

**COMMONWEALTH OF MASSACHUSETTS  
JUVENILE COURT DEPARTMENT  
PROPOSED 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 for the care and protection of children, including actions for guardianship of minors, child support, paternity, 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, c. 190B and c. 210.

**Note**

*See* G. L. c. 119, § 24 (care and protection), c. 190B, §§ 1-401 and 5-101 (guardianship of minors), c. 209C, § 3(c) (paternity 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 seeking 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* 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 child 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 by 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. When Served. 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).

### **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(s), 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 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 first-class mail, postage prepaid to the Office of 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, and 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, the parents have not appeared or cannot 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 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 summons or order of notice to the 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 first-class mail, postage prepaid to the Office of 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 setting forth the diligent efforts made, 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, and 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.

(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 a temporary guardian and written notice of its hearing shall be served with the notice of the guardianship petition, unless the court otherwise orders.

### 3. Paternity and Child Support Cases

After the filing of a complaint for paternity and/or for an order of child support, 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, and on the Department, if the legal custodian. 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 Office of the Regional Counsel.

(b) Personal service may be accomplished on the parent or child who is age fourteen years or older, if present, and upon 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 first-class mail, postage prepaid to the Office of 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 paternity 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 paternity or child support case the court shall, upon motion of the plaintiff, other party, or sua sponte, issue an Order for Service by Publication, and 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 paternity 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 (f), 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 on the parent by 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 change of name is heard, unless the court otherwise orders.
- (b) Service may be accomplished by a court officer if the parent is 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 the Department, if not the legal custodian, by first-class mail, postage prepaid to the Office of the Regional Counsel.

(d) 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 (e), below.

(e) 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, and 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.

(f) 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.

**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 on line at <http://www.mass.gov/courts/forms/juv/juv-forms-gen.html>.*



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

Personal Service on the parents. If a parent is unable to be present in court, the parent's attorney may accept service on behalf of his/her client, with the client's authorization, when the matter is before the judge.

**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, paternity 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 or plaintiff 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 or complaint, of each child named in the petition or complaint. In rare circumstances and for good cause shown, the judge may extend the time or waive the filing of the birth certificate. The petitioner or plaintiff may request an order from the court to produce a birth certificate pursuant to G. L. c. 46, § 2A of the General Laws if the petitioner or plaintiff does not have custody of the child.

B. Guardianship, Paternity 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 with the court. The petitioner or plaintiff may request an order from the court to produce a birth certificate pursuant to G. L. c. 46, § 2A of the General Laws 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, paternity 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, paternity complaint or change of name petition.

### **Note**

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 the inability to obtain a foreign birth certificate, 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.

## **Rule 7. Service and Form of Motions and Documents**

A. Every motion or document filed in court shall be served promptly 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.

B. 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 therefore.

C. Unless a motion, other than a motion to dismiss as provided in paragraph B, 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 therefore, 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.

D. All motions other than those that 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 A 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. Every motion or 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 that 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, and shall set forth the name, address, telephone number and e-mail address of the attorney or pro se party filing it, and the Board of Bar Overseers registration number of the attorney; and the date on which the motion or document was filed with the court.

## **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 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 (so called "72 hour notice" hearing) or § 25 (non-emergency hearing) may be waived by a parent or child. The parent's waiver shall be in writing signed by the parent and 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 in opposition to the court's order regarding his/her child's custody pending the trial on the merits, and the right to appeal the court's order. The court shall conduct a colloquy with the parent and determine whether the waiver was intelligently and voluntarily made. The waiver and the certification shall be on a form approved by the Chief Justice of the Juvenile Court. 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**

At the temporary custody hearing, the judge must determine whether custody should be removed from the child's parents or present legal custodian **and** 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). 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 preliminary hearing). This rule addresses a parent's or child's waiver of either a § 24 or § 25 custody hearing. By waiving the temporary custody hearing, the parent or child is relinquishing his/her right to be heard, to object to the court's order and to appeal that order. A parent or child may waive the hearing by formal action as provided in this rule or by failure to appear or participate after having received notice of such hearing, sometimes referred to as "forfeit." Waiver and/or forfeit is distinguished from the circumstance in which a parent or child agrees to a transfer of custody but seeks to nominate a relative or other individual to be appointed the child's legal custodian pending the hearing on the merits. In this situation, the parent or child has not "waived" the temporary custody hearing. Although the parent or child has 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. There may be situations in which a parent or child requests a reasonable amount of time 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 “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. The placement decision of the legal custodian is only reviewable under § 21 for abuse of discretion or error of law, unless the court grants custody to a third party subject to conditions, including the imposition of restrictions on the third party custodian’s power to change the child’s placement. The court does not have authority to grant custody to the Department subject to conditions or restrictions regarding placement, unless the court finds an abuse of discretion by the Department. *See Care and Protection of Isaac*, 419 Mass. 602 (1995) and *Care and Protection of Jeremy*, 419 Mass. 616 (1995).

*See* Juvenile Court Standing Orders regarding child welfare proceedings.

#### **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 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**

A. 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. An extension of time for the filing of 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 said motion for extension of time shall be filed no later than fourteen days prior to the date the report is due, provided that the court may permit the filing of a request for an extension at some other time in the interests of justice. If the court approves a request for an extension of time, the court investigator shall provide a copy of the approved request to all counsel of record and to any party who is not represented by counsel.

B. The court investigator shall attend the status hearing held pursuant to Rule 13 if notified by the Clerk’s office to be present.

### **Note**

This rule differs from the prior rule in that it requires the court investigator to attend the status hearing when notified by the Clerk's office in accordance with Rule 13A. As a matter of practice, court investigators should assume that their attendance will be required and arrange their schedules accordingly to avoid unnecessary delay.

### **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 other 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 the court, except that counsel for a party may disclose the material to an expert retained by counsel.

When producing a copy of its social services file in compliance with this rule, the Department or 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 licensed placement agency shall produce with the copy of the file a list of any materials and information withheld. The attorney for the Department 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. Upon the request of the court or one or more of the parties, the Clerk's office shall notify the court investigator that his/her attendance is required at the status hearing. When so notified by the Clerk's office, 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 10 and G. L. c. 119, §§ 21A and 24. The request to require the attendance of the court investigator shall be on a form approved by the Chief Justice of the Juvenile Court and filed no less than 10 days prior to the status hearing. The Clerk's office shall notify the court investigator upon receipt of the request. Nothing in this rule precludes a court investigator from attending the status hearing in the absence of a request by the court or one or more of the parties. Failure of the court investigator to be present or the report to be available shall not preclude the court from proceeding with the status hearing.

B. Unless previously addressed and resolved, at the status hearing the court shall address but need not be limited to: 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; and the scheduling of a pretrial conference. Nothing in this rule shall preclude the court from hearing motions, including discovery motions, at other times in the interests of justice.

C. 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, which shall then become a part of the record in accordance with G. L. c. 119, § 24.

D. 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.

This rule differs from the prior rule in that it requires the attendance of the court investigator when notified by the Clerk's office to be present upon the request of the court or one or more of the parties and addresses how the court investigator's report becomes part of the record and evidence in the case.

When notified 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. If the court investigator attends 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 intent of the legislature, by requiring court investigator reports to become part of the record, is to insure that all such investigations will be part of the evidence considered by the court in determining the outcome of the case. 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.

The report may contain hearsay statements from a wide variety of sources and the cases do not distinguish between levels of hearsay. *Custody of Michel*, 28 Mass. App. Ct. 260, 265 (1990). 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, but specific objections may be made by motions in limine. Judges may not rely on information obtained exclusively from unnamed or unknown sources in making their decisions; the weight given to the report, as distinguished from its general admissibility, is decided by the judge after assessing the credibility of the investigator and the reliability of the information the report contains. *Custody of Tracy*, 31 Mass. App. Ct. 481, 486 (1991). Accordingly, it is vital that all sources of statements and information in the report be clearly identified. Parties have a fair opportunity to rebut allegations in the report by cross examining the court investigator or by other means at trial. *See Michel, Tracy, see also* Mass. G. Evid. §§ 115(c)(1) and (e)(6) regarding court investigator reports in general.

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

A. 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.

B. 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 completed 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 with expert witnesses clearly designated, 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 of a date for the submission of motions in limine, if any, and the scheduling of a hearing thereon
10. Any unaddressed motions
11. An estimate of trial time
12. Any other matters that may aid in the disposition of the action

The court shall address, where applicable:

13. Whether the possibility of settlement has been discussed
14. 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
15. If applicable, whether the expert has been identified in accordance with the Indian Child Welfare Act
16. The Department's plan to provide timely notice of the trial to the foster parent, pre-adoptive parent or relative providing care

Parties shall be bound by the witness and exhibit lists set forth at the pretrial conference, except by leave of court for good cause shown.

C. Nothing in this rule prohibits the parties from submitting, or the trial judge from ordering, a written joint or individual pretrial memorandum covering the issues set forth in subsection B of this rule.

D. 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 removes the requirement of a written pretrial conference memorandum. In several divisions, the trial judge conducts the pretrial conference and addresses directly with the attorneys those issues that aid in narrowing the scope and length



of trial. However, nothing in this rule precludes the trial judge from requiring, or the attorney(s) from submitting, a written joint or individual pretrial memorandum. 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 14 B6, counsel shall 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 may testify in court under oath or file a written statement with the court, provided the written statement is submitted under oath and he/she is available in court for cross-examination. Failure by the Department to provide timely notice does not preclude the judge from proceeding with the hearing.

#### **Note**

G. L. 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 the hearing on the merits, the termination or so called “best interests,” hearing, the review and redetermination hearing(s), and the permanency hearing(s). 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; 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. 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. Civ. P. 43. Prosecutions for criminal contempt shall proceed in accordance with the provisions of Mass. R. Civ. 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: 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 the 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 to the Department of a child, the court shall schedule the case for review no later than 6 months from the date of the mittimus or custody order.

B. Notice. Immediately following the clerk's entry of the above adjudication, order, allowance or denial on the docket, the clerk shall notify all parties by mail or electronically of the entry of said adjudication, order, allowance or denial. The clerk shall note on the docket, or otherwise record electronically, the names of the persons to whom such 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 Department, findings of fact and conclusions of law to support said order and/or adjudication.

E. Notification to All Parties by Clerk. Immediately upon the filing of said findings of fact and conclusions of law, the clerk shall mail or transmit a copy to each party.

### **Note**

After an adjudication, the judge may issue a permanent mittimus or grant permanent custody to the Department. **The issuance of a permanent mittimus or grant of permanent custody to the Department is not a final disposition and such order does not achieve permanence for that child.** In those instances, the judge must schedule the case for review no later than 6 months from the date the mittimus was issued or permanent custody was granted to the Department. Best practices for achieving permanency for a child dictate that the judge review the actions of the Department within 6 months of an order of permanent custody to the Department in order to assess the progress toward a final disposition and achieving permanency for the child. **The only dispositions considered to be final are the following: reunification, guardianship, adoption, or permanent care with a relative.** Although an alternative planned permanent living arrangement ("APPLA") is considered a permanent plan for a child 16 and over for the purposes of Trial Court Rule VI Uniform Rules for Permanency Hearings, it is **not** a final disposition in a care and protection case. A judge who has approved APPLA as the plan/goal must review the case every 6 months until legal permanence is established or the child ages out of Juvenile Court jurisdiction.

### **Rule 20. Appeal**

A. Claim of Appeal. An appeal under 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 applying 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 minor subject of the action; 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.