

Operating Procedure for the Berkshire Division of the Probate and Family Court Under Standing Order 2 – 20, as amended July 1, 2020 and Supreme Judicial Court third updated order regarding court operations under the exigent circumstances created by the COVID-19 (coronavirus) pandemic effective July 1, 2020

Court Operations starting on July 13, 2020

A. Access to Courthouses

As outlined in Paragraph 4 of SJC Order OE-144 effective July 1, 2020, starting on July 13, 2020, courthouses will reopen for court staff and persons who are present in courthouses for attending in-person court proceedings as described in Sections E and F below; conducting in-person business with a register's office; meeting with a probation officer or probation staff person; or conducting business at other offices that are open to the public and housed in the courthouse.

Parties having business with the Registry will contact the court by calling 413-442-6941. If the parties are present at the front door, a staff member will assess their request and advise them accordingly. If the parties are requesting an emergency hearing, a manager will assess that request and facilitate the proceeding as determined. In addition, the Berkshire Division will be rolling out a virtual Registry and once operational, will be our first line of contact to facilitate and assess the user's needs. Parties will be allowed in the court only under the current restrictions as they are outlined by the Trial Court administration.

Records requests from our archive or storage location may still be made. Rather than come to the courthouse in person, we strongly recommend that you email your request to: Berkshireprobate@jud.state.ma.us Registry representatives will scan and email the plain copies to you at the email address used to make your initial request. Any fees for copies provided in this manner must be paid by credit card charge to be made by court cashier over the phone.

B. Virtual Proceedings

To continue to limit the number of persons entering courthouses, the Probate and Family Court will continue to conduct most business virtually. **The volume and type of cases to be heard virtually will be determined by the Register and First Justice, collectively, and will be scheduled based upon on-site and remote staffing availability and the availability of technological support and training needed to conduct virtual hearings. Because of the unique characteristics of each physical location, some courts will not be able to safely increase staffing levels in the same way as other locations.** To facilitate the business of each division, in the discretion of the First Justice, the individual assignment of cases may be relaxed so that all cases may be heard as scheduled.

Whether it is practicable to address certain case types/events will differ for each division of the Probate and Family Court, and will be based on a variety of

considerations. However, the Probate and Family Court is committed to hearing as many case types/events as is possible.

1. All motions and contempt proceedings shall be given **two** dates. A telephonic appearance for the first date will allow the Court to conduct an intake to ensure all necessary papers are filed. Cases where at least one party is not represented by counsel will then be assigned to a Probation Officer, who will conduct dispute intervention (“DI”) by telephone that day. If the matter is resolved as a result of that DI, an Order or Judgment shall enter that day. If the matter remains unresolved, the matter will be heard by the Court on the second assigned day. The parties will be given a specific time slot on the scheduled hearing date.
2. At this point, cases where attorneys are involved will by-pass the DI process. However, counsel shall use the first assigned date to discuss the matter with the opposing party to see if it can be resolved. On that date, counsel shall report the results of their negotiations to the Court, in writing, by sending an email to berkshireprobate@jud.state.ma.us. In that email, counsel shall provide (a) a certification that the matter has been resolved along with an attached agreement with electronic signatures; or (b) a certification that the matter remains contested. If the matter remains contested, counsel shall further provide the Court with email addresses for ALL parties and ALL counsel. If there is an agreement, the agreement may be incorporated into an Order or Judgment on that date without hearing. If the matter remains unresolved or requires a hearing, the parties will be given a specific time for their hearing on the second assigned date.
3. Attorneys are encouraged to include case management language regarding discovery deadlines in their agreements for temporary orders and request a pre-trial date to be assigned.
4. Attorneys who believe a pre-trial conference could be helpful in resolving a case may request that the Court schedule a pre-trial conference via Zoom.
5. The Court shall attempt to accommodate and schedule 1As.
6. All hearings shall continue to be primarily conducted by the Court via ZOOM technology, when capable to do so. In the event this platform is not accessible to the parties, the hearings may be conducted by telephone, or in person, so long as all participants adhere to appropriate safety protocols.
7. Staffing restrictions along with the more cumbersome process of remote hearings will continue to result in a limited number of cases the Court will be able to accommodate each day.

8. There will be a limited number of hearing slots for motion days. Attorneys will not be able to simply choose a date and mark up their motion(s) for that date. Counsel will need to contact the Court to secure a specific hearing slot. The hearing slot is the “second date” referred to in paragraph 3 above. In order for the Court get through its list, it will devote no more than 25 minutes of hearing time per case and shall endeavor to adhere to the assigned time slot. Therefore, if your case is assigned for a hearing at 10:30 a.m., you must be ready at that time. Absent extraordinary circumstances, the 10:30 a.m. hearing shall terminate at 10:55 a.m.
9. In completing a Notice of Hearing, counsel shall include this language in the documents they serve to the opposing party:
 - a. **IMPORTANT:** You must check-in for your hearing by contacting the Registry at [413-442-6941](tel:413-442-6941) by 10 am on _____ (2days before). You will be provided with additional instructions at that time as to how the hearing shall proceed. Failure to follow these instructions may result in your inability to participate in your hearing."
10. In order to ensure that all members of the Bar gain access to the Court, no attorney shall be permitted to schedule more than one case per motion day.
11. To promote efficiency, the rules of the individual calendar will be relaxed. Hearings on motions filed in cases, regardless of which Judge the case is assigned, may be heard on either a Wednesday or Thursday.

C. New Filings

1. For the actions listed in Section D below, parties may file by email, mail, in-person, e-filing where available, or utilizing the MassAccess filing procedure where available.
2. For all other matters: Parties may file by the above means, except that email may only be used for filing when done so by a Court Service Center staff member or an attorney volunteering through a Lawyer for the Day program on behalf of a self-represented litigant.
3. Drop-box: Every courthouse location will have a drop-box for filings.

The Drop-box is located at the front door of the Registry and is emptied once daily. If your filing is time sensitive, please call the Registry at 413-442-6941 and notify staff before leaving your filing in the Drop-box.

D. Occupancy Limits

As outlined in Paragraph 4 of SJC Order OE-144 effective July 1, 2020, entry into a courthouse may be limited to avoid exceeding occupancy limits. In that event, the

Probate and Family Court considers the below actions to be emergency proceedings for purposes of entry into a courthouse. This list is not ranked in order of importance.

1. Restraining Orders Pursuant to G. L. c. 209A/Orders to Vacate Pursuant to G. L. c. 208, § 34B, although hearings under G. L. c. 209A are presumptively virtual (See Section G below);
2. Petitions/motions seeking a Do Not Resuscitate/Do Not Intubate/Comfort Measures Only (DNR/DNI/CMO) order, authorization for medical treatment order, or order for antipsychotic medication;
3. Petitions seeking appointment of a temporary guardian or conservator;
4. Petitions pursuant to G. L. c. 19A, § 7 and G. L. c. 19C, § 20 – protective services;
5. Health Care Proxy actions;
6. Petitions/Motions for Appointment of Special Personal Representative;
7. Petitions for marriage without delay;
8. Complaints for Dependency (SIJS) and any related motions;
9. All requests for injunctive relief;
10. Motions for temporary orders where exceptional/exigent circumstances have been demonstrated; and
11. Contempt actions where exceptional/exigent circumstances have been demonstrated.

E. In-Person Matters Starting on July 13, 2020

On July 13, 2020, the Probate and Family Court may begin hearing the below actions in person. All other matters will be heard virtually, unless the First Justice and Register of a division determine that additional actions may be heard in person.

1. Evidentiary hearings; and
2. Trials.

F. In-Person Matters Starting on August 10, 2020

Beginning on August 10, 2020, the Probate and Family Court may hear the actions listed below in person. All other matters will be heard virtually, unless the First Justice and Register of a division determine that additional actions may be heard in person.

1. Evidentiary hearings;
2. Trials;
3. Motions for temporary orders involving custody/parenting time; and
4. Contempt actions.

G. Abuse Prevention Orders

Proceedings pursuant to G. L. c. 209A (abuse prevention orders) shall be conducted virtually unless otherwise ordered by the court. Virtual hearings shall be conducted by videoconference, unless it is not practicable to conduct the hearing by videoconference, in which case the hearing may be conducted by telephone.

An in-person hearing may be permitted by a judge if requested by one or more of the parties, or as ordered by a judge. In determining whether to permit an in-person hearing to occur, the judge should take into consideration all relevant factors, including but not limited to the positions of the parties, case scheduling constraints, building and courtroom occupancy limits, and social distancing accommodations.

H. Protocol in the event of a court closure by the Trial Court

I. REGISTRY

- a. With the agreement of the First Justice of the District Court, all 209A matters shall be referred to the District Court on-call Judge.
- b. The following emergency contact information shall be prominently placed on the entry door of the building.
 - i. Emergency phone number: (413) 442-6941, extension 7200.
Emergency email address: berkshireprobate@jud.state.ma.us
- c. Any member of the “Team”¹ shall access both the Registry phone messages and emails regularly throughout the closure to triage the emergencies as outlined in Standing Order 2-20..
- d. Whenever possible, a member of the Team shall work with the litigant or attorney to complete the appropriate paperwork online and email it to berkshireprobate@jud.state.ma.us or if available, to e-file the paperwork. If the person is unable to do this, the Team member shall ask the litigant to make the request in writing in an email and send it to berkshireprobate@jud.state.ma.us. In the event the person has no access to email, the Team member shall assist the litigant by filling out the necessary paperwork over the phone.
- e. The Team member shall ensure that the following information is gleaned from the litigant and/or Masscourts:
 1. Names, phone numbers, email addresses and residential addresses of both the moving party and the adverse party;
 2. Where appropriate identifying information in order to run a CARI: dates of birth, mother’s maiden name; social security numbers
 3. Docket number of any open or closed case involving the parties;

¹ The Team consists of Register Fran Marinaro, Asst Register Clem Ferris, JCM Lisa McCormack and Office Manager, Tony Patella. The Team will have its own system of rotating responsibilities.

4. If the case is open, what is the status of the case, including the last Order and the next scheduled date;
5. The terms and dates of any existing Order;
6. Whether or not there is an active 209A Order in existence between the parties; and
7. Whether or not DCF is involved with the family.

ii. The moving party shall be told to follow through with filing original documents for later filing and docketing.

- f. Team member shall determine procedurally, in conjunction with the Judge, whether the case shall go forward with or without notice. If the case is going to proceed without notice, the Team member shall contact Chief Probation Officer, Amy Koenig.
- g. If Probation is able to resolve the matter with an agreement and it would be beneficial to have the parties' agreement become an Order, Probation shall contact the Team member, who in turn will contact Judge Simons.
- h. Amy shall request from one of her colleagues that CARIs be run for the parties. If DCF is involved, Amy shall arrange with DCF to have the appropriate social worker available to testify in the emergency hearing. Amy shall ensure the CARI information and DCF contact information is forwarded to the Team member.
- i. Prior to any hearing, all information, including the moving parties' telephone number, the opposing parties' telephone number, DCF contact information, CARI information, and any pleadings/emails shall be forwarded to Judge Simons by email.
- j. If Judge Simons deems the matter to be an emergency requiring a hearing, all reasonable attempts shall be made to conduct a telephonic hearing. The Team member shall communicate the conference line number to the litigants, attorneys, Probation and DCF and instruct them to call at a designated time. Judge Simons shall ensure the hearing is recorded using the portable ZOOM H4nPro Recorder. This recording shall later be transferred to FTR when practical. Judge Simons shall administer an oath to all parties who testify.
- k. The Team member shall assist the Judge with processing any resulting Order. The Order shall be saved and distributed as an un-editable PDF and the typed signature of the Judge shall suffice for the entry of the Order until such time as the Order may be signed and docketed.

I. At no time shall the private contact information for any Registry, judicial or Probation staff be disclosed to any litigant, attorney or other individual.

II. EMERGENCY JUDGE

a. In absence of unforeseen circumstances, Judge Richard A. Simons shall be the emergency judge for the Berkshire Division.

I. Contact Information

Emergency phone number	(413) 442-6941 ext 7200
Emergency email address	berkshireprobate@jud.state.ma.us
Registry phone number	(413) 442-6941
Probation contact	Amy A. Koenig, amy.koenig@jud.state.ma.us (413) 443-9469
Judicial Case Manager	Lisa M. McCormack lisa.mccormack@jud.state.ma.us (413) 442-6941
Sessions clerk: Judge Simons	Joan Oggiani joan.oggiani@jud.state.ma.us (413) 442-6941, ext 7241
Sessions clerk: Judge Dacyczyn	Lisa Marcotte lisa.marcotte@jud.state.ma.us (413) 442-6941, ext 7238
Judicial Assistant	Carolyn Lines Carolyn.lines@jud.state.ma.us (413) 442-6941, ext 7251