

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.

RODERICK L. IRELAND
Chief Justice

1. Court Submitting Rules for Approval:

Probate and Family Court

2. Date Rules Submitted for Approval:

May 21, 2013

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

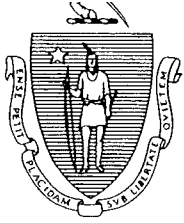
June 25, 2013

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

Amendment to Probate and Family Court Supplemental Rule 412
as attached.

Effective date - August 1, 2013

(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 COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT
ADMINISTRATIVE OFFICE
JOHN ADAMS COURTHOUSE
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PAULA M. CAREY
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May 21, 2013

Honorable Robert J. Cordy, Associate Justice
Supreme Judicial Court
John Adams Court House
One Pemberton Square
Boston, MA 02108

Dear Justice Cordy:

Pursuant to G. L. c. 215, § 30, I submit for approval by the Supreme Judicial Court proposed changes to Rule 412 of the Supplemental Rules of the Probate and Family Court.

The proposed changes are recommended by the Probate and Family Court Bench/Bar Committee on Rules. I join the Committee in recommending that the proposed changes be adopted.

The proposed changes to Rule 412, Joint Petition for Modification of Child Support Judgment, would expand the Rule to allow parties to modify any judgment or temporary order of the Probate and Family Court where the parties are in agreement, the agreement is in writing, and all other requirements of the Rule are met. The proposed changes were motivated, in part, by feedback received at the November 2012 Probate and Family Court conference, "Improving the Delivery of Justice: Vision for the Future".

The proposed changes to Rule 412 went through two rounds of review and comment. During the first round of review, proposed changes were sent to the Child Support Enforcement Division of the Department of Revenue and circulated internally to all Justices of the Probate and Family Court, Registers, Judicial Case Managers, Assistant Judicial Case Managers, First Assistant Registers, Assistant Registers and Family Law Facilitators. The overwhelming response was favorable. Some of the comments received were:

"Overall the Child Support Enforcement Division of the Department of Revenue (DOR) supports the changes and agrees that the proposed changes further the court's efforts to make efficient use of limited resources and better serve the families who rely on the court." – DOR

"Great idea !!!!!!!!!!! " – Justice of the Probate and Family Court

Based on suggestions from DOR and court officials, the Committee then made minor improvements to the Rule. As part of the second round of review, the proposed changes were sent to Chief Justice Robert A. Mulligan, the various bar associations and published in Lawyers Weekly for public

comment. Again, overwhelming support was received from bar associations, legal services groups, attorneys, mediators, and the public. Some of the comments received were:

"Your proposed changes to Rule 412 make it easier for parents to agree and to express that agreement in a modified judgment or order. I for one applaud these changes and thank you for all you do to encourage people to define their own solutions. Here's to the spirit and teaching of Knox v. Remick, 371 Mass. 433 (1976), "We see no reason why parties to a separation agreement which anticipates that the marriage will be terminated by divorce may not agree to a permanent resolution of their mutual rights and obligations, including support obligations between them." p. 436." - Mediator

"You may consider this my vote of support for the expansion of Rule 412 respecting streamlining agreed matters. About time." – Attorney

"The BBA Family Law Section considered the proposed amendments and unanimously supported them."- President of the Boston Bar Association

Notwithstanding the overall support received for the proposed amendments, concerns were raised regarding the Rule's application to cases where there is an existing abuse prevention order. The Rule was then revised to expressly provide that the Rule cannot be applied to actions governed by G. L. c. 209A. Additional commentary was also added to the Reporter's Notes. Ultimately, the proposed Rule was then submitted to the justices of the Probate and Family Court for a vote. Twenty-seven (27) of our forty-one (41) justices responded favorably with only one (1) dissenting vote.

A redlined version of the proposed amendments to Rule 412, showing the additions and deletions to the current Rule, and the text of how Rule 412 would appear with the proposed amendments are enclosed. It is hoped that the Rule, if approved, will become effective July 1, 2013. If you or the Court's staff have any questions or comments, I would be happy to discuss them. Thank you for your consideration.

Very truly yours,

Paula M. Carey
Chief Justice

Enclosures

cc: Hon. Roderick L. Ireland, Chief Justice
Hon. Robert A. Mulligan, Chief Justice of Trial Court
Hon. Geoffrey Wilson, Chair, Probate and Family Court Bench/Bar Rules Committee
Christine Burak, Esq.

**RULE 412. UNCONTESTED ACTIONS TO MODIFY A JUDGMENT OR ORDER
JOINT PETITION FOR MODIFICATION OF CHILD SUPPORT JUDGMENT**

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

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

- (1) an agreement setting forth the agreed upon modification(s), which must be notarized if modifying a judgment. If a child's primary residence or custody is being modified, the agreement must specifically state whether any terms in a prior judgment or order related to child support, health, dental, vision or life insurance coverage are also modified, or if they remain in effect. If child support is being modified and the parties deviate from the guidelines amount, the agreement must include specific facts that justify departure from the guidelines, and if the parties agreement terminates child support upon the age of 18, the agreement must acknowledge that G. L. c. 208, § 28 or G. L. c. 209C, § 9 is not applicable;
- (2) complete and accurate financial statements signed by each party, and counsel, if any, pursuant to Supplemental Probate and Family Court Rule 401, with supporting documentation (attach W- 2's, and 1099 forms for prior year), attached if financial issues are being modified;
- (23) a complete and accurate Child Support Guidelines Worksheet, if child support or medical, dental or vision insurance is being modified and;
- (4) a written assent from the Department of Revenue Child Support Enforcement Division as the IV-D agency when a party, and/or a dependent child, is a current recipient of public assistance or owes a past-due child support debt assigned to the Commonwealth, and any term relating to child support or medical insurance is being modified;
- (5) a proposed Child Support Findings form, if child support is being modified and the parties deviate from the guidelines amount;
- (6) an Affidavit Disclosing Care or Custody Proceeding form by each party, pursuant to Trial Court Rule IV, if the care, custody or visitation of a child is being modified;
- (75) any other assent or document required by statute or court rule; and
- (38) a proposed judgment or order on a form approved by the

Probate and Family Court, if the child support is being paid by wage assignment, a complete order for support and health care coverage reflecting the child support amount agreed upon in the petition.

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

(b)(c) The Joint Petition for Modification of Child Support Judgment and accompanying documents shall be filed with the court. No Neither party shall mark the joint petition or joint motion for hearing. In the event that the court believes that a hearing is necessary or helpful to a disposition of the petition matter, the court will set the time and date for the hearing and will notify the parties within twenty-one fourteen (21+4) days of the filing of the joint petition or motion. If the pleadings are deficient or incomplete, an in-person hearing will be required.

(de) A jJoint pPetition for Modification of Child Support Judgment or joint motion that which is not set down scheduled for a hearing in accordance with paragraph (b) hereof will be decided on the papers filed in accordance with this rule within thirty fourteen (30+4) days of the such filing of the joint petition.

(e) A judgment or order entered on a The jJoint pPetition for Modification of Child Support Judgment or joint motion involving child support if allowed by the court, will be entered in the State Case Registry pursuant to G.L. c. 119A, § 4.

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

Adopted June 5, 2003, effective September 2, 2003; amended December 14, 2011, effective January 2, 2012; amended _____, effective _____.

Reporter's Notes-2003

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

Reporter's Notes-2013

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