

## INTERIM AMENDED STANDING ORDER 3-17

### FIDUCIARY LITIGATION SESSION PILOT PROJECT

1. **Purpose.** The purpose of this Standing Order is to establish a Fiduciary Litigation Session (hereinafter, "FLS") within the Probate and Family Court Department for certain complex probate litigation cases.
2. **Goal.** The goal of the FLS is to provide a specialized forum for the speedy resolution of complex probate litigation cases and to provide individualized and collaborative case management to reduce the costs associated with fiduciary litigation.
3. **Duration and Location.** The FLS will be held at the Norfolk Division of the Probate and Family Court. The judge of the FLS will have the authority to hear and decide matters reassigned to the FLS. Parties or attorneys of record who participate in the pilot project are encouraged to provide feedback so data may be gathered and analyzed to assess the efficacy of the project.
4. **Applicable Divisions.** The FLS may accept cases from the following Probate and Family Court divisions: Essex, Middlesex, Norfolk, Plymouth and Suffolk.
5. **Case Types.** Cases that fall into any of the following categories may be accepted into the FLS based primarily on the complexity of the case and the need for substantial case management.
  - Contested cases involving the probate of a will, determination of heirs, appointment or removal of a personal representative;
  - Contested conservatorship, estate and trust accounts;
  - Trust petitions which involve, *inter alia*, the removal of fiduciaries, reformation and modification of trust instruments, interpretation or construction of trust instruments, termination of trusts and allegations of breach of fiduciary duty by trustees;
  - Equity complaints on issues involving estates and trusts, such as challenges to the validity of an instrument, removal of trustees, request for instructions, declaratory judgment actions, and breach of fiduciary duty allegations; and
  - Removal of conservators.
- (a) **No Jury Trial.** A jury trial is not available in any division of the Probate and Family Court, including the FLS. Any case requesting or requiring a jury trial will not be reassigned to the FLS.
6. **Who May Request Reassignment.** A request for reassignment to the FLS may be made by a Probate and Family Court judge before whom the case is originally assigned (hereinafter, "the assigned judge"), by a party's attorney, or by a self-represented party, in a new or pending matter.
7. **Procedure to Request Reassignment.** All new cases must continue to be filed in the division of proper venue. For new and pending cases, after the expiration of the answer period or return date, a *Request for Reassignment (MPC 304)* may be filed in the division where the matter is pending for consideration to reassign the case to the FLS.

- (a) **Required Notice.** Upon filing, a copy of the *Request for Reassignment* must be sent contemporaneously to the Administrative Office of the Probate and Family Court, and to all attorneys and self-represented parties in the matter, by hand delivery, by United States mail or by email.
- (b) **Contesting Reassignment.** Any party who wishes to contest reassignment must file a written response within ten (10) calendar days of the date of service of the *Request for Reassignment* in the division where the matter is pending. Notice must be sent as provided in section (a), above.
- (c) **Initial Determination by the Assigned Judge.** A *Request for Reassignment* must first be approved or denied by the assigned judge. This determination may be made without a hearing or, in the sole discretion of the assigned judge, a hearing may be scheduled. The assigned judge shall have final authority to approve or deny a request.

If the case is denied reassignment to the FLS, a copy of the denied *Request for Reassignment* shall be issued and the case shall proceed on the time standards established by Standing Order 1-06 and, if necessary, the next event shall be scheduled.

The initial determination is not an adjudication and cannot be appealed.

- 8. **Acceptance into the FLS.** If a case is approved for reassignment to the FLS by the assigned judge, after the objection period has expired, a copy of the approved *Request for Reassignment* shall be forwarded to the FLS judge, who will make a final determination within ten (10) business days of receipt whether to accept the case into the FLS.

If the case is accepted into the FLS, a *Notice of Reassignment to the Fiduciary Litigation Session (MPC 604)* shall be issued.

If the case is not accepted into the FLS, a *Notice of Denial of Reassignment to the Fiduciary Litigation Session (MPC 605)* shall be issued and the case shall proceed on the time standards established by Standing Order 1-06 and, if necessary, the next event shall be scheduled.

The final determination is not an adjudication and cannot be appealed.

- 9. ***Sua Sponte* Reassignments to the FLS.** *Sua sponte* requests for reassignment to the FLS by the assigned judge shall be made in the same manner as provided in 7 and 8 above.

- 10. **Original Case File; Filing and Docketing Subsequent Documents.** Once accepted into the FLS, the original case file shall be transferred to the FLS judge. Docketing shall be up to date and in proper order. All subsequent documents required to be filed shall be filed in the FLS and docketed by the person designated as the primary or back-up Interdivisional Transfer Designee (ITD). At the conclusion of the matter, the file shall be returned to the register of probate in the division of origin.

- 11. **Case Management.** Standing Order 1-06 [Case Management and Time Standards for Cases filed in the Probate and Family Court] shall not apply to cases reassigned to the FLS. Pre-trial procedure shall be governed by Mass.R.Civ.P. 16, any applicable rules of the Supplemental Rules of the Probate and Family Court, and the following.

**12. Scheduling Conference.** Within 30 days of acceptance into the FLS, all parties and attorneys shall be required to appear at a scheduling conference for such purposes as:

- defining the issues and disputes;
- establishing early and continuing control of the case;
- discouraging wasteful pre-trial activities;
- facilitating settlement, including but not limited to, exploring the use of Alternative Dispute Resolution (ADR) processes; hearing the case on an uncontested basis if settlement has been achieved; and
- establishing a scheduling order appropriate to the case and expediting disposition of the action.

At least ten (10) days prior to the scheduling conference, attorneys and self-represented parties shall confer with each other in an attempt to agree upon, or narrow their differences as to a proposed scheduling order which must be filed with the court on or before the date of the scheduling conference.

**(a) Contents.** The scheduling order may set the time to join other parties, amend pleadings, complete discovery and file motions. It may also set a date for a pre-trial conference and set forth the format of the pre-trial memoranda.

**(b) Scheduling Order.** At the conclusion of the scheduling conference, the FLS judge shall issue a scheduling order. A scheduling order may be modified only for good cause and with the approval of the FLS judge.

**13. Pre-trial Conference(s).** The FLS judge may hold one or more pre-trial conferences following the scheduling conference.

**(a) Attendance.** All parties and attorneys are required to be present at the pre-trial conference, unless waived by motion. Failure of one or more parties to appear shall not preclude the court from proceeding with the pre-trial conference.

**(b) Trial Date(s).** By written order, the trial date(s) shall be set by the FLS judge at the pre-trial conference. Each attorney and self-represented party shall provide the court with a reasonably accurate estimate of the time required to try the case to completion. The FLS judge will impose a reasonable time limitation upon attorneys and self-represented parties to present their case, within the confines of due process, in order to ensure a timely and fair disposition from the court.

**14. Motions *in limine*.** Motions *in limine* shall be disposed of as follows:

- Unless a different schedule is ordered by the court, no later than 30 days before trial, attorneys and self-represented parties shall file all motions *in limine*. Prior to filing a motion *in limine*, attorneys and self-represented parties shall confer to identify disputed evidentiary issues that are anticipated to be the subject of motions *in limine*.
- Any opposition to a motion *in limine* shall be filed within ten (10) calendar days of the date of service of the motion. The moving party shall not file a reply to any opposition filed unless requested by the FLS judge.

- Motions *in limine* may be decided on the pleadings or scheduled for a hearing in the sole discretion of the FLS judge.
- All motions *in limine* submitted in accordance with this subsection shall be ruled upon before trial unless the court determines the particular issue of admissibility is better considered at trial.
- Motions *in limine* not filed in accordance with this subsection shall be deemed untimely.

**15. Final Trial Management Conference.** The FLS judge may hold a final trial management conference to formulate a trial plan, including a plan to facilitate the admission of evidence. The conference must be attended by any self-represented party and at least one attorney who will conduct the trial for each party. At least 24 hours prior to this conference, attorneys and self-represented parties shall exchange and file with the court a proposed judgment or decree.

**16. Sanctions.** On motion or *sua sponte*, the FLS judge may issue orders, including dismissal of the case and those authorized by Mass.R.Civ.P. 37, if a party or his/her attorney:

- fails to appear at a scheduling, pre-trial or final trial management conference;
- is substantially unprepared to participate in any conference; or
- fails to obey a scheduling, pre-trial, final trial management, or any other order.

**17. Imposing Fees and Costs.** Instead of or in addition to any other sanction, the FLS judge may order a party, his or her attorney, or both, to pay the reasonable expenses, including attorney's fees incurred because of any noncompliance with this Standing Order.

**18. Next Event Scheduling.** At the conclusion or cancellation of any court event, until a judgment or decree has issued, the court shall schedule the next court event for the case unless one has already been scheduled.

**19. Issuance of Judgment or Decree.** A judgment or decree shall issue after conclusion of the trial and receipt of any supplemental submissions ordered by the court.

**20. Application.** This Standing Order shall apply to all new cases filed on or after its effective date and to all cases pending on its effective date.

Adopted October 31, 2017, effective November 20, 2017; amended approved December 4, 2018, effective *nunc pro tunc* to November 20, 2018.