

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT
HAMPSHIRE DIVISION**

**FAMILY RESOLUTIONS SPECIALITY COURT
FAQS FOR ATTORNEYS**

- **WHAT IS FRSC?**

FRSC is a problem-solving specialty court. It received specialty court status from the Massachusetts Trial Court in August 2015. FRSC is loosely based on an Australian model called the Less-Adversarial Trial; it has been modified to address federal and state due process concerns as well as to fit with the structure and available staff and resources of our system.

- **WHAT ARE THE GOALS OF FRSC?**

1. To reduce conflict and litigation in cases involving families.
2. To keep proceedings focused on the needs of each family member, with special focus on children.
3. To increase parents' participation in and satisfaction with the Court process, resulting in a reduction in uncontrolled conflict during and after the case.

- **HOW IS FRSC DIFFERENT FROM THE TRADITIONAL MODEL?**

1. At the beginning of the FRSC process, each family is assigned a team consisting of
 - (a) the parents themselves;
 - (b) a Family Consultant (FC) who is a mental health professional with knowledge of the needs of adults and children at times of family transition or family conflict. The FC will guide the parents through the FRSC process offering support and information about co-parenting, parental skills, and parental communication, help in creating a parenting plan, and make referrals for community services if needed for any family member;
 - (c) an attorney appointed for the child/ren to ensure the child's voice is heard, if appropriate;
 - (d) a probation officer may be appointed to help guide the family through the FRSC process in the Court,
 - (e) the parents' attorney(s),
 - (f) a mediator who will help the parents exchange the information they need to learn in order to make wise parenting and financial decisions, work on co-parenting communication, if needed, and help the parents reach an agreement on all the issues they need to solve to reach the end of the Court process, and
 - (g) a Team Coordinator who will help the team work together efficiently and will help the team plan the FRSC process specifically suited to each family's needs.

The professional members of the team are called "the support team."

2. All parents are referred to a court-approved mediation program. The timing of the use of mediation will differ case by case. Typically, the parents will meet alone with the mediator, but in each case, the parents will have an opportunity to design a process by

which their lawyer(s), the child's lawyer, or the Family Consultant may be involved in the mediation process as needed.

3. FRSC may appoint a Team Coordinator (TC) to help the team work together efficiently and to help the team plan the specific elements of the process best suited to the family's needs. The TC is an attorney familiar with domestic relations law and procedure and with the FRSC process.
4. The case is assigned at the outset to one of the FRSC Judges. The parents and the team will meet with the FRSC Judge in a series of court conferences, rather than in formal court hearings. The FRSC Judge meets with the team around a table rather than sitting on the bench and will help the parents work toward their agreements. If necessary, the Judge will make decisions on subjects the parents are unable to agree upon. Lawyers will assist their clients so that the clients are able to speak directly to the FRSC Judge in the court conferences. The procedural and evidentiary rules of the traditional court process are relaxed in FRSC. There are usually no motions in FRSC. Issues that arise in the case are dealt with by full or partial team meetings, and the team may schedule a court conference if the Judge's input or a judicial decision is needed during the process.
5. Once the team helps the parents resolve one issue, it will move on to the next. The parents will continue to meet in a series of team meetings, partial team meetings and court conferences until all the issues are resolved.
6. FRSC team members may refer the family to support services, such as therapy, substance use disorder treatment, educational and developmental support for the child/ren, job training, fuel, housing, and transportation assistance, etc.

- **CAN PARENTS PARTICIPATE IN FRSC IF THEY HAVE COUNSEL? Yes. IF THEY ARE REPRESENTING THEMSELVES? Yes.**

If only one parent is represented, the team will help create ways to help make the process feel fair to both parents. An attorney may practice in FRSC under the LAR procedures as well.

- **WHAT IS THE ATTORNEY'S ROLE IN FRSC?**

Attorneys will advocate for their clients in FRSC, though with a strong emphasis on legal education and counseling. For example, attorneys will still be expected to educate their clients on their rights and on the laws relevant to the case. Most of the laws and rules of court remain relevant in FRSC. For example, an exchange of information early in the case is expected in accordance with Rule 410. In addition, Rule 411, the Automatic Restraining Order, applies in FRSC. And the requirements regarding Financial Statements, Rule 401, are also applicable.

There are differences, as well. In FRSC, the parents commit to openness in the process on all financial issues and on all related issues. Withholding information for strategic or tactical legal purposes has no place in FRSC. Parents meet with the FC alone, without their attorneys, in the guided interview and in many meetings with the FC throughout the process. Parents may meet alone with the mediator, as well, although the involvement of the Attorneys in mediation can be negotiated with the parents and the mediator. Rather than

speaking for their clients in court conferences, Attorneys will support their clients to speak for themselves at least for much of the time. The same will be true for parents' participation in team meetings. Attorneys will be practicing as equal members of a cross-professional team. This approach to advocacy requires some particular skills to be mastered by the attorneys because they have an obligation to model collaborative behavior for the parents. To that end, attorneys should:

- Respect the equal status of team members by use of first names rather than titles
- Use plain language rather than legalese
- Attend to tone of voice and body language
- Strive for timeliness and preparedness
- Stay aware of the necessity to correspond with all team members with clarity and with regularity so that the full team is aware of the progression of the process
- Look for ways that the special expertise of each team member might be of particular use for a particular family or at a particular time in the process
- Demonstrate commitment to and address the needs of each family member, including the parent the attorney is not representing
- Stay aware of situations that become hostile or confusing and use skills to stabilize the process, calling on other team members to assist as needed

To the extent reasonably possible, FRSC will provide orientation to assist attorneys in preparing to fulfill their special role in FRSC. In addition, attorneys are urged to read *Fluent in FRSC*, a more extensive description of the attorney role. The article is available from the Judicial Case Manager.

- **WHAT CLIENTS SHOULD I RECOMMEND FOR FRSC?**

With only a few exceptions, all families with children are eligible to participate in FRSC. Because the parents' involvement in the process is quite active, you should consider the extent to which your client will feel comfortable speaking up in team meetings and in court conferences. Part of your role is to assist your client to become comfortable in these activities – supporting them, teaching them how to stick with important points, etc. If your client and his or her spouse have already reached agreement, or if you are able to help them reach agreement easily, there is no need to participate in FRSC. They can conclude the process quickly in the traditional way.

FRSC is cautious if there is an active 209A order between the parents or if there is a history of 209A orders. In these circumstances, the issue of violence or undue control by one parent over the other will be addressed at an initial intake, again at the guided interview and throughout the process if there is an indication it is an issue for a family. FRSC has been asked by SafePassage not to exclude such families automatically but to examine their ability to work together successfully in the process. If there is a restraining order in existence and the parents decide to enter FRSC, they will need to seek an amendment of the restraining order for this purpose.

FRSC is also cautious if there are active mental health **or** substance use disorder issues or any indication that one or both parents are unable to participate openly and truthfully in the

process. The issues are explored at intake. If the family goes forward in FRSC, they will be reviewed again in the guided interview and throughout the process as needed.

You should review the terms of the Consent to Participate that you and the parents will be required to sign if they wish to participate in FRSC. Be sure that all the provisions are acceptable to your client.

- **ARE THE GROUNDS FOR A FRSC DIVORCE LIMITED TO IRRETRIEVABLE BREAKDOWN?**

Yes.

- **CAN MY CLIENTS PARTICIPATE IF THEY DO NOT HAVE CHILDREN?**

Currently, FRSC accepts only families with children. The program may be able to open for people who do not have children at some later time.

- **HOW DO PARENTS GET INTO FRSC?**

Parents may enter FRSC at the very beginning of their case or can transfer into FRSC if they already have a case opened in the traditional model. In either situation, counsel who have been hired by a parent interested in FRSC should notify Probation or Registry staff of the parent's interest. Staff will refer the parents to the JCM for an initial FRSC intake.

If a parent has consulted with an attorney, but has not yet hired the attorney, the attorney should include FRSC among the options available to the parent to consider. If the parent expresses an interest in FRSC, the attorney should refer the parent to Registry or Probation staff for information.

- **IF THE PARENTS HAVE A PENDING COMPLAINT AND OPT IN TO FRSC, WHAT HAPPENS TO THE ORIGINAL COMPLAINT AND DOCKET NUMBER?**

The Court will open a new FRSC docket number. There will be a designation in the Court system that the case has been transferred to FRSC. The parents will be directed to file jointly the appropriate FRSC pleading (*e.g.*, FRSC Petition for Divorce; FRSC Petition for Custody-Support-Parenting Time). Court staff will then initiate a new docket number for the FRSC case. If the parents have already paid the fee for the traditional pleading, another fee will not be required. If parents have not initiated a traditional pleading prior to the FRSC pleading, and therefore have not paid a filing fee, the Court will assess one at the time of filing the FRSC pleading.

- **DOES SUPPLEMENTAL PROBATE AND FAMILY COURT RULE 411 – AUTOMATIC RESTRAINING ORDER – APPLY TO THE FRSC PROCESS?**

Yes. If the parents have filed a Complaint for Divorce or a Complaint for Separate Support prior to agreeing to participate in FRSC, the automatic restraining order goes into effect as of that filing. If the parents have not filed a traditional pleading prior to agreeing to participate in FRSC, the automatic restraining order goes into effect with respect to both parents at the time they file their FRSC Joint Petition for Divorce or FRSC Joint Petition for Separate Support. There is a provision in the parents' FRSC Consent to Participate requiring them to comply with the automatic restraining order.

- **DOES SUPPLEMENTAL PROBATE AND FAMILY COURT RULE 401 – FINANCIAL STATEMENT – APPLY TO THE FRSC PROCESS?**

Yes. The parents will be required to submit completed Financial Statements with their FRSC Parenting Questionnaires distributed to them after the intake and to update the Financial Statements as needed throughout the FRSC process.

- **DOES SUPPLEMENTAL PROBATE AND FAMILY COURT RULE 410 – MANDATORY SELF-DISCLOSURE – APPLY TO THE FRSC PROCESS?**

Yes. However, because the timeframe for the FRSC process is different from that for traditional cases, the deadline for providing mandatory self-disclosure may be different. Team members will discuss this with counsel and the parents and plan the self-disclosure process.

- **WHO CAN OPT OUT OF FRSC?**

A parent can opt out of FRSC at any time. Any member of the support team can recommend at any time that a family leave FRSC if he/she believes that FRSC is inappropriate for the family (*e.g.*, if there are concerns about inter-partner violence, capacity or a lack of cooperation or transparency). The FRSC Judge may opt a family out of FRSC at any point.

- **WHAT HAPPENS TO THE FRSC CASE IF THERE IS AN OPT OUT?**

The Court schedules a court conference (a) to help the parent(s) be certain they wish to leave FRSC if a parent has initiated the opt-out; or (b) to explain the opt-out if it has been initiated by a support team member or by the Judge. and to prepare to transfer the case back to the traditional system. In addition, the opt-out conference helps the parents organize for the transfer into the traditional system. The full team attends this court conference. The FRSC docket number is closed and the original docket number for the traditional proceeding is re-opened or, if the case is new to the traditional system, a new docket number is issued. The case is assigned to a new Judge. All partial final agreements reached in FRSC are binding in the traditional system. All temporary orders in place at the time of the FRSC opt-out remain in place until they can be reviewed by the new Judge.

After opt-out, the FC will no longer provide services to the family. The Child's Attorney will be given an opportunity to withdraw but may choose to remain in the case, subject to the approval of the new Judge. The Probation Department will determine on a case-by-case basis whether or not the FRSC-assigned probation officer will continue to serve the family in the traditional system. The mediator may continue with the family if the mediator and the parents agree – subject to an agreement for private payment of the mediator after the opt-out.

- **HOW DOES THE FRSC PROCESS AFFECT THE “LENGTH OF THE MARRIAGE” UNDER G.L.C. 208, SEC. 48?**

The end date for the “length of the marriage” for purposes of G.L. c. 208, sec 48 will be measured from the date of the initiating document: either the date of the filing of the traditional pleading, if there is one, prior to the parents entering FRSC; or, if there has not been a prior traditional pleading, the date of the joint filing of the FRSC pleading.

- **ARE THERE ANY COSTS IN FRSC?**

The Court filing fee is the same as in the traditional process.

If the Court appoints a guardian to waive or assert a child's therapeutic privilege, the parents may be assessed a fee based on their incomes and other financial resources.

The parents pay for any out-of-court services that may be recommended and that they agree to use, such as counseling, parenting classes, financial advisors, etc.

All other components of FRSC – the Family Consultant, the Child's Attorney and mediation are provided at no cost to parents.