

STANDING ORDER 1-06
CASE MANAGEMENT AND TIME STANDARDS FOR CASES FILED
IN THE PROBATE AND FAMILY COURT DEPARTMENT

PREAMBLE

The fair and efficient administration of justice requires that all cases and actions before the Probate and Family Court receive timely attention and action from the court. This requires that the judicial system dispose of cases as expeditiously as is consistent with care, fairness and sound decisions. It is the responsibility of the court to manage the process and disposition of the cases before the court. These time standards are intended to provide the Probate and Family Court with recognized goals for the timely disposition of cases.

These time standards represent aspirational goals to measure the movement of cases in the Probate and Family Court. Each case is unique and the Judges must, consistent with the rules of court and statutes, exercise sound judgment in such a manner as to provide the parties with a fair opportunity to be heard and to allow the court to achieve a reasoned disposition. Those individuals who appear before our courts have distinct needs that must be addressed on an individual basis, case by case. These time standards preserve discretion for judges to schedule individual cases according to the particular needs of the individuals involved.

These time standards recognize that there are many factors that determine the flow of cases in the Probate and Family Court which are not within the control of the court. These standards also recognize that the cases heard in the Probate and Family Court require consideration of the individual needs of the families who come before the court.

Accordingly:

1. GENERAL PROVISIONS

This Standing Order applies to all actions filed in the Probate and Family Court.

This Standing Order applies to all Divisions of the Probate and Family Court.

The timing for the completion of the case, from filing to trial, settlement, or dismissal, shall be calculated from the date of filing the petition or complaint.

At time of filing, all cases shall be assigned to a caseflow track according to the type of case. Most cases shall be assigned to one of the following tracks; 3-6 months to trial, 8 months to trial, or 14 months to trial.

2. TRACK ASSIGNMENT AND CASE MANAGEMENT

a. Track Assignment

At filing each case is assigned to a track.

The Plaintiff/Petitioner shall be provided with a Track Assignment Notice except as set forth below. The Plaintiff/Petitioner shall serve the Track Assignment Notice upon the Defendant/Respondent along with the summons or notice (citation). No service of the Track Assignment Notice will be required in cases where service is by publication.

No Track Assignment Notice shall be issued for cases in the 3-6 month track: Probate of Will, Administration, Accounts, Real Estate Sales, and Change of Name. No Track Assignment Notice shall be issued for cases described in sections 10 through 17 of this Standing Order. No Track Assignment Notice shall be issued at the time of filing for any case filed by the Department of Revenue, Child Support Enforcement Division.

The goals for completion of all cases filed in the Probate and Family Court are outlined in the chart in section 7(a) and in sections 10 through 17 of this Standing Order. A Judge, at any time, may change the track designation for a case and issue a new Track Assignment Notice.

b. Next Event Scheduling

At the conclusion of every court event, until a judgment has issued or the complaint has been dismissed, or until a permanent decree has issued or the petition has been dismissed, the Court shall schedule the next court event for the case.

Once a motion hearing, conference, or any other court event has been scheduled and placed on a court list, whether at the request of a party, a party's lawyer, the Register, or the Court, it can be removed from the list or continued only if a next court event is scheduled.

c. Case Management Conferences: Generally

Case Management Conferences will be scheduled by the court for the case types set forth in sections 2(d),(e), and (f) below, when a return of service, answer, objection, or counterclaim is filed and there is no future court event scheduled for the case.

In scheduling a case management conference, the Register shall issue a Case Management Conference Notice and Order in the format specified by the Chief Justice of the Probate and Family Court.

The purpose of the Case Management Conference is to establish the Court's control of the progress of the case, to provide early intervention by the Court, to offer Alternative Dispute Resolution processes, to establish discovery limitations and deadlines, to discuss settlement progress and opportunities for settlement, and to assign a date for the pre-trial conference, if needed.

- d. Case Management Conference: Equity, Petition to Partition, and Domestic Relations, including Paternity (except Joint Petitions for Divorce, Joint Petitions for Modification and Complaint for Divorce filed under G. L. c. 208, § 1B).

Upon the filing of the return of service, answer, objection, or counterclaim, the Register shall review the case to determine if a future court event has been scheduled in the case. If no future court event has been scheduled, the Register shall schedule a Case Management Conference on the next available date, but no sooner than thirty (30) days from the filing of the return of service, answer, objection, or counterclaim. The Register shall send the Case Management Conference Notice and Order to all parties.

- e. Case Management Conference: 1B Divorce, Guardianship and Conservatorship

All G. L. c. 208, § 1B Divorce Cases

The Register shall review the case one hundred twenty (120) days after the case is filed. If no return of service has been filed, and no answer, appearance, motion, or other paper has been filed by a defendant, the Register shall mail to the plaintiff a written notice of dismissal in accordance with section 3 of this Standing Order. If the return of service or an answer, objection, or counterclaim has been filed, but no future court event has been scheduled, a Case Management Conference shall be scheduled on the next available date, but no sooner than thirty (30) days from the filing of the return of service. The Register shall send the Case Management Conference Notice and Order to all parties.

Guardianship and Conservatorship Cases

The Register shall review the case one hundred twenty (120) days after the case is filed. If no future court event has been scheduled, the Register shall schedule a Case Management Conference on the next available date. The Register shall send the Case Management Conference Notice and Order to all parties. All temporary guardianships shall include an expiration date and a further hearing date. All

guardianships with approval and authorization of an anti-psychotic medication treatment plan shall include an expiration date and a review date, which may be the same date. All guardianships with authority to approve other extraordinary medical treatment shall include an expiration date for the authority.

f. Case Management Conference for Certain Probate Matters

A Track Assignment Notice shall not be issued at the time of filing for the cases assigned to the 3-6 Month Track: Probate of Will, Administration, Accounts, Real Estate Sales, and Change of Name. If a timely appearance in opposition or objection is filed in a case initially assigned to the 3-6 Month Track, the Register shall reassign the case to the 8 Month Track and issue to all parties a Track Assignment Notice. The Register shall also issue a Pre-Trial Notice and Order in the form specified by the Chief Justice of the Probate and Family Court with an established date for a Pre-Trial Conference unless another future court event has been scheduled. The date for the Pre-Trial Conference shall be after the return date, but no more than forty-five (45) days after the return date.

g. Case Management Conference conducted at Motion Hearing

If a motion, or other hearing, is scheduled and held prior to the date of the Case Management Conference, the Judge may conduct a Case Management Conference in connection with the motion hearing, even if there has been no notice of a Case Management Conference for that day, and may cancel any previously scheduled Case Management Conference, making sure to schedule a next event in the order on the motion or the order after Case Management Conference.

Motions shall not be heard at a scheduled Case Management Conference without prior approval of the Court. As a general rule, the discovery schedule and deadline and a Pre-Trial Conference date should be assigned the first time the case is before a Judge with both parties or counsel present.

h. Joint Stipulation on Case Management Conference

Counsel and pro se parties may, at any time after a complaint is filed, file a Joint Stipulation signed by counsel for each represented party and by each pro se party which, at a minimum, requests a pre-trial conference date and agrees to a specific date to be the discovery deadline for that case. The discovery deadline date shall be not more than 180 days after the date of filing of the complaint.

Counsel and pro se parties may, after receiving notice that a Case Management Conference has been scheduled, file, on or before the date of the Case Management Conference, a Joint Stipulation signed by counsel for each represented party and by each pro se party which, at a minimum, requests a

pre-trial conference date and agrees to a specific date to be the discovery deadline for that case. The discovery deadline date shall be not more than 120 days after the date of filing of the Joint Stipulation. If the Joint Stipulation is filed prior to the time scheduled for the Case Management Conference, no one need appear for the Case Management Conference.

Upon the filing of such a Joint Stipulation, the Register shall schedule a pre-trial conference for the next available date not sooner than 14 days after the discovery deadline and issue a Pre-Trial Notice and Order in the form specified by the Chief Justice of the Probate and Family Court. The scheduled pre-trial conference is a “future court event” so that a Case Management Conference will not be automatically scheduled upon the 120 day review or upon the filing of a return of service, answer, objection or counterclaim.

i. Joint Requests to Continue Case Management Conference

Parties engaged in alternative dispute resolution may request an extension of a scheduled Case Management Conference date by filing a joint or assented to motion which attests that the parties are engaged in alternative dispute resolution and includes:

- ▶ the name of the alternative dispute resolution provider;
- ▶ the dates and number of sessions held and;
- ▶ the dates and number of future sessions scheduled.

All other joint requests to continue shall be by written motion stating detailed and specific reasons for the request. All motions shall include proposed dates for the rescheduling of the Case Management Conference. Joint or assented to motions shall be considered without an in person hearing, unless otherwise ordered by the Court. If the motion is allowed, the court shall reschedule the Case Management Conference and send notice to all parties.

j. Citations in Probate, Guardianship, Child Welfare, and Adoption Petitions

Unless all required assents are filed with a probate petition, including guardianship petitions, custody petitions under G. L. c.119, and adoption petitions, the Register shall issue a citation no later than three (3) court days after the date of filing.

k. General Provisions

Nothing in this Standing Order precludes the marking of an earlier hearing date for a motion or other case event when appropriate.

The Court may schedule conferences, including Case Management, Pre-Trial and Status Conferences, as well as Trials, in its discretion.

Any party to any matter filed in the Probate and Family Court may request a Case Management Conference or Pre-Trial Conference after service of the complaint or petition, with notice to the other side of such request.

When a Case Management Conference is held, the conference will include discussion of all actions pending between the named parties. Other pending actions shall be scheduled for a future court event or shall be dismissed.

3. DISMISSAL FOR LACK OF SERVICE

The Register shall review all Domestic Relations and Equity cases 120 days after filing of the complaint to determine whether a return of service has been filed. If a return of service has not been filed, and no future court event has been scheduled, the Register shall issue a notice in a format specified by the Chief Justice of the Probate and Family Court. The notice shall inform the plaintiff that, because no return of service has been filed to show that service was made within 90 days of filing as required by Mass. R. Civ. P./Mass. R. Dom. Rel. P. 4 (j), the case will be dismissed 21 days after the date of the notice unless the plaintiff files the return of service showing that service was made within ninety (90) days after the filing of the complaint or unless within those twenty-one (21) days, the plaintiff files and has scheduled a motion for extension of time which shows good cause why service was not made within ninety (90) days after the filing of the complaint.

4. CONDUCT OF CASE MANAGEMENT CONFERENCE

a. Counsel and/or Parties Encouraged to Confer.

Prior to the Case Management Conference, counsel and/or parties are encouraged to confer for the purpose of agreeing on a proposed schedule of deadlines and dates through trial.

If a domestic violence restraining order (G. L. c. 209A) or a domestic violence protective order (G. L. c. 208) has been issued for one party against the other, then the parties are not expected to confer. The Case Management Conference shall still be held.

b. At a Case Management Conference the Court may:

- (1) explore the possibility of settlement including but not limited to exploring the use of Alternate Dispute Resolution (ADR) processes;
- (2) identify or formulate (or order attorneys or parties to formulate) the principal issues and disputes;
- (3) prepare (or order attorneys or parties to prepare) a discovery schedule including discovery parameters and deadlines;
- (4) establish deadlines for filing motions, including but not limited to motions for summary judgment and a time frame for their disposition;
- (5) explore any other matters that the court determines appropriate for the fair and efficient management of the litigation;
- (6) hear the case on an uncontested basis if settlement has been achieved, or if no appearance or answer is filed after service and return of service and there is no opposition; or
- (7) dismiss the case if no parties are present for the Case Management Conference or if the plaintiff or petitioner is not present.

c. Next Event Scheduling

At the Case Management Conference, the next court date shall be assigned unless a judgment or permanent decree is issued or the case is dismissed.

d. Requirement to Appear

Counsel and parties, or parties alone if not represented by counsel, shall be required to appear at the Case Management Conference, except as provided in section 2(h) above. The Court, in its discretion, may waive the requirement for the appearance of the parties if they are represented by counsel. The Court may conduct Case Management Conferences by telephone, in its discretion.

e. Sanctions for Failure to Appear.

The court may impose sanctions for failure to attend the Case Management Conference without good cause, including dismissal, or may hear the case as if it were uncontested.

5. ALTERNATE DISPUTE RESOLUTION SERVICES

When appropriate, cases may be referred to:

- a. Probation Officers for dispute intervention services in contested matters at any court event; or
- b. Other approved providers of court connected dispute resolution services as defined in S.J.C. Rule 1:18, Uniform Rules on Dispute Resolution.

6. CHANGES TO TRACK ASSIGNMENT AND RESCHEDULING OF SCHEDULED EVENTS

- a. A party may file and serve a motion requesting a change in track assignment or rescheduling of scheduled events. Changes in track assignment or rescheduling of scheduled events shall be allowed only at the discretion of the Judge. A Probation Officer, in connection with an investigation, may file and serve on all parties a motion requesting a change in track assignment or rescheduling of scheduled events.
- b. Motions to continue a trial may be allowed, only for good cause shown, with notice and hearing, in accordance with Mass. R. Dom. Rel. P. 40 (b) and Mass.R. Civ. P. 40 (b).
- c. All requests for rescheduling shall include proposed future dates. No action shall be “continued generally.” Any rescheduling shall be to a date and event certain.
- d. In cases involving allegations or a history of domestic violence, or a prior or current abuse prevention order, the Judge shall take into account the safety of alleged victims and victims and the reduction of conflict when considering any requests for changes in track assignment or rescheduling of scheduled events.

7. ASSIGNMENT TO TRACKS:

- a. At filing, all Probate, Equity, Domestic Relations (including Paternity) cases (except Joint Petitions for Divorce, Joint Petitions for Modification of Child Support, and Complaints for Contempt, which shall be heard as outlined in sections 10 through 12) shall be assigned to a track according to the chart below:

	3-6 Month Track¹	8 Month Track	14 Month Track
	Probate of Wills and Administration of Estates	Complaint to Establish Paternity	Complaint for Divorce
	Accounts	Complaint for Custody, Visitation, and Support (Paternity)	Complaints in Equity
	All Other “Probate” except Guardianships and Conservatorships	Complaint for Modification (except Joint Petition for Modification of Child Support)	Petitions to Partition
	Real Estate Sales	Probate-Guardianships Conservatorships	Other “Divorce” Case Types (except Joint Petition for Divorce)
	Change of Name	Complaint for Separate Support	
		Other Paternity Case Types	

- b. G. L. c. 209A Complaints and G.L. c.19A Petitions for Protection from Abuse, cases concerning the custody of children under G. L. c.119, § 23A, G. L. c.119, § 23C, and G. L.c .210, § 3, and Adoptions shall be heard as outlined below in sections 13 through 17.
- c. Assignment to a track indicates the maximum amount of time in which a case should be tried, settled, or dismissed. Most cases should be tried, settled, or dismissed before the maximum time period of the track.
- d. There may be extraordinary cases which cannot be disposed of within the time frames set forth in their track designations.

¹As described in section 2(f) above, if a case assigned to this track becomes contested due to the filing of an appearance and, if required, objections, the Register shall change the track designation to an 8 month track.

- e. The Register shall issue a Track Assignment Notice for each case in the 8 month and 14 month tracks, except as outlined in section 2 (a) of this Standing Order, in a format specified by the Chief Justice of the Probate and Family Court. The Track Assignment Notice shall reflect the time requirements for each track.

8. CONDUCT OF PRE-TRIAL CONFERENCES

- a. The Pre-Trial Conference shall be conducted in accordance with Rule 16 of the Massachusetts Rules of Domestic Relations Procedure or the Massachusetts Rules of Civil Procedure.
- b. In scheduling a Pre-Trial Conference the court shall issue a Pre-Trial Notice and Order in a format specified by the Chief Justice of the Probate and Family Court.
- c. If a case is not resolved at the Pre-Trial Conference, an Order After Pre-Trial Conference shall be issued which shall include provisions specified by the Chief Justice of the Probate and Family Court, and may also include additional provisions at the discretion of the Judge conducting the Pre-Trial Conference.

9. SEQUENTIAL TRIAL DAYS

When trial dates are originally assigned, they shall be scheduled on days as close to sequential trial days as the calendar of the trial Judge permits. When trials are not completed in the number of days originally scheduled, the Court shall schedule the remaining trial days as soon as possible using the earliest available trial days, with the goal of minimizing intervals between trial days.

10. TRACK FOR COMPLAINTS FOR CONTEMPT

At time of filing, a summons shall issue with the date for the contempt hearing. The hearing date shall be set for no later than twenty-eight (28) days from the date of filing.

11. JOINT PETITIONS FOR DIVORCE UNDER G. L. C. 208, § 1A

All Joint Petitions for Divorce shall be scheduled for hearing within thirty (30) days of filing of all required documents.²

12. JOINT PETITION FOR MODIFICATION OF CHILD SUPPORT

Pursuant to Probate and Family Court Supplemental Rule 412 and Protocol, these cases shall be decided on the pleadings without hearing, within fourteen (14) days of filing, unless otherwise ordered by the Court. If a hearing is ordered by the Court, the Court shall set the time and date for the hearing and shall notify the parties within fourteen (14) days of the filing of the joint petition.

²If a case is ready for hearing at time of filing, a hearing shall be scheduled within 30 days. If a case is uncontested at time of filing, but incomplete, the case shall be scheduled for hearing within thirty (30) days of the date of filing all required documents.

13. G. L. c. 209A COMPLAINT FOR PROTECTION FROM ABUSE

All proceedings pursuant to G. L. c. 209A shall be processed in accordance with the existing statutory time requirements and each order shall specifically state the next hearing date and expiration date of the order, unless the order is permanent. If the order is permanent, it shall so specify.

14. COMPLAINTS FOR PROTECTION FROM ELDER AND DISABLED ABUSE, G. L. c. 19A, § 20, G. L. c. 19C, § 7

An initial hearing shall be held within fourteen (14) days of the filing of a petition. Emergency hearings may be held with at least twenty-four (24) hours notice to the elderly or disabled person. The court may dispense with notice upon finding that immediate and foreseeable physical harm to the individual or others will result from the twenty-four (24) hour delay and that reasonable attempts have been made to give notice.

15. TRACK FOR PETITIONS FILED PURSUANT TO G. L. c. 210, § 3 AND PETITIONS FILED PURSUANT TO G. L. c. 119, § 23C

- a. If the Petition is uncontested, due to the assent of all parties or completion of proper notice, with no appearance in opposition filed, the Register shall, within fourteen (14) days of the return date, notify the petitioners that the case is uncontested, and schedule an uncontested hearing within 30 days of the return date. For cases filed under G. L. c. 210, § 3, an adoption plan shall be filed, in accordance with Uniform Probate Court Practice X prior to the hearing date.
- b. If, by virtue of an appearance the case is contested, the Register shall issue a Track Assignment and Scheduling Notice for a Case Management Conference to be held not more than thirty (30) days after the return date.
- c. At the Case Management Conference, referral to Permanency Mediation shall be considered and a Pre-Trial Conference shall be scheduled for a date within seventy-five (75) days of the Case Management Conference. At the Pre-Trial Conference, a trial date shall be set for no later than one hundred twenty (120) days from the date of the Pre-Trial Conference.
- d. If a sua sponte or ex parte custody order under G. L. c. 119, § 23C is issued, the Court shall schedule a hearing within 72 hours of the sua sponte or ex parte custody order, unless a prior evidentiary hearing has been held. Notice shall be given to all parties and counsel.

16. TRACK FOR ADOPTION PETITIONS

- a. If a Petition is filed as uncontested, due to the filing of necessary surrenders or termination decrees, and notice is not required, a hearing shall be scheduled within thirty (30) days of the filing of the Petition.³

³If a case is ready for hearing at time of filing, a hearing shall be scheduled within 30 days. If a case is uncontested at time of filing, but incomplete, the case shall be scheduled for hearing within thirty (30) days of the date of filing all required documents.

- b. If a timely appearance is filed, a Case Management Conference shall be scheduled for not more than thirty (30) days after the return date.
- c. At the Case Management Conference, a Pre-Trial Conference shall be scheduled for a date within seventy-five (75) days of the Case Management Conference. At the Pre-Trial Conference, a trial date shall be set for no later than one hundred twenty (120) days from the date of the Pre-Trial Conference.

17. PETITIONS FILED PURSUANT TO G. L. c. 119, § 23(A), VOLUNTARY PLACEMENT WITH DEPARTMENT OF SOCIAL SERVICES

At time of filing, all petitions filed pursuant to G. L. c. 119, § 23(A) shall be scheduled for hearing within thirty (30) days.

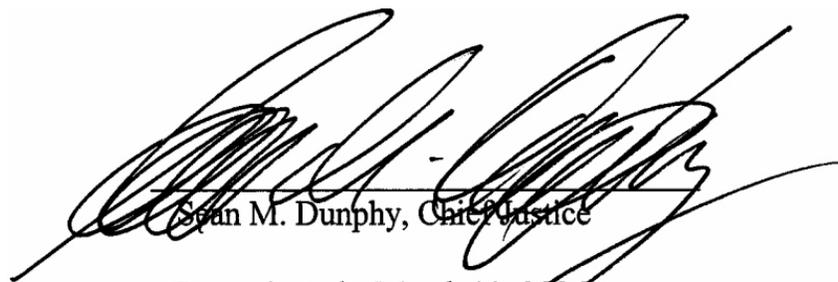
18. ISSUANCE OF TEMPORARY ORDERS

Temporary orders shall be issued as expeditiously as possible, but in no event more than fourteen (14) days from the conclusion of the hearing, or the receipt by the court of all written submissions. On motions for summary judgment, orders shall be issued within thirty (30) days of the conclusion of the hearing, or the receipt by the court of all written submissions.

19. ISSUANCE OF JUDGMENT OR DECREE

Except as otherwise indicated in this Standing Order, or with notice to the Chief Justice of the Probate and Family Court, and counsel or parties, the judgment or decree shall be issued as follows:

<u>Trial Time</u>	<u>Entry of Judgment or Decree</u>
One day or less	Within 30 days of the conclusion of the trial
Two days	Within 60 days of the conclusion of the trial
Three to Seven days	Within 90 days of the conclusion of the trial
Exceeds Seven days	Within 120 days of the conclusion of the trial



Sean M. Dunphy, Chief Justice

Promulgated: March 10, 2006
 Effective: April 3, 2006