



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE VETERAN ADVOCATE
100 HANCOCK STREET, 2ND FLOOR
QUINCY, MA 02171

December 12, 2024

Brian Pariser, Deputy Legal Counsel
Administrative Office of the Probate and Family Court
3 Center Plaza
Boston, MA 02108

Via Email to brian.pariser@jud.state.ma.us

Re: Comments on Proposed Amendments to Rules 1-6 of the Massachusetts Rules of Domestic Relations Procedure

Dear Mr. Pariser,

The Office of the Veteran Advocate (OVA) is a newly formed independent State agency tasked with several statutory mandates that essentially focus on ensuring Massachusetts veterans receive the dignified treatment and respect they have earned. I am writing to you now to convey OVA's comments on the proposed amendments to Rules 1-6 of the Massachusetts Rules of Domestic Relations Procedure.

Partly due to the stressors of military service, actively serving members and veterans consistently experience higher than average rates of divorce and involvement in child custody / child support litigation. Based on OVA staff's extensive experience serving veterans and active military members in Massachusetts and after conferring with several legal aid organizations we offer the following comments:

Proposed Changes to Rule 3: Commencement of Action

OVA supports the inclusion of a reference to fee waivers and the statute regarding indigency in Rule 3. However, the proposed language is highly technical and may not be easily understood by pro se litigants. Simplifying the wording could make this provision more accessible. For example:

Instead of:

"Waiver of the entry fee on the ground of indigency may be sought in accordance with G.L. c. 261, § 27C,"

Consider:

"A party who cannot afford the entry fee or other costs due to financial hardship may request a waiver by submitting an affidavit of indigency form with the complaint. Waiver requests will be processed in accordance with G.L. c. 261, § 27C."

This aligns with G.L. c. 261, § 27C(5), which encourages plain-language notices about fee waivers.

Proposed Changes to Rule 4: Process

OVA acknowledges the importance of updating Rule 4 to incorporate modern electronic communication methods. However, Rule 4 should emphasize actual notice as the primary objective. For instance, the statement that "[t]he court shall require proof of actual notice when practicable" in Rule 4(d)(6) should appear earlier in the rule to underscore its importance.

Requiring publication in addition to electronic service imposes unnecessary costs and burdens while

being ineffective in providing actual notice. In OVA's opinion, service by publication is rarely effective in providing actual notice to a party. This will only add additional barriers to the justice system which do not serve any statistically significant purpose. In the alternative, OVA recommends the creation of a centralized website through the mass.gov domain for legal notices where notices can be easily searched. This would modernize the process while reducing costs and increasing accessibility.

Concerns Regarding Parties Serving in the Military

OVA urges the inclusion of explicit references to the Servicemembers Civil Relief Act (SCRA) in the Rules of Domestic Relations Procedure. Unlike Rule 55(b)(4) of the Massachusetts Rules of Civil Procedure, the domestic relations rules do not require affidavits demonstrating compliance with the SCRA. This omission is concerning because judgments are routinely issued against individuals who fail to appear or respond to complaints, even though such judgments may later be vacated under federal law if the defendant is serving on active duty.

Moreover, serving active-duty military personnel involves unique challenges:

- Access Restrictions: The Posse Comitatus Act and operational security protocols complicate service on military installations.
- Limited Communication: Servicemembers in combat zones or remote locations often lack reliable access to electronic or postal communication, rendering alternative service methods ineffective.
- Extended Non-Response: Military duties may prevent timely responses even if notice is received.

To address these issues, the rules should explicitly require compliance with the SCRA, including the filing of affidavits confirming military status and ensuring appropriate safeguards are in place before entering judgments. These provisions would uphold servicemembers' rights while preventing unnecessary retrials.

Conclusion

Thank you for considering these comments on this important matter. I urge you to reconsider the language regarding the role of VSOs in the treatment plan review process. If you have any questions regarding this letter, please contact me at scott.pitta@mass.gov.

Sincerely,

Scott Pitta

Scott D. Pitta, Esq.
General Counsel / Executive Chief of Staff
Veteran Advocate