that all motions for continuances be in writing with an affidavit, including ones made at the hearing on the merits.

**Rule 9. Temporary Custody Hearing and Waiver**

- Requires that the temporary custody hearing be held within 72 hours of the emergency removal of the child, as required by statute, that the hearing occur over consecutive days and only be continued for exceptional circumstances.
- Requires the hearing to conclude within 30 days of the emergency removal.
- Emphasizes that the only issue reviewed when a hearing is set for the nomination of the custodian is the nomination of the custodian.
- Requires the court issue a scheduling order following the conclusion of the temporary custody hearing addressing the dates for the filing of the birth certificate, discovery, court investigator report and other hearings.
- Requires that the hearing on the merits, if scheduled at the conclusion of the temporary custody hearing, be scheduled as a minimum of 3 consecutive hearing days.

**Rule 11. Investigator's Report in Care and Protection Cases**

- Allows court investigators to file their report electronically with the court.
- Requires that the report is filed 7 days prior to the pre-trial conference.

**Rule 13. Discovery/Motion Status Hearing**

- Combines current Rule 13 and Rule 14 and requires the Department of Children and Families to produce updates to the court and parties every 60 days after the initial production of the social services file.
- Requires consecutive dates for the hearing on the merits be scheduled at the motion status hearing if they have not already been previously scheduled by the court.

**Rule 14. Pre-Trial Conference in Care and Protection Cases**

- Requires the pre-trial conference (previously Rule 15) to be held within 9 months from the filing of the care and protection petition.
- Requires that when an adjudication is made that the pre-trial is held within three months of the date of the adjudication.
- Requires the Department of Children and Families to report on its permanency recommendation for the child.

**Rule 15. Trial Readiness Conference**

- Creates a new event and replaces current Rule 15.
- Conference will occur no more than two weeks prior to the start of the hearing on the merits.
- The goal of the trial readiness conference is to ensure that the parties are ready for the hearing on the merits and that all last-minute details and issues have been addressed or will be addressed in time for the hearing to take place.
- The trial readiness conference is also an opportunity for the parties to submit any stipulations to adjudication or termination of parental rights.

**Rule 16. Hearing on the Merits.**

- New rule that requires the hearing on the merits be held no later than 15 months from the filing of the care and protection petition and that a minimum of 3 consecutive hearing dates shall be scheduled for the trial.

The Juvenile Court established a Juvenile Court Rules Committee composed of judges, a clerk-magistrate and staff from the Administrative Office of the Juvenile Court. Drafts of the Rules were provided to all Juvenile Court First Justices and Clerk-Magistrates as well as the members of the Executive Office of the Trial Court Permanency Working Group prior to the public comment period. On November 1, 2024, the Rules were sent to Lawyers Weekly for publication and posted on the Juvenile Court website for public comment. Written comments were received from the Committee for Public Counsel Services, the Department of Children and Families, and the Children's Law Center. Additionally, the Administrative Office of the Juvenile Court held a meeting via zoom on November 14, 2024, for attorneys from the Department of Children and Families and CPCS to provide oral comments to the Rules. The committee reviewed and considered all comments received regarding the proposed Rules.

If you or a member of the committee has any questions about the proposed Rules, please do not hesitate to contact me or Anne Marie Ritchie, Assistant Deputy Court Administrator by email or by phone at (617) 788-6550.

Sincerely,



Dana M. Gershengorn  
Chief Justice

Cc: Christine P. Burak, Legal Counsel to the Chief Justice

## **Juvenile Court Rule 6**

### **Rule 6. Filing of Birth Certificates**

**A. Care and Protection Cases.** The petitioner shall file, within sixty days of commencement of the action, a copy of the certified birth certificate issued after the date of the filing of the petition, of each child named in the petition. For good cause shown, the judge may waive or extend the time for the filing of the birth certificate. The petitioner may request an order from the court to produce a certified birth certificate pursuant to [G. L. c. 46, § 2A](#).

**B. Adoption, Guardianship, Parentage and Change of Name Cases.** If there is a copy of the child's birth certificate on file in the care and protection case, the petitioner shall file the copy in the adoption, guardianship, parentage or change of name case. A judge shall order the petitioner to provide an updated certified birth certificate only when there is good cause to believe that the birth certificate may be amended due to a parentage issue. The petitioner or plaintiff may request an order from the court to produce a certified birth certificate pursuant to [G. L. c. 46, § 2A](#).

#### **NOTE**

A. It is important to have a recent copy of the child's birth certificate to determine parentage and to provide parents with notice and the opportunity to be heard. "Good cause" should be construed narrowly and constitute more than mere inconvenience; however, there may be rare circumstances in which a copy of the birth certificate cannot be obtained or obtaining it would cause unreasonable delay in the disposition of the case. In such circumstances, including but not limited to instances in which a foreign birth certificate cannot be obtained, a judge may waive the filing of a copy of a birth certificate. In the event a foreign birth certificate is obtained, the burden is on the petitioner to provide an English translation.

B. There may be circumstances in which the copy of the birth certificate in the care and protection case does not satisfy the requirements of this rule and cannot be used when filing an adoption, guardianship, change of name petition, or a parentage complaint. In those instances, if the petitioner or the plaintiff does not have custody of the child and cannot otherwise obtain a copy of the birth certificate, the petitioner or plaintiff may file a motion in the underlying care and protection case for a court order to produce the birth certificate for filing with the petition or complaint. The person seeking such an order may be permitted to appear in the care and protection case for the sole purpose of filing such a motion. An appearance for this limited purpose does not make the person a party to the care and protection case.

## **Juvenile Court Rule 7**

### **Rule 7. Service and Form of Papers**

**A. Form of Motion.** Every motion or other document filed with the court, other than documents offered in evidence, shall be on 8 ½ " x 11 " paper, or in an electronic or digital manner. Every such motion or document shall bear the name of the court and the county, the title of the action, the designation of the nature of the pleading or paper, and provide the information as required in **Supreme Judicial Court Rule 1:08, *Case and Filer Information on Papers Filed in All Courts.***

**B. Requirement of Written Motion and Affidavit.** Any request for a court order shall be made by written motion accompanied by an affidavit signed by the person with personal knowledge of the factual basis of the motion, and shall state with particularity the grounds therefor, and shall set forth the relief or order sought, provided however, that the following types of motions are not required to be accompanied by an affidavit: motions in limine, motions to strike, motions for discovery, motions for appointment of appellate counsel, and motions to correct a name on the petition. Whenever a motion is supported by an affidavit or memorandum, the affidavit or memorandum shall be served with the motion. This requirement shall apply to all motions to continue made during the course of the proceedings including the hearing on the merits.

All motions to dismiss shall be in writing accompanied by an affidavit signed by the person with personal knowledge of the factual basis of the motion and shall state with particularity the grounds therefor.

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

**D. Manner of Service.** Every motion, except an ex parte motion, or document filed in court shall be served by the attorney or party filing it by mailing or delivering a copy, or electronically in accordance with court procedure, to each attorney of record and each party appearing pro se.

## **Juvenile Court Rule 9**

### **Rule 9. Temporary Custody Hearing and Waiver**

**A. Temporary Custody Hearing, G.L. c. 119, § 24.** Pursuant to G. L. c. 119, § 24, a temporary custody hearing shall be held within 72 hours of the emergency removal of the child unless the parent, guardian or custodian waives their right to the hearing. It is presumed that the hearing shall occur over consecutive dates and only be continued for exceptional circumstances, however in any event the hearing shall conclude within 30 days of the date of emergency removal.

**B. Waiver of the Temporary Custody Hearing.** The temporary custody hearing pursuant to [G. L. c. 119, § 24](#) or [§ 25](#) may be waived by a parent, guardian, custodian or child. The waiver by the parent, guardian or custodian shall be in writing signed by the parent, guardian or custodian and, unless such person is self-represented, accompanied by a certification by his/her attorney. The certification shall include a statement that the attorney has discussed the waiver with his/her client and advised the client that he/she is giving up the right to object and present evidence at the hearing in opposition to the court's orders, including orders regarding his/her child's custody, and the right to appeal the court's orders. The waiver and the certification shall be on a form approved by the Chief Justice of the Juvenile Court. The court shall conduct a colloquy with the parent, guardian or custodian and determine whether the waiver was intelligently and voluntarily made. The attorney for the child may waive the temporary custody hearing by signing a waiver and certification form on behalf of his/her client.

**C. Nomination of Non-Party ('Third Party') Custodian.** Waiver or forfeiture of the hearing is distinguished from the circumstance in which a parent, guardian, custodian or child agrees to a temporary transfer of custody but seeks to nominate a relative or other individual to be appointed the child's temporary custodian pending the hearing on the merits. Although that party may have acknowledged or stipulated that there is sufficient evidence to support a temporary transfer of custody, he/she has not waived the opportunity to be heard on the issue of a third-party temporary custody order. In that situation, the parent, guardian or custodian waives his/her right to a hearing but reserves the right to a third-party custody hearing. Upon receipt of the waiver, the court shall schedule a third-party custody hearing. A parent, guardian, custodian or child may exercise their right to a temporary custody hearing and simultaneously nominate a relative or other individual to be appointed the child's temporary custodian in the event the court finds that there is sufficient evidence to support the temporary transfer of custody. When necessary, the court shall order a home study of the proposed custodian in accordance with G.L. c. 119, § 26. The third-party custody hearing shall occur not more than six weeks following the waiver or conclusion of the 72-hour hearing. For a child who has not been placed with kin or with the person nominated by the parent, the court shall make every effort to conduct the third-party custody hearing no more than three weeks following the waiver or conclusion of the 72-hour hearing. The only issue reviewed and determined at the hearing shall be whether the nominated custodian is qualified by the court to give care to the child.

**D. Indian Child Welfare Act (ICWA).** At the inception of the case, the court shall inquire of all parties and the assigned social worker for the family as to whether there is reason to believe that the children are Indian children subject to ICWA. If it is determined that ICWA applies, the

court shall order the Department to provide notice to the tribe and confirm that all other legal requirements under ICWA have been satisfied prior to the date of the status hearing.

**E. Orders Issued at the Conclusion of the Temporary Custody Hearing.** At the conclusion of the temporary custody hearing, the court shall issue the following orders, in writing:

1. Temporary Custody order continuing custody of a child with the Department, or ordering custody of a child to the Department, to a named non-party/third party custodian, or to the parent, including non-custodial parent, guardian or custodian;

2. Determination regarding reasonable efforts as required by G. L. c. 119, § 29C;

3. Scheduling order setting forth the dates for identification of the child (G. L. c. 119, § 24), the filing of the birth certificate (Rule 6), establishment of parentage if applicable, the discovery/motion status hearing (Rule 13), the pre-trial conference (Rule 14), and the permanency hearing (scheduled in accordance with G. L. c. 119, § 29B and Trial Court Rule VI). The scheduling order shall be on a form approved by the Chief Justice of the Juvenile Court;

4. Any other orders as determined by the judge.

**F. Discovery/Motion Status Hearing.** The dates for the trial readiness conference and the hearing on the merits shall be scheduled at the discovery/motion status hearing in accordance with Rule 13 of these rules. A judge may schedule in the judge's discretion the dates for the trial readiness conference and the hearing on the merits at the temporary custody hearing as part of the written scheduling order required by section E.3 of this Rule.

**G. Hearing on the Merits.** The hearing on the merits shall occur over consecutive days. Once begun, the hearing shall occur over consecutive days with no continuances allowed except for extraordinary circumstances. Any continuance granted shall be accompanied by written motion and oral findings on the record. If a hearing date is continued, it is presumed that the hearing will continue the next business day.

**H. Massachusetts Child Custody Jurisdiction Act (MCCJA)/Uniform Custody and Child Jurisdiction Enforcement Act (UCCJEA).** The court shall order counsel for all parties and the Department to determine whether there are jurisdictional issues implicated under the MCCJA/UCCJEA involving the parties. If it is determined that there are jurisdictional issues in the case, the court shall take immediate steps in accordance with the MCCJA/UCCJEA to resolve the jurisdictional issues. All written and oral communications between the court and the court of another jurisdiction shall be recorded and made part of the case record.

**I. Interstate Compact on the Placement of Children (ICPC).** The court shall order counsel for all parties to determine whether the ICPC is applicable in the care and protection case.

## NOTE

The temporary custody hearing may be held pursuant to one of two mutually exclusive statutory provisions, [G. L. c. 119, § 24](#) (so-called "72 hour" hearing) or [§ 25](#) (non-emergency temporary custody hearing). At the temporary custody hearing, the judge must determine whether custody



should be removed from the child's parent, guardian or custodian, or whether the initial temporary custody order should be continued, depending on the circumstances. The judge must consider any nomination by the child or the parents of a relative or other individual to become the temporary legal custodian pending the hearing on the merits. See *Care and Protection of Manuel*, 428 Mass. 527 (1998). The judge must also make the written certification and determinations required by G. L. c. 119, § 29C (contrary to the welfare certification and reasonable efforts determination). See *Care and Protection of Walt*, 478 Mass. 212 (2017). The court's authority under G.L. c. 119, § 26, to appoint any person or agency to investigate the qualifications of a nominated custodian includes appointing a social worker to conduct the home study.

The rule requires that the 72-hour hearing take place within 72 hours of the emergency removal of the child and held over consecutive days. "[T]he purpose of a seventy-two hour hearing is to enable the judge to determine whether a child will be in immediate danger of serious abuse or neglect if returned to his parents or custodian. G.L. c. 119, § 24. In this respect, the principal interest at stake is the child's immediate welfare. Such hearings should be held as promptly as possible to that end, and continuances sought by a parent or custodian for the purpose of delaying the proceeding for his or her own benefit are properly denied." See *In re Protection of Perry*, 438 Mass. 1014 (2003). The need for promptness applies to not only the start of the hearing but the hearing's conclusion, which is why if multiple hearing days are needed the days should occur consecutively. The 72-hour hearing is "analogous to the hearing accorded a request for a preliminary injunction. In both cases, parties are seeking a temporary, but significant, stabilization of the factual situation at issue." *Care and Protection of Robert*, 408 Mass. 52, 68 n.7 (1990). Attorneys are expected to make 72-hour hearings a priority over other cases and therefore should not accept appointment in a 72-hour hearing that will conflict with a previously scheduled matter.

This rule addresses waiver by a parent, guardian, custodian or child of either a § 24 or § 25 temporary custody hearing. By waiving the temporary custody hearing, the parent, guardian, custodian or child is relinquishing his/her right to be heard, to object to the court's orders and to appeal the orders. A parent, guardian, custodian or child may waive the hearing by formal action as provided in this rule, or may forfeit the hearing by failure to appear or participate after having received notice of such hearing.

A temporary custody hearing held pursuant to either G. L. c. 119, § 24 or § 25 is not a so called "placement hearing." Placement decisions are within the discretionary powers of the legal custodian as one of the usual incidents of custody. See G. L. c. 119, § 21. Decisions related to the normal incidents of custody generally are committed to the Department or third party legal custodian and are reviewable only under § 21 for abuse of discretion or error of law. The court does not have authority to subject the Department to conditions absent a finding of no reasonable efforts. See *Care and Protection of Isaac*, 419 Mass. 602 (1995), *Care and Protection of Jeremy*, 419 Mass. 616 (1995) but see *Care and Protection of Walt*, 478 Mass. 212 (2017). In contrast, if the court grants custody to a third party, it may subject the grant of custody to conditions, including conditions that restrict the third party custodian from changing the child's placement.

General Laws c. 209B sets forth the provisions for the Massachusetts Child Custody Jurisdiction Act (MCCJA), which is "loosely based on" the Uniform Child Custody Jurisdiction Act (UCCJA). See *Adoption of Twyla*, 104 Mass.App.Ct. 434, Fn. 9 (2024). The National Conference of

Commissioners on Uniform State Laws replaced the UCCJA with the UCCJEA in 1997. *Id.* All 50 states with the exception of Massachusetts have adopted the UCCJEA. *Id.* The UCCJEA and the MCCJA have similar provisions and though Massachusetts has not adopted the UCCJEA at the time of the promulgation of this rule, the recommended practice is for the court to apply the MCCJA and UCCJEA when reviewing jurisdictional issues in a care and protection case.

For the purposes of this rule, the hearing on the merits refers to the hearing that may result in an adjudication and disposition including a termination of parental rights. The hearing on the merits may also be referred to as the ‘best interest trial’ in some courts.

## **Juvenile Court Rule 11**

### **Rule 11. Investigator's Report in Care and Protection Cases**

In a care and protection case, including a case in which the need for parental consent to adoption is an issue, the report of the court-appointed investigator required by [G. L. c. 119, §§ 21A, 24](#) shall be filed in the Clerk's Office or electronically with the court seven days prior to the date of the pre-trial conference, unless the court otherwise orders. A request for extension of time to file the court investigator's report shall be made by motion on a form approved by the Chief Justice of the Juvenile Court, signed by the court investigator and approved by a justice of the Juvenile Court. Any motion for extension of time shall be filed no later than seven days prior to the date the report is due, provided however, that the court may permit the filing of a motion for an extension of time at some other time in the interests of justice. If the court approves a motion for extension of time, the court investigator shall provide a copy of the approved motion to all counsel of record and to any party who is not represented by counsel.

#### **NOTE**

Counsel of record may obtain from the Clerk's Office a copy of the court investigator's report without filing a motion to do so. Standing Order 1-84 applies to all court-appointed investigator reports.

**Juvenile Court Rule 13**  
**Rule 13. Discovery/Motion Status Hearing**

**A. Discovery**

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

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

The attorney for the Department or the licensed placement agency shall produce with the copy of the file a list of the materials and information withheld. The attorney for the Department or the licensed placement agency shall have an ongoing duty to produce for each other party updates every sixty days made after initial production required in this subsection.

**2. Other Discovery.** Other discovery may be had only by court order on such terms as the court prescribes. A court order shall be requested by motion in accordance with Rule 7.

**B. Discovery/Motion Status Hearing**

There shall be a discovery/motion status hearing held within 90 days after the commencement of a care and protection case. All parties and counsel are required to be present at the hearing, which may occur virtually or in person, at the court's discretion, except that counsel for the child may appear without his/her client. Failure of one or more parties to appear shall not preclude the court from proceeding with the hearing.

**1. Hearing on the Merits.** The court shall schedule no less than three consecutive days for the hearing on the merits if the days were not scheduled at the temporary custody hearing.

**2. Other Issues to be Addressed.** At the hearing the court shall also address: the progress of the court investigation or the report; service of process in accordance with Rule 5; discovery motions and compliance by all parties; child identification; the Indian Child Welfare Act and Interstate Compact on the Placement of Children, if applicable; any special evidentiary issues; the Department's plan to achieve permanence; any issues regarding services being offered or delivered to the family pending trial; confirmation of the dates for the pre-trial conference, trial readiness conference and the hearing on the merits; and compliance with the standing orders regarding time standards and scheduling order. Nothing in this rule shall preclude the court from hearing motions, including discovery motions, at other times in the interests of justice.

**3. Orders.** At the conclusion of the hearing, the court shall issue any necessary and appropriate orders to resolve the matters before the court.

#### **NOTE**

*See* Juvenile Court Standing Order 1-84, Juvenile Court Case Records and Reports, regarding the confidentiality of records filed in the Juvenile Court.

## **Juvenile Court Rule 14**

### **Rule 14. Pre-trial Conference in Care and Protection Cases**

A pre-trial conference shall be held within nine months from the filing of the petition. All parties are required to be present with counsel at the pre-trial conference, except that counsel for the child may appear without his/her client. Failure of one or more parties to appear shall not preclude the court from proceeding with the pre-trial conference. The conference may be held in person or virtually, at the court's discretion.

If an adjudication of unfitness enters on the case, a pre-trial conference shall be scheduled to occur within three months from the date of the adjudication, with a status hearing held no later than every three months thereafter until final disposition.

**A. Summons to the Court Investigator.** The court may issue, or one or more of the parties may request, a summons to the court investigator to attend the pre-trial conference. When so summoned, the court investigator shall attend the pre-trial conference to respond to any questions regarding the process of the investigation or the report filed in accordance with Rule 11 and [G. L. c. 119, §§ 21A, 24](#). Failure of the court investigator to be present without good cause or the unavailability of the report shall not preclude the court from proceeding with the pre-trial conference.

**B. Permanency Recommendations.** At the pre-trial conference, the Department shall report on the recommendation of the Foster Care Review regarding the permanency plan for the child as well as the Department's permanency recommendation. The previously scheduled dates for the hearing on the merits shall be reviewed and rescheduled, if needed.

#### **C. Issues to be Addressed.**

In addition, the court shall address the matters set forth below:

1. Whether parents, guardians, custodians, have been served by the petitioner and the date(s) of service;
2. Whether discovery has been completed; and if discovery has not been completed, a list of discovery items not yet provided and the compliance date;
3. Relief sought, including whether or not there will be a request for a decree dispensing with the

need for parental consent to the adoption, custody, guardianship or other disposition of the child named in the petition;

4. Identification of the specific contested issues to be litigated at trial;
5. A stipulation of all uncontested facts and issues;
6. A list of proposed exhibits to be introduced at trial;
7. A list of proposed witnesses which shall include the names of any expert witnesses, a delineation of the issues to which the expert is expected to testify, and a copy of his or her curriculum vitae;
8. Issues regarding the admissibility of evidence at trial;
9. Scheduling a date for the submission of motions in limine, if any, and scheduling a hearing thereon, if necessary;
10. Any unaddressed motions;
11. Whether a writ of habeas corpus will be required to ensure attendance of a party or witness, or whether a witness needs to participate telephonically or by other means;
12. Whether an interpreter is required;
13. Whether a child witness needs an accommodation to testify;
14. Whether, if the Indian Child Welfare Act (ICWA) applies, the tribe has been notified and has responded and whether other legal requirements under ICWA have been satisfied;
15. An estimate of trial time; and
16. Any other matters that may aid in the disposition of the action.

The court shall address, where applicable:

17. Whether the possibility of settlement has been discussed;
18. Whether counsel for the parties have discussed mediation with their client(s) pursuant to Rule 5 of Rule 1:18 of the Supreme Judicial Court; and
19. DCF's plan to provide timely notice of the trial to the foster parent, pre-adoptive parent or relative providing care.

A pre-trial conference form approved by the Chief Justice of the Juvenile Court shall be available to be used at the court's discretion.

**D. Court Investigator's Report.** The court shall attach the court investigator's report to the petition at the pre-trial conference, or at the next court date after the filing of the report. The report shall then become a part of the record in accordance with [G. L. c. 119, § 24](#).

**E. Future Dates.** All future dates shall be reviewed by the court and the parties at the conclusion of the pretrial conference.

## NOTE

The purpose of the pre-trial conference is to address any matters that may impact the timely resolution of the case and permanency for the child.

When summoned to attend the pre-trial conference by the Clerk's Office, the court investigator is present to answer any questions from the parties, their attorneys or the court regarding the process of the investigation and to identify sources of information. It is not the purpose of the attendance of the court investigator at the pre-trial conference to address the factual content of the investigator's report or assess the credibility of the investigator or the reliability of the information in the report. When the court investigator is summoned to attend the pre-trial conference, the court should make every effort to conduct the hearing as early as possible on the scheduled date in order to avoid and/or reduce the wait time for the court investigator.

This rule makes it clear that the court investigator's report automatically becomes part of the record in accordance with [G. L. c. 119, § 24](#). The court investigator's report becomes part of the record and evidence not by its physical “attachment” to the petition but by operation of law. [General Laws c. 119, § 24](#), requires that “the court shall appoint a person qualified under [section 21A](#) to investigate the conditions affecting the child and to make a report under oath to the court, which shall be attached to the petition *and be a part of the record*.” (emphasis added). Accordingly, the Appeals Court has held that there is “no question that [§ 24](#) anticipates use of the report by the trial judge.” *In re Zita*, 455 Mass. 272, 281 (2009) (citing *Custody of Two Minors*, 19 Mass. App. Ct. 552, 559 (1985)). See also *Custody of Michel*, 28 Mass. App. Ct. 260, 267 (1990). (“Primary reliance concerning the family picture will be on the [§ 24](#) report. Such is the import of the statutory language ...”)

Because the investigator's report is part of the record of the case, there can be no objection in general to the receipt or use of the investigator's report in arriving at decisions in care and protection cases. *Custody of Michel*, 28 Mass. App. Ct. at 265. The report may contain hearsay statements from a wide variety of sources and the cases do not distinguish between levels of hearsay. *Id.* at 266. Parties have a fair opportunity to rebut allegations in the report by cross examining the court investigator and his/her sources or by other means at trial, so it is vital that all sources of statements and information in the report be clearly identified. Specific objections may be made by motions in limine. *Custody of Tracy*, 31 Mass. App. Ct., 481 (1991) and *Custody of Michel*. See also [Mass. G. Evid. § 1115\(c\)\(1\) and \(e\)\(6\)](#) regarding court investigator reports in general.



## **Juvenile Court Rule 15**

### **Rule 15. Trial Readiness Conference**

A trial readiness conference shall be scheduled and held not more than two weeks prior to the start of the hearing on the merits. All parties and attorneys are required to be present, in-person, for the conference.

Any stipulations to adjudication or termination of parental rights along with any relevant post adjudication agreements shall be submitted at the conference.

If stipulations are not presented at the conference and the parties indicate that the case shall go forward on the hearing on the merits, the following factors shall be reviewed by the parties:

- (i) all discovery is complete;
- (ii) all motions have been decided;
- (iii) expert witnesses, if applicable, are available and will be called;
- (iv) number and availability of expected witnesses, including a written witness list from each party;
- (v) submission of court investigator's report;
- (vi) need and availability for interpreters;
- and
- (vii) all parties, counsel, and witnesses are ready and available to proceed.

**A. Confirmation of Dates for Hearing on the Merits.** After the trial readiness conference has been held, the judge shall confirm the previously scheduled dates for the hearing on the merits. If as a result of the trial readiness conference it is determined that additional dates are necessary for the hearing on the merits, the court shall schedule the additional dates immediately. The dates shall be scheduled to be held consecutively from the previously scheduled dates.

### **NOTE**

Because hearings on the merits are scheduled as consecutive dates, it is important that parties make every effort to resolve the case ahead of time with a stipulation or confirm that trial preparation is near completion and the hearing on the merits will begin on the previously selected dates. Rescheduling the hearing on the merits shall not be granted at the trial readiness conference, absent extraordinary circumstances. If the hearing on the merits is continued, it shall be scheduled as consecutive dates.

## **Juvenile Court Rule 16**

### **Rule 16. Hearing on the Merits**

A hearing on the merits shall be held not later than fifteen months from the filing of the care and protection petition in accordance with G. L. c. 119, § 26 and Juvenile Court Standing Order 2-18. The dates for the hearing shall be scheduled at the discovery/motion status hearing, if not sooner. For contested matters, a minimum of three consecutive hearing dates shall be scheduled for the hearing.

Attorneys for all parties, are expected to be available each day of the hearing on the merits with no continuances allowed except for extraordinary circumstances. A written motion shall be filed and the judge shall make an oral finding on the record regarding the reason for any continuance. If a hearing date is continued, it is presumed that the hearing will continue on the next business day. Attorneys, therefore, shall be available day to day and are expected to schedule hearings on the merits as a priority.

#### **NOTE**

Due to the importance of conducting the hearing on the merits in a timely manner, all attorneys, including attorneys for the Department, shall ensure that they are available day to day until the conclusion of the hearing on the merits and are encouraged to avoid scheduling other hearings, including temporary custody hearings held pursuant to G. L. c. 119, § 24, during the duration of the hearing on the merits.

The following rules require changes to the rule number:

**Rule 16. Notice to Foster Parent, Pre-Adoptive Parent or Relative Providing Care for a Child** is now Rule 17.

**Rule 17. Sanction and Contempt** is now Rule 18.

**Rule 18. Subpoenas** is now Rule 19.

**Rule 19. Trial Judge's Order, Findings of Fact and Conclusions of Law and Notification by Clerk of Issuance of Findings of Fact and Conclusions of Law** is now Rule 20.

**Rule 20. Appeal** is now Rule 21.