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

**Rule 1. Scope of Rules**

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

**Note**

Throughout these rules "paternity" has been replaced by the gender-neutral term "parentage." *See Partenan v. Gallagher*, 475 Mass. 632 (2016).

*See* G. L. c. 119, § 24 (care and protection), c. 190B, §§ 1-401 and 5-101 (guardianship of minors), c. 209C, § 3(c) (parentage and support), c. 119, § 28 (temporary support), and c. 210, § 1 (authority of the Juvenile Court to hear cases pursuant to c. 210 with respect to pending proceedings in the Juvenile Court). Proceedings that seek equitable relief are governed by the Massachusetts Rules of Civil Procedure, including proceedings pursuant to G. L. c. 210, § 6D (enforcement of post-adoption agreements). *See* G. L. c. 218, § 59 and Mass. R. Civ. P., Rule 1. Permanency Hearings are governed by the Massachusetts Trial Court Rule VI Uniform Rules for Permanency Hearings.

**Rule 2. Definition of Terms**

For these rules the terms below shall have the following definitions:

"Child" means the person who is the subject of the petition or complaint.

"Department" means the Department of Children and Families or its successor.

"Order or Decree Dispensing with Consent to Adoption" means an order or decree dispensing with the need for consent to adoption, guardianship or any other disposition of the child, commonly referred to as "termination of parental rights."

"Precept" means an order of the court to take and bring the child who is the subject of the care and protection petition before the court.

**Rule 3. Precepts**

A. Procedure. The court may order a precept sua sponte or upon the request of the petitioner or the Department. The precept shall be served by a court officer, constable, deputy sheriff, sheriff, police officer, or other person designated by the court and shall be on a form approved by the Chief Justice of the Juvenile Court.

B. Service. The precept shall be served forthwith. The child shall be brought to the court within court hours and identified. Nothing in this rule limits the authority or responsibility of the Department regarding the care and custody of children as set forth in statutes, case law and Department regulations.

C. Return of Service. The officer or other person making service in accordance with this rule shall make a return of service on the precept and file it promptly with the court.

**Note**

If the precept is served and the child cannot be brought before the court the same day, the Department shall bring the child to the court for identification as soon thereafter as practicable. If available and with prior arrangement, the child may be identified by way of videoconference. *See* Executive Office Transmittal 14-4 Trial Court Videoconferencing Policy. The child should be identified by a judge from the court that issued the precept. However, if necessary and with prior arrangement, the child may be identified by a judge from a different Juvenile Court. *See* Order of Assignment dated February 12, 2014 authorizing justices appointed to a particular division of the Juvenile Court Department and circuit justices appointed to the Juvenile Court Department to sit and act as justices in all divisions of the Juvenile Court Department.

**Rule 4. Appointment of Counsel**

Counsel shall be appointed in accordance with the provisions of G. L. c. 119, § 29 and c. 211D, the Massachusetts Rules of the Supreme Judicial Court, Rule 3:10, and applicable case law.

**Note**

*See Dept. of Pub. Welfare v. J.K.B.*, 379 Mass. 1 (1979) (indigent parent entitled to court-appointed counsel in termination of parental rights proceedings pursuant to G. L. c. 210, § 3), *Guardianship of V.V.*, 470 Mass. 590 (2015) (indigent parent entitled to court-appointed counsel on a guardianship petition pursuant to G. L. c. 190B) and *L.B. v. Chief Justice of the Probate and Family Court Dept.,* 474 Mass. 231 (2016) (indigent parent entitled to court-appointed counsel in petitions to remove guardian and/or seek visits with the child under the guardianship provided the parent presents a meritorious claim for removal and/or modification of visitation).

## Rule 5. Process

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

1. Care and Protection Cases

After the filing of the care and protection petition, the petitioner shall cause a summons or order of notice and a copy of the petition to be served by a court officer, constable, deputy sheriff, sheriff, police officer, or other person approved by the court on each of the parents of the child, the legal guardian, if any, the legal custodian, if any, and the Department, if the legal custodian. The summons or order of notice shall be on a form approved by the Chief Justice of the Juvenile Court and shall be served on each of the above in the following manner:

(a) If the place of residence or whereabouts of the persons above is known, service shall be accomplished by delivery in hand. Service shall be accomplished on the Department by delivering the summons or order of notice to the appropriate Office of the Regional Counsel.

(b) Personal service may be accomplished the first time the matter comes before the judge or at the temporary custody hearing on persons above, if present, and upon a representative of the Department.

(c) If the Department is not the legal custodian, the petitioner shall provide notice to the Department of the filing of the petition by certified or registered mail, return receipt requested, to the appropriate Office of Regional Counsel, attention to the Regional Counsel.

(d) If the place of residence or whereabouts of persons above, except the parent(s), is known but the petitioner has been unable to accomplish in-hand service despite diligent efforts to do so, on the petitioner's written motion for alternate manner of service setting forth the diligent efforts made to accomplish in-hand service, the court may order that service be accomplished by certified or registered mail, return receipt requested, to the last known place of residence, the mailing to be at least twenty-one days before the date of the pretrial conference, unless the court otherwise orders.

(e) If the place of residence or whereabouts of a parent is known but the petitioner has been unable to accomplish in-hand service despite diligent efforts to do so, or the place of residence or whereabouts of a parent cannot be found after diligent efforts, on the petitioner's written motion for alternate manner of service setting forth the diligent efforts made to accomplish in-hand service or ascertain the place of residence or whereabouts, the court may order that service be accomplished on that parent, either within or outside of the Commonwealth, by:

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

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

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

(g) Whenever service by publication is required in a care and protection case, the court shall, upon motion of the petitioner, other party, or sua sponte, issue an Order for Service by Publication. The petitioner shall cause notice to be published in accordance with the order in the newspaper or newspapers designated by the court once in each of three successive weeks, the final publication to appear no later than the pretrial conference date unless the court otherwise orders. Whenever the court orders service by publication the court shall also require the petitioner to file a Military Affidavit on a form approved by the Chief Justice of the Juvenile Court as to the parent to be served by publication.

(h) If, after the petitioner has perfected service of process in accordance with this rule, no parent has appeared or can be found, and the legal guardian, if any, has not appeared and the legal custodian, if any, has not appeared, a summons shall be issued to the person with whom such child last resided, if known.

2. Guardianship of a Minor Cases

Except as provided for in subsection (i), after the filing of a guardianship petition, the petitioner shall cause notice and a copy of the petition to be served by a court officer, constable, deputy sheriff, sheriff, police officer, or other person approved by the court on the person(s) set forth in G. L. c. 190B, § 5-206. The notice shall be on a form approved by the Chief Justice of the Juvenile Court and shall be served with a copy of the petition in the following manner:

(a) If the place of residence or whereabouts of persons entitled to notice pursuant to G. L. 190B, § 5-206 is known, service shall be accomplished by delivery in hand on the:

(i) parent(s);

(ii) child if age fourteen or older and not the petitioner;

(iii) person given care or custody of the child by court order and with whom the child has resided within sixty days prior to the filing of the petition, excluding foster parent(s);

(iv) current guardian or conservator for the child; and

(v) the Department, if the legal custodian. In-hand service shall be accomplished on the Department by delivering the notice to the appropriate Office of the Regional Counsel.

(b) Personal service may be accomplished on person(s) entitled to in-hand service pursuant to paragraph (a), if present, and upon a representative of the Department, if the legal custodian, when the matter comes before the judge.

(c) Service shall be accomplished on all others entitled to notice pursuant to G. L. c. 190B, § 5-206 by certified or registered mail, return receipt requested, to the last known place of residence or whereabouts, if known. Service shall be accomplished on the Department, if not the legal custodian, by certified or registered mail, return receipt requested, to the appropriate Office of Regional Counsel, attention to the Regional Counsel.

(d) If the place of residence or whereabouts of a person, except the parents, entitled to in-hand service pursuant to paragraph (a) is known but the petitioner has been unable to accomplish in-hand service despite diligent efforts to do so, on the petitioner's written motion for alternate manner of service setting forth the diligent efforts made to accomplish in-hand service, the court may order that service be accomplished by certified or registered mail, return receipt requested, to the last known place of residence, the mailing to be at least fourteen days before the petition for guardianship is heard, unless the court otherwise orders.

(e) If the place of residence or whereabouts of a parent is known but the petitioner has been unable to accomplish in-hand service despite diligent efforts to do so or the place of residence or whereabouts of a parent cannot be found after diligent efforts, on the petitioner's written motion for alternate manner of service setting forth the diligent efforts made to accomplish in-hand service or ascertain the place of residence or whereabouts, the court may order that service be accomplished on that parent, either within or outside of the Commonwealth, by:

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

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

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

(g) Whenever service by publication is required in a guardianship case the court shall, upon motion of the petitioner, other party, or sua sponte, issue an Order for Service by Publication. The petitioner shall cause notice to be published in accordance with the order at least once in the newspaper or newspapers designated by the court, the publication to appear at least seven days before the petition for guardianship is heard, unless the court otherwise orders. Whenever the court orders service by publication the court shall also require the petitioner to file a Military Affidavit on a form approved by the Chief Justice of the Juvenile Court, as to the parent to be served by publication.

(h) If the minor is entitled to any benefit, estate, or income paid or payable through the United States Veterans Administration or its successor, service shall be made on the Veterans Administration or its successor by certified or registered mail, return receipt requested, unless the court otherwise orders.

(i) No notice need be given in the following circumstances: (1) to a person entitled to notice under this rule who has assented in writing to the allowance of the petition if the assent is filed in court; (2) to a parent who executes an adoption surrender in conformance with G. L. c. 210, § 2; or (3) if the court has terminated parental rights pursuant to G. L. c. 119, § 26 or c. 210, § 3.

(j) A motion for the appointment of a temporary guardian may not be filed unless a guardianship petition has been filed**.** If service of the notice of the guardianship petition has not been made in accordance with this rule, a copy of the motion for the appointment of temporary guardian and written notice of its hearing shall be served with the notice of the guardianship petition, unless the court otherwise orders.

3. Parentage and Child Support Cases

After the filing of a complaint for parentage or an order of child support, or both, the plaintiff shall cause notice and a copy of the complaint to be served by a court officer, constable, deputy sheriff, sheriff, police officer, or other person approved by the court on each of the parents of the child unless a parent has assented to the filing of the complaint, on the child, if the child is age fourteen years or older, on the Department, if the legal custodian, and on the person entitled to notice pursuant to G.L. c. 209C, § 6. The notice shall be on a form approved by the Chief Justice of the Juvenile Court and shall be served with a copy of the complaint in the following manner:

(a) If the place of residence or whereabouts of a parent is known, service shall be accomplished on that parent by delivery in hand to the parent. If the child is age

fourteen years or older, service shall be made in the same manner on the child. Service shall be accomplished on the Department by delivering the notice to the appropriate Office of the Regional Counsel, attention to the Regional Counsel.

(b) Personal service may be accomplished on the parent or child who is age fourteen years or older, if present, and on a representative of the Department, if the legal custodian, when the matter comes before the judge.

(c) If the Department is not the legal custodian of the child, the plaintiff shall provide notice to the Department of the filing of the complaint by certified or registered mail, return receipt requested, to the appropriate Office of Regional Counsel, attention to the Regional Counsel.

(d) If the place of residence or whereabouts of a parent is known but the plaintiff has been unable to accomplish in-hand service despite diligent efforts to do so or the place of residence or whereabouts of a parent cannot be found after diligent efforts, on the plaintiff's written motion for alternate manner of service setting forth the diligent efforts made to accomplish in-hand service or ascertain the place of residence or whereabouts, the court may order that service be accomplished on that parent, either within or outside of the Commonwealth, by:

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

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

(e) Whenever service by publication is required in a parentage or child support case the court shall, upon motion of the plaintiff, other party, or sua sponte, issue an Order for Service by Publication. The plaintiff shall cause notice to be published in accordance with the order at least once in the newspaper or newspapers designated by the court, the publication to appear at least seven days before the complaint for parentage or support is heard, unless the court otherwise orders. Whenever the court orders service by publication the court shall also require the plaintiff to file a Military Affidavit on a form approved by the Chief Justice of the Juvenile Court as to the person to be served by publication.

4. Change of Name Cases

Except as provided in subsection (e), after the filing of a change of name petition, the petitioner shall serve notice on each of the parents of the child and upon the Department if the legal custodian or if there is a care and protection case pending, in accordance with an

order of notice. An order of notice shall be on a form approved by the Chief Justice of the Juvenile Court and shall be served with a copy of the petition in the following manner:

> (a) Service shall be accomplished by certified or registered mail, return receipt requested, on the parent to the last known place of residence of the parent and on the Department to the appropriate Office of the Regional Counsel, attention to the Regional Counsel, the mailing to be at least fourteen days before the petition for change of name is heard, unless the court otherwise orders.
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> (b) Service may be accomplished by a court officer on the parent, if present, and on a representative of the Department when the matter comes before the judge.
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> (c) If the place of residence or whereabouts of a parent is known but the petitioner has been unable to accomplish service by certified or registered mail despite diligent efforts to do so or if the place of residence or whereabouts of a parent cannot be found after diligent efforts, on the petitioner's written motion for alternate manner of service setting forth the diligent efforts made to accomplish service or ascertain the place of residence or whereabouts, the court may order that service be accomplished on that parent, either within or outside of the Commonwealth, by publication in accordance with subsection (d), below.
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> (d) Whenever service by publication is required in a change of name case the court shall, upon motion of the petitioner, or sua sponte, issue an Order for Service by Publication. The petitioner shall cause notice to be published in accordance with the order at least once in the newspaper or newspapers designated by the court, the publication to appear at least seven days before the petition is heard, unless the court otherwise orders. Whenever the court orders service by publication the court shall also require the petitioner to file a Military Affidavit on a form approved by the Chief Justice of the Juvenile Court, as to the parent to be served by publication.
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> (e) No notice need be given in the following circumstances: (1) to a person entitled to notice under this rule who has assented in writing to the allowance of the petition if the assent is filed in court; (2) to a parent who executes an adoption surrender in conformance with G. L. c. 210, § 2; or (3) if the court has terminated parental rights pursuant to G. L. c. 210, § 3.

B. Filing Proof of Publication. Following publication in accordance with the order, counsel for the petitioner or plaintiff shall promptly complete and file in the Clerk's office an Affidavit of Notice of Publication on a form approved by the Chief Justice of the Juvenile Court and shall file a completed Military Affidavit as to the person served by publication.

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

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

**Note**

*See* Trial Court Rules, Rule IV Uniform Rule Requiring Disclosure of Pending and Concluded Care or Custody Matters and Rule X Uniform Rule Requiring Disclosure of Present or Past Receipt of Public Assistance Benefits by Minor Children. Current Juvenile Court forms are available online on the Juvenile Court website.

**Subsection A.** Service on the Department. When providing service in hand or by certified or registered mail on the Department, the address to be used is that of the Office of the Regional Counsel for the region in which the case is filed.

**Subsection A.3.** See G.L. c. 209C, § 6, relative to persons who must be joined as a party and the manner of notice required.

**Subsection A. 4**. Petitions for change of name pursuant to G. L. c. 210, § 12 are for name changes other than those that occur in the context of adoption cases or, in some instances, parentage cases. After the petition for change of name is allowed, the clerk may, upon request, issue a Certificate of Name Change. Allowance of the petition for change of name will not result in an amendment of the birth certificate. The birth name remains the same. The new name is considered an alias or an "also known as" ("aka"). *See* G. L. c. 210, §§ 12 -14.

**Rule 6. Filing of Birth Certificates**

A. Care and Protection Cases. The petitioner shall file, within sixty days of commencement of the action, a certified copy of the birth certificate issued after the date of the filing of the petition, of each child named in the petition. In rare circumstances and for good cause shown, the judge may extend the time or waive the filing of the birth certificate. The petitioner may request an order from the court to produce a birth certificate pursuant to G. L. c. 46, § 2A if the petitioner does not have custody of the child.

B. Guardianship, Parentage and Change of Name Cases. The petitioner or plaintiff shall file along with the petition or complaint, a certified copy of the birth certificate for each child named in the petition or complaint. For good cause shown, the judge may extend the time or waive the filing of the birth certificate. The certified birth certificate shall have been issued within sixty days of filing the petition or complaint. The petitioner or plaintiff may request an order from the court to produce a birth certificate pursuant to G. L. c. 46, § 2A if the petitioner or plaintiff does not have custody of the child. If there is a certified copy of the child's birth certificate on file in the care and protection case, the clerk may copy and file it in the guardianship, parentage or

change of name case provided that it was filed in the care and protection case within sixty days of the filing of the guardianship petition, parentage complaint or change of name petition.

### Note

A. The importance of having a recent certified copy of the child's birth certificate to determine parentage in order to provide parents with notice and the opportunity to be heard cannot be overstated. "Good cause" should be construed narrowly and constitute more than mere inconvenience; however, there may be circumstances in which a certified 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 certified 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 of a foreign birth certificate.

B. There may be circumstances in which the certified 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 a 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 certified copy of the birth certificate, he/she 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.

## 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 approved by the court, and shall have a heading which includes the name, division and county of the court, the docket number, the title of the action and a designation of the nature of the motion or document. Every such motion or document shall set forth the name, address, telephone number and email address of the attorney or pro se party filing it, the Board of Bar Overseers registration number of the attorney, and the date on which the motion or other document was filed with the court.

B. Requirement of Affidavit. Unless a motion, other than a motion to dismiss as provided in paragraph C, is made during a hearing or trial, any request for a court order shall be made by written motion accompanied by an affidavit signed by the person with personal knowledge of the factual basis of the motion, and shall state with particularity the grounds 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, motions to correct a name on the petition and motions for continuance or change of court date. Whenever a motion is supported by an affidavit or memorandum, the affidavit or memorandum shall be served with the motion.

C. Motions to Dismiss. 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.

D. 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 E 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.

E. 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.

**Rule 8. Appearances**

All counsel, including court-appointed counsel, shall file a notice of appearance in the Clerk's Office by hand delivery or mail that shall include the name of the attorney, address, telephone number, email address and Board of Bar Overseers registration number. A copy of the appearance shall be served on all parties.

**Note**

This rule applies to all private and court-appointed counsel and to attorneys employed by state agencies, including but not limited to, the Department and the Committee for Public Counsel Services.

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

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 of 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.

**Note**

This 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).

This rule addresses waiver of 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. 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 or be heard on the issue of reasonable efforts. 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 or the issue of reasonable efforts. There may be situations in which a parent, guardian, custodian or child requests a reasonable amount of time beyond the scheduled 72 hour hearing to nominate another individual or family member, or more time is necessary to complete a home study of the proposed nominee. In those cases, after the hearing has commenced, the judge may continue the temporary custody hearing to another date for this purpose.

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 regarding placement. *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. 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.

**Rule 10. Written Reports by the Department**

The Department shall file a written report with the court each time the case is before a judge for hearing or report. The report shall be filed in the Clerk's Office at least two days in advance of the scheduled court date and shall contain relevant information regarding the child, the parents, caregivers, the services being offered and provided and the progress towards the permanency goal. The failure of the Department to provide the report in advance of the scheduled court date shall not preclude the judge from proceeding with the hearing.

**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 and 24 shall be filed in the Clerk's Office within sixty days after the appointment of the investigator, unless the court otherwise orders. A request for extension of time to file the court investigator's report shall be made by motion on a form approved by the Chief Justice of 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 fourteen 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.

**Rule 12. Assignment of Care and Protection Cases**

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

**Rule 13. Discovery**

A. 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 him/her.

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, and 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 on a timely basis any additions to the social services file made after initial production required in this subsection.

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

**Note**

Section A. *See* Juvenile Court Standing Order 1-84, Juvenile Court Case Records and Reports.

**Rule 14. Status Hearing**

There shall be a status hearing within ninety days after the commencement of a care and protection case, provided however, that it shall be scheduled to occur after the court investigator's report has been filed. All parties are required to be present with counsel at the status hearing, 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 status hearing.

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 status hearing. When so summoned, the court investigator shall attend the status hearing 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 and 24. Failure of the court investigator to be present without good cause or the report to be available shall not preclude the court from proceeding with the status hearing.

B. Issues to be Addressed. Unless previously addressed and resolved, at the status hearing the court shall address but is not limited to addressing: the process of the court investigation or the report; service of process in accordance with Rule 5; discovery motions; child identification; the Indian Child Welfare Act; any special evidentiary issues; the Department's plan to achieve permanence; any issues regarding services being offered or delivered to the family pending trial; the scheduling of a pretrial conference; and compliance with the standing order regarding time standards. Nothing in this rule shall preclude the court from hearing motions, including discovery motions, at other times in the interests of justice.

C. Court Investigator's Report. The court shall attach the court investigator's report to the petition at the status hearing, 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.

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

**Note**

The purpose of the status hearing is to address any matters that may impact the timely resolution of the case and permanency for the child.

This rule differs from the prior rule in that it provides a uniform procedure to secure the presence of the court investigator and addresses how the court investigator's report becomes part of the record and evidence in the case.

When summoned to attend the status hearing 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 status hearing 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 status hearing, 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.

**Rule 15. Pretrial Conference in Care and Protection Cases**

A pretrial conference shall be scheduled to occur no later than thirty days before the trial on the merits, except for good cause shown provided however, that it shall be scheduled to occur after the date upon which the court investigator's report is due. All parties are required to be present with counsel at the pretrial conference, except that counsel for the child may appear without his/her client. Failure of one or more parties to appear shall not preclude the court from proceeding with the pretrial conference.

A. Witness and Exhibit Lists. The parties shall file written witness and exhibit lists with the court at the pretrial conference. As a matter of discretion in a particular case, the trial judge may order the parties to submit a written joint or individual pretrial memorandum that covers any or all of the issues set forth below in subsection B of this rule. Parties shall be bound by the witness and exhibit lists filed separately or set forth in a pretrial memorandum, except by court order for good cause shown.

B. Issues to be Addressed. At the pretrial conference, the court shall address the matters set forth below:

1. Whether parents 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
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
19. The Department's plan to provide timely notice of the trial to the foster parent, pre-adoptive parent or relative providing care.

C. Scheduling the Hearing on the Merits. At the pretrial conference, unless previously scheduled, the court shall schedule a hearing on the merits to be heard within twelve months of the filing of the petition unless a later date is necessary in the interests of justice.

**Note**

This rule differs from the prior 2007 rule in that it retains the pretrial conference and written witness and exhibit lists but removes the requirement of a written pretrial conference memorandum unless ordered by the trial judge. Pretrial memoranda that contain mere boilerplate paragraphs relative to the issues to be addressed or a list of all possible witnesses are of no value to the court.

In some divisions, proposed exhibits are marked for identification at various stages of the proceedings. In those divisions, when listing exhibits marked for evidence under Rule 15 B. 6, counsel should use the same numbers used by the court to mark the exhibits for identification.

If a date has not been set for the submission of, or to hear, motions in limine, the trial judge should schedule said date(s) at the pretrial conference.

**Rule 16. Notice to Foster Parent, Pre-adoptive Parent, or Relative Providing Care for a Child**

The Department shall file a certification with the court that the Department has provided notice and informed the foster parent, pre-adoptive parent or relative providing care for a child, who is the subject of a care and protection petition, of his/her right to attend and be heard at a hearing held pursuant to G. L. c. 119, §§ 26 and 29B. The certification shall be on a form approved by the Chief Justice of the Juvenile Court. In the event the foster parent, pre-adoptive parent or relative chooses to exercise his/her right to be heard, he/she shall testify in court under oath. Failure by the Department to provide timely notice does not preclude the judge from proceeding with the hearing.

**Note**

General Laws c. 119, § 29D requires the Department to provide notice and inform the foster parent, pre-adoptive parent or relative providing care of a child who is the subject of a care and protection petition of the right to attend and be heard at hearings pursuant to G. L. c. 119, §§ 26 and 29B. This includes hearings on the merits, (including the termination or so called "best interests" hearing) review and redetermination hearings, and permanency hearings. The statute expressly provides that the foster parent, pre-adoptive parent or relative does not become a party to the case by exercising his/her right to attend and be heard. Although the rule provides that the hearing may proceed in the absence of timely notice by the Department, the court may provide an opportunity for the foster parent, pre-adoptive parent or relative to be heard on another date. The rule does not require the foster parent, pre-adoptive parent or relative to inform the court in advance of the hearing of his/her intention to attend and be heard but he/she may do so. *See* Adoption of Sherry, 435 Mass. 331 (2001) (usual rules of evidence apply; testimony of foster parent must be under oath and subject to cross examination; unsworn written statement is inadmissible.)

**Rule 17. Sanctions and Contempt**

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

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

**Rule 18. Subpoenas**

Subpoenas shall be served and enforced as provided by Mass. R. Civ. P. 45 and may be issued by the Clerk's Office or as otherwise provided in Mass. R. Civ. P. 45.

**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**

A. Entry of Adjudication, Order of Commitment, Order Dispensing with the Need for Consent to Adoption, Allowance or Denial of Guardianship Petition. Upon adjudication, order of commitment, or order dispensing with the right of the parents to receive notice of or consent to the adoption, custody, or guardianship or any other disposition of the child or an allowance or denial of a guardianship petition, the clerk shall forthwith enter that adjudication, order, allowance or denial on the court's docket. If the court issues a permanent mittimus or grants permanent custody of a child to the Department, the court shall schedule the case for review which shall be no later than six months from the date of the mittimus or custody order and every six months thereafter until permanency has been achieved for the child.

B. Notice. Immediately following the clerk's entry of the above adjudication, order, allowance or denial on the docket, the clerk shall notify all attorneys of record and parties who are self-represented by mail or electronically, of the entry of that adjudication, order, allowance or denial. The clerk shall note on the docket, or otherwise record electronically, the names of the persons to whom the notice was sent, with the date notified. This notice shall include: 1) a copy of the adjudication, order, allowance or denial; 2) the date of the clerk's entry; and 3) notice that each party has thirty (30) days from the date of entry within which to file a claim of appeal.

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

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

E. Notification to All Parties by Clerk. Immediately upon the filing of the findings of fact and conclusions of law, the clerk shall mail or transmit a copy to each attorney of record and party who is self-represented.

## Note

After an adjudication, the judge may make any appropriate dispositional order including conditions and limitations relative to the care and custody of the child. The dispositional order may include, but is not limited to, reunification with the parent, guardian, or other custodian found by the court to be qualified to care for the child; custody to any agency or private organization licensed or otherwise authorized to provide care for the child; or custody to the Department. G. L. c. 119, § 26(b).

Although issuance of a permanent mittimus or grant of permanent custody to the Department is a permissible post-adjudication order under § 26(b), these alternatives are not considered to be permanent plans for children under Rule 9(a)(1) of Trial Court Rule VI Uniform Rules for Permanency Hearings. Accordingly, this rule requires the court to schedule a review of these cases no later than six months after the date of the issuance of a permanent mittimus or order of permanent custody to the Department and every six months thereafter until the child is returned to his/her parents, is adopted, is placed with a third party custodian, a permanent guardian is appointed, or the child ages out of the system.

While an alternative planned permanent living arrangement ("APPLA") is considered to be a possible permanency plan for a child sixteen years of age or over under Rule 9(a)(1) of the Uniform Rules for Permanency Hearings, it does not achieve legal permanency for the child. Therefore, if APPLA is approved by the court as the permanency plan, the court must schedule a review of the case every six months thereafter until the child is returned to his/her parents, is adopted, is placed with a third party custodian, a permanent guardian is appointed, or the child ages out of the system. The review required in section A of this rule is different from the right of review and redetermination under G. L. c. 119, § 26(c); rather it is established by this rule to permit the court to assess progress toward permanency in keeping with the best practices for achieving legal permanency for children.

## Rule 20. Appeal

A. Claim of Appeal. An appeal, as permitted by G. L. c. 119, § 27, shall be governed by the Massachusetts Rules of Appellate Procedure. The claim of appeal shall be on a form approved by the Chief Justice of the Juvenile Court and shall be taken to constitute the "notice of appeal" for the purposes of complying with the Massachusetts Rules of Appellate Procedure. The claim of appeal and any request for a transcript, if required, shall be signed by the appealing party or parties unless the appellant is the child; a claim of appeal that is not so signed by the party or parties shall not be accepted for filing by the clerk.

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