

Massachusetts Probate and Family Court Department

Standing Order 4-20

Order Concerning Email Service in Cases under Rule 5 (b) of the Massachusetts Rules of Domestic Relations Procedure

In light of the public health concerns regarding the COVID-19 (coronavirus) pandemic, and as directed by the Massachusetts Supreme Judicial Court in its Order dated March 30, 2020, upon recommendation of the Probate and Family Court Bench/Bar Committee on Rules, and with approval of the Chief Justice of the Trial Court, I hereby approve and promulgate the following.

Although Rule 5(b) of the Massachusetts Rules of Domestic Relations Procedure provides that, except as provided under other rules,¹ service of pleadings and other papers upon an attorney representing a party ("attorney of record") or a party not represented by an attorney ("self-represented party"), shall be made by delivering a copy to the attorney of record or self-represented party, or by mailing it to their last known address, or, if no address is known, by leaving it with the register of probate;

Considering that the act of serving pleadings and other papers on an attorney of record or self-represented party pursuant to the methods required by Rule 5(b) can expose attorneys, parties, postal service and other delivery personnel, and others to the risk of exposure if any of them have contracted or been exposed to the coronavirus. And, service at a law office may not be an effective way to receive pleadings and other papers if attorneys are working from home during this emergency.

The Probate and Family Court hereby ORDERS that effective April 2, 2020, and until further order of the court:

1. Where the email address of an attorney of record is known because it was previously provided by the attorney on pleadings or other papers filed with the court in connection with the case at issue, pleadings and other papers may be served upon the attorney of record under Mass.R.Dom.Rel.P. 5(b) by email sent to the email address provided.
2. If, for any reason, an attorney of record cannot be served at an email address previously provided or if an attorney of record, for whatever reason, has not previously provided an email address,² the attorney of record shall promptly communicate that to all other attorneys of record and self-represented parties and provide an active email address.

¹ Other rules addressing service include, but are not limited to, Mass.R.Dom.Rel.P. 4 (summons and complaint), 4.1 (attachment), 4.2 (trustee process), and 45 (subpoenas). Service under these rules is not covered or affected by this Standing Order.

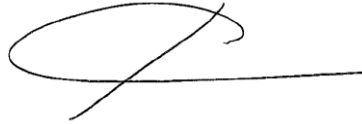
² All attorneys licensed to practice in Massachusetts are required to provide the Board of Bar Overseers annually with a business email address, see Supreme Judicial Court Rule 4.02, and to provide it on every pleading filed in a

3. Service by email is complete upon hitting "send" or its equivalent, unless the person making service receives notice or otherwise reasonably should be aware that the email was not successfully transmitted. Attorneys must periodically check their "spam," "quarantine," or equivalent folders to ensure that a party's email is not being blocked or diverted to those folders.
4. Whenever parties have the right or are required to do some act or initiate a proceeding within a prescribed period after the service of pleadings or other papers upon them and the pleadings or other papers are served upon them by email, three (3) days shall be added to the prescribed period.
5. All attorneys of record shall cooperate in the exchange of pleadings and other papers by email to accomplish the purpose of this order.³
6. Pleadings and other documents may not be served by email upon a self-represented party, unless that self-represented party consents in writing, which may be by email, in which case the self-represented party shall be subject to the same obligations and restrictions as an attorney of record under this order.
7. Service of pleadings and other papers by email upon an incarcerated self-represented party is not authorized by this order under any circumstances.
8. If applicable, parties should note on their filings "served via email."
9. If the pleadings or other papers to be served by a party include an affidavit signed under the penalties of perjury, but the party making service has been unable to secure the affiant's original handwritten signature, or a scanned or photographed copy thereof, due to constraints arising from the coronavirus pandemic, the affidavit may still be served and subsequently filed with the court if the affiant has signed the affidavit electronically. The party making service shall thereafter take steps to secure the affidavit bearing the affiant's original handwritten signature as soon as practicable.
10. Any party who claims that the party did not receive pleadings or other papers that allegedly were served by email may move for relief from any ruling, entry of default, or other adverse action that arose from the allegedly defective service.

case. See Mass.R.Dom.Rel.P. 11. Self-represented parties are required to provide an email address, if they have one. Id.

³ Nothing in this Standing Order shall prevent parties from agreeing in writing to make and receive service of pleadings and other papers by email.

This Standing Order shall be effective on April 2, 2020, and remain in effect until further order of the court.

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line and a small flourish.

John D. Casey
Chief Justice of the Probate and Family Court

Adopted, effective April 2, 2020.