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PROBATE AND FAMILY COURT RULES

Standing Orders

Probate and Family Court Standing Order 2-20, as amended July 1, 2020: Court operations under the exigent circumstances created by COVID-19

ADOPTED DATE:

03/17/2020

EFFECTIVE DATE:

07/01/2020

UPDATES:

Adopted March 17, 2020, effective March 18, 2020 (https://www.mass.gov/media/2116411/download)
Section H (1) superseded March 24, 2020
(/probate-and-family-court-rules/temporary-amendment-to-probate-and-family-court-standing-order-2-16)
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Introduction

To safeguard the health and safety of the public and court personnel during the COVID-19 pandemic while continuing to increase the business being conducted in the Probate and Family Court, I hereby invoke the authority granted to me by G. L. c. 211B, § 10 to promulgate this Standing Order.

To maintain consistency among the Divisions of the Probate and Family Court, this Standing Order shall supersede any administrative or scheduling protocols previously instituted by any Division of the Probate and Family Court in response to the COVID-19 pandemic, as well as Standing Order 1 – 20, Standing Order 2 – 20, Standing Order 2 – 20, as amended April 6, 2020, Standing Order 2 – 20, as amended May 4, 2020, Standing Order 2 – 20, as amended June 1, 2020 and Standing Order 2 – 20, as amended June 11, 2020.

It is hereby ORDERED, effective July 1, 2020, that the Divisions of the Probate and Family Court will operate subject to the following conditions.

1. Court operations until July 13, 2020

Until at least July 13, 2020, the Probate and Family Court will be open to conduct emergency and non-emergency court business, and to adjudicate emergency and non-emergency matters identified herein. But courthouses will continue to be closed to the general public and all business will be conducted virtually (i.e., by telephone, videoconference, email, or comparable means, or through the electronic filing system), except as provided in the next paragraph. Where court personnel are physically present in a courtroom for the purpose of conducting a virtual hearing, no one other than court personnel may be physically present in the courtroom without the approval of the judge conducting the hearing.

In-person proceedings will be conducted only where entry to a courthouse is required to address emergency matters that cannot be resolved virtually because it is not practicable or would be inconsistent with the protection of constitutional rights.

Each Registry shall conduct emergency and non-emergency court business, including accepting the filing of pleadings and other documents, scheduling and facilitating hearings, issuing orders, and answering questions from attorneys, litigants, and the general public. All business will be conducted virtually unless, in an emergency matter, the filing of pleadings and other documents cannot be accomplished virtually.

Emergency matters are included in Section 1 (B) and Section 1 (E) of this Standing Order. Apart from the exception stated in Section 1 (C) (1), entry into a courthouse for the purpose of an emergency in-person proceeding shall continue to be limited to attorneys, parties, witnesses, and other necessary persons as determined by the judge presiding over the proceeding, plus no more than three members of the "news media" as defined in Supreme Judicial Court Rule 1:19(2).

Non-emergency matters that the Probate and Family Court will attempt to address virtually, in whole or in part, where it is practicable, are included in Section 1 (F) of this Standing Order.

A. Telephonic/Videoconference/Virtual Hearings

Whenever practical and possible, the Court shall conduct hearings by telephone or videoconference rather than having people appear in person or rescheduling event dates. The Probate and Family Court may also consider matters through an administrative review process and determine motions in accordance with Rule 78.

B. Restraining Orders Pursuant to G. L. c. 209A/Orders to Vacate Pursuant to G. L. c. 208, § 34B

1. All restraining order requests and requests for orders to vacate are deemed emergency matters and their initial return dates, including return dates when notice has not been accomplished, shall be heard by telephone or videoconference.
2. All emergency protection orders (G. L. c. 209A; G. L. c. 208, § 34B) issued at a hearing after notice prior to the issuance of this Standing Order and that are due to expire on or after March 16, 2020 shall remain in effect until the matter is rescheduled and heard by the Probate and Family Court.
3. Any protection orders (G. L. c. 209A; G. L. c. 208, § 34B) issued at a hearing after notice during the pendency of this Standing Order which were not heard in person may be issued only until such date at which the court can schedule an in-person hearing.

C. Trials and Hearings

1. Trials scheduled to commence at any time from March 14, 2020, through June 30, 2020 are continued to a date no earlier than July 13, 2020, unless in the trial judge's discretion the trial may be conducted virtually. Where a trial has commenced, the determination whether the trial shall proceed, and how, is left to the sound discretion of the trial judge, in consultation with the Chief Justice of the Probate and Family Court.
2. A party who has had a trial or other non-emergency hearing postponed as a result of this Standing Order or the prior versions of Standing Order 2 – 20 may apply for a status or case management conference with the court to address matters arising from the postponement, which shall be conducted virtually.

D. New Filings

Emergency matters: Parties may file emergency matters by email, mail, or e-filing where available, unless the filing of pleadings and other documents in emergency matters cannot be accomplished virtually (i.e., by telephone, videoconference, email, or comparable means, or through the electronic filing system).

Non-emergency matters: Parties may file non-emergency by the above means, except that email may only be used for filing when done so by a Court Service Center staff member or an attorney volunteering through a Lawyer for the Day program on behalf of a self-represented litigant.

E. Emergency Case Types/Events

Emergency situations not addressed below or in Section 1 (B) above will be considered on a case-by-case basis.

The below actions/case types have been identified as emergency matters and may be filed and shall be heard, unless the Court requires notice:

1. Petitions/motions seeking a Do Not Resuscitate/Do Not Intubate/Comfort Measures Only (DNR/DNI/CMO) order, authorization for medical treatment order, or order for antipsychotic medication;
2. Petitions seeking appointment of a temporary guardian or conservator;
3. Petitions pursuant to G. L. c. 19A, § 7 and G. L. c. 19C, § 20 – protective services;
4. Health Care Proxy actions;
5. Petitions/Motions for Appointment of Special Personal Representative;
6. Petitions for marriage without delay;
7. Complaints for Dependency (SIJS) and any related motions;
8. All requests for injunctive relief;
9. Motions for temporary orders where exceptional/exigent circumstances have been demonstrated; and
10. Contempt actions where exceptional/exigent circumstances have been demonstrated.

F. Virtual non-emergency matters

The judges of the Probate and Family Court are continuing to attempt to hear all case types/events, excluding trials and evidentiary hearings, virtually, in whole or in part, where it is practicable to do so. **The volume and type of cases to be heard will be determined by the Register and First Justice, collectively, and will be scheduled based upon on-site and remote staffing availability and the availability of technological support and training needed to conduct virtual hearings. Because of the unique characteristics of each physical location, some courts will not be able to safely increase staffing levels in the same way as other locations.** To facilitate the business of each division, in the discretion of the First Justice, the individual assignment of cases may be relaxed so that all cases may be heard as scheduled.

Whether it is practicable to address certain case types/events will differ for each division of the Probate and Family Court, and will be based on a variety of considerations. However, the Probate and Family Court is committed to hearing as many case types/events as is possible.

G.

This Standing Order does not affect the Probate and Family Court's ability to consider matters that can be resolved without in-person proceedings through communication by telephone, videoconferencing, email, or other comparable means. This Standing Order does not limit the Probate and Family Court's ability to consider matters through an administrative review process or to determine motions in accordance with Rule 78.

H. Programs

1. Parent Education requirements are governed by Temporary Amendment to Standing Order 2-16: Parent Education Program Attendance.
2. Lawyer of the Day programs will not be held until after July 13, 2020, unless done remotely.
3. Any person who was been ordered to perform community service shall not have to perform such community service until after July 13, 2020.

2. Court operations starting on July 13, 2020

A. Virtual Proceedings

The Probate and Family Court will continue to conduct most business virtually. The volume and type of cases to be heard virtually will be determined by the Register and First Justice, collectively, and will be scheduled based upon on-site and remote staffing availability and the availability of technological support and training needed to conduct virtual hearings. Because of the unique characteristics of each physical location, some courts will not be able to safely increase staffing levels in the same way as other locations. To facilitate the business of each division, in the discretion of the First Justice, the individual assignment of cases may be relaxed so that all cases may be heard as scheduled.

Whether it is practicable to address certain case types/events will differ for each division of the Probate and Family Court, and will be based on a variety of considerations. However, the Probate and Family Court is committed to hearing as many case types/events as is possible.

B. New Filings

For the actions listed in Section 2 (C) below, parties may file by email, mail, in-person, e-filing where available, or utilizing the MassAccess filing procedure where available.

For all other matters: Parties may file by the above means, except that email may only be used for filing when done so by a Court Service Center staff member or an attorney volunteering through a Lawyer for the Day program on behalf of a self-represented litigant.

C.

As outlined in Paragraph 4 of SJC Order OE-144 effective July 1, 2020, entry into a courthouse may be limited to avoid exceeding occupancy limits. In that event, the Probate and Family Court considers the below actions to be emergency proceedings for purposes of entry into a courthouse. This list is not ranked in order of importance.

1. Restraining Orders Pursuant to G. L. c. 209A/Orders to Vacate Pursuant to G. L. c. 208, § 34B, although hearings under G. L. c. 209A are presumptively virtual (See Section 2 (F) below);
2. Petitions/motions seeking a Do Not Resuscitate/Do Not Intubate/Comfort Measures Only (DNR/DNI/CMO) order, authorization for medical treatment order, or order for antipsychotic medication;
3. Petitions seeking appointment of a temporary guardian or conservator;
4. Petitions pursuant to G. L. c. 19A, § 7 and G. L. c. 19C, § 20 – protective services;
5. Health Care Proxy actions;
6. Petitions/Motions for Appointment of Special Personal Representative;
7. Petitions for marriage without delay;
8. Complaints for Dependency (SIJS) and any related motions;
9. All requests for injunctive relief;
10. Motions for temporary orders where exceptional/exigent circumstances have been demonstrated; and
11. Contempt actions where exceptional/exigent circumstances have been demonstrated.

D.

On July 13, 2020, the Probate and Family Court may begin hearing the below actions in person. All other matters will be heard virtually, unless the First Justice and Register of a division determine that additional actions may be heard in person. If a division is able to conduct additional in-person proceedings, the information describing those proceedings will be found at the Probate and Family Section of COVID-19 page.

1. Evidentiary hearings; and
2. Trials.

E.

Beginning on August 10, 2020, the Probate and Family Court may hear the actions listed below in person. All other matters will be heard virtually, unless the First Justice and Register of a division determine that additional actions may be heard in person. If a division is able to conduct additional in-person proceedings, the information describing those proceedings will be found at the Probate and Family Section of COVID-19 page.

1. Evidentiary hearings;

2. Trials;
3. Motions for temporary orders involving custody/parenting time; and
4. Contempt actions.

F. Abuse Prevention Orders

Proceedings pursuant to G. L. c. 209A (abuse prevention orders) shall be conducted virtually unless otherwise ordered by the court. Virtual hearings shall be conducted by videoconference, unless it is not practicable to conduct the hearing by videoconference, in which case the hearing may be conducted by telephone.

An in-person hearing may be permitted by a judge if requested by one or more of the parties, or as ordered by a judge. In determining whether to permit an in-person hearing to occur, the judge should take into consideration all relevant factors, including but not limited to the positions of the parties, case scheduling constraints, building and courtroom occupancy limits, and social distancing accommodations.

Downloads

Probate and Family Court Standing Order 2-20, as amended effective July 1, 2020
(https://www.mass.gov/doc/probate-and-family-court-standing-order-2-20-as-amended-effective-july-1-2020/download)
(PDF 147.62 KB)

UPDATES:

Adopted March 17, 2020, effective March 18, 2020 (https://www.mass.gov/media/2116411/download)
Section H (1) superseded March 24, 2020
(/probate-and-family-court-rules/temporary-amendment-to-probate-and-family-court-standing-order-2-16)
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