This document is provided for historical background only. While general recommendations contained herein may remain relevant, specific guidance and references may be outdated or superseded.

SERVING THE SELF-REPRESENTED LITIGANT:

A Guide By and For Massachusetts Court Staff

Released June 2010

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Prepared by The Court Personnel Working Group of the Supreme Judicial Court Steering Committee on Self-Represented Litigants:

John H. Cross
Staff Attorney/Pro Se Coordinator, Probate and Family Court Department, Chair of the Court Personnel Working Group

Cynthia Campbell
Departmental Law Librarian

R. David D'Attilio
Deputy Special Assistant Clerk, Massachusetts Appeals Court

Hon. Maura S. Doyle
Clerk of the Supreme Judicial Court for the County of Suffolk

Mary K. Hickey
First Assistant Clerk, Norfolk Superior Court

Paul J. Kenneally
Law Clerk to the Clerk of the Massachusetts Appeals Court

Thomas R. Lebach
Clerk Magistrate (ret.), Plymouth County Division, Juvenile Court Department

John McCoy
Title Examiner, Land Court Department

Cynthia Robinson Markey
Legal Counsel to the Chief Justice, Boston Municipal Court Department

Susan Mellen
Clerk of the Supreme Judicial Court for the Commonwealth

Lawrence A. Thoreson III
Assistant Clerk Magistrate, Newburyport Division, District Court Department

William S. Weiss
First Assistant Clerk Magistrate, Worcester Housing Court

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Administrative Office of The Trial Court

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And we salute the dedicated, hard-working men and women who staff our courthouses for their commitment to the people of Massachusetts and to the principle of equal justice for all.

A: INTRODUCTION

All members of the Judicial Branch play an important role in the operation of our court system. Together, we share an enormous responsibility -- making fair, equal, and effective justice available to all. Those of you who staff the offices of the Clerks and Registers shoulder much responsibility. Not only are you essential to the efficient operation of the entire court system, but also you play a key role in helping the public access and use the system. In addition, because frequently you interact with the public more than any other sector of the Judicial Branch, you have a major impact on the public's perception of our legal system. By your actions, you demonstrate that our courts operate in a fair and impartial manner and that they exist for everyone.

Your job is not easy. It requires in-depth knowledge of court policies, procedures, and practices, as well as strong communication skills. Every day, you are bombarded with questions. These come from a variety of people -- from self-represented litigants to attorneys to jurors to members of the press. To be effective, you must tailor your response to the individual. In addition, because many who come to your office have little, if any, knowledge of legal procedures and often are involved in emotionally-charged issues, you frequently must deal with people who are upset and confused. As a result, your job also requires patience and empathy.

You take satisfaction in doing your job well. Given the increasing numbers of self-represented litigants, the issue of how to provide effective assistance and useful information to court users is becoming more critical and urgent. This Guide is designed to provide you with both useful and practical information as you strive to help those who need assistance. As always, you should ask your supervisor for guidance if you are unsure about how to assist any court user who requests your help.

ON THE WEB

http://trialcourtweb.jud.state.ma.us/serving-self-rep-guide.pdf

The contents of this Guide and any updates are maintained on the Trial Court Intranet and on the Internet, where you can also download the complete Guide or any portions thereof.

B: ACCESS TO THE COURTS

*** COURT STAFF CAN AND DO MAKE A DIFFERENCE! ***

One of the basic principles of the American justice system is that the doors of our courthouses are open to everyone. Most members of the public, however, are not familiar with courts and court procedures and require some level of assistance. These individuals will be effectively denied access to justice if they do not know how to use the system. ***You have a vital role to play in keeping our courts fair and open to everyone.***

* Court staff, as the gatekeepers to the court system, are vital to ensuring that the basic principle of accessibility for all is achieved.

* Court staff who are well-trained have a positive effect on access to the courts and the administration of justice.

* Court staff must explain court processes and procedures to court users.[2]

* Access to the judicial system is affected not only by the type of information provided to court users but also by the manner in which it is presented.

* In choosing how to respond to questions and requests for information, court staff can have a tremendous impact on the administration of justice.

* Court staff are responsible for giving court users the help they need by furnishing accurate information in a competent, cooperative, and timely manner.

* Court staff must provide quality service to all court users.

* By providing effective assistance, court staff may reduce the number of times court users must come to court, and thus, reduce stress upon the court system overall and the individual court users.

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[2] Throughout this Guide, we use the terms "self-represented litigant" and "court user" interchangeably, to emphasize that the principles herein are applicable to a wide range of people and entities coming to our courts. Please note, however, that the law in Massachusetts requires that a corporation be represented by a lawyer except in small claims cases. See Varney Enters., Inc. v. WMF, Inc., 402 Mass. 79 (1988) (except for small claims matters, a corporation may not be represented in judicial proceedings by a corporate officer who is not an attorney licensed to practice law in the Commonwealth).

* Court staff must treat all court users with equal courtesy, respect, and responsiveness.

C: LEGAL INFORMATION V. LEGAL ADVICE

Court staff must remain **impartial** and **neutral** when dealing with both lawyers and litigants. They also may not engage in the unauthorized practice of law by providing legal advice. Court staff in virtually every State have struggled with the definition of just what constitutes legal advice. Here are some guidelines:

"**Legal information**" is:

- A written or oral statement that describes and explains court processes, procedures, rules, practices, legal phrases or terms, and options available to court users
- Answering questions about how the court system works
- Identifying for court users standard court forms and/or sample pleadings that meet the court users' needs
- Providing general instructions on how to complete court forms
- Answering questions containing the words, "Can I?" or "How do I?"

"Legal Advice" is:

- Advising a court user whether to bring a particular case or problem before the court
- Suggesting which of several procedures or options a court user should follow
- Providing advice or information for the purpose of giving one party an advantage over another
- Assisting a court user in developing a strategy regarding his or her case
- Telling a court user what to say in court
- Predicting for a court user what a judge is likely to do in a case
- Answering questions containing the words, "Should I?"

Court staff may provide to court users as much information and as many options as possible, without interfering in or directing the decision to be made by court users or affecting their legal rights.

Here are some helpful guidelines:

1. Court staff should not give information to one party that they would not give to an opposing party.

2. Court staff should not tell a court user whether a case should be brought to court or give an opinion about the probable outcome.

3. Court staff should not give advice about specific arguments a court user should make while in court or tell a court user what they think would be the best way to handle a court appearance.

4. Court staff should not give an opinion about what specific remedies to seek or which option the court user should use or otherwise advise someone on whether to bring the problem before the court. However, if there is only one legal option or remedy available, court staff can and should give the court user that information. If there are multiple options, they should be presented to the court user.

5. In all circumstances, court staff must remain and appear neutral and cannot take a position that will encourage or discourage a court user's particular course of action.

6. It is important for court staff to explain options because the court user often is not aware of those options. By explaining options, court staff provide court users with better access to the courts. It is also important that court staff advise court users of **all** appropriate options. Providing only some of the options may indirectly influence a decision by limiting the court user's choices.

7. If court staff cannot answer a question or provide assistance because it would be giving legal advice, they should explain that the interests of fair and impartial justice for all require that court staff remain neutral and impartial, and that this obligation prohibits court staff from giving legal advice. Court staff should make court users aware that they may obtain information about where to go for legal advice in the handbook *Representing Yourself in a Civil Case: Things to Consider When Going to Court*, a copy of which should be available at every courthouse public assistance counter (and is available on the web at http://www.mass.gov/courts/admin/ji/repyourself.html. Court staff should also make court users aware of the resources of the Trial Court Law Libraries, including their web site, http://www.lawlib.state.ma.us.)

8. If any member of the court staff is unsure of the answer to a court user's question, or unclear whether a communication to a court user would be legal advice or legal information, he or she should ask a supervisor for help.

D: SIGNAGE

Court staff in other states have found that posting a basic list of what staff can and cannot do in a prominent place in the courthouse is helpful when assisting court users. The following is an example based upon the New York, California, and Arizona model:

WELCOME TO THE [Name of Court]

WE WILL BE HAPPY TO HELP YOU IF WE CAN. AS WE MUST BE FAIR TO EVERYONE, WE ARE ALLOWED TO HELP YOU ONLY IN CERTAIN WAYS.

WE CAN:

- Explain and answer questions about how the court works.
- Give you information about court rules, practices, and procedures.
- Explain options available to court users.
- Provide you with court forms and general instructions about filling out court forms.
- Provide you with information from your case file, unless such information is restricted.
- Provide information about past rulings in your case.
- Answer questions about court deadlines.
- Provide information about court schedules and how to get a case scheduled.
- Provide you with contact information for lawyer referral services, legal aid programs, and other services where you may be able to obtain legal information and the services of a lawyer.
- Provide you with information about the Trial Court Law Libraries in your area, and the link to their web site**.**

WE CANNOT:

- Tell you whether or not you should bring your case to court.
- Advise you on what words to use in your court papers or whether they are correct.
- Tell you what to say in court.
- Give you an opinion about what will happen if you bring your case to court.
- Provide confidential case information that you are otherwise not authorized to obtain.
- Conduct legal research for you.
- Talk to the judge for you or let you talk to the judge outside of court.
- Alter court documents.
- Recommend a particular attorney to handle your case.

WE WILL BE HAPPY TO ASSIST YOU IN ANY WAY WE CAN, CONSISTENT WITH THE ABOVE GUIDELINES. THANK YOU.

E: REFERRALS TO ATTORNEYS

Court staff are the first to recognize that court users benefit significantly if they are represented by knowledgeable and competent counsel. The court also benefits when the parties have lawyers. Despite this, many court users simply cannot afford their own attorneys or choose to represent themselves.

An extremely important aspect of assisting court users is to make them aware of lawyer referral services, legal services programs, pro bono organizations, public agencies, and lawyer for the day programs, if available. This information should be readily available in every courthouse. For example, the Trial Court's *Representing Yourself in a Civil Case: Things to Consider When Going to Court*, which every clerk's office should have, include comprehensive listings of lawyer referral and legal services organizations. Your clerk's office may also have a copy of the *Massachusetts Lawyers Diary and Manual*, another useful resource. Every Department and Division of the Trial Court should consider as well developing handouts containing lawyer referral information, which court staff can then give to court users. In some instances, providing information on finding a lawyer is the most meaningful assistance that court staff can provide to court users.

Since court staff must remain neutral and impartial, they cannot make referrals to a specific lawyer or law firm. Court staff **can** tell court users that they can ask friends or colleagues for the name of a lawyer or even find one by checking the *Yellow Pages*. Many people simply don't know how to go about finding a lawyer, particularly if they have never used a lawyer's services in the past.

If a court user, however, chooses to self-represent, he or she is constitutionally entitled to do so and to receive meaningful assistance from court staff. Court staff should make such individuals aware that helpful tips about representing oneself in court may be found in the Trial Court's *Representing Yourself in a Civil Case: Things to Consider When Going to Court*. Also court staff should make self-represented litigants aware of the resources of the Trial Court Law Libraries, including their web site: http://www.lawlib.state.ma.us.

In courts and matters where limited assistance representation (LAR) is permitted, court staff may inform court users about this option and direct them to listings of LAR-qualified attorneys. As of the publication of this document, LAR is permitted in all divisions of the Probate and Family Court Department and may soon be extended to other Departments.

F: COURT FORMS AND INSTRUCTIONS

Providing court forms and instructions on how to fill out those forms is an important part of the job of court staff. Often court users will not know what forms to request in order to bring their

matters before the court. When this happens, it is appropriate for court staff to identify and provide the form that most appropriately meets the court user's needs.

Court staff may answer questions about how to complete court forms, including where to write particular types of information, and may explain what unfamiliar legal terms mean.

Court staff also can check forms for completeness and provide information about specific problems on the form and how to resolve them.

In circumstances where a person is unable to complete a form due to physical disability or other limitation such as illiteracy or language barriers, court staff are permitted to enter on the form specific information provided by the court user. In such situations, court staff merely acts as "scribes", which is an appropriate role to play.

Court forms can be confusing. If a court user cannot figure out how to fill out a required form, he or she may be denied meaningful access to the court. Although information now available on various websites and other instructional materials such as handouts or videos may be extremely helpful, some court users need to speak directly with a staff person in order to understand and complete court forms.

ALERT!!

Providing basic assistance with court forms does NOT constitute giving legal advice or engaging in the unauthorized practice of law. The court does not depart from its impartial role by providing forms and directing court users as to their proper use.

G: *EX PARTE* COMMUNICATIONS

Black's Law Dictionary defines *ex parte* as "on one side only; by or for one party; done for one party only." Court staff should remember the basic principle that neither parties nor attorneys may communicate with the judge *ex parte*. Be sure that you do not violate this restriction by carrying a message from a party to a judge or by speaking to a judge on behalf of a court user. To do so could give one side in a case an unfair advantage.

Many self-represented court users feel that they have a right to communicate directly with a judge to explain their situations and problems. When a court user makes this type of request,

court staff should explain that communications with a judge occur only at a hearing or trial, when the other side also is present. While you are explaining this rule, it sometimes helps to ask court users how they would feel if the judge communicated privately with the other side in their case. Court staff also can explain procedures, such as motions, that would allow the court user to properly bring his or her concerns to the court's attention.

Sometimes, court users attempt to communicate directly with a judge by writing to the judge. Such correspondence should be returned to the party, with an explanation about the prohibition against such *ex parte* communications.

H: SCHEDULING CASES AND COURT DEADLINES

Court staff always can tell court users how to schedule matters for hearing. This is one of the most important things court staff can do to make sure people have access to the courts. When court users cannot figure out how to get a case scheduled for hearing, they cannot even begin the process of getting a judge to decide the case.

Providing assistance with court deadlines is a little more complicated. Court staff can help court users calculate routine filing deadlines associated with most court hearings. However, if court staff are not sure what the filing deadline is on a particular matter, it is appropriate to say, "I don't know."

On the other hand, court staff should not attempt to explain the statute of limitations to court users. This is a complicated area, and it would be very easy to give incorrect or misleading information.

If court staff reject a document or pleading as untimely, then they should assist the court user by explaining why the deadline was missed. Court staff also can explain how to calculate the deadline for filing that type of document.

In sum, court staff should provide court users with court schedules, court calendars, and information on how to get a case scheduled. Court staff also can answer most questions about court deadlines and how to compute them.

I: CITATIONS TO STATUTES AND RULES

Court staff may refer court users to commonly-used statutes and court rules to assist them in bringing their cases before the court. They also may provide copies of these materials, e.g., in information packets. In addition, court employees may recite common rules. Court staff should not undertake independent research or search the statute books for a court user. In determining what is considered research, consider whether the material or information requested is something

that should be known as a part of court staff's job and whether the information is readily available or would require compilation. When a statute or rule is not readily available or commonly known, court users should be referred to a local law library. See "Law Libraries" section below.

J: INFORMATION FROM CASE FILES

Court staff can provide to a court user case information that is public, including the material in most court files. Court files may be difficult for many court users to read and understand, so court staff may need to provide assistance here as well. It is appropriate to answer questions about the court procedures and legal terms reflected in public court files and to assist the court user in finding the specific information that the court user is seeking.

Court staff, however, cannot disclose non-public or confidential information. It is very important to understand what information is confidential. Where a case or information is impounded or sealed, a court user should be informed that "no public record exists." If court staff is not sure whether a record is considered public or confidential, they should check with a supervisor.

In addition, access to internal memoranda, notes, or preliminary drafts prepared by or under the direction of a judge that relate to the adjudication, resolution, or disposition of any past, present, or future case is limited to court staff only.

Court staff must **not** disclose the outcome of a matter submitted to a judge for decision until the outcome is part of the public record or the judge otherwise directs disclosure of the matter. Court staff must also seek assistance from a supervisor if unsure about what information constitutes "personal identifying information" (addresses, social security numbers, and the like) that may not be made public.

K: WHAT YOU NEED TO KNOW ABOUT COMMUNICATING WITH SELF-REPRESENTED LITIGANTS: A CONCISE PRIMER

Every court has an obligation to explain court processes and procedures to its customers. The court is obligated to provide accurate information to all court users. Court staff must remain neutral and impartial and never give information for the purpose of giving one court user an advantage over another. A court should treat all of its court users equally: attorneys and defendants, self-represented litigants and lawyers, jurors, and members of the public.

Access to the judicial system is affected by the accuracy of information that a court provides to its customers, along with the manner in which it is presented. Access to justice is effectively denied if court users do not know how to use the system, and the court does not tell them.

Court staff act as the gatekeepers to the judicial system and are essential to ensuring that the basic principle of accessibility is achieved. It is important that court staff have the necessary communication skills to ensure that requested legal information is properly provided to court users, including self-represented litigants. How court staff respond to questions and requests for information can have a tremendous impact on the administration of justice and affects how court users view their court experience.

Most people who come to court are not familiar with court procedures or terminology. If someone does not ask a question in the right way, it is court staff's responsibility to take the time to clarify what is being asked. By providing effective customer service, court staff may reduce the number of times court users must come to court, and thus, reduce stress on the court system.

Court staff can act as a bridge of knowledge to self-represented litigants, but they cannot guide self-represented litigants completely. Although court staff cannot provide legal advice, that premise is an unacceptable excuse not to provide service. There is usually some information or assistance that can be provided, even if it is just explaining the reason court staff cannot give legal advice; you may always explain procedural options or make a referral.

The following are suggested strategies for answering sometimes difficult questions posed by self-represented litigants.

- ☞ **Be Patient**. Coming to court may be stressful, confusing, and intimidating, so you should take the time to welcome and greet court users. You may have been asked for the same information many times before; however, this may be the first time that this particular court user has asked for it. Put yourself in the court user's position and think how much you would appreciate it if someone took the time to answer your questions and explain an unfamiliar process.

- ☞ **Remain calm even when the court user is not**. Your attitude is key. Some court users may need to vent. Take it professionally, not personally.

- ☞ **Explain your answers and reasons**. Be clear and concise when providing information.

- ☞ **Provide reasons why you cannot give certain information.** This helps to minimize a court user's frustration and increases his or her understanding of the court system. If you cannot answer a question or provide assistance, explain why by telling the court user how important it is that court staff remain neutral and impartial. If you cannot answer a question, give alternatives.

- ☞ **Know the distinction between "legal advice" and "legal information**." Never use the prohibition against giving legal advice as an excuse not to provide legal information.

  There is usually some information or assistance you can provide, even if it is just explaining the reason you cannot give legal advice, explaining procedural options, or making a referral.

- ☞ **Offer options to court users**. Be prepared to offer options for legal help, including referrals to other agencies and self-service centers. Ask court users if they know of an attorney they can turn to for assistance. If they do not have an attorney, provide information on how they can find an attorney. Do not suggest which attorney the court user should or should not contact because you must remain neutral and impartial at all times.

- ☞ **Learn about *ex parte* communication** and do not let court users use you to circumvent that principle, or fail to respect it, or act on matters not delegated to you for decision.

Remember that communication is a two-way process, in that the speaker gives information and the listener provides feedback. For a communication to be successful, five basic elements should be taken into consideration: the Listener; the Speaker; the Language; the Environment; and Feedback.

- ☞ **The Listener**: Communication starts with listening. Good listening encompasses more than lending an ear. It involves body language and feedback.

- ☞ **The Speaker**: As a holder of the information being sought, it is important for you to ensure there is understanding and not leave it to the court user to interpret the words. Remember that some court users are not fluent in English. To the extent possible, interpreters should be used to ensure that the requested information is provided and understood.

- ☞ **The Language**: The language you chose should be simple, clear, and specific. Avoid legal terms, acronyms, and jargon.

- ☞ **The Environment**: Distractions add to the challenge of providing technical and precise legal information. It is essential to focus on the legal information being sought.

- ☞ **Feedback**: Checking for understanding ensures that the legal information being provided is understood by the court user.

The following are a few tips for effective communication:

- ☞ Listen attentively

- ☞ Ask and invite questions

- ☞ Provide feedback to others to demonstrate respect

- ☞ Clarify your own ideas before communicating

- ☞ Communicate purposefully -- focus on your real message

- ☞ Consider the timing, setting, and social climate

- ☞ Acknowledge the other person's perspective

- ☞ Be aware of your tone, expression, and receptiveness

You often may encounter obstacles to effective communication. Be mindful of these obstacles, and do your best to recognize and overcome them. The following are examples of obstacles to effective communication:

- ✔ Poor listening skills
- ✔ Lack of interest
- ✔ Stereotyping
- ✔ Power struggle
- ✔ Intimidation
- ✔ Inability to understand the other party or no desire to understand the other party
- ✔ Language barriers
- ✔ Low self-respect
- ✔ Defensiveness
- ✔ Inaccurate assumptions

L: A PRACTICAL APPROACH TO EFFECTIVE COMMUNICATION

1. To Thine Own Self Be True.

This is a very important part of communicating. Ask yourself about your own prejudices. **Be honest with yourself**. Don't automatically say that you have no biases. Understand that prejudice isn't limited to racial, ethnic, or religious issues. What kind of crimes really anger you? Do you have a problem with accents? How about swearing? Personal hygiene? Repetitive questions?

These questions are very important, because how you feel about certain things will influence the way you act. We have all had the experience of being on the telephone and *feeling* the other party roll their eyeballs at us. Imagine what that eye-roll looks like to someone standing in front of you who is under considerable stress.

So what can you do? Quite possibly nothing, but it may be possible to talk with your colleagues to see if you can have that person take over your duties with regard to a court user with whom you have had repeated problems in the past (and don't forget to return the favor). It may not work in your particular work environment, but it never hurts to ask. In any event, it is your responsibility, under all circumstances, *always* to provide respectful and professional service.

2. Body Language Tells The Story.

How you say something can be as important as what you say. Be aware of your body language as you assist court users. Posture, gestures, facial expressions, eye contact - all of this non-verbal communication is part of the message you are sending to those who ask for your help.

Respectful, courteous, professional non-verbal communication shows that you are welcoming and eager to help. Examples of appropriate non-verbal communication include: a mild tone of voice, an attentive demeanor, eye contact, and standing or sitting up rather than slouching over the counter. Some examples of non-verbal communication that convey annoyance or disinterest include: speaking in a harsh tone, watching the clock or yawning when speaking with the court user, pointing at the court user, putting your hands on your hips, etc., etc. This is just common sense. You can be sure that any body language that you would interpret from another person as showing impatience, rudeness, hostility, or indifference toward you will be interpreted the same way by the court user if coming from you.

Be mindful as well that cultural differences may play a role in how the court-user interacts or engages with you and you with the court-user and make your best effort to refrain from making quick judgments and to ensure that your non-verbal communication is consistently appropriate and professional.

Your job as a professional requires that you maintain a respectful approach, even in the most difficult situation. You should always be aware of how you are coming across. If you find yourself tensing up and resorting to body language that conveys negativity toward the court user, take this as a sign that you need to regroup, and perhaps seek the help of a supervisor in dealing with the court user.

3. But Words Count Too.

A. Show respect.

Use Mr., Mrs., or Ms. instead of first names, unless you really know the court user or have a long history of successful interaction. Consider having the court user call you by your first name. There are two good reasons for doing this. First, it will lower the court user's level of tension to some degree. Second, for security reasons, you do not have to give court users your last name, or any other personal information for that matter.

B. Let people know why you are asking for things.

Those of us who work in the courts frequently use terms that seem like a foreign language and engage in customs that might appear strange to those unfamiliar with the environment in which we work. We frequently are required to ask personal and sometimes embarrassing questions, and it is reasonable to expect court users to resent these inquiries into their private lives. Letting court users know why you are asking, and telling them that the process will make their experience in court easier and quicker, may enable you to get the needed information with a minimum of difficulty.

C. Understand that people are frustrated.

Nobody ever wants to be in court. Don't be afraid to say, "I understand that this process is difficult and confusing, but I'll try to help you as much as I can."

D. Don't criticize anyone.

You will hear many complaints about many people -- judges clerks, probation officers, police, tenants, attorneys, parties to lawsuits -- but do not allow yourself to be drawn into that kind of conversation. It is not professional, and it can cause problems for you. If possible, don't respond to the comment. If you think a response is needed, say something non-judgmental and benign -- like, "I'm sorry you're having such a hard time. I'll try to help you straighten things out as soon as possible."

E. Never use "The Forbidden Phrase."

The absolute worst thing court staff can say to a court user is, "Everything is going to be all right." Many times things do not work out all right, and court staff will be responsible for raising that false hope. Your ability to work with that court user will be forever compromised.

4. Mistakes Happen, And You Are Not Alone.

Court staff are not immune from having bad days. There will be times when, no matter how hard you try, and for many different reasons, you will not be able to effectively assist a court user. It happens to everybody. Do your best, but don't be afraid to step back and ask for help from a colleague. It is perfectly acceptable to say to the court user, "I don't seem to be able to help you with this, so let me find someone who can." Don't take it personally, and don't feel that you have failed.

5. Take Care of Yourself.

You do not have to accept verbal abuse from anybody. Know in advance what to do if you feel unsafe. If you sense that things are deteriorating badly, seek assistance from a supervisor or a manager. It is the responsibility of your supervisors to ensure that your office operates in an efficient and safe manner.

M: TRIAL COURT LAW LIBRARIES

http://www.lawlib.state.ma.us

Who We Are

The Trial Court Law Libraries are a system of 17 libraries located across Massachusetts. Just like public libraries, we are open to everyone. We are committed to providing legal reference services and legal research to all: the public, the legal community, and the courts. Because we are funded through the state budget, we do not charge for the services we provide.

We welcome referrals from the court just as we get referrals from public libraries and social service agencies. Our job is to help people find legal information.

You Can:

- Use our expert legal reference skills to streamline your research.
- Request or renew books through our online library catalog: http://www.lawlib.state.ma.us.
- Access state and federal laws and cases by books or computers.
- Use your library card number to access Retrievelaw, Hein Online, and Nolo Press through our website.
- Request documents (cases, laws, regulations, etc.) at: http://www.lawlib.state.ma.us/libraries/services/docdelivery.html.
- IM or email a reference question at: http://www.lawlib.state.ma.us/libraries/services/ask.html.
- Access Wi Fi at all 17 locations.
- Look up thousands of legal treatises.
- Find legal forms on disks and CD-ROMs.
- Take advantage of free online access to Retrievelaw (MA and federal law) at your home or office 24/7.
- Enjoy free access to legal databases such as Westlaw and Lexis in our libraries.
- Have cases and articles faxed or emailed directly to you.

Types of Questions We Answer

1. How do I create and file my own will?

You can start by viewing *Massachusetts Law About Wills and Estates* (http://www.lawlib.state.ma.us/subject/about/wills.html) for links to Massachusetts Probate and Family Court forms and topical information from the Massachusetts Bar Association. Then, for further assistance about will drafting, try Nolo.com's *Wills* resource. If you would prefer, you can visit any of the 17 Massachusetts Trial Court Law Libraries (TCLLs) in person and request one of our helpful print resources; i.e., *How to Make a Massachusetts Will: with forms* (2nd ed., Sphinx Publishing Co., 1999) or *Nolo's Simple Will Book* (6th ed., Nolo, 2005). If you require an attorney's help after viewing those resources, you can go to the TCLLs' site and click on "Find a Lawyer" for help finding one.

2. Where can I find Massachusetts speeding laws? What about other civil motor vehicle infractions?

The statute that generally governs speeding offenses in Massachusetts is G. L. c. 90 §§ 17, 17A, and 18. For an extensive list of civil motor vehicle infractions and their penalties, see the *Massachusetts District Court's CMVI Assessment Schedule* (http://www.mass.gov/courts/courtsandjudges/courts/districtcourt/trans976revisedcmviassessments.pdf) for other links and related information, see the Massachusetts Trial Court Law Libraries' page, *Massachusetts Law About Traffic Violations*.

3. How do I get a copy of my divorce decree?

You can get a copy of your divorce decree by mail. The fee is $20.00 for a certified copy. You need to contact the county seat of probate court where your divorce was filed. You can find the address on the Trial Court website by clicking on the appropriate county here: http://www.mass.gov/courts/courtsandjudges/courts/courtscounty.html. In your letter, include the names of the divorced parties, the approximate date of the divorce, and, if you have it, the docket number. Include your full address and phone number in case they have questions.

4. What constitutes a trespass to real property?

The elements of a civil trespass to land are available in *Massachusetts Practice, Summary of Basic Law*, v. 14C, § 17.24.

5. Is a wife obligated to pay for the burial of her deceased husband?

Apparently so. Durell v. Hayward, 75 Mass. 248 (1857), holds: "The indisputable and paramount right, as well as duty, of a husband, to dispose of the body of his deceased wife by a decent sepulture in a suitable place, carries with it the right of placing over the spot of burial a proper monument or memorial. . . ." Vaughan v. Vaughan, 294 Mass. 164 (1936), holds: "In this Commonwealth the right to possession of the dead body is in the surviving husband or wife, with the duty of burial, and not in the executor or administrator where there is no expressed wish of the testator as to the disposition of the remains."

Finally, the Elder Law Center summarizes it this way: "In Massachusetts, the wishes of the decedent govern the disposition of remains. If there are no expressed wishes, the decedent's surviving spouse has the right to possession of the body, with the duty of burial. If there is no surviving spouse, the next of kin have the right to possession, with the duty of burial. In the event of conflict, the desires of the surviving spouse supersede those of next of kin."

6. How long do I have to file an appeal?

We are librarians, not attorneys, so we can't address the specifics of your situation. More generally, in Massachusetts state courts, the answer is usually 30 days. According to Mass. R. App. P. 4(a), “In a civil case, unless otherwise provided by statute, the notice of appeal required by Rule 3 shall be filed with the clerk of the lower court within thirty days of the entry of the judgment appealed from."

According to Mass. R. App. P. 4(b), "In a criminal case, unless otherwise provided by statute or court rule, the notice of appeal required by Rule 3 shall be filed with the clerk of the lower court within thirty days after entry of the judgment or order appealed from; or entry of a notice of appeal by the Commonwealth; or the imposition of sentence."

According to *Appellate Practice in Massachusetts*, edited by Ashley Brown Ahearn (MCLE, 2000), at § 11.7.3, the appellate court computes the time periods prescribed by statutes, by the Massachusetts Rules of Appellate Procedure (http://www.lawlib.state.ma.us/source/mass/rules/appellate/index.html), or by court orders, in this manner: "The day on which the 'triggering event' occurs is not included. The first day to be counted is the day following the triggering event. The last day of the prescribed period is included, unless it falls on a Saturday, Sunday or legal holiday, in which case the last day is deemed to be the next business day thereafter. If the prescribed period is less than seven days, Saturdays, Sundays and legal holidays falling within that period are not included in the computation. When the prescribed period commences after the service of a document and service is made by mail, three days are added to the period."

7. How can I find a copy of a criminal record from the 1800s?

For questions about historical court records, a good starting point is to reference *A Research Guide to the Massachusetts Courts and Their Records*, published by the Supreme Judicial Court Archives. According to the Head of Archives at the Supreme Judicial Court, "for the period 1692 - 1827, minor crimes & misdemeanors were heard by the Court of General Sessions of the Peace. This Court handled County business as well and was dissolved when the County Commissioners system was established in 1827. From 1828 - 1859 the Court of Common Pleas in 13 of the 14 counties heard both civil and criminal cases. By the early 1820s Police Courts were established in several jurisdictions with a civil and criminal sitting. Suffolk County operated differently then the other 13 counties with the Municipal Court hearing criminal cases. The Superior Court of Judicature heard capital cases from 1692 - 1782 and then the Supreme Judicial Court until 1891. (With the exception of three months in 1859 when they went to the Superior Court)."

The records for the various county courts (1636 - 1860) are in the Judicial Archives (http://www.sec.state.ma.us/ARC/arccol/colidx.htm) State Archives in Boston. For further assistance you may consult *Finding Aids for the County at the State Archives* (Reference Desk) or contact the Judicial Archives.

You should try to find as much information about the case as you can before you contact the Judicial Archives. We were told that the person's name, year of the trial, as well as the type of crime is helpful. The archivist suggests that local newspapers from around the time of the trial often provide detailed information.

8. How do I get a Trial Court Law Library Card?

You must register in person at one of our 17 locations.

You must completely fill out a registration form. Forms are available in the libraries in English and Spanish.

You must bring with you one form of photo identification with a current home address.

Once you have completed the paperwork, you will be given your library barcode number, which you can use to access online databases through our website, and you will be permitted to borrow one book that day.

The borrower's card will be mailed to your home address. After you receive the card by mail, you will need to present it whenever you wish to borrow materials. There will be a $2 fee for the replacement of a lost borrower card.

After the first mailing, you may choose to have a preferred contact address (different from your home address) for circulation activities, such as reserves and overdue notices. Circulation notices will be e-mailed, or, if you'd rather, mailed to the preferred address.

To borrow materials from the Massachusetts Trial Court Law Libraries, or to use our online databases, you will need a Trial Court Law Libraries library card. One card will work at all seventeen law libraries, but it is not the same as your local public library card.

For more information on circulation and borrowing privileges, see our *Circulation Policy* http://www.lawlib.state.ma.us/libraries/services/circulation.html.

A Note on Legal Reference

Legal reference does not include legal interpretation or advice. Therefore, the inquiries that can be answered completely by telephone may be limited. If you have a specific citation, need background information on a famous case, or help in identifying and locating print or on-line legal resources, we can probably answer these on a "ready reference" basis. We can recommend and loan general books on a topic, and can direct your patron to the most convenient law library for in-person assistance.

When a patron has a legal question, the law librarian conducts a reference interview in enough detail to be able to identify the issues and select materials that are most likely to help the patron find an answer. The Trial Court Law Libraries' collections include both the primary sources of the law itself, and the secondary sources that interpret them. Since primary law is made up of texts and interpretations by many different branches of government (legislative, judicial, administrative) and in multiple jurisdictions (national, state, local), this process is frequently quite complex, even for what may seem like a simple question.

Once the sources are identified, the librarian will demonstrate how to use them, how they are updated, and how they relate to one another. We will follow up when clarification is needed, and can offer referrals to outside individuals or programs. The patron must read, analyze and interpret the material in the light of his or her own situation, and decide what action to take.

Massachusetts Trial Court
Law Libraries

www.lawlib.state.ma.us
1-800-445-8989

Ask the librarian for information regarding:

_____

_____

_____

Suggested Materials:

Sample Form:

_____

Sample Motion:

_____

Rule or Statute:

_____

Other Material (please explain):

_____

_____

Referred by:

_____

Superior ___ District ___ Probate ___ Juvenile ___
Housing ___ Land ____ BMC ___

This form is for interdepartmental communication and is not intended as legal advice.
For library locations see reverse.

Massachusetts Trial Court
Law Libraries

Barnstable Law Library
1st District Courthouse
Barnstable, MA 02630
(508) 362-8539

Berkshire Law Library
76 East Street
Pittsfield, MA 01201
(413) 442-5059

Bristol Law Library
9 Court Street
Taunton, MA 02780
(508) 824-7632

Brockton Law Library
72 Belmont Street
Brockton, MA 02301
(508) 586-7110

Essex Law Library
34 Federal Street
Salem, MA 01970
(978) 741-0674

Fall River Law Library
441 North Main Street
Fall River, MA 02720
(508) 676-8971
Moving in July, 2010 to:
186 South Main Street
Fall River, MA 02721

Fitchburg Law Library
84 Elm Street
Fitchburg, MA 01420
(978) 345-6726

Franklin Law Library
425 Main Street
Greenfield, MA 01301
(413) 772-6580

Hampden Law Library
50 State Street
Springfield, MA 01102
(413) 748-7923

Hampshire Law Library
99 Main Street
Northampton, MA 01060
(413) 586-2297

Lawrence Law Library
2 Appleton Street
Lawrence, MA 01840
(978) 687-7608

Lowell Law Library
360 Gorham Street
Lowell, MA 01852
(978) 452-9301

Middlesex Law Library
200 Trade Center, 3rd Floor
Woburn, MA 01801
(781) 939-2920

New Bedford Law Library
441 County Street
New Bedford, MA 02740
(508) 992-8077

Norfolk Law Library
57 Providence Highway
Norwood, MA 02062
(781) 769-7483

Plymouth Law Library
52 Obery St.
Plymouth, MA 02360
(508) 747-4796

Worcester Law Library
184 Main Street
Worcester, MA 01608
(508) 831-2525

Statewide Toll Free
Legal Reference Assistance
1-800-445-8989

N: SUPREME JUDICIAL COURT

Prepared for the Intake Clerks of the Office of the Clerk of the Supreme Judicial Court for the Commonwealth.

A self-represented litigant with a pending matter before the full court often needs our help in navigating the rules f appellate procedure. As Clerk's office staff, we strive to strike a balance between being helpful to a self-represented litigant and overreaching. We may never offer legal advice, make a tactical decision for the court user, or suggest that his or her case has less importance than other cases. We may answer a court user's questions by directing the court user to the appropriate rule of procedure and reminding him or her of obligations under the applicable rules. As a courtesy, on occasion, we may make copies as needed. We have available sample copies of briefs, applications for direct appellate review (DAR) and further appellate review (FAR), and an affidavit of indigency.

Appellate courts are reviewing courts. The court reviews the rulings of law as applied to the facts before the Trial Court. Therefore, appellate courts do not receive new evidence or record materials. All appeals must be from a final judgment of the lower court. A final judgment determines/adjudicates all issues as to all parties. Partial judgments (a judgment that does not determine all issues as to all parties) entered in the Trial Court may only be appealed if allowed to be appealed by the Trial Court. See Mass. R. Civ. P 54(b).

Almost half of the appeals in the Supreme Judicial Court (SJC) are transferred from the Appeals Court (except murder one convictions and appeals from the SJC single justice session). The SJC is the court of last resort for cases in Massachusetts.

The type of appeals that are handled by self-represented litigants typically are either applications for further appellate review or appeals from the SJC single justice session. Below are some frequently asked questions and suggested responses.

Further Appellate Review

1. How do I appeal a decision of the Appeals Court to the SJC?

The FAR review procedure is not an appeal of right. Parties dissatisfied with the Appeals Court decision have the opportunity to apply for FAR to the SJC. The application procedure is a separate docket. The party seeking FAR must prepare and submit the application. There is no set "form" to fill out. It is a document that must be generated by the party-applicant.

Essentials/Basics

You may tell the applicant that an application for FAR is something akin to the brief filed in the Appeals Court, but it is addressed to the SJC. The court user must set forth, in ten pages or less, the reasons that the SJC should take and reconsider the appeal. The rules specify that a novel question of law, a constitutional challenge, or a matter of great public interest are factors that the court considers when reviewing the FAR.

Court staff cannot write the application for the applicant.

The applicant is allowed 20 days from the date of the Appeals Court decision to file the FAR. The rule uses the language from the "date of the rescript." You may need to explain that in this context, the "date of rescript" refers to the date of the decision itself, not the date the rescript issues and not the date the applicant received it in the mail. A motion to file late will be considered and acted on only if accompanied by the FAR. If the court user is filing the application late, advise him or her to seek assistance from the Appeals Court clerk's office regarding the issuance or the stay of the issuance of the rescript.

A copy of the Appeals Court decision must be appended to the FAR.

Eighteen (18) copies must be filed with the SJC and one copy filed with the Appeals Court.

Each copy must have a white cover page.

A filing fee of $270.00 is required in civil matters only. A motion to waive filing fee will be considered if the party has been adjudicated indigent within the last 30 to 90 days and has had no change in financial circumstances in that time. Only one copy of the motion to waive filing fee is needed.

2. How do I appeal an opinion of the single justice to the SJC?

The only single justice sessions that the full court has jurisdiction to hear are appeals from the SJC single justice session (Supreme Judicial Court for Suffolk County). The single justice session is treated as any other lower court in the rules of appellate procedure.

Essentials/Basics

Notice of Appeal must be filed in the single justice session within the specified time. See M.R.A.P. Rule 3 and Rule 4.

The single justice clerk assembles the record and notifies the parties and the Supreme Judicial Court clerk's office.

The appellant has ten days from receipt of the notice of appeal to docket the appeal by paying the entry fee of $300.00 or requesting the waiver thereof.

The brief and appendix of the appellant must be filed within the specified time. A motion to extend the time for filing will only be allowed for "good cause shown." See Mass. RAP 14 (b). A brief is the party's legal argument on appeal. The brief should have references to the record before the single justice. The appendix is a compilation and copies of the original papers before the single justice. A motion to proceed on the original papers may be filed to omit the necessity of filing the appendix. Typically there are no transcripts in appeals from the single justice.

3. How do I appeal a single justice decision denying my motion for interlocutory relief?

Rule 2:21 appeals: After an appeal has been perfected from the single justice to the full court, the parties may chose to proceed pursuant to Supreme Judicial Court Rule, 2:21. This is a decision that the appellant makes. Rule 2:21 is applies when a single justice denies relief from a challenged interlocutory ruling in the Trial Court and does not report the denial of relief to the full court.

Essentials/Basics

A notice of appeal is filed in the single justice session within seven days of the judgment.

Unless the single justice (or the full court) orders a stay, no stay is automatic in the trial court.

The record appendix consists of the papers filed in the single justice session and any memorandum of decision.

Rule 2:21 allows for a memorandum of not more than ten pages stating reasons that review of the trial court decision cannot be adequately obtained on appeal from any final judgment in the trial court.

The full court can decide a Rule 2:21 appeal without a hearing.

O: SUPREME JUDICIAL COURT FOR THE COUNTY OF SUFFOLK

CLERK'S OFFICE OVERVIEW

The duties of the Supreme Judicial Court of Massachusetts are divided into two main areas with a clerk's office dedicated to each. The clerk of the Supreme Judicial Court for the County of Suffolk handles that part of the court's business in which an associate justice essentially acts as a trial judge, also known as the single justice session of the Supreme Judicial Court. It is often referred to as the County Court. The clerk of the Supreme Judicial Court for the Commonwealth handles matters before the seven justices or full court.

The clerk's office is open during regular business hours to assist the single justice, counsel, self-represented litigants, and other court users with questions covering every aspect of single justice practice and procedure. The clerk and court staff commonly perform the following functions: serve as a liaison between the single justice and the parties; receive and review petitions, complaints, and motions in all single justice and bar docket cases; address frequent requests by court users for information concerning single justice practice and procedure, bar docket practice and procedure, appellate procedure and jurisdiction; conduct court sessions; and administer oaths to new attorneys.

Parties who come to the court without attorneys should have access to the court equivalent to those who are represented by counsel. Because of the special nature of the cases brought to the single justice, and because even many attorneys have limited experience before the single justice, information is sought by almost everyone who comes before the court. It is critical that information given by court staff be accurate, but that only legal information and not legal advice be given. This is sometimes a difficult distinction to make. The impartiality of the clerk's office must always be maintained. Generally, information about the court's process, rules, and practices may be given.

Following are frequently asked questions with suggested responses. Samples of the documents mentioned therein will available in the clerk's office. Of course, court staff should always feel free to seek the assistance of the clerk or an assistant clerk regarding these or any other matter.

Single Justice Frequently Asked Questions

Opening a case

1. What papers do I file to open a single justice case?

Requirements are a petition or complaint and the filing fee or a motion to waive the fee.

2. Are there forms or samples?

The only forms are the court approved affidavit of indigency forms for waiving the filing fee. However, we can give you a sample petition, certificate of service, and memorandum of law to guide you.

3. How much is the fee? Can it be waived?

The fee is $315.00, payable to the Commonwealth of Massachusetts, which must be paid before a case may be entered. We accept attorneys' checks or money orders, not cash. To request a fee waiver, a court approved affidavit of indigency form is required. The forms and instructions are available at any clerks' office or online.

4. How many copies do I file?

Only one set of original papers is filed with the clerk's office.

5. Do I need a lawyer?

You do not need a lawyer. In criminal matters, a defendant may ask the court to appoint a lawyer. The single justice may refer the request to the Committee for Public Counsel Services (CPCS), which will screen the case and recommend or deny the appointment of counsel. In civil matters, we have a list of organizations and resources that may be able to provide legal assistance.

6. This is an emergency. Can I see a judge now?

This court does not generally act without hearing from both sides. Even if the judge were to stay proceedings in the trial court, the judge would want a response from the opposing party before taking further action. After reviewing the papers from both sides, the judge will determine if a hearing is required.

After the case is filed

1. How are the other parties served? Is a summons required?

All pleadings filed in the single justice session may be served by first class mail, hand delivery or, in the case of emergencies, via facsimile. The petitioner or plaintiff is not required to serve a summons with the original pleading. If the petitioner or plaintiff chooses to serve an opposing party with a summons, despite the relaxed service requirement, summonses are available through the clerk's office. However, a certificate of service is required with every pleading.

2. Are there any other documents I must file other than the petition/complaint and certificate of service?

Although not strictly required, the filing of a memorandum of law in support of your petition or complaint is encouraged.

3. How much time does the other side have to answer?

Response time depends on the situation in each individual case. The clerk works with the judge to see that matters are dealt with expeditiously.

4. When is my hearing?

The judge will review the petition and the response from the other side, then determine if a hearing is required. If the judge orders a hearing, the clerk's office will work out a suitable date and time with the parties or their counsel.

5. I do not live near Boston, or it is inconvenient to come to a hearing. What should I do to have my case heard?

The court can conduct hearings by telephone in such situations.

6. Can I fax or email papers to the court?

In limited instances, where time is of the essence, a facsimile will be accepted so long as the original is filed forthwith. Electronic filing currently is not available.

7. I had a hearing. Can I get a transcript or a copy of the tape?

Hearings are digitally recorded. You may obtain an audio CD of the hearing from the clerk's office.

After a decision is issued

1. I don't understand the decision. The judge didn't give any reasons for the ruling. What does it mean? Did the judge even look at my papers?

The single justice reads and reviews everything in the file before issuing a ruling. The single justice is not required to give reasons for the decision.

2. Can I appeal the decision?

Some matters cannot be appealed, such as decisions on applications for leave to appeal a ruling on a motion to suppress under Mass. R. Crim. P. 15, or on requests for review of decisions on post-conviction motions in first degree murder cases. Other decisions are appealed to the full Supreme Judicial Court by filing a notice of appeal in our clerk's office.

P: APPEALS COURT

Introduction

As a staff member of the Appeals Court, you will find that self-represented litigants are presented with a daunting challenge. The technicalities of the appellate process can be difficult to navigate, even for attorneys. You will need to exercise a great deal of understanding and patience as you assist self-represented litigants through this challenging process, especially since some of them may arrive at your counter very upset at having lost their case or having to "reargue" a case they have just won.

The key to meeting a self-represented litigant's need for (and right to expect) effective assistance is effective communication. As the general sections of this manual have explained, although you may not provide "legal advice" to self-represented parties, you may provide "legal information." That means that Appeals Court staff can and should assist self-represented parties by providing information about the "how-to's" of the appellate process.

What follows are examples of the most frequently asked questions about the appellate process that court staff get from self-represented litigants, together with suggested answers. We also present a brief scenario and suggestions for effectively handling the self-represented litigant who comes to our clerk's office in a highly emotional state.

Frequently Asked Questions[4]

[4] Because the majority of criminal defendants are represented by counsel, our focus here is on civil cases. Although most of the questions we have selected would be asked in cases where the self-represented litigant is the appellant, our general approach to providing information about the rules and the appellate process applies equally in cases where the self-represented litigant is the appellee.

1. I lost my lower court case. How do I appeal the court's decision?

You must file a document called a "notice of appeal" with the clerk's, register's, or recorder's office of the trial court where your case was heard. The deadline for filing a notice of appeal varies. In most cases, the deadline is 30 days from the time that the order or judgment appealed from was entered on the trial court's docket. However, the appeal period can be as short as ten days in some cases. Generally, the date when the order or judgment was entered on the trial court's docket will be noted on the document itself; if you have any questions about the docketing date, call the clerk's office of the court in which your case was heard. If you are uncertain as to the appeal period that applies in your case, you may wish to do research with the assistance of a librarian at a Trial Court or law school library, or to consult an attorney.

If you do not know what a notice of appeal should look like or contain, I can show you some samples. You also may find samples in any of the Trial Court libraries or the libraries of your local law schools. You will want to look at the Rules of Appellate Procedure and, especially at this stage, to consult Mass. R.A.P. 3(a) and 4(a). I can provide you with a copy of the rules, which also are available on the Appeals Court website.

Ordinarily, you cannot file a notice of appeal until the case has gone to final judgment. A judgment is "final" when all claims against all parties, including counterclaims, have been resolved by the lower court. Prematurely filed appeals will be dismissed without the court taking action on them. Determining when a judgment is "final" for purposes of appeal (or whether you may appeal in the absence of a final judgment) may be difficult and may require you to get the advice of an attorney.

2. The time for filing my notice of appeal has expired. Can I still appeal my case?

I cannot tell you whether you will be able to do this, because the decision is up to a judge, but I can inform you how to file your request. You can file a motion asking the court to allow you to file the notice of appeal late. The motion must show that you did not file your appeal on time for reasons of excusable neglect, or good cause, and that your appeal has merit. I can show you some examples of successful motions, but you also may wish to consult form books and other materials on appellate practice that are available in any Trial Court or law school law library.

If you plan to file your motion within 30 days following the expiration of the original appeal period, you may file it either with the lower court (see Mass. R.A.P. 4(c)), or with the single justice of the Appeals Court. If more than 30 days have elapsed since the original appeal period has ended, you may file your motion only in the Appeals Court. You will have to pay a filing fee of $315.00 to file the motion in the Appeals Court.

The Appeals Court cannot consider any motions to file a late notice of appeal in a civil case that are filed more than one year from the date of entry of the judgment or order to be reviewed. (See Mass. R.A.P. 14(b)).

3. I filed my notice of appeal on time. What happens next?

Once you have filed your notice of appeal, the lower court will begin the process of assembling the record on appeal. (See Mass. R.A.P. 9(a)). The record on appeal consists of all original

papers filed in your case (by the parties and others), as well as the exhibits, the transcript of proceedings if needed to decide the appeal, and a certified copy of the docket entries. (See Mass. R.A.P. 8(a)).

As the party filing the appeal, it is your responsibility to order from the court reporter the entire transcript of the proceedings, or those portions of the transcript that you believe to be relevant to your appeal, within ten days of filing your notice of appeal. The clerk's office of the trial court in which your case was heard can give you further information about how to do this. Also, within the same ten-day period, if you do not intend to order the entire transcript, you must serve the other parties in the case with a designation of those portions of the transcript you intend to order, along with a statement of the issues you intend to raise on appeal. (See Mass. R.A.P. 8(b)(1)). The other parties then have the opportunity to identify other portions of the transcript that they think are necessary for the appeal and must be included in the appellate record.

Once the court that heard your case has completed assembling the record, it will send a notice of the assembly of the record to each party. Within ten days of receiving the notice, you must docket the case in the Appeals Court by submitting the required filing fee. (See Mass. R.A.P. 10(a)). Currently, the fee to enter an appeal is set at $300.00 for each appealing party. In the same ten-day period, you must serve each other party to the appeal with a designation of the parts of the record you intend to include in the record on appeal, as well as a statement of the issues you plan to raise on appeal. (See Mass. R.A.P. 18(b)).

It is important to note that the trial court that assembles the record **does not** send that record to the Appeals Court. It is **your** responsibility as the appealing party to photocopy all relevant portions of the record and to prepare a "record appendix," to be filed along with your brief. Again, because the rules governing the appellate process are very technical, if you intend to proceed without the assistance of an attorney, you may wish to read about Massachusetts appellate practice in the libraries I've suggested.

4. I cannot afford to pay the filing fee. What should I do ?

You may file a motion requesting that the entry fee be waived. The motion must be accompanied by the "affidavit of indigency." I would be happy to provide you with a copy of the standard motion and affidavit.

5. Now that my appeal has been entered, how much time do I have to file my brief and appendix?

As the appellant (the party appealing the case), you have 40 days to prepare and file your brief and record appendix with the Appeals Court. (See Mass. R.A.P. 19(a)). Day one of this period begins on the day following the entry of the appeal in the Appeals Court. The appellee (the party opposing your appeal) must file his or her brief within thirty 30 days after you filed your brief and appendix. Day one of this period begins on the day after your brief and appendix have been docketed.

You are not required to respond to the opposing party's brief, but you may do so if you so desire. If you do wish to respond, you may file a reply brief with the Appeals Court within 14 days of

the docketing of the appellee's brief. No further briefs may be submitted without permission of the court.

Note that if a party's brief was mailed to the opposing party, then you have three additional days in which to respond to that party's brief. (See Mass. R.A.P. 14(c)). The date of service listed on the certificate of service is the starting date from which to count the reply period. For example: If your brief is mailed to the opposing party with a certificate of service showing that you mailed the brief on January 1, 2008, the opposing party's brief will be due 33 days after the service date, or February 3, 2008.

If you are uncertain about any of the briefing dates applicable to your case, please contact our office and we will be happy to assist you.

6. How do I prepare my brief and appendix?

There are many formatting requirements for preparing a brief and an appendix. Before you prepare these documents, you will need to read and understand Rules 16, 18, and 20. Again, I can provide you with copies of the rules, they are on the Appeals Court website, and they are available at the Trial Court and law school law libraries. Also, I would be happy to show you a sample brief and appendix, along with the Appeals Court's guide to preparing a brief, and to answer any further questions you have about the process.

If you wish, you may bring a final draft of your brief and/or record appendix to the clerk's office before your filing date so that court staff can review them and point out any deviations from the rules that you should correct before filing.

7. My brief is due soon, but I will not be able to complete it before the deadline. Can I obtain more time?

Whether you get additional time will be up to a judge, but I can tell you how to make your request. You need to file a motion asking the Appeals Court to enlarge the time for you to file your brief and appendix. The motion should propose a definite date by which you will file the brief (and appendix, if applicable), and must be accompanied by an affidavit telling the court why you are requesting the extension of time. As with all papers you file in the Appeals Court, make sure you serve copies to each party and include a certificate of service with the motion and the affidavit.

8. How long will it be until my appeal is submitted to a panel of the Appeals Court Justices to be decided?

Ordinarily, your case will be assigned to a panel of three Appeals Court Justices within four to six months after the appellant's brief is filed. By then, the case will have been screened to determine whether it should be scheduled for an oral argument. There is no right to oral argument in the Appeals Court. If your appeal is scheduled for oral argument, you and the other parties will be notified of the date on which the argument will be held. If your case is not designated for oral argument, all parties will be notified that the appeal will be considered in a particular month by a panel of judges, who will decide it based upon the parties' briefs.

The panel considering the appeal will try to issue a decision within 130 days of oral argument, or within 130 days from the date the case is docketed as being under panel consideration. The 130-day period is only a guideline, however, and not a firm deadline.

9. I lost my appeal. Can I appeal the decision of the Appeals Court?

There are two ways to try to try to obtain further relief after a decision of the Appeals Court, and you may pursue either or both. First, you may file a petition for rehearing with the Appeals Court within fourteen days after the court issues its decision. (See Mass. R.A.P 27). Your petition should be in the form of a letter no longer than ten pages. It should be addressed to the senior Justice of the panel that decided your appeal. I can help you identify that Justice if you are uncertain who it is. You must file **seven** copies of the petition in the clerk's office of the Appeals Court, along with a certificate of service showing that you served the petition for rehearing on all other parties. (See Mass. R.A.P. 27(b))

In the alternative, or in addition to filing a petition for rehearing, you also may file an application for further appellate review with the clerk's office of the Supreme Judicial Court. You must file your application within 20 days of the date that the Appeals Court issues its opinion. (See Mass. R.A.P. 27.1). Although you may pursue both of these avenues at the same time, you should be aware that the Supreme Judicial Court will take no action on your application for further appellate review until the Appeals Court makes its decision on your petition for rehearing.

Before taking either of these steps, you need to read and understand Rules 27 and 27.1. Again, I can provide you with copies of the rules, they are on the Appeals Court website, and they are available at the Trial Court and law school libraries.

<u>Scenario</u>: A self-represented litigant enters the Appeals Court clerk's office visibly upset and loudly demanding assistance. What do you, as court staff, do?

Occasionally, a self-represented litigant will enter the clerk's office in a highly emotional state. The person may be crying, angry, and/or confused about having recently lost his or her lower court case, or having to continue litigating a case won in the lower court. In particular, emotions tend to run high in housing cases, such as an eviction, or in cases from the Probate and Family Court involving decisions about money and/or children. The court user may demand and expect immediate relief from the Appeals Court. He or she may be angry at the court system as a whole. There are times when a court user's demeanor can be disruptive and disturbing to you and other staff.

First, make an attempt to calm the self-represented litigant down by assuring him or her that you are there to help. Ask the court user if he or she has any paperwork that would be helpful in understanding the issue at hand. Helpful documents may include the lower court decision, the case docket sheets, or a copy of the notice of appeal, if one has been filed. Next, try to get a sense of what the court user is requesting from the Appeals Court so that you can present the matter, along with any paperwork, to an assistant clerk who can further assist the person. Avoid legalese, make appropriate eye contact, and do your best to ascertain whether the self-represented litigant understands what you have said. (The tips provided in the Communications section of this Guide offer good suggestions on this.)

Of course, if you feel increasingly uncomfortable in your interaction with the court user or the situation seems to be going out of control, seek the immediate assistance of your supervisor.

Q. SUPERIOR COURT DEPARTMENT

Many people have legal disputes and either are unable to afford a lawyer or have chosen to represent themselves. The following is a guide that will assist you in helping self-represented individuals. It contains answers to the most frequently asked questions. It does not answer all questions that will be asked of you. It is most important that you provide accurate information; if you do not know an answer, you should ask your supervisor or an assistant clerk.

A positive approach is very important. You should make the person feel welcomed to the Superior Court. The approach you take should be as follows: "I understand that you have a legal problem and have decided to represent yourself, rather than hire a lawyer. You have a right to represent yourself, and we will be pleased to assist you by providing legal information, including any procedural information. We are unable to provide legal advice. If you are an officer of a corporation, you may not represent the corporation. The law in Massachusetts requires that a corporation be represented by a lawyer except in small claims cases." See Varney Enters., Inc. v. WMF, Inc., 402 Mass. 79 (1988) (except for small claims matters, a corporation may not be represented in judicial proceedings by a corporate officer who is not an attorney licensed to practice law in the Commonwealth).

Frequently Asked Questions and Some Suggested Responses

1. I need to sue someone; how do I start my lawsuit?

First, are you in the right court? Please tell me a little about your lawsuit. Where do you live? (It is always a good idea to check whether the court user is in the correct county). Are you seeking money damages? If so, how much? (Maybe the court user should be filing in the District Court, possibly even a small claims case.) You will need three things: a complaint; a cover sheet; and the entry fee

2. How do I draft a complaint ?

There are no form complaints in the Superior Court. You will have to write out or draft your own complaint. We have examples of previously filed complaints that will assist you. We will provide you with a copy that will assist you in following the format. The format and heading for a complaint should be as follows:

COMMONWEALTH OF MASSACHUSETTS

[county], ss. **Superior Court**
Civil Action
No.

_____
Plaintiff(s)

vs.

_____
Defendant(s)

Complaint

If you are bringing the suit, you are the plaintiff; the person you are suing is the defendant.

Next, you should list the parties and their addresses.

Next, you should write out the facts that support your complaint. This is your opportunity to tell your story, including all the information you believe to be important. You should include dates and what you allege the defendant did to you.

Next, describe the relief you request in your own words. For example, is it money damages? Did the defendant's actions cause you physical harm? Does the defendant owe you money? Are you looking for a restraining order? Has someone threatened you? (The most commonly filed complaint by a self-represented individual requests a civil restraining order. Many people come to the Superior Court because they need protection from a person who is not covered by a 209A restraining order or an order for protection from harassment under c. 258E.[5])

After you have detailed the relief you are requesting, you must sign the complaint and print (or type) your name, address, and phone number.

If you are looking for a civil restraining order, you must verify the complaint. The rule requires that you swear under the pains and penalties of perjury that you know the facts to be true.

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[5] Under § 3 of G.L. c. 209A, a person suffering from abuse by a "family or household member" may seek protection from such abuse by applying to the court for a restraining order. A "family or household member" includes persons who "(a) are or were married; (b) are or were residing together in the same household; (c) are or were related by blood or marriage; (d) having a child in common regardless of whether they have every married or lived together; or (e) are or have been in a substantive dating or engagement relationship." G.L. c. 209A § 1. If a person is seeking a 209A order under (e), a judge in the District Court, Probate Court, or Boston Municipal Court must determine if the parties were in a substantive dating or engagement relationship after considering several factors outlined in the statute. G.L. c. 209A §§ 1(e)(1-4). Therefore, it appears that, while a Superior Court judge can issue a 209A order under (a)-(d), he or she cannot do it under §§ 1(e)(1-4) if the judge determines that the parties were or are engaged in a "substantive dating or engagement relationship."

A person who does not have the kind of intimate relationship required to qualify for a restraining order under c. 209A may be eligible for an order under c. 258E, the new harassment prevention statute that became effective on May 10, 2010. This statute allows the court to issue an order of protection to someone who has been a victim of sexual assault; who has been a victim of an act that constitutes a violation of one of a number of criminal statutes; or who has suffered harassment. Harassment is defined as three or more willful and malicious acts aimed at the victim, intended to cause fear, intimidation, abuse or property damage and actually causing fear, intimidation, abuse or property damage. “Malicious” means done with cruelty or hostility or for revenge. The Superior Court has jurisdiction over these types of cases unless the defendant is under the age of 17, in which case the Juvenile Court has exclusive jurisdiction.

Someone who does not qualify for an order of protection under c. 209A or under c. 258E may still seek a civil restraining order in the Superior Court.

An example of appropriate language to verify a complaint is:

I declare under penalty of perjury that all statements of fact made within this complaint, and any additional pages attached, are true.

3. What is a cover sheet and how do I prepare one?

A cover sheet is a form required to file a complaint in the Superior Court. Should you have any questions when filling this out I will assist you.

4. Do I have to pay anything before filing my lawsuit?

Yes, there is a filing fee. The fee must be paid before your case may be entered and assigned a number. The clerk's office accepts cash or a check. We do not accept credit or debit cards. (Many people are not aware of the fee and in many instances are unable to afford the fee.) If you are unable to pay the fee, just ask any of our court staff for an affidavit of indigency. You should fill out this form completely. Depending on your financial situation, you might be required to fill out the supplementary form. Once again, if you have a question, do not hesitate to ask court staff. Once the form is completed, it will be submitted to the court for a determination.

Please make sure to ask for waiver of all fees that will be necessary for you to proceed with your suit. For example, this is the time to request waiver of the $90.00 fee required for a civil restraining order. It is also the time to request that the Commonwealth pay the fees charged by the sheriff to serve your complaint. I can provide you with a copy of written instructions to assist you in seeking a waiver of fees.

5. I need a restraining order? What do I need to do?

First, take a deep breath; we are here to assist you. The most commonly filed complaint by a self-represented individual is one seeking a civil restraining order, sometimes referred to as a stay away order. Possibly your local police department has suggested you come to the Superior Court. Possibly you need an order against a neighbor, a fellow worker, or an ex-girlfriend or ex-boyfriend of your current spouse. A copy of a complaint is included to assist you. The Superior Court can issue an order in cases where the situation is not covered by either a Chapter 209A or a Chapter 258E restraining order but where the court believes that the plaintiff nevertheless needs protection from the defendant. (See note 5 above for more information on who might qualify for these varying types of orders.) Following is additional information to assist you.

Write out the complaint and follow the other instructions in sections 2, 3 and 4.

Even after you have written out your complaint, verified it, filled out the cover sheet, and paid the entry fee or filled out the requested affidavit requesting waiver of the fee, you probably have some questions. First, I will have this complaint reviewed by my supervisor or an assistant clerk for completeness.

6. May I see the judge about my request for a civil restraining order?

Probably. The law does not require a judge to see you. Rather, a judge must review your complaint and determine if the civil restraining order should issue *ex parte* (without notice to the other side). This is why it is so important that you include all the necessary information in your written complaint. In some instances, the judge will speak to you in the courtroom on the record and ask you additional questions. It is possible that the judge will not be available until later in the day (this differs from court to court).

7. What will the judge do?

The judge may decide that he or she wants to speak to all parties before issuing any order. In that case, the judge will issue what is called a short order of notice. The clerk or the judge will ask you when you are available to come back for the hearing. You will need to come back to the clerk's office, where one of us will type a summons and order of notice. Once this is typed, it will be your responsibility to take it to the sheriff and arrange for it to be served on the defendant. You may not serve it yourself, and, unlike the practice in Chapter 209A or 258E matters, the police do not serve civil restraining orders. The summons and order of notice informs the defendant that you are suing him or her, tells the defendant that he or she has 20 days to file a written answer, and notifies the defendant of the date and time of the hearing on your request for a civil restraining order.

The judge may decide that for your safety a civil restraining order should issue immediately. The civil restraining order is only in force for a maximum of ten days. Once again, the judge or the clerk will ask you when you are available to come back for the hearing for the issuance of a preliminary injunction. (A preliminary injunction is an order of the court that continues a civil restraining order until a specific date, or until further order of the court.) You will need to come back to the clerk's office, where one of us will type a summons, a civil restraining order, and an order of notice. Court staff will ask you for the required fee of ($90.00). You will be responsible for bringing the paperwork to the sheriff for service on the defendant.

If you are going directly to the sheriff's office, make sure you have copies of the complaint and cover sheet for each defendant, and one additional copy for your records. Keep a copy of the civil restraining order with you at all times. If the court has waived the service fees, we will provide you with a certified copy of the court's determination for you to give to the sheriff, so that the sheriff will bill the Commonwealth.

Please remember that if you obtain a civil restraining order, it is a civil order. Unlike Chapter 209A or 258E restraining orders, disobedience of the civil restraining order does not lead to arrest. **Most importantly, a Chapter 209A or 258E restraining order will not protect you unless you immediately call the police if the defendant does not obey the order and threatens you.**

8. What happens on the return date?

If the defendant appears, the court will hear from both parties and determine whether the civil restraining order should be extended as a preliminary injunction.

If the defendant does not appear, it is most important that you make sure the sheriff's office has filed the return of service proving that the defendant has been notified of the hearing. **Without proof of service on the defendant, the hearing will not go forward.**

9. The defendant has not obeyed the order; what should I do?

It is a common misunderstanding that a violation of a civil restraining order is a criminal offense. It is not. Rather, it is an offense punishable by civil contempt.

Obtaining this relief requires the filing of a verified complaint for contempt. This contempt complaint will be filed in your current case. There is no fee for a complaint for contempt. The complaint is reviewed by a judge, who determines if a hearing should be scheduled and for what purpose. We will type an order of notice. Once again, it will be your responsibility to take this order to the sheriff's office for service on the defendant. This summons must be served on the defendant **in hand**. You should tell the sheriff that you need in-hand service, rather than "last and usual."

10. How do I notify the defendant of my suit? (For cases in which no order of notice has issued.)

You will need to purchase a summons, one for each defendant you have sued. The cost of a summons is $5.00.

You should fill out the summons and bring it to the sheriff's office.

You should also provide the sheriff with a copy of the complaint and the cover sheet. You will need one copy for each defendant.

The sheriff will charge you a certain fee depending on where each defendant lives.

If you are unable to pay for this service, hopefully you have included a request to have the Commonwealth pay this fee when you filled out your affidavit of indigency.

The sheriff will deliver a copy of the summons, complaint, and cover sheet to each defendant at the addresses you provide. The sheriff will file the return of service to the clerk's office noting the manner of service. You should instruct the sheriff 's office as to whether you want them to return the summons to you or directly to the court. Many people choose to have the sheriff mail the return to them so that they may make a copy for their records. If you do this, please make sure you file the original return of service with the clerk's office within 90 days of filing the suit. The procedural rules require the clerk to dismiss all cases if the return of service is not on file within 90 days.

As previously mentioned, if you are coming in for a hearing on a civil restraining order, you must make sure the return of service is here prior to the hearing.

Make sure you use the correct summons. It must be a summons from the court in which you are filing your suit.

In addition, if the defendant is from a different county, you must go to the sheriff in that county and have them serve your papers.

There are some statutes that provide for service in a manner other than through the sheriff's office.

11. I've been sued! What do I do?

You have 20 days to respond to the complaint. Your answer must be in writing.

The response may be either a motion to dismiss or a written answer.

If you have an attorney, you should immediately get in touch with the attorney and provide a copy of the complaint to the attorney.

If you are being sued because you were in an motor vehicle accident, and assuming you have insurance, you should notify your insurance company of the suit immediately, and the company will assign an attorney to defend you.

If you forget to respond/answer the complaint, you may be defaulted. The plaintiff may request the court to default you 20 days after you have been served by the sheriff. The clerk is required to default you after five months if you have not answered the complaint.

12. How do I answer a complaint when there is a civil restraining order that prohibits me from having any contact with the plaintiff?

You should ask the judge if the serving of all papers is permitted as an exception to the order. If it is not, or if the plaintiff's address has been impounded, you should send two copies of your paperwork to the clerk's office, and they will forward one copy to the plaintiff.

13. I need help from the court. I've been told to file a motion -- what is this and how do I file one?

Motion practice in the Superior Court is not always easy. Once again, there are no forms, but once again, we will provide you with a copy of a motion filed in another case so that you may follow the format. Did you forget to answer the complaint, and did the plaintiff default you? You want to ask the court permission to remove the default and answer late. You will need to serve and file a motion to remove the default. Did you file a complaint challenging an agency decision and now discover that it is your responsibility to serve a motion for judgment on the pleadings? (These are just a couple examples of motions that are commonly filed by self-represented individuals.)

Motion practice in the Superior Court is controlled by Superior Court Rule 9A. It is rather complicated, so do not hesitate to ask questions. The following information will highlight the Rule and commonly asked questions.

14. What does a motion look like?

The motion should be on 8.5" x 11" paper. The heading should be similar to that used for a complaint. You would title it:

Plaintiff or Defendant's Motion to _____

(Examples: to remove the default; to extend the time to answer; to continue a hearing; to dismiss; for summary judgment; for judgment on the pleadings; for reconsideration)

15. What is an assented-to motion?

This is a motion that all counsel/parties agree to. For example, if you have been defaulted and want to remove the default, you could call the plaintiff's attorney (or the plaintiff if he or she does not have an attorney) and determine whether the plaintiff will agree to the removal of the default. If the plaintiff says yes, you then send the plaintiff your motion to remove default for his or her signature assenting to it. When a motion is being filed by assent, you do not have to wait for 13 days to file pursuant to Rule 9A. Another common motion that is often filed as an assented-to motion is a motion to continue.

16. How do I schedule a hearing?

The clerk's office schedules all hearings. Not all motions are scheduled for a hearing. Rule 9A presumes that many motions will be decided by a judge after reviewing all the submitted papers.

Certain motions have a presumptive right to a hearing.

17. How will I know if the court schedules a hearing?

You will receive written notification of the date, time, and location of the hearing.

18. How do I reschedule a hearing?

You should check with the clerk's office to see what the policy is of the judge sitting in the session. Some judges require that you file a motion to continue the hearing. Some judges allow the parties to take a motion off the list by agreement.

You will have to call the other party or, if they have an attorney, call the attorney, to see if the attorney will agree to a continuance. If the party or attorney agrees, then depending what the policy of the judge is, you will either just call and speak with the assistant clerk or file a motion to continue the hearing. If the other side will not agree to a continuance, you will have to file a motion to continue. If there is not enough time to serve a motion under Rule 9A (which takes up to 13 days), then you will have to file an emergency motion to continue.

19. I'm confused! What is the difference between serving and filing?

Serving is when you send or deliver the papers to the other parties. Filing is when you send the papers to the court after waiting the appropriate time under Rule 9A.

Pursuant to Rule 9A, you must file your motion package promptly: within ten days.

20. Would you mind starting at the beginning and walking me through how I serve and file a motion?

Since you are requesting the court to do something, you are called the moving party. Since there are no forms in the Superior Court, you will need to write or draft your own motion.

Each motion must have a separate document and a statement of reasons, including supporting authorities that explain why your motion should be allowed. Affidavits are commonly filed to support motions. Remember, an affidavit must be sworn to under the pains and penalties of perjury. Sometimes other people will provide you with affidavits to support your motion.

So, now you have the motion and all supporting documents prepared (the motion package). If you want the court to schedule a hearing, you should include a written request for the hearing in your motion papers. You should serve (mail) this motion package to all other parties. Remember, if a party is represented by an attorney, you should mail to the attorney; if a party represents him/herself, you should mail directly to the person.

For most motions (except summary judgment), the opposing parties have a total of thirteen days (ten days plus three for mailing) to file opposition papers back to you.

If you receive opposition papers, you should gather all your papers and all the opposition papers and make a document list of all the papers you are sending to the court. You should mail or deliver the motion package, which now includes opposition papers, to the clerk's office. You should send a copy of the document list to the opposing parties. This indicates to them everything you have sent to the court. You should include a certificate of service which indicates the date you sent the papers to the court. Rule 9A allows for ten days to send the papers to the court after receiving the opposition papers. Make sure you include your email address, if available, on the certificate of service.

The time for opposing a motion for summary judgment is different. These motions are more complex, so the rule allows for 21 days to serve an opposition; adding in three days for mailing, you are up to 24 days. There are different time limits for motions for judgment on the pleadings filed pursuant to Standing Order 1-96. (This will be discussed later.)

21. I need to correct some statements made in my papers -- what do I do?

You will need to ask the court's permission to serve and file a reply brief. You may send a letter or motion to the clerk's office asking permission. The clerk will deliver this to the judge, who will review it and make a decision. The clerk will notify you in writing of the judge's decision.

22. I was served with a motion -- what do I do?

Serve all opposition papers within thirteen days (ten days, plus three for mailing). If you are opposing a motion for summary judgment, you will have 21 days plus three days for mailing, a total of 24 days. If you want a hearing, you should request it at this time.

As the opposing party, you should serve on the moving party an original and one copy of all documents. The moving party keeps the copy and forwards the original set to the court.

23. Now that I've filed the motion package, what happens next?

The clerk's office will docket all the documents, pull the file, and deliver it to the judge assigned to the case. The judge will review all the papers and do one of two things:

1. Decide the motion on the papers. The judge might write his or her decision in the margin of the motion, or the judge might issue his or her decision in a separate memorandum. The clerk's office will send written notice of the decision.

2. The judge will instruct the clerk's office to schedule a hearing. The clerk's office will send written notice of the date and time of the hearing.

24. What happens at the hearing?

The judge listens to all the parties, one at a time. Sometimes the judge announces his or her decision from the bench. In many instances, the judge takes the matter under advisement. This means that the judge will take time to review the papers again, reflect on the oral arguments, and possibly do additional research. When the judge makes his or her decision, it is given to the clerk's office to be docketed, and the clerk will once again send written notice of the decision.

25. I want to get rid of my attorney and to represent myself. What do I do?

If you want to take over your case and you have been represented by an attorney, the attorney must withdraw before you may represent yourself. The clerk's office may not accept filings from you until your attorney has been allowed to withdraw and you have filed an appearance.

Rule 11 controls appearances and withdrawals.

If there are no pending motions and the case has not been scheduled for trial, the attorney may file a withdrawal of appearance so long as it is accompanied by an appearance of successor counsel.

You may be the successor counsel, representing yourself.

If the case is on the trial list or there is a pending motion, the attorney will be allowed to withdraw only by filing a motion to withdraw that follows Rule 9A.

Some other Trial Court Departments allow "limited assistance representation (LAR);" individuals are allowed to represent themselves for some hearings and have their attorneys represent them at other times. This is not allowed in the Superior Court Department at this time.

26. What do I do when I am in the courtroom?

It is advisable to arrive a few minutes early to make sure you are in the correct courtroom.

It is a good idea to organize your thoughts and possibly write down the most important points you want to make.

During the motion/pre trial conference session, it is typical for the assistant clerk to call the list prior to the judge coming onto the bench, to verify that all parties are present for all the cases. When you hear your case called you should answer "here" and indicate to the clerk that you will be representing yourself. This will allow the clerk to arrange for the court reporter to appear and take down everything that is said during your hearing.

Dress appropriately. No hats are allowed except for religious reasons.

If you are running late, you should call the clerk's office and ask that a note be brought to the courtroom. If you do not do this, it is possible that your case will already be heard before you arrive. If you do arrive late, make sure to check in with either the clerk or the court officer.

You should stand whenever you are speaking to the judge. You may be seated when the other parties are speaking.

Do not interrupt the other parties or the judge. Only one person may speak at a time. Remember, the court reporter is taking down everything that is said and is only able to hear one person at a time.

You should turn off all cell phones and pagers while you are in the courtroom.

If you have brought additional papers to submit to the judge, ask the judge if he or she will accept the papers. If yes, hand them to the clerk, who will hand them to the judge.

27. How do I get a copy of the tape of my hearing?

You will not be able to get a copy of the tape, but you may order a transcript of your hearing. A transcript is a typed manuscript of everything that was said during your hearing.

You must contact the court reporter and order the transcript. Or, ask the clerk’s office for a Superior Court transcript order form if the session was recorded with the JAVS machine.

28. I don't know who the court reporter was. Can you tell me his or her name?

I will need your docket number or your name and the date you were here. I will look up in the computer who was assigned on that day.

If you do not know the name of the court reporter, call the clerk's office and they will look in their records to determine which court reporter was present on the day(s) of your hearing.

The court reporter does not work for the clerk's office but is employed by the Chief Justice.

29. I disagree with the judge's decision. What are my options?

You may serve and file a motion for reconsideration. You must follow Rule 9A of the Superior Court Rules.

You may appeal the decision. You should follow the Massachusetts Rules of Appellate Procedure. You have 30 days to file a written notice of appeal from a judgment. When the Commonwealth is involved as a party, you have 60 days to file the appeal.

30. I do not agree with an agency's decision. What do I do?

You should first read Standing Order No. 1-96. This order instructs court users on the procedure for processing and hearing complaints questioning an agency's decision.

There are different timetables than in other types of cases.

You are the plaintiff, so you must file a complaint. There is no form complaint (except for surcharge appeal complaints), but we have a copy of an example that you may review and follow. The entry fee is $275.00, and you must also fill out the cover sheet.

After you have filed the complaint, you must serve the complaint on the agency.

Within 90 days of being served, the agency will file a certified copy of the record of the proceeding to be reviewed.

31. I want the court to know about some problems that I experienced at the agency hearing.

You may file a preliminary motion. There are three preliminary motions that must be served within 20 days after service of the record or else they will be waived. The motions are:

a. A motion to dismiss pursuant to Rule 12(b) or 12(e).

b. A motion for leave to present testimony of alleged irregularities in procedure before the agency.

c. A motion for leave to present additional evidence.

32. Do I need to order a transcript of the agency hearing?

You must do so if you are going to argue any of the following about the agency's decision:

a. The decision is not supported by substantial evidence.

b. The decision is arbitrary or capricious.

c. The decision is an abuse of discretion.

33. How long do I have to order a transcript?

You have 30 days after service of the complaint.

34. How will my agency case be decided?

It will be decided on a motion for judgment on the pleadings. You must follow Rule 9A of the Superior Court Rules; however, there are different time limits.

You have 30 days from service of the record to serve your motion for judgment on the pleadings and your memorandum (unless you filed one of the preliminary motions I mentioned earlier).

The defendant has 30 days to respond to your motion. You should gather your motion and memorandum and the response from the defendant and send them all to the court with a document listing all of the papers. This material should be filed within ten days.

You should send a copy of the document listing to the other side.

35. What if I need more time to serve my motion and memorandum?

You may file a motion asking the court to extend the time.

Once you have filed your motion papers, the court will notify you in writing as to the date and time of your hearing.

36. What will happen at the hearing?

There are no witnesses, and no testimony is taken. The court will listen to oral argument from all of the parties that have not waived oral argument.

37. How do I file my papers with the court?

In most instances, you will need to mail your papers to the court or hand-deliver them. Unlike in the federal court, we are not permitted to accept e-filings.

Acceptance of fax materials varies from court to court. There is no rule that allows for faxing filings.

Courts that do accept faxes when time is of the essence or there is a real emergency require that you mail a hard copy of the document.

38. What is discovery?

Discovery is the process of gathering and preserving evidence prior to trial. It is a complex area of the law and is controlled by the Rules of Civil Procedure. The complete subject is too lengthy to go into in detail, but a few definitions follow:

a. Depositions

An individual is questioned under oath. A stenographer takes down the testimony and either provides a transcript or a videotape of the deposition. In most instances, depositions are taken outside of the courthouse, often at a lawyer's office. Depositions are often used at trial for two different reasons: first, if the individual is unavailable to come in and testify; and second, to impeach the testimony of the witness at trial.

b. Interrogatories

Written questions about the facts of the case. One party poses these questions to another party. Answers to interrogatories are always under oath and must be signed by the individual, not his or her attorney.

c. Requests for Admissions

A party to a case may list facts relevant to the case and ask the other party to admit or deny the facts.

d. Requests for Production of Documents

One party requests another party to produce documents and/or items related to the case.

39. What is alternative dispute resolution? Do you think it would be appropriate for my case?

The goal of alternative dispute resolution (ADR) is to have the parties explore whether they are able to resolve their dispute without litigating their case.

The different types of ADR are:

Arbitration	Mediation
Case evaluation	Mini-trial
Conciliation	Summary jury trial
Dispute intervention	Early intervention

Only you may decide if ADR is appropriate, and in what form. Many individuals choose this manner to resolve their disputes.

R: LAND COURT DEPARTMENT

Jurisdiction

The Land Court Department of the Trial Court has statewide jurisdiction. While the Land Court has jurisdiction throughout the Commonwealth, all of the court's records and filings are kept at

the court's location at 226 Causeway Street, Boston, MA 02114, where the seven judges of the Land Court normally sit. Where the circumstances warrant and counsel request, the court routinely hold trials in other locations throughout the Commonwealth.

The Land Court's jurisdiction is described in G. L. c. 185 § 1. The Land Court has exclusive, original jurisdiction over the registration of title to real property and over all matters and disputes concerning such title subsequent to registration. Additionally, the Land Court has superintendency authority over the Registered Land office in each registry of deeds. The Land Court also exercises exclusive original jurisdiction over the foreclosure and redemption of real estate tax liens for all cities and towns in the Commonwealth. The Land Court shares, with certain other Trial Court Departments, jurisdiction over equitable actions involving title to property and land use, and actions to partition property. Under G. L. c. 40A and 41, the Land Court shares jurisdiction over matters arising out of decisions by local planning boards and zoning boards of appeal.

Both the Land Court and the Superior Court Departments have jurisdiction over the processing of the first step in mortgage foreclosures: actions brought under the Servicemembers Civil Relief Act to determine the military status of the mortgagor. The Land Court does not otherwise oversee foreclosures. There are no juries in the Land Court; all cases are tried to an individual judge to whom the case is assigned when it is filed.

The Land Court has a dedicated session called the "Permit Session," in which permitting decisions involving large development projects may be reviewed. Cases filed in other Trial Court Departments may be transferred to the Permit Session on the approval of the Chief Justice for Administration and Management of the Trial Court (see G. L. c. 185 § 3A).

People litigating in the Land Court should be advised that the court has its own rules and standing orders that pertain to cases filed in the Land Court. These rules and standing orders must be followed, together with the Massachusetts Rules of Civil Procedure, where they apply. The Land Court's rules and standing orders are available on our website and in the Massachusetts Rules of Court -- State (West Publishing), and may be obtained in any of the Trial Court Law Libraries.

To reach the Land Court's website, go to http://www.mass.gov/courts/courtsandjudges/courts/landcourt/index.html. Our website is also easily reached through internet search engines by entering "Massachusetts Land Court."

The following frequently asked questions have been categorized by case type for easy reference.

Miscellaneous Cases

1. How is a miscellaneous case filed?

A miscellaneous case is commenced with the filing of the complaint at the Land Court. The filing fee is $255, and an additional $5 per summons is charged in cases involving more than one summons. The check should be made payable to "Land Court." The complaint should be filed with the Land Court Civil Cover Sheet, which is available in hard copy at the court and on our

website. **If the case is filed in the Permit Session, a Permit Session Civil Cover Sheet must be used in place of the regular civil cover sheet.**

2. What form should the complaint take?

With the exception of cases brought under the Servicemembers Civil Relief Act, all miscellaneous cases are covered by the Massachusetts Rules of Civil Procedure. There are no standard forms. The complaint should clearly state the jurisdiction of the Land Court, the issue to be resolved, and the relief desired from the court.

3. What form should service take?

Service should follow Mass. R. Civ. P. 4, which requires service by a deputy sheriff or, if the court permits, a constable.

4. What types of cases fall under the Miscellaneous category?

Boundary and title disputes, cases where the plaintiff seeks to correct a defect or "cloud on title," zoning and subdivision appeals, and low value tax foreclosure cases all fall under the Miscellaneous category.

5. How is a judge assigned to the case?

A judge is randomly assigned at the time the case is initiated and entered into the computerized case management system called MassCourts. The individual judge will be involved with the case until it is complete. The judge's sessions clerk will generally be the contact person for the filing of any motions or communications with the court. Soon after the case is filed, a tracking order is sent out by the sessions clerk which will inform the plaintiff of the judge assigned to the case, and the "track" to which the case is assigned. At the same time, or shortly thereafter, the court will assign a date for a "case management conference." These conferences are generally held within 90 days of the filing of the complaint. You will be advised in the tracking order the date by which a "case management memorandum" will be due in the court. The memo must be a joint effort of all parties, as described in the notice you receive.

6. How do I determine what date and time to mark up motions before the judge?

The court publishes in *Lawyer's Weekly* and on the Land Court website the dates and times when motions may be marked up before each judge. Each judge's sessions clerk should be contacted with any questions regarding motions and hearings.

<u>Registration, Confirmation, and "S" Cases</u>

1. How do I file a complaint to register or confirm title to my land?

A complaint to register or confirm title to land is begun with the filing of the complaint (Land Court Form No. LCP-8), accompanied by a copy of the complaint (Land Court Form No. LCP-9), a notice of complaint (Land Court Form No. LCN-3), and a completed assessor's certificate (Land Court Form No. LCA-1). All of these forms are available on our website, or at the court.

In addition, an original and two prints of a plan of locus drawn by a Professional Land Surveyor must be filed. This plan must be pre-approved by the Land Court Survey Division prior to the filing of the complaint to be sure it complies with Land Court requirements. The rules and procedures governing preparation of plans are found in the "**2006 Manual of Instructions for the Survey of Lands in Preparation of Plans."** The 2006 Manual is available on our website and has a "search" function, which makes finding relevant portions easy and fast. In order to find a particular word or phrase, "right click" to access to the search function.

New registration/confirmation plans may be filed on a walk-in basis, and staff from the Survey Division are available for a consultation. It is better to call in advance to insure that someone will be able to meet with the person filing the plan.

Before the registration case is officially opened and entered on the Land Court docket, the plan must be approved for filing. If the plan does not comply, it will be returned to the plaintiff for revision by the surveyor who prepared it.

Copies of the plaintiff's most recent deed and the Assessor's Map showing the locus must also be submitted with the complaint for registration/confirmation.

When the complaint and plan are ready to be filed, you must present a check payable to "Land Court." The amount of the filing fee is set by statute as follows:

(1) Registration - $775.00 plus 1/10 of 1% of assessed value
(2) Confirmation - $775.00

The "Notice of Filing" must be filed on the "recorded" side of the appropriate registry of deeds.

A report and abstract of title must be prepared by a Land Court Examiner and filed with the Land Court. The Land Court Examiner is appointed by the court pursuant to S.J.C. Rule 1:07, unless a Land Court Examiner has previously examined the title, in which case a request for a waiver from the sequential appointment of the Examiner will be considered.

An outline of the process for Registration/Confirmation is available on the Land Court website: http://www.mass.gov/courts/courtsandjudges/courts/landcourt/index.html.

2. What is an "S-Petition" or "Supp. Case"?

"S-Petition" and "Supp. Case" are generic terms for all petitions affecting registered land, subsequent to the judgment for registration. Some of the most common forms of S-Petitions are:

- Petition for new certificate of title after the death of a registered land owner;
- Petition for approval of a subdivision plan of land already described on an existing certificate of title; and
- Petition to amend a certificate of title

Some of the most common S-petition forms are available on the Land Court website.

An S-Petition filing must include a check payable to "Land Court" in the amount of $50.00.

3. **How do I file a Petition for a new certificate of title:**
   (a) after the death of a person in whose name alone a certificate of title stands,
   (b) after the death of both tenants by the entirety, or
   (c) after the death of any tenant in common and after the death of the last joint tenant?

(a) Land Court Form LCP-2 must be completed and filed at the Land Court along with the attested Probate Court copies listed on the complaint and the statutory filing fee of $50.00. The complaint has two signature sections. The plaintiffs (heirs or devisees of the deceased owner) may sign the first section of the complaint, or their attorney may sign for them. The statement in the last paragraph of the petition must be signed by the executor or administrator of the estate, and the signature must be notarized.

(b) An attested copy of the outstanding certificate of title must be obtained through your local registry of deeds and filed with the complaint.

(c) Additional documentation will vary depending upon how title to the property was held.

Further information is included in the Commonwealth of Massachusetts Guidelines on Registered Land, issued February 27, 2009, which is available on our website: http://www.mass.gov/courts/courtsandjudges/courts/landcourt/index.html.

The Guidelines document has a "search" function, which makes finding relevant portions easy and fast. In order to find a particular word or phrase, "right click" to access to the search function.

Dividing Registered Land into Two or More Lots

1. **If I own registered land and want to divide my property into two or more lots, how do I go about doing that?**

You need to file a plan with the court prepared by a registered land surveyor. The plan must comply with the requirements set forth in the **2006 Manual of Instructions** in all respects and follow the checklist contained in the Manual. The division plan is reviewed by personnel in the Land Court's Survey Division before it is accepted for filing with the court. This process is called Pre-Filing-Review (PFR).

2. **How long must I wait for a PFR of a division of registered land?**

As of the July 1, 2009, PFR packages with complete information are assigned by the Chief Surveyor and responded to within two to three weeks of receipt. The Land Court staff will inform you of whether the filing and plan preparation are complete. If they are, the division plan will be accepted for filing. The time frame will vary with case load and available personnel.

3. **Does the consolidation of registered lots for building purposes require a new survey and plan?**

Yes, the plan will be handled in the same manner as a division of registered land, set forth above.

4. When do I need to have a deed or other instrument approved for description by the Survey Division?

All instruments up to and including the first deed out for each new lot created and shown on a plan must be stamped "approved" for description prior to filing at the Land Court District at the local registry of deeds, until the final plan prepared by the court has been filed at the local registry. After the first deed out for each lot, subsequent deeds do not need to be stamped for description.

5. How do I obtain the description stamp from the Survey Division?

Instruments for approval may be walked-in between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday. Instruments may also be mailed in and will be sent out by first class mail unless an alternate return mailer is provided to us. Non-executed instruments may also be faxed or attached to an e-mail for review.

6. What is an acceptable deed description for a registered lot?

A lot number and Land Court plan number reference is a sufficient (and preferable) description for a registered lot. You do not need to include a metes and bounds description. If you want to have the Survey Division stamp your deeds in blank, that is acceptable so long as the instrument contains the name of the grantor and reference to the outstanding certificate of title number. The grantee may be blank, and the instrument need not be executed.

Servicemembers Civil Relief Act (Foreclosure) Proceedings

1. What is a Servicemembers Civil Relief Act proceeding?

In Massachusetts, a foreclosing bank or other mortgagee must file an action either in the Land Court (statewide jurisdiction) or the various Superior Courts (county jurisdiction only) to show that the present record owner of the property subject to foreclosure is not currently in the active military service. **Thus, the only issue in the Servicemember case is whether or not the named defendants are presently in the Armed Services of the United States**. If they are in the military, they have certain protections set forth in the the Servicemembers Civil Relief Act of 1944. The actual foreclosure sale process proceeds without court involvement.

2. If I receive a Servicemembers Order of Notice stating that a proceeding has been filed against me, can I file an answer in the Land Court?

The only answer that you can file is one that states that you are presently on active duty with one of the Armed Services of the United States (Army, Navy, Marines, Coast Guard and Army Reserves / National Guard if activated for more than thirty (30) days). The Land Court will also accept an answer that challenges the right of the plaintiff mortgagee to bring the action, if a defendant believes that the plaintiff bringing the action is not in fact a holder of the mortgage being foreclosed.

Other challenges to the mortgagee's actions, including challenges to the underlying loan, should be brought in a different case and are not properly brought by way of answer in a

Servicemembers case. Such claims will be dismissed if brought by way of an answer in the Servicemembers case.

3. Will there be a hearing at the Land Court?

Servicemember cases rarely require a hearing. In cases where no answer is filed, there is no hearing. Where a proper answer is filed, there may be a hearing, in the discretion of the court.

4. If I am in the active military service and I file an answer, but cannot afford an attorney to represent me, what are my options?

Fortunately, if you file an answer informing the court that you are in active military service, the attorney for the foreclosing mortgage is contacted by the Land Court and a request is made for the appointment of a military attorney (the same type of attorney that is appointed by the court for use as guardians ad litem in other cases). Once the military attorney is appointed, he or she will contact you and get the information he or she needs in order to file a report with the Land Court. If necessary, a hearing will take place in order to determine your rights and whether or not a judgment authorizing a sale will issue.

Tax Lien Cases

1. What is a Tax Lien (T.L.) Case?

If the real estate tax owed on a piece of real estate has not been paid on time to the collector of taxes for the municipality where that real estate is situated, the collector has several options available in seeking to collect what is due. The most often used of these options is the "taking" process. To make a taking of real estate for which taxes are overdue, the collector records or registers a document called an "instrument of taking" at the local registry of deeds. In general, if the taxes have not been paid within six months of the date of the taking, the treasurer of the city or town may file in the Land Court a tax lien case against the owner.

In a T. L. Case, the city or town is seeking payment of the overdue taxes. The final result will be either a judgment in favor of the municipality or a withdrawal of the case because the taxes have finally been paid. The effect of a judgment of foreclosure is to wipe out the interest of the owner and make the city or town the owner of the subject real estate. The municipality also will hold the real estate free of the claims of any other parties with interests, like mortgages and other types of liens.

The Land Court is obligated to send a notice about the case to any party identified as having an interest at risk from the records at the local registry of deeds. People named in the notice are considered "defendants" in the T. L. case. The Land Court's notice may be served on you directly, mailed to you by certified mail, or published in a local newspaper. The notice will contain a date (return date) by which you must file an answer with the Land Court if you want to protect your interest in the property. It is possible for a private party (an individual or a corporation) to file a T.L. case. This occurs when a city or town decides to sell its right to collect the overdue taxes to a private party. In either event, the party who files the case is known as "the plaintiff." The procedures in tax lien cases are governed by the Massachusetts Rules of Civil Procedure.

2. What is the meaning of this notice I received from the Land Court?

Notices sent by certified mail, served by deputy sheriffs, or published in newspapers are meant to inform parties interested[6] in the property described in the notices that tax lien cases affecting such property are pending in the Land Court. The plaintiffs listed in the notices are seeking judgments of foreclosure on the property with respect to collector's deeds or instruments of taking recorded or registered against the owners of the described property. Recipients of these notices have until the specified return dates to file answers.

If you receive notice that you are named as a defendant in a tax lien case in the Land Court, you must be aware that your property is at risk of being foreclosed.

The effect of a final judgment in a T.L. case is to make the city or town the new owner in your place. If you hold a lien on such real estate, such as a mortgage, the final judgment serves to eliminate your interest in the property. To prevent such a drastic outcome, whether you are an owner or a lienholder, you need to file a timely answer in the case.

3. How do I file an answer in a T.L. Case?

Filing an answer is a straightforward procedure that can be accomplished by completing a simple form obtainable from the Land Court. You may also draw up your own answer or have an attorney prepare one for you. An acceptable answer should include: (1) the official case number; (2) a description of the nature of your interest in the property; (3) a statement that you wish to redeem the real estate by paying the city or town all overdue taxes, interest, and other charges; (4) a further statement (if you so desire) in which you raise any question you may have about the validity of what the city or town has done; (5) your signature with your name printed or typed underneath for the sake of legibility; and (6) your complete address and telephone number.

You may file your answer in the Land Court at any point before the return date on the official citation sent to you, served on you, or published against you by the Land Court. Answers may be filed in person or by mail; if mailed, **the answer must still be received no later than the return date.** The answer should be addressed to the office of the Recorder of the Land Court, 226 Causeway Street, Boston, MA 02114. It may be filed instead in the office of the Assistant Recorder of the Land Court at the local registry of deeds. A copy of your answer must be mailed at the same time to the attorney for the city or town (you can find his or her name, address, and telephone number on the citation that you received).

If you want to learn more about the case, you may inspect the case file at the Land Court, in the office of the Recorder, 2nd floor, during regular business hours (8:30 a.m. - 4:30 p.m.), or you may contact the attorney for the plaintiff.

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[6] By "interested parties" we mean those who have an actual interest in the property, such as the owner, mortgage holder, lienholder, devisees or heirs of a deceased record owner, shareholders or officers of a dissolved corporation, etc. "Interested parties" do NOT include those who may be interested in purchasing the property -- such parties do not have standing to file an answer in tax lien cases. Answers filed by such people will not give them rights in the case.

The importance of filing an answer is that you protect yourself from being defaulted, which can result in the loss of your property without a hearing. When your answer is filed with the Land Court, the only way that the plaintiff can proceed with the foreclosure after all interested parties have been notified is to schedule a hearing and notify you of the date of the hearing. After you file your answer, we recommend that you contact the plaintiff's attorney before a hearing is scheduled and try to work out a payment plan or other agreement to pay the taxes. Most of these cases get resolved without the necessity of a hearing in court.

4. What do I do if the other side has scheduled a hearing in my case and I can't make it?

You should contact the attorney for the plaintiff as soon as possible and ask him or her to reschedule the hearing. If that attorney cannot reschedule, you should then contact the Land Court directly for further guidance.

5. What is the effect of a judgment of foreclosure?

Once a judgment of foreclosure has entered in a tax lien case, that particular case has been completed. The plaintiff now owns the subject real estate free of the claims of the taxpayer and all other interested parties who received notice in the case. The right to redeem the property has been extinguished.

6. How do I set aside a judgment of foreclosure entered against my property?

Pursuant to Massachusetts General Laws Chapter 60, § 69A, you have to file a motion to vacate a judgment of foreclosure for a fee of eleven dollars ($11.00) in the office of the Recorder of the Land Court. If the attorney for the plaintiff(s) cannot assent to the allowance of your motion to vacate, you must tell the Land Court in writing when you wish to have a hearing on your motion. All tax lien hearings are held on Thursday mornings beginning at 10:00 a.m. and Thursday afternoons beginning at 2:00 p.m. If your property is located in Boston, the hearings for the City of Boston are held in the 10:00 a.m. session. You must provide the attorney for the plaintiff with a copy of your motion and a written notice of the date and time of the hearing. Your notice must be received by plaintiff's attorney at least seven days prior to the hearing if hand delivered or ten days prior to the hearing if the mail is used.

S: PROBATE AND FAMILY COURT DEPARTMENT

In the majority of family law cases heard in the Probate and Family Court Department, one or more of the court users is self-represented. Providing meaningful and effective assistance to court users is a day-to-day challenge for court staff because of the sheer volume of self-represented litigants. All of the Divisions of the Probate and Family Court have struggled with ways to assist self-represented litigants. Different models have been created, and some have proven to be quite innovative and successful. Notwithstanding these innovations, the fact remains that many self-represented litigants continue to have difficulty navigating the court

system. **The quality of advice given to a self-represented litigant by court staff will ensure that all persons have access to our system of justice.**

Access to the Probate and Family Court Department by self-represented litigants is impeded by barriers of poverty, literacy, language, and culture. Some self-represented litigants are unable to fill out pleadings or understand written materials that explain court procedures. Assistance in filling out court forms and explaining court procedures are among the most important responsibilities that court staff can provide to self-represented litigants. In the past, court staff in some of our Divisions did not assist self-represented litigants in filling out pleadings. Court staff considered such assistance to constitute giving legal advice and, therefore, to be prohibited. This view has since been clarified. In November 1995, the Supreme Judicial Court's Advisory Committee on Ethical Opinions for Clerks of the Court issued an opinion that states, in relevant part: "In the opinion of the Committee, providing assistance with filling out forms and offering procedural advice clearly do not run afoul of the prohibition on the practice of law."

Within the past several years, a new position has been created within the Probate and Family Court Department in an effort to ensure that self-represented litigants have effective access to our court – the position is that of family law facilitator. It is clear that this position, as it has evolved, now plays an essential role in assisting self-represented litigants. Our family law facilitators are experienced domestic relations attorneys who provide one-on-one assistance to self-represented litigants. In the Divisions that have such positions, the family law facilitators work closely with court staff. As a team, the family law facilitators and court staff regularly "triage" family law cases. Decisions are made about the nature and urgency of cases. A determination is then made as to who will provide assistance and/or work with an individual court user. Assistance may be provided by the family law facilitator or a registry staff person depending on the complexity of the case. Alternatively, a referral might be made to the lawyer for the day or to the domestic violence advocate, or perhaps to the local law library, as appropriate. In addition, in terms of day-to-day questions, court staff can routinely turn to the family law facilitators for assistance. Hiring additional family law facilitators is now a priority in the Probate and Family Court Department. In Divisions that do not have family law facilitators, triaging cases on the part of court staff also has become the norm.

In many of the manuals for clerks that have been written in other jurisdictions, court staff are cautioned not to hide behind the phrase: "I can't provide legal advice." In the Massachusetts Probate and Family Court Department, court staff generally take great pride in assisting self-represented litigants.

What follows is a hypothetical based on an actual case that illustrates what court staff may and may not do in assisting court users who appear without counsel.

Hypothetical: Complaint for Contempt

Ms. Kathryn Davis is a knowledgeable and experienced court staff person working in the registry of probate. Like most court staff, she takes a great deal of pride and satisfaction in assisting others.

Today Ms. Davis is covering the registry counter and is approached by a self-represented litigant. The court user explains that she has not received any child support payments for the

past several weeks. She has with her a copy of the court order and, upon review, it is apparent that the order is for temporary child support and was entered in the context of a recently-filed divorce. Although the husband has a lawyer in the divorce action, the wife is representing herself. The divorce complaint was filed by the husband.

At the outset, Ms. Davis asks the court user whether the Department of Revenue is involved in her case and if the court user is presently a customer of DOR. The court user responds that she has, in fact, recently talked to a DOR representative but desires to pursue the matter on her own, if possible.

Ms. Davis gives the court user a standard, one-page complaint for contempt form and suggests that she look it over carefully and fill it out at one of the available tables located in the registry area. There is now a long line of self-represented litigants at the counter, and one of Ms. Davis' co-workers, also assigned to cover the counter, remarks that the volunteer Lawyer for the Day just telephoned and apparently is ill and won't be coming in.

After briefly reviewing the complaint for contempt form, the court user comes back to the counter and asks Ms. Davis who the plaintiff should be. Ms. Davis explains that although the court user is the defendant in the divorce action, she will be the plaintiff for the purposes of the contempt.

A couple of minutes later, the court user returns again and tells Ms. Davis that she does not know her husband's current address. However, she does know where he works. She has tried to telephone him at work, but he won't take the call. Ms. Davis tells the court user that she may use her husband's last known address on the complaint for contempt but that she should add the words "last known address" on or below the appropriate line for the defendant's residence.

Within another two to three minutes, the court user is back. She is having difficulty calculating the child support arrears. After the weekly child support order was entered by the court, the husband made only two payments. She asks to borrow a calendar and a calculator. Ms. Davis looks at the calendar with her and assists her as she calculates the arrears.

The court user has one more question: what does the B.B.O. # mean on the contempt form? Ms. Davis informs her that this information applies only to attorneys.

Although the complaint for contempt is now complete, there are a lot of words crossed out, and the paper is, to say the least, rather crumpled. Ms. Davis suggests that the court user use this form as a draft and fill out a nice, clean complaint for contempt for filing with the court. The court user does this and returns with a neatly written, legible complaint for contempt.

Ms. Davis takes the complaint for contempt for filing and explains that a contempt summons will issue that will include a hearing date. Ms. Davis explains that copies of both the complaint for contempt and the summons will have to be served on the defendant by a constable. Ms. Davis hands the court user a written list of constables in the area and relevant contact information that has been previously prepared by the court.

The court user reminds Ms. Davis that she does not know her husband's current address and asks if the defendant may be served at his place of work. Ms. Davis answers yes.

Ms. Davis also indicates that the hearing date will probably be several weeks out. The court user becomes quite upset. She states that without her weekly child support, she is unable to meet her current expenses. Among other things, she fears that she and her two children will lose their housing. She also fears that the children will lose their daycare, causing her to have to leave her job.

Ms. Davis is aware that in such circumstances, the court may entertain a motion for short order of notice. She informs the court user of this option and assists her in filling out a blank motion form. Ms. Davis tells the court user that she will have to write out the specific reasons for the short order of notice and that this may be done on the motion form itself or with an accompanying affidavit.

When the motion for short order of notice is completed, Ms. Davis sends the court user to the courtroom, where the motion is heard *ex parte* and allowed by the judge assigned to the case.

When the court user returns to the registry, Ms. Davis suggests that the court user wait for the summons, which will be completed within 20 to 30 minutes.

Ms. Davis continues working with the other six to seven self-represented litigants that she is now assisting, who are filling out various types of pleadings, including motions, a complaint for modification, a name change petition, another contempt, and a voluntary administration.
While waiting for the summons, the court user again approaches Ms. Davis and asks her what will happen at the time of hearing. Ms. Davis responds that if the matter is not resolved by the time of hearing, the parties and counsel, if any, will initially be referred to the probation department to discuss the possibility of resolving the matter. Ms. Davis also states that if the defendant is properly served with copies of the complaint for contempt and summons but fails to appear, a capias will be issued for his arrest. Ms. Davis tells the court user that she should get the paperwork to a constable as soon as possible, preferably today.

Finally, Ms. Davis suggests to the court user that she might want to consult with an attorney. Ms. Davis describes how the court's Lawyer for the Day program works and also gives the court user a pamphlet prepared by the local Bar Association that includes lawyer referral information.

Query: Has Ms. Davis remained impartial and neutral? Has she provided legal information only, or has she also rendered legal advice?

Discussion: In Fiscal Year 2008, 21,413 contempt actions were filed in the Probate and Family Court Department. Thus, court staff are very familiar with this type of action and are able to provide meaningful assistance to self-represented litigants.

In our hypothetical, there is really only one option or remedy available to the court user. Therefore, Ms. Davis, our staff person, has not given legal advice by merely informing the court user that she will need to file a contempt action in order to collect her child support. This is done routinely in our Divisions.

When the court user begins to come back with various questions about how to fill out the contempt form, the easiest answer for Ms. Davis is: "I can't give legal advice."

If we consider the specific questions posed, however, the court user is actually looking only for basic information:
"Am I the plaintiff or the defendant?"

"What if I don't have my husband's current address?"

"I'm having difficulty calculating the child support arrears. May I borrow a calendar and a calculator?"

"What does the form mean when it asks for a B.B.O. number?"

"Can my husband be served at his place of employment?"

By answering these questions, Ms. Davis is assisting the court user in getting started. Even a one-page, pre-printed complaint for contempt form can prove daunting for some court users, particularly if they have never filed a contempt action before.

When Ms. Davis informs the court user that she may file a motion for short order of notice, has she rendered legal advice? This may depend upon how the particular Division handles such motions. In Ms. Davis' Division, the court will entertain a motion for short order of notice if the court user's individual circumstances justify an earlier hearing date. Ms. Davis has merely informed the court user of this option. It is up to the court user to supply the specific reasons for the short order of notice and to present her motion to the judge.

Beyond this, Ms. Davis has described generally for the court user how the contempt process works at the time of hearing. For example, she has described the role of the probation department. She has not told the court user what to say in court, assisted her in developing a strategy regarding her case, or predicted a likely outcome. Finally, Ms. Davis has suggested that the court user speak with an attorney and has provided her with lawyer referral information, as well as a description of the Division's Lawyer for the Day program.

In sum, Ms. Davis has provided the court user with meaningful assistance, while remaining impartial and neutral.

T: HOUSING COURT DEPARTMENT

The Housing Court Department is truly the people's court, in that people from all walks of life, racial and ethnic backgrounds, economic status, ages, and educational levels come to the Housing Court for assistance at very stressful times in their lives. For a variety of reasons, many of our court users do not have the assistance of legal counsel when they come to the Housing Court. This raises a unique set of issues for both court users and court staff, in that self-represented litigants may need a significant amount of assistance to enable them successfully to access the court system, and that court staff may be unsure of what, if any, information they are permitted to provide.

The inability of any court user successfully to access the court system is a severe impediment to that court user's ability to receive a fair and just resolution of the legal matter. It is the obligation of all court staff to provide effective and meaningful assistance to every court user. Court users who are not represented by counsel may require more time and effort on the part of court staff to provide that assistance. This is not an easy task. Court staff know that they cannot provide legal advice, but it is sometimes difficult to differentiate between legal information that may and may not be provided. This section is designed to provide guidance to Housing Court staff, particularly to those employed as supporting staff in the clerk magistrate's office, in this difficult endeavor.

I have chosen to use a question-and-answer format to address this issue. The questions are those frequently asked by self-represented litigants who are unfamiliar with the court system and its processes, and the answers are representative of the type of information that may be given without fear of improperly providing legal advice. The first section deals with matters of a general nature, and the second section consists of questions and answers concerning summary process. It is hoped that answers to specific questions regarding civil matters, small claims, and criminal matters can be inferred from the material provided here.

Please note: The information contained within this section may not be reflective of the practices and procedures of your specific court Division. Please check with your supervisors if any discrepancies exist.

I hope that this section, as well as this entire Guide, will be helpful to you as you interact with self-represented litigants on a daily basis. You have an important job, and a difficult one. If this Guide helps only one member of court staff to better serve one resident of Massachusetts, then its objective has been achieved.

William S. Weiss
First Assistant Clerk Magistrate
Worcester Housing Court
Autumn, 2008

General Information

1. Can I bring my case in the Housing Court?

The Housing Court can hear cases that deal with almost all areas of residential housing, including zoning matters, public health matters, nuisance matters, and criminal matters relating to these types of issues. Residential eviction cases can be heard in the Housing Court, but they can also be heard in the District Court, the Boston Municipal Court, and the Superior Court.

The Housing Court does not have the authority to conduct trials regarding commercial matters, such as leases for businesses.

2. Can I speak to a judge now?

You can only speak to a judge during a scheduled court appearance. However, if you have an emergency that needs to be addressed immediately, we can have you speak to a clerk or a housing specialist, who may be able to resolve the problem, get you before a judge quickly, or schedule a hearing in the near future.

3. How do I get to speak to a clerk?

Please tell me why you came to court today. I can probably help you, but if I can't, I'll call the clerk to come speak to you.

4. How do I get to speak to a housing specialist?

If you have an action filed with this court, please give me any information that you have such as your name, your landlord's/tenant's name, or docket number so I can pull the case from the file room.

If you don't have a case in the Housing Court, please tell me what you want the court to do so I can let the Housing Specialist know before he or she comes to see you.

5. How do I open a case?

It depends on what you think the problem is. Depending on the issue, certain types of forms need to be completed, and some filing and service fees apply.

6. How much are the filing fees?

Again, it depends on the type of case. If you are trying to evict someone, you need to buy a form for $5.00, and the filing fee is $135.00. If you are filing a civil action, the summons costs $5.00, and the filing fee is $135.00. If you are filing a small claim, the form is free, but for a small claim less than $500.00, the fee is $30.00, and if the small claim is $500.00 or larger, the fee is $40.00.

7. What is a service fee?

For many types of cases, it is necessary for you to have a sheriff or constable serve the complaint on your defendant. You will need to pay for that. You can find sheriffs and constables in the *Yellow Pages* to learn their fees. *(Note: Some courts may have lists of sheriffs and constables that can be provided to the public.)*

8. I can't afford to pay the fees. Does that mean I can't do anything?

No, it doesn't. If you can't pay these fees, we have some forms that you can fill out to ask the court to waive the fees. After you complete the forms, I will take them to the clerk, who will either approve or deny your request. If the clerk approves your request, then the court will pay the fees. If the clerk denies your request, you are entitled to an immediate appeal of that denial, which will take place today (*if a judge is available*) or (*schedule the hearing for the earliest possible date.*)

9. These forms are confusing. Can you help me with them?

We can provide you with some help. We can help you schedule a date for your trial or hearing. We can tell you how to let the other side know what you intend to do. We can help you do a lot of things that will help you get your case heard by the court.
But there are some things we can't do. We cannot tell you specific rules of law. We cannot tell you what to write on your form or what to say to the judge or clerk magistrate. We cannot tell you how much money you should ask for in your law suit. And we can never tell you if you have a good case and what your chances are of winning your case.

Basically, when you fill out these forms, tell us, as best you can, what is going on, and what you want the court to do to help you. If you need to take the forms home with you to work on them, do so, and bring them back to us when you are finished.

10. This sounds complicated. Should I get a lawyer?

That's up to you. Many people come to Housing Court with lawyers, and many handle their cases themselves. We do not provide free lawyers in the Housing Court.

11. Can you recommend a lawyer for me?

No. You can find a lawyer in the *Yellow Pages*, by calling the county Bar Association, or by asking people you know for a referral. *(Note: Some courts may have a list of agencies that provide legal assistance. Also: In some courts, volunteer lawyers from the local Bar Associations participate in the "Lawyer-for-the-Day" Program on most Thursdays. Parties who meet certain financial standards may discuss their cases with lawyers who are present in court.)*

12. My friend, who is the person coming to court, doesn't speak English. Can the court help?

Yes. The court provides interpreters for many different languages. Please tell me what language is needed, and the court will find an interpreter. We will try to get an interpreter today, but that may not be possible. If we can't get one today, we will need to set up another trial date, and we will inform you when we schedule the new trial.

13. I want to file a criminal complaint against someone. How do I do that?

Ordinarily, criminal complaints are brought by the city or town in which you live. If you believe that criminal activity is taking place, you should contact your local police. If they won't help you, you can file a request for a criminal complaint, and the court will schedule a hearing for you. A fee, which can be waived, may be charged.

14. How long does it take to get my case heard by a judge?

While emergency cases are heard as soon as possible, we can often to provide an immediate hearing.

A summary process (eviction) case will be scheduled when you fill out the complaint. We can provide the dates for you. Generally, it takes about three weeks for a summary process case to come to trial.

A civil action is governed by the Housing Court's Time Standards. A schedule will be prepared by the court and given to the parties when the complaint is filed. The time standards vary depending upon the type of case.

Small claims are heard about four to eight weeks after filing.

Summary Process Cases: Landlord's Questions

1. How do I evict my tenant?

There are four things you must do before you can get your case into court.

First, in most cases, you must terminate the tenancy. You do this by giving your tenant what is called a notice to quit. This tells the tenant that you no longer want the tenant to live in your property and that if he or she doesn't leave within a specified period of time, you will begin the judicial process to remove him.

Second, you must purchase a summary process summons and complaint from the court for $5.00. You must complete the form, schedule the trial, and sign it. The court can help you schedule the trial and service dates.

Third, you must have the form served on your tenant by a constable or sheriff. There is a fee for this. You will have to pay that fee, but you will be entitled to the return of that fee if you win your case. The sheriff or constable will serve a copy of the summons and complaint on the tenant, and return the original to you.

Fourth, you must file the original summons and complaint in the Housing Court by the required date that is listed on the summons and complaint. There is a $135.00 filing fee.

2. What happens when I come to court?

Depending on the policies of the court, you will first need either to check in or wait for the calling of the trial list. When both parties arrive, you will have the opportunity to go to mediation, where, with the assistance of a trained, impartial mediator who is an employee of the court, you may be able to come to an agreement to resolve the matter. If an agreement is reached, it will be written up and signed by a judge, and then it will become a court order.

If you can't come to an agreement, you will have a trial before the judge on the same day, if possible. If a trial can't be held on that day, it will be scheduled to occur as soon as possible.

3. What do I need to bring to court?

You need to bring everything that you think you need to convince the judge that the tenant should be evicted. This could be your lease or rental agreement, receipts, statements, photographs, or any other documents you think you need. You must bring your notice to quit with you. If you do not have your notice to quit on the day of trial, the case will be dismissed.

4. How long do you think I will need to be in court?

That's hard to predict. It depends on many factors, such as how busy the court is on that day, when you and your tenant arrive at court, and how long each trial and hearing takes. As a general rule, you should plan on being here all morning, and sometimes for the entire day.

5. What if I have something else to do on that day?

Again, that's up to you. You must be present in order for your case to proceed. If you are not present when your case is called, your case will be dismissed. If you need to postpone your case to another day, you will need to get your tenant to agree to postpone, or you will have to file a motion and go before a judge to ask for a continuance. The clerk's office can help you file that motion.

6. What if the tenant doesn't show up?

If all of your paper work is in order, you will receive a default judgment, which means that you win the case.

7. If I win my case, how do I get the tenant out of my apartment?

If you win the case, you need to apply for an execution, which is a piece of paper that you can take to a sheriff or constable to move the tenant out. Executions can be requested ten days after the issuance of a judgment in a summary process case. You have only 90 days after the issuance of that judgment to request the execution, and you have only 90 days after you receive the execution to remove the tenant from the property.

Most sheriffs or constables will arrange for the move and tell you how much it will cost.

8. Do you mean that I have to pay for the move?

Yes, but you can attempt to recover those costs through the court.

9. I've signed a court-approved agreement with my tenant, but the tenant is not making the payments. What do I do now?

You are entitled to file a motion for an execution, or a motion for entry of judgment (if judgment has not yet entered in the case), where you will go before a judge to ask that the tenant be removed from the property. The clerk's office can help you file that motion.

10. Although there is still a lot of stuff in the apartment, I don't know if the tenant still lives there or not. Can I get rid of the stuff and change the locks?

That's a very hard question to answer. If you are convinced that the apartment has been abandoned, or if there is a legitimate risk that the property will be damaged (such as continually running water, no heat causing the pipes to burst, risk of fire, pest infestation), you can enter. However, you do run a risk that the tenant could sue you for illegally entering and perhaps stealing his property.

This is a very complicated legal question, and court staff cannot give you legal advice as to what to do. However, we do have a list of some organizations you can contact to get legal advice or guidance.

11. My tenant has moved out but still owes me money. What should I do to collect it?

There are four ways you can collect your debt.

First, you can file a request for a payment hearing, have your tenant come to court to provide some financial information, and enter into a payment plan. *(*Note*: This is the method used in the Worcester Housing Court, but this is not universally used in the other Divisions.)*

Second, you can file for supplementary process, which is a legal proceeding to compel payment. *(Note: The Worcester Housing Court does not use Supplementary Process, but the majority of the other Divisions do.)*

Third, you can dismiss your summary process action and attempt to collect by filing a small claims action.

Fourth, you can take your execution to a sheriff or constable and have them seize some of the tenant's property and sell it. This does not require any action by the court. This method of collection is seldom, if ever, used.

12. How long do I have to collect my money?

An execution for money lasts for 20 years.

<u>Summary Process Cases: Tenant's Questions</u>

1. I received this letter from my landlord saying I have fourteen days to move. Can the landlord really move me out in two weeks?

No. In Massachusetts, only the court can order you to leave the apartment in an eviction action.

2. What happens if I don't move after fourteen days?

If you are still there after the expiration of the notice to quit, the landlord may, if he or she so chooses, begin the eviction process by serving you with a summary process summons and complaint, which will tell you why the landlord is trying to evict you and tell you when you need to come to court.

3. My summons and complaint tell me that I need to file an "answer." What is an answer and how do I file it?

An answer is a form that you can fill out to tell the court why you don't think you should be evicted. It also gives you the opportunity to file a counterclaim against your landlord, if you believe that he or she has committed some unlawful act against you.

You pick up a blank answer form here in court. Answer forms also may be obtained from local legal services offices and tenant assistant programs. Fill out the form as best you can, sign it, and then make two photocopies of the complete form. Keep one copy for your records, give one copy to your landlord, and send one copy to this court. You must give the landlord his copy by the date stated on your summons and complaint. There is no charge to file an answer.

You may also prepare and submit your own answer, if you prefer.

4. If I don't file an answer, does that mean I can't file a counterclaim?

No. Counterclaims are not compulsory in summary process cases. You can file your counterclaim as a separate lawsuit.

5. My landlord filed a summary process summons and complaint against me in the local District Court. Can I transfer my case to the Housing Court?

Yes. You have an absolute right to transfer your case to the Housing Court, provided you do so before the date your case is scheduled for trial at the District Court. You need to go to the District Court clerk's office to have them transfer the case for you.

However, if you wait until the date of your trial in the District Court, you will need to file a motion with the District Court to allow you to transfer your case to the Housing Court.

6. My landlord filed a summary process summons and complaint against me in the Housing Court. Can I transfer my case to the local District Court?

No. The statute is very clear. Cases can be transferred to the Housing Court from another court, but not the other way around.

7. What is discovery?

Discovery is a process where a party may ask questions of the opposing side, and also may request that the opposing side provide certain types of evidence to allow the requesting party to study it in preparation for trial. Third parties also may be asked to provide information in discovery.

8. Does the Housing Court provide discovery forms?

No. You will have to get these yourself. You can go to a Trial Court or law school library, a legal stationery store, a legal services provider, a tenant assistance program, or even consult the internet.

9. How do I file discovery requests?

You need to provide your landlord with your requests for discovery on the same day your answer is due. Filing discovery automatically continues the case for two weeks, but only if you filed and served your landlord on time. You also need to file a copy of your discovery requests with this court.

10. What happens when I come to court?

Depending on the policies of the court, you will first need to either check in or wait for the calling of the trial list. When both parties arrive, you will have the opportunity to go to mediation, where, with the assistance of a trained, impartial mediator who is an employee of the court, you and your landlord can attempt to reach an agreement to resolve the matter. If an agreement is reached, it will be written up and signed by a judge, and then it will become a court order.

If you can't come to an agreement, you will have a trial before the judge on the same day, if possible. If a trial can't be held on that day, it will be scheduled to take place as soon as possible. *(Note: There is some variation in this practice in the various Housing Courts.)*

11. What if my landlord doesn't come to court?

The case against you will be dismissed. However, that does not necessarily mean that the case is over. The landlord may always file another case, or ask that the case be restored to the trial list. If the case is dismissed against you, it is probably a good idea for you to contact your landlord to see what's going on.

If you have filed a counterclaim, you will have to decide if you want to dismiss your counterclaim at that time, or schedule a trial at another time.

12. What happens at a trial?

At trial, each party will be sworn in, and then each side will have the opportunity to tell their side of the story. They will have the opportunity to present any evidence that will support their case, and they will have the opportunity to ask questions of the other side. The judge also may ask each side some questions.

After each side has had the opportunity to present his or her case, the judge will end the trial. The judge will probably not tell you the decision at that time. He or she most likely will take the case under advisement and prepare a written decision, which will be mailed to you.

13. If I lose my trial, do I have to leave my apartment immediately?

Absolutely nothing will happen for ten days after the decision is made. You will have that time to decide to appeal the case. If you decide to appeal, you need to come to the Housing Court to file your notice of appeal. The clerk's office can help you do that. You need to do this no more than ten days after the judgment is entered.

After that ten-day period passes, the landlord can request the court to issue an execution.

14. What is an execution?

An execution is a piece of paper that the landlord can take to a sheriff or a constable to provide them with the authority to move your belongings out of the apartment.

15. How quickly can that happen?

Pretty fast. After the sheriff or constable receives the execution from the landlord, he or she needs to provide you with only 48 hours' written notice of an intent to move you out.

16. What happens to my stuff?

A moving company will be hired to pack and move your belongings. Your belongings will be put into storage, unless you tell the moving company where you want them to take them.

17. Who pays for this?

Eventually, you will have to pay for the moving and storage costs. The landlord will pay them up front, but the landlord may try to recover them through legal action.

18. I can't move in 48 hours. What do I do?

First, talk to your landlord. See if you can come to some agreement on a moving date for you to move out on your own. Your landlord may wish to give you some more time, to avoid paying the moving and storage costs.

However, if the landlord refuses to agree to delay the move, you need to think about whether you want to come to court to file a motion asking the judge to give you more time.

19. What do I need to bring to court?

You need to bring everything that you think you need to convince the judge that you should be allowed to stay in your apartment This could be your lease or rental agreement, receipts, statements, photographs, or any other documents you think you need.

20. How long do you think I will need to be in court?

That's hard to predict. It depends on many factors, such as how busy the court is on that day, when you and your landlord arrive at court, and how long each trial and hearing takes. As a general rule, you should plan on being here all morning, and sometimes for the entire day.

21. What if I have something else to do on that day?

Again, that's up to you. You must be present in order for your case to proceed. If you are not present when your case is called, your landlord will receive a default judgment, and you will lose the case. If you need to postpone your case to another day, you must get your landlord to agree to postpone, or you will have to file a motion and go before a judge to ask for a continuance. The clerk's office can help you file that motion.

22. I have a disability (or I am a victim of domestic violence). Can the court help me?

On your trial day, let the clerk's office know about this. They will introduce you to a member of the Tenancy Preservation Project, a Housing Court program designed to provide a level of

services to tenants with these types of problems. They may be able to help you stay in your apartment, or they may be able to help you find a new place and access some financial assistance. *(Note: Not all Housing Court Divisions have access to the Tenancy Preservation Project.)*

U: DISTRICT COURT DEPARTMENT

Application for Criminal Complaint/Show Cause Hearing Procedure: Frequently Asked Questions and Suggested Responses

1. May I file an application for a criminal complaint? The local police department sent me here and told me I could -- they would not take out charges on my behalf.

Yes, you may file an application for a criminal complaint with the District Court. We do, however, encourage you first to report your incident to the local police department, as they may investigate on your behalf and decide to file charges after investigation. This would then obviate your need to file an application and save you the cost of a filing fee. What you need to begin is an original, multi-part, District Court-approved application for criminal complaint form (DC-CR-2) and a statement of facts in support of application for criminal complaint form (DC-CR-34). A $15.00 filing fee applies if the criminal offense that you wish to file is a misdemeanor. If the offense charged is a felony, then the filing fee does not apply. It should be noted that it is not the responsibility of court staff to suggest what is an appropriate criminal offense to charge and/or what offense the self-represented litigant should cite. That question may more appropriately be addressed to the local police departments, or the district attorney's office within that particular court. It is, however, appropriate to ask the self-represented litigant where the offense occurred, as jurisdiction may be need to be determined. A self-represented litigant only may file an application for complaint in the court within the jurisdiction where the offense occurred. (There may be other special exceptions, however, that may require clerical staff to obtain the assistance of their immediate supervisor and/or clerk or assistant clerk in determining where jurisdiction may lie.)

2. What information do I need to file an application?

The most basic information that is required to file an application for criminal complaint is:

- Information about the accused (i.e., name, current address, date of birth, social security number (if available), gender, height, weight, eye color, hair color, race, and complexion)

- Description of offense(s) (i.e., the charge(s) that you would like to bring against the accused), the date that the offense(s) occurred, and any other information that may be related to the offense (i.e., victim name, type and value of property, etc.)

- Complainant name (person filing and signing the application) and mailing address

- Statement of facts in support of application for criminal complaint (a statement that alleges a factual basis for the offense(s) for which a criminal complaint is sought)

Should the application for criminal complaint be missing some of the basic required information, a hearing still may possibly be scheduled; however, the complaint may not issue after the hearing if it is unclear to the clerk/assistant clerk who the accused is, because of incorrect or missing identifying information about the accused.

3. The offense occurred almost seven years ago. May I still file an application for criminal complaint?

Generally, the statute of limitations for criminal offenses in the Commonwealth of Massachusetts is seven years; however, you may file the application, and it will be reviewed by a clerk/assistant clerk.

4. What happens once I file the application?

A clerk/assistant clerk will review the completed application for criminal complaint and statement of facts in support of the application for criminal complaint and then make a determination as to what process should issue, if any. If the clerk/assistant clerk determines that a hearing will be necessary and should be scheduled, the clerk's office will notify both parties by mail of the hearing date. It is also possible that a clerk/assistant clerk may make a finding, based on the statement of facts in support of the application, that a hearing is not necessary and may deny the complaint prior to a hearing.

5. If a hearing is scheduled, do I need an attorney?

You do not need an attorney to represent you at the hearing; however, you may retain one if you wish. An attorney may assist you in clarifying any legal issues that may arise.

6. What if I need to reschedule the hearing?

If either party needs to reschedule the hearing, he or she should do so at the earliest possible time, by submitting their request in the form of a letter or motion to the court. This request will then be presented to a clerk/assistant clerk for determination as to whether a continuance should be granted. If the request is granted, both parties will be notified of the future hearing date.

7. What do I need to bring with me the day of the hearing?

You should bring with you anything that you determine is necessary to support your application for criminal complaint and assist the clerk/assistant clerk in determining whether or not probable cause exists for the issuance of a criminal complaint against the accused.

8. Do I need to appear at the hearing, or may I have someone else appear?

You need to appear at the hearing that you have requested. Your attorney may also appear with you and assist you in presenting your case.

9. What happens if I fail to appear for my hearing?

If you, the complainant, fail to appear for the hearing and the clerk/assistant clerk has determined that you had received proper notice of the hearing date, the complaint will not issue. If a request for a continuance of the hearing has been made by either the complainant or the accused, proper and equal consideration will be given to all requests by the clerk/assistant clerk who has been presented with the request.

10. What happens after the hearing has concluded?

After the hearing has ended, and both sides have presented all evidence and testimony, the clerk will make a determination based on probable cause as to whether the complaint will issue. If the complaint does issue, the defendant (accused) will be mailed a summons to appear in court for arraignment before a judge.

11. What if the complaint is denied and does not issue? Do I have any recourse?

If you, the complainant, wish to request a new hearing before a judge of this court, it is recommended that you notify the court in writing promptly of your request. Note, however, that one's disagreement with the hearing outcome may not be the sole basis for a rehearing before a judge.

V: BOSTON MUNICIPAL COURT DEPARTMENT

Small Claims Cases: Frequently Asked Questions and Suggested Responses

Some commonly asked questions about the small claims process and suggested informative responses by Trial Court personnel include the following:

1. How do I go about suing someone over a small claim?

The limit for filing a small claim is $2,000. A small claim does not take place in a separate court, but merely a special *session* of the Boston Municipal Court Department and the District Court Department. This session was created to help resolve smaller cases, making it easier and less expensive than in other courts of law. To prevail, the law requires you, the plaintiff, to prove the validity of your claim.

2. Do I need a lawyer?

You do not need a lawyer for a small claim action, but you may retain one if you wish.

3. How do I file a small claim? Where do I file my small claim?

You will first need to complete a "Statement of Small Claim and Notice of Trial" form. It is also referred to as an application. This form is available at the counter of the clerk magistrate's office. You will need to file your small claim in the court where either you (the plaintiff) or the defendant lives, works, or has a usual place of business. Although the plaintiff does have a

choice in where to file the action, bringing the action in the court where the defendant is located may make it easier for you to enforce the judgment against the defendant. If you choose your home court to file your small claim, once a judgment is obtained, you will have to file supplementary process (the collection of a judgment) in the court where the defendant is actually located.

4. Whom should I sue?

I cannot tell you whom to sue because I cannot give you legal advice. If you are not sure whom to sue, ask yourself the following question: Who owes you the money?

5. Can you help me fill out the Statement of Small Claim and Notice of Trial form?

Although I cannot fill out the application for you, I can offer helpful suggestions about properly completing a small claim application. For example, you should state whether the defendant is an individual, corporation, trust, or company. If the defendant is a corporation, you should list the full legal name of the corporation. If the defendant is a trust, list the name of the trustee or principal officer. If the defendant is a company, list the name of the owners, the d.b.a.(doing business as), and the company's name. If you are unsure of the defendant's legal name, you may need to call the Corporation Department of the Secretary of State's office at 617-727-2850 to find out. If the defendant is not listed with that office, you should check with the city or town hall where the defendant is located and inquire if the defendant is d.b.a. The Boston city clerk's office phone number is 617-635-4600.

6. How do I schedule a hearing? What copies do I give to the other party? How many copies do I need?

Here is a Statement of Small Claim and Notice of Trial form. By completing this application and paying the required filing fee, you begin your small claims action. The court will schedule a hearing in the near future. When completing this one-page application, you should either type or print the information on the application and bear down hard to ensure that all carbon copies (4 in total) are readable and intact.

7. Can I resolve the matter without going to trial?

Mediation of this action may be available before trial *if* both parties agree to discuss the matter with a trained mediator. Mediation is a way to settle your differences by talking with the other side with the help of a neutral third-party called a mediator. Mediation is confidential and voluntary. There is no cost to try mediation.

8. What happens at the hearing?

On the day of your hearing, you should bring any witnesses, checks, bills, photographs, and letters that will help you prove your case. The laws governing small claim actions are the same as those for larger lawsuits, except that simplified, more informal procedures are used.

As the plaintiff, you must prove that your claim is one that the law recognizes and that the defendant is liable for. If not, the clerk magistrate will enter a decision for the defendant. To

prevail, the law requires you to prove the validity of your claim. A clerk magistrate will hear the case on the day of trial.

9. What is the last day I can file my small claim?

The time for filing your claim can vary depending on the particular facts and circumstances involved in your specific case.

10. The application says "plaintiff's claim." What should I put there?

The "plaintiff's claim" question asks you simply to explain your claim and state the amount of money you are suing for. I cannot tell you the words to use, but you should write in your own words the nature of your claim and what you want the clerk magistrate to do.

11. How do I prepare for my small claim hearing?

It may be helpful to write down ahead of time the facts of your case in the order in which they occurred. This will help you organize your thoughts and make a clear presentation of your story. Be sure to arrive on time for your hearing. As the plaintiff, you will be asked to tell your side of the story first. The defendant will then have the opportunity to tell his or her side. Each party will be able to ask questions of the other side and the other side's witnesses. The clerk magistrate will make a decision after he or she has heard all the evidence. Notice of the clerk's decision is called a "judgment," and it will be mailed out to each side after the hearing has concluded.

12. How do I know if the defendant has been served?

I recommend that you call the court two to three days before the hearing date and ask if the defendant has been served a copy of the application. Give the docket number and date of the hearing to the person who is assisting you. The hearing cannot take place if the defendant has not been served with a copy of your small claim application.

13. Why did the court dismiss my case?

The court record shows that your case was dismissed because neither you nor the defendant came to court on the scheduled date. You may have your small claim restored to the trial list by refiling your application and starting the process all over again.

W: JUVENILE COURT DEPARTMENT

Introduction

This Guide is intended to encourage court staff to provide the self-represented (pro se) party with access to the courts equivalent to that provided to parties who are represented by counsel. While not unfairly limiting that access, court staff must take care to provide only information that is

accurate, and be certain that only certain legal information, and **not legal advice,** be provided, and that the **impartiality** of the clerk's office be maintained.

The following are frequently asked questions by self-represented parties in the Juvenile Court and suggested responses for court staff. These responses are simply examples of what information, in general, may and/or should be provided. Local practice may differ regarding the duties and responsibilities of individual court staff. This Guide is not intended to dictate such practices, but merely to provide some guidance and encouragement to court staff. Furthermore, these questions and suggested responses clearly do not cover every potential situation that may arise. Court staff are always encouraged to seek the assistance of the immediate supervisor and/or a clerk or assistant clerk regarding circumstances not addressed in this Guide. When referring a person to an outside agency, please give the telephone number and/or address of the agency.

Frequently Asked Questions and Suggested Responses

Appointment of Counsel

1. How do I get an attorney appointed to represent me and/or my child?

Check first to see if an attorney has already been appointed and, if so, provide the attorney's contact information to the party.

If an attorney has not been appointed, explain to the party that one may be appointed, depending on the type of case and the party's financial information. The financial information must be provided to the probation department.

2. How do I get a *different* attorney assigned to represent me and/or my child?

Tell the party to contact the current attorney to discuss getting a new attorney, and explain that if the current attorney files a motion to withdraw, the court will decide whether to allow the motion and appoint new counsel.

If the party indicates that he or she has attempted to reach the attorney and has been unsuccessful, court staff may provide assistance in reaching the attorney.

3. Do I have to have an attorney?

Inform the party that, in most cases, it will be up to the judge whether to allow a party to go forward without an attorney. The judge will ask questions to determine whether the party understands the consequences of proceeding without an attorney and whether the waiver of counsel is voluntary.

Refer the party to a clerk/assistant clerk for further information on self-representation**.**

Access to Clerk's Records/Documents

1. My child has a magistrate hearing scheduled, and I would like some information on the charges. Can you provide me with that information?

Tell the party to contact the particular police department that filed the application for complaint.

Allow the party to review, under staff supervision, any statement of facts submitted by a private complainant.

2. I am a victim/parent of a victim in a juvenile matter. Can I see a police report or can I find out what the charges are against the defendant?

Refer the party to the district attorney's office if a complaint has been issued; otherwise, refer the party to the police department.

3. I need proof that my juvenile matters were dismissed for the Armed Services/University/Immigration. Can I get that proof from you?

Provide a certified copy of the docket sheet to the party, on the condition that he or she presents proper photo identification.

4. I have had juvenile cases in the past in several different courts. Can I get a copy of my criminal record to find out what courts my cases were in, and can you tell me how to get those records sealed?

Tell the party how to contact the probation department and/or the Office of the Commissioner of Probation to get a copy of his or her record.

5. My child was committed to the Department of Youth Services/Children and Families. Can I have a copy of the commitment/custody order?

Check to see if the person's parental rights were terminated. If they have not been terminated, provide a certified copy of the docket sheet, custody order, or mittimus on the condition that the requestor presents proper photo identification.

Care and Protection Cases

1. I am a parent representing myself in a care and protection case. Can I review my file?

Consult with a clerk/assistant clerk regarding your court's policy for allowing review of care and protection files.

If the party is allowed to review the care and protection file, request photo identification and tell the party that he or she may review the file and take notes under court staff supervision, but that the party may ***not*** remove the file from the immediate area of the clerk's office, may ***not*** remove documents from the file, and may ***not*** make any markings on the file.

2. I am a parent representing myself in a care and protection case. Can I have copies of certain documents/records contained in my file?

Always consult with a clerk/assistant clerk regarding your court's policy for providing copies of certain records/documents to the party.

If authorized to provide copies, request photo identification from the party seeking copies and refer the party to a clerk/assistant clerk for direction on the party's responsibilities regarding confidentiality and restrictions on the reproduction of records/documents.

3. I am a parent representing myself in a care and protection case and my rights to my child(ren) have been terminated. Can you tell me what my rights are at this time? (e.g., Can I review my care and protection file? How can I appeal the court's decision?)

Tell the party whose parental rights have been terminated that he or she cannot review the file unless the person is representing him/herself on appeal.

If the party indicates he or she wishes to file an appeal, always seek the immediate assistance of a clerk/assistant clerk or other supervisor, who can tell the party the procedure involved in appealing the decision.

4. I am a parent representing myself in a care and protection case. My rights to my child(ren) have been terminated, and my child(ren) have been adopted. I have not been getting the amount of contact with my child(ren) that was promised. Can you tell me what my rights are at this time? (e.g., Can I review my care and protection file? What can I do to make sure I get that contact?)

Tell the party that he or she cannot look at the care and protection file under these circumstances**.**

Suggest to the party that he or she may contact the Department of Children and Families (DCF) for possible assistance, and provide the telephone number of the office that handled the case. Consult with a clerk/assistant clerk to answer any questions of the party regarding other available remedies, such as an action in equity.

5. I am a parent representing myself in a care and protection case. Can you help me to understand the procedures of the Juvenile Court? (e.g., How do I file a motion, and what should my motion say?)

If a party asks how to file a motion, advance the case, or how to proceed in the case, you may provide that party with the necessary paperwork and forms. You may assist the party with general procedural questions, such as how to fill out the forms, what information is necessary, and the requirement of service of process.

Tell the party to look at the Juvenile Court Rules to help the party understand Juvenile Court procedures. Provide the party with information on where to find the rules, such as on the

Commonwealth's website or a Trial Court or law school law library, or provide the party with an office copy.

Always seek the assistance of a clerk/assistant clerk when the party asks legal questions about the case, such as what type of motion to file or what words to use in the motion.

Never provide legal advice to the party.

6. I am a parent representing myself in a care and protection case, and I need to find some information on the procedures of the Juvenile Court and where I can get some help. (e.g., Can you tell me where to go and/or who to call? Can you recommend an attorney to me?)

Direct the party to other sources for assistance and information, such as the local bar association, legal services office, and/or the nearest Trial Court or law school library.

Provide the party with the address and telephone number of a specifically-requested attorney or allow the party to review a list of attorneys certified in care and protection cases, but ***never*** recommend a specific attorney.

Provide the party with any information available to the public that explains court procedures, such as the Juvenile Court Rules, and/or any other resources that indicate where and how to seek further professional assistance.

Magistrate Hearings/Delinquencies/CHINS

1. My child was hit by another child. How do we take out charges?

Ask whether the applicant has sought the assistance of the local police department before filing a private application for complaint.

If the applicant still wishes to file a private application, explain that there is a $15.00 filing fee (which may be waived in certain circumstances).

Have the applicant complete an application for complaint and a statement of facts describing what happened and/or refer the party to a clerk/assistant clerk for assistance in completing the application, in accordance with the established policies and practices of your court.

Provide the applicant with information on the magistrate's hearing process, including time, place, and notice, in accordance with the established policies and practices of your court.

2. Can you tell us what will happen at a magistrate's hearing?

Tell the party that the clerk/assistant clerk will hear from the parties, parents, and any witnesses present to determine whether there are enough facts ("sufficient facts" or "probable cause") regarding the charges listed in the application for a complaint.

Tell the party that there are several possible outcomes to the hearing but, in general, one of the following may occur:

If the clerk/assistant clerk finds sufficient facts/probable cause, a complaint may issue and the juvenile will be summonsed back into court for arraignment at a later date.

If the clerk/assistant clerk finds sufficient facts/probable cause, and the parties are in agreement, the clerk/assistant clerk may hold the matter open for a period of time subject to certain conditions being placed on the juvenile.

If the clerk/assistant clerk finds that there are not sufficient facts/no probable cause, the application will be denied and the complaint will not issue.

3. Will my child need an attorney for the magistrate's hearing? Should we bring witnesses to the hearing?

Tell the party that an attorney is not required, nor will one be appointed at this stage of the proceedings, but the party may hire an attorney at his or her own expense if desired.

Tell the party that witnesses may be brought to the hearing, but that the clerk/assistant clerk will determine at the time of the hearing whether to hear from the witnesses.

4. What will happen if one of the parties does not appear at the hearing?

If the child is the accused and does not appear at the hearing, explain that the clerk/assistant clerk could find sufficient facts/probable cause and order the complaint to issue, even in the juvenile's absence.

If a parent or guardian does not appear with the juvenile, explain that the matter must be continued to a later date, when the parent/guardian is available to come to court.

If the complainant/applicant does not appear at the hearing, explain that the clerk/assistant clerk may deny the application and not issue the complaint.

5. Can we appeal the clerk/assistant clerk's decision made at the magistrate's hearing?

If the clerk/assistant clerk found insufficient facts/no probable cause on a private application, explain that the applicant may request a new hearing before the judge.

Seek the assistance of a clerk/assistant clerk to explain the appeal process to the applicant, including that the judge will decide whether to grant the applicant's request for a new hearing and may deny the request without holding a hearing.

6. What happens at an arraignment?

Tell the parent and the juvenile that they must report to the probation department when they arrive at the court for arraignment, so that they may provide financial information to determine eligibility for appointment of counsel and any possible fees.

Explain that, in the courtroom, a clerk will formally read the charge(s) and enter a plea of not delinquent; if the defendant is eligible, an attorney will be appointed and the case will be scheduled for a further court date.

7. Will my child be placed in custody at the arraignment?

Tell the party that either the district attorney or the probation department may ask that the juvenile be held in custody, either on bail or without bail, but in either case, the child will be represented by counsel at least for purposes of bail.

Explain that after the bail/detention hearing, the court will decide whether the child will be released or held in custody.

8. What if we do not appear for the arraignment?

Explain that a warrant may be issued for the child's arrest.

9. What could happen to my child at the end of the case?

Explain that there is a range of dispositions available to the court.

10. I need help with my child's behavior, maybe a CHINS. Can you help me?

Suggest that he or she speak with the probation department.

<u>Guardianships</u>

1. I would like to file for guardianship. What do I do?

Check to see whether there is an open case involving the child in the Juvenile Court, and, if not, direct the party to the Probate and Family Court for assistance in filing a guardianship.

If there is a related case in the Juvenile Court, provide a guardianship packet to the party, and when the packet is completed, refer the matter to a clerk/assistant clerk/assigned court staff for review.

Tell the party that the clerk/assistant clerk/assigned court staff will review the packet for accuracy and provide oral and/or written instructions explaining scheduling and notice requirements.

2. I am a guardian who is no longer willing or able to care for the child. How do I resign?

Check to make sure that the guardianship is in your court.

Provide the party with a "motion to resign guardianship."

Upon completion of the motion, refer the party to a clerk/assistant clerk/assigned court staff who will review the motion for accuracy and provide oral and/or written instructions explaining scheduling and notice requirements.

If the guardian who wishes to resign has identified another person who wishes to take over as guardian, direct the proposed guardian to follow the steps for filing a guardianship petition.

3. I am a parent who wants custody of my child back from the guardian. Can you tell me what to do?

Check to make sure the guardianship is in your court and advise the person to contact the attorney who represented him or her on the guardianship petition.

If the party is proceeding without an attorney, provide the party with a "petition to remove guardian."

Upon completion of the petition, tell the party that a clerk/assistant clerk/assigned court staff will review the petition for accuracy and provide oral and/or written instructions explaining scheduling and notice requirements.

4. Can you help me fill out the forms and tell me what the procedure is regarding guardianships?

Tell the party that he or she is responsible for filling out the forms and that the party must use his or her own words in any written requests to the court.

Assist the party regarding what forms are available for his or her particular situation and answer simple questions if the party is confused about filling out a particular part of the form, such as where to place certain information on the form.

Answer simple questions about procedures. Tell the party in general terms how to schedule the matter before the court, and provide the party with any written instructions available in your court.

Tell party there are rules to follow regarding filing paperwork. Provide the party with information on where he or she can find the rules, such as on the Commonwealth website or at a local Trial Court or law school library, or provide an office copy.

5. The guardian will not let me visit my children. What can I do?

Tell the party to address the issue by motion and provide the party with a blank motion form.

Tell the party to explain in writing, in his or her own words, the problem that the party is experiencing with visitation and what action he or she would like the court to take.

Tell the party that a clerk/assistant clerk/assigned court staff will review the petition for accuracy and provide oral and/or written instructions explaining scheduling and notice requirements.

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