

Probate and Family Court Scheduling Practices and Procedures

Purpose:

To promote predictability and uniformity of practice to the mechanisms, practices and procedures utilized for the scheduling of all types of hearings in the Probate and Family Courts throughout the Commonwealth.

Applicability:

These practices and procedures apply to all divisions of the Probate and Family Court and are applicable in all cases, regardless of whether or not litigants are represented by counsel or self-represented.

Case Management

Pursuant to Standing Order 1-06, the Time Standards of the Probate and Family Court, all Domestic Relations and Equity cases shall be reviewed 120 days after the filing of the complaint to determine if service of process has been made. If no service has been made a notice shall be sent informing the Plaintiff that the case will be dismissed 21 days after the date of the notice unless the Plaintiff files with the court the return of service, or schedules a motion for an extension of time to complete service.

If service has been accomplished and returned to the Court within the requisite period of time, pursuant to Standing Order 1-06, section e., a case management conference will be scheduled by the court to be held on a date certain (approximately six weeks after the date upon which the return of service is due) and specified in the notice.

(N.B. A scheduled case management conference may be canceled if the case is before the Court prior to the date scheduled for the case management conference. Also, a joint stipulation may be filed by all parties in lieu of appearing at a case management conference. This process is detailed in Standing Order 1-06. The joint stipulation must, upon receipt by the Court, be incorporated by a Judge into a formal order).

Mandatory Next Event Scheduling

Pursuant to Standing Order 1-06, section 2.b., whenever a case is, for whatever reason, in Court, if the proceeding before the Court does not result in the matter being brought to final judgment, a next event date will be issued, preferably after consultation with counsel and/or the parties. The assigned date must be made before the parties leave the courthouse. There are to be no exceptions to the issuance of a next event date, unless the case already has a scheduled next event. In cases where the parties have reached any out of Court agreement and have a complete stipulation which the parties intend to have the Court incorporate into an order, the case may not be released until: the case has been given a next event date in the courtroom; the next event date is in the stipulation; or, a future event date had previously been scheduled. Cases referred to the Probation Department for Dispute Intervention which result in a stipulation that does not require further court appearance by the parties or their attorneys on that day, shall include a next event date, if the case is not going to judgment or decree. If the stipulation does not include a next event date, the case must return to the courtroom to receive a next event date.

Scheduling of Motions

Any party may mark a motion for hearing, with proper service upon the opposing party, for any date upon which the Judge to whom a case is assigned, is sitting and generally hears motions, except as follows. In the First Justice's discretion, with the approval of the Chief Justice of the Probate and Family Court, marking to a particular motion session, in a particular division, may be limited, as justice requires. Any limitation on motion sessions approved by the Chief Justice shall be posted in the division (Registry of Probate and courtrooms) and on the web site of the Probate and Family Court. In the First Justice's discretion an individual Judge may from time to time as circumstances may warrant, limit the number of matters which may be scheduled on a particular day.¹

There shall be no restrictions on the number or timing of motions which may be filed except as set forth above regardless of the nature of the underlying complaint, except that all motions (and complaints for contempt) shall be scheduled to be heard at the commencement of the Court's day unless otherwise allowed by the Court, or advance permission has been obtained from the Court to have a motion (or a contempt) heard at another time during the day. In the Court's discretion, motions that are expected to require greater than 20 minutes of time before the Court shall be specifically assigned by the Judge. The Court must be provided with the motion, and notice of the date and time of the motion, at the same time that the opposing party is given notice thereof. Advanced

The Probate and Family Court is committed to providing timely access to our Court for all parties in all cases. There are however instances where the number of motions per day must be limited, in order to insure the allocation of sufficient time to adequately hear each case. Parties are encouraged to consolidate the number of appearances in their case on issues requiring temporary relief.

permission to schedule a motion need not be obtained from the Court, except as set forth above.

Exceptions to number and timing of motion scheduling.

a. Dispositive Motions (i.e., Motion for Summary Judgment) shall be scheduled by the Judge assigned to the case. Motions for Summary Judgment and responses must be filed with the Court in accordance with Mass.R.Civ.P. 56 and Probate Court Rule 27C in advance of the hearing.

b. All ex-parte motions shall be reviewed, as directed by the Court, prior to presentment to a Judge. Any *ex parte* motion must be supported by an affidavit setting forth the nature of the emergency and shall be submitted in person. After review, such requests shall be heard by the Court at an appropriate time during the course of a judge's session.

c. Motions for permission to file a complaint or pleading must be presented in person to the Court;

d. Requests for a short order of notice must be presented to the Court in person, unless otherwise allowed by the Court.

Scheduling of Status and Pre-trial Conferences

If any action has not been before the Court, or for whatever reason does not have a next event date scheduled, either party may request that the case be assigned for a status conference or a pre-trial conference. In such event, the Court, and not a party, shall select the date (although a party may request a particular date or dates).

When multiple pre-trial conferences are to be heard on the same day, the Court should stagger the scheduling of pre-trial conferences throughout the day, for example, at 9:00 a.m., 10:30 a.m., 12:00 p.m., and 2:00 p.m. Pre-trial conferences shall be heard on the record in open session before the judge to whom the case is assigned. A pre-trial conference may be referred to a Judicial Case Manager, Assistant Judicial Case Manager, or Probation Officer in the discretion of the judge, with approval of the parties or their counsel.

Continuances

Motions, case management conferences, contempts, reviews and status conferences may, for good cause shown, be continued at the joint request (in writing) of the parties to a date certain if the case does not already have a next event date. Any such agreement to continue a matter may be either presented in person or faxed to the Court (e-mailing not permitted) prior to the date upon which the matter is scheduled to be heard. The request for a continuance will be reviewed by the Court for consideration. The Court reserves the right to deny any such request or to require the parties (either or both) to appear before the

Court (either in person or by tele-conference) to present any such motion. It shall be the responsibility of the parties to check with the Court, prior to the day of the hearing, to assure that the request for a continuance was granted as the case may be subject to dismissal, (if the case does not already have a next event scheduled), or a party subject to sanctions, for failure to appear should the request for a continuance not have been granted.

Pre-trial conferences may, for good cause shown, be continued once, by joint request, to a date certain, unless the Court orders that there will be no continuances when the Pre-trial conference is assigned.² Any such agreement to continue a pre-trial conference may be either presented in person or faxed to the Court (e-mailing not permitted) prior to the date upon which the matter is scheduled to be heard. The Court reserves the right to deny any such request or to require the parties (either or both) to appear before the Court (either in person or by tele-conference) and present any such motion. It shall be the responsibility of the parties to check with the Court, prior to the day of the hearing, to assure that the request for a continuance was granted as the case may be subject to dismissal, or a party subject to sanctions, for failure to appear should the request for a continuance not have been granted. Any further requests to continue a pre-trial conference, whether by agreement or not, must be presented to the court for hearing.

Any motion, even a joint motion, to continue a **trial date** must be presented in person (teleconference, if authorized by the Court, would constitute a personal appearance), and should be presented to the Court at least 30 days prior to the trial date, (except in emergency circumstances) with proper notice to the opposing party. In accordance with Mass.R.Dom.Rel.P. 40 (b) and Mass.R.Civ.P.40 (b), a motion to continue a trial may be allowed only for good cause shown.

Scheduling of Hearings on Uncontested Matters

The Court will hear any agreement or uncontested pleading which results in any complaint going to final judgment within thirty days of the filing of the pleadings or request for uncontested final hearing. Individual Divisions may adopt a policy to hear uncontested matters resulting in final judgment on a walk-in or expedited basis, but at a minimum, must establish procedures to hear such uncontested matters within thirty days of filing or request for hearing. Prior to the hearing, the case must have been filed in the Registry to assure that all required paperwork is in the file and then reviewed by a member of the Court staff for technical sufficiency. Requests may be made to hear uncontested matters resulting in final judgment in satellite sessions. Uncontested hearings for final judgment shall be heard by the judge to whom the case is generally assigned,

²If needed, requests for extension of discovery deadlines should be included with motions to continue.

with the exception of satellite sessions or if the case cannot be heard by the assigned judge within thirty days of filing or request.

Contested Discovery Motions

The parties may, by agreement, or at the direction of the Court be required to submit any such motion, without hearing, to the Court for determination on the pleadings and accompanying memoranda. After initial review by the Judge who would be hearing the motion, on the day of hearing, but prior to any appearance before the Court, the Judge may, in his or her discretion, refer all contested discovery motions to the Judicial Case Manager or to an Assistant Judicial Case Manager for review and recommendations. Cases not resolved through this referral shall be heard by the Judge. For Domestic Relations and Equity cases, prior to any such hearing or submission, the parties must have complied with the requirements of Mass.R.Dom.Rel.P 26(f) and submitted an affidavit affirming such compliance.

Scheduling of Tele-Conferences

The use of tele-conferences is encouraged in the following types of events:

- motions, in which participation of the litigants is not required;
- discovery motions;
- case management conferences;
- status conferences; and,
- any other matter at the direction of, and in the discretion of, the Court.

Any party seeking the participation at any proceeding of an attorney, litigant or witness via tele-conference must request permission for such participation by motion, with proper notice to the opposing party or parties, to be heard, or ruled upon, at least seven days prior to the scheduled event, by the Court. These motions will be handled administratively. If the Court approves the request, the Court will notify the requesting party of the time of the hearing and the telephone number to call.

Implementation and Effect

The provisions set forth in these Practices and Procedures shall supersede any local rules, practices, or promulgated procedures where there is a conflict.