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Lynch & Owens provides a comprehensive review of Massachusetts Probate & Family Court operations during the coronavirus crisis.

[Last Updated 5/15/2020]



From the earliest days of the Coronavirus crisis, Massachusetts courts have pursued ambitious plans to maintain services even as courtrooms have closed to live visitors for safety reasons. Leading this response has been the state's Probate & Family Court Department, led by Chief Justice John D. Casey, who's efforts have included an [open letter to Massachusetts parents](#) affected by the crisis.

Many of the court system's responses can be found on the state's page presenting the [Massachusetts court system's response to COVID-19](#).

However, the rapidly expanding list of special rules, orders and notices have turned into a tidal wave, in recent days. In this blog, we attempt to organize and present some of the new rules impacting Massachusetts Probate & Family Courts. We conclude the blog with observations about how courts are operating under the crisis.

UPDATE: 5/15/20: First Justice of the Plymouth Probate & Family Court Offers Guidance on Future Operations

In a letter shared through the Plymouth County Bar Association, Hon. Edward G. Boyle, III, First Justice of the Plymouth Probate & Family Court has offered attorneys guidance on court operations in the weeks ahead. Among the changes

on the way is an expansion of video and telephone hearings for non-emergency matters:

We expect to expand the number and types of matters to be heard in the near future. The Administrative office has secured zoom licenses for each judge. Trainings took place last week and additional trainings are scheduled this week. Once the trainings are completed, it is expected that each judge will conduct hearings on a daily basis.

I expect that each Judge will conduct Pre-Trial Conferences, Status Conferences, Contempt actions, Motions, Uncontested matters and Agency Sessions using telephonic conferencing or zoom technology. I shall start hearing matters that are currently scheduled. The matters that were scheduled, but not heard because of the shutdown, will be rescheduled for hearing during the next two months. Days that were set aside for trials will be used to hear those matters. Notices will be issued by the Court for those hearings.

Judge Boyle indicated that all trials will be placed on hold indefinitely:

Trials will be suspended until further notice. Counsel and parties are encouraged to continue to meet and discuss resolution of outstanding issues. If additional Court intervention would be beneficial to the parties/counsel in order to achieve a global resolution, the Court will do all it can to be accommodating. Alternative Dispute alternatives should be fully explored by parties and counsel.

With trials on hold, it appears that the judges will use the additional time in their schedule to catch up on the backlog of cases that accumulated during the shutdown. Judge Boyle noted that in order to participate, attorneys and litigants may need internet-ready devices and connections:

It will be necessary for the parties to have access to devices that will allow them to file memoranda, financial statements and other documents electronically.

He also indicated that a failure to file Pre-Trial Memoranda and Financial Statements in advance of hearings will result in continuances:

The way we conduct business in our Court will be different going forward. The days of filing Pre-Trial Memoranda, financial statements and child support guidelines on the day of the conference are over. These documents will need to be filed no later than ten (10) days prior to the hearing. If they

are not received according to this schedule, the matter may be taken off the list and rescheduled in the normal course. This will enable us to backfill the time slot allotted to the matter removed from the list.

Finally, he added that attorneys and litigants should familiarize themselves with all of the tools available in Zoom:

I urge all of you to familiarize yourselves with the zoom technology. There are several features you should become familiar with before participating in a hearing. Breakout rooms and waiting rooms are available for users and I expect they will be utilized during most hearings.

SJC Suggests Massachusetts Courts will Stay Closed Until Summer, with Increase in Non-Emergency Video/Phone Hearings in June

On May 15, 2020, the Supreme Judicial Court delivered a letter to attorneys in Massachusetts suggesting that Massachusetts courts "will physically reopen this summer, but only in stages and only for certain matters that require in-person appearances." The letter touted the increasing use of phone and video hearings while declaring with near certainty that courts will not re-open in June:

*Before May 4, the Trial Court was focused mostly on emergency matters. Now every department, guided by new standing orders, is also hearing an increasing number of nonemergency matters where it is practicable to do so without an in-court hearing. **We anticipate that our courthouses will likely remain physically closed in June, but that the number and range of nonemergency matters adjudicated virtually in the Trial Court will continue to grow, such that the Trial Court will endeavor to handle most matters that do not require an in-person court appearance.** Therefore, we are considering whether to end the tolling of certain court deadlines sometime in June, so that most matters may be released from "litigation limbo" and move forward in courts that are increasingly able virtually to act on those cases.*

This raises the question of whether the courts will attempt to resume "regular business", including hearing non-emergency motions, prior to the physical re-opening of courthouses in July or later. The key question focuses on which matters "do not require an in-person court appearance", as well as the timing of the expansion of matters that can be heard by video and phone. Even after

courthouses re-open, the SJC reports that courts will continue to rely heavily on remote operations:

Even as courthouses reopen, we will still need to conduct most court business virtually to reduce the number of lawyers, litigants, and court personnel that come to the courthouse, so that those who must come can do so safely with the necessary social distancing. The days when our Trial Court welcomed approximately 40,000 persons a day into our courthouses are over, at least for the duration of the pandemic.

The letter acknowledges that certain matters, such as jury trials, must be conducted in person, while expressing hope that trials may resume in September, if schools reopen:

We hope that, in September, if schools reopen, we will once again begin to conduct jury trials. But the challenges of conducting jury trials with social distancing during a pandemic are formidable, and will require us to reimagine how juries are empaneled, where they will sit during trial, and where they will deliberate so that jurors can both be safe and feel safe. We are hard at work trying to address those challenges, and it is premature to predict now what it will look like.

The SJC's current emergency order closing courthouses expires on June 1, 2020. We anticipate that the SJC will enter a new order in the next two weeks that extends the physical closures through the end of June, while inviting Trial Departments (including the Probate & Family Court Department) to expand the number of non-emergency matters that are regularly heard by Courts in the meantime.

UPDATE: 4/27/20 - Courts to Remain Closed Until June 1, 2020

The Massachusetts Supreme Judicial Court has [extended the closure of Massachusetts courts for non-emergency matters until June 1, 2020](#). The new order suggests that individual courts will continue to expand phone/video hearings for certain non-emergency matters, but ultimately confirms that Massachusetts courts are unlikely to be fully open for business for some time.

Courts Closed to Non-Emergency Matters, But Some Telephone Hearings Continue

[Probate & Family Court Standing Rule 2-20](#) was initially enacted on March 17, 2020, with several amendments in the weeks that followed. The main elements of Standing Order 2-20 are:

- Limits in-person appearances at courthouses that cannot be resolved through a videoconference/telephonic hearing through at least May 4, 2020.
- Telephonic and/or video hearings are used for most emergencies.
- Pleadings mailed to the court will continue to be processed and docketed by the court.
- Each county Probate Court to issue orders defining what constitutes such an emergency, and the method for filing emergency motions.
- Unless otherwise ordered, all deadlines set forth in statutes or court rules, standing orders, or guidelines that would otherwise expire May 4, 2020, are extended to at least that date.

Since Standing Order 2-20 was entered, the Courts have released several related orders and instructions, including:

- **Contact info for emergency filings by phone and email.** [Filing methods for emergency motions](#) applicable to all Probate Courts, including email/phone contacts for each court.
- **County-by-County Emergency Filing Rules.** Each county has issued separate [Guidelines for Operation When Court is Open for Emergency Matters During COVID-19](#), including defining what constitutes an emergency and methods for filing emergency actions by county.
- **Frequently Asked Questions (FAQ).** [Probate and Family Court FAQs Related to COVID-19](#) provides Q&A's for a variety of issues pertaining to Probate Courts and the coronavirus.
- **[Open letter from Chief Justice Casey dated March 24, 2020](#)**, providing that "Parenting orders are not stayed during this period. In fact, it is important that children spend time with both of their parents and that each parent have the opportunity to engage in family activities, where provided for by court order. In cases where a parent must self-quarantine or is otherwise restricted from having contact with others, both parents should cooperate to allow for parenting time by video conference or telephone."

Other Orders Impacting Massachusetts Probate & Family Courts (Updated 4/14/2020)

In addition to Standing Order 2-20, other orders impacting Probate Courts include:

- **Court staffs reduced to limit spread of virus.** On April 6, 2020, the SJC entered [Trial Court Emergency Administrative Order 20-7](#), which reduces court staff “to the minimum number of employees necessary to meet operational needs” with all other staff to “conduct their work remotely, to the extent feasible.”
- **Electronic signatures by judges and clerks allowed.** On March 25, 2020, the [SJC entered its order concerning electronic signatures of judges and clerks](#). The order allowed all judges and clerks to sign court documents electronically.
- **Electronic signatures by attorneys and self-represented parties allowed.** On April 13, 2020, the [SJC entered its order authorizing use of electronic signatures by attorneys and self-represented parties](#), which provides that, “In all courts and case types, whenever an attorney or self-represented party is required to sign a document to be served on another party or filed with the court, the attorney or self-represented party may electronically sign, unless the court specifically orders otherwise. The electronic signature can take the form of either a scan of the attorney's or self-represented party's handwritten signature, an electronically inserted image intended to substitute for a signature, or a ‘s/ name of signatory’ block”
- **Pleadings served by email instead of mail.** On April 2, 2020, [Probate and Family Court Standing Order 4-20](#) was entered, providing that pleadings that are ordinarily served by mail can be served on attorney using email. For self-represented (pro se) parties, service by mail is still required unless the pro se party consents in writing (email consent ok). The rule includes some exceptions and technical details worth reading in full. For example, the rule allows attorneys to sign affidavits on behalf of clients in certain circumstances.
- **Up to ten days for emergency restraining orders.** On March 17, 2020, [General Trial Court Emergency Administrative Order 20-5](#) regarding emergency restraining orders (effective March 19, 2020) entered, providing that “Judges serving on after-hours judicial response will have 10 days to issue emergency restraining orders, harassment prevention orders, and extreme risk protection orders. All hearings regarding emergency protective orders will be held by telephone conference or videoconference”, with parties to contact the Court by phone at 9AM the morning following the issuance of the order.

- **Guardian ad litem Evaluations (GAL) investigations and reports delayed.** On March 20, 2020, [Probate and Family Court Standing Order 3-20](#) extended all outstanding GAL appointments, investigations and reports to April 21, 2020 or later, with mechanisms built in for further extensions.
- **Parent Education Classes can be completed by video.** On March 24, 2020, [Temporary Amendment to Probate and Family Court Standing Order 2-16: Parent Education Program attendance](#) provided that parents can attend “virtual” parent education classes or by watching a 5-hour DVD. Notably, parents are not relieved from their obligation to complete the class, but may use an alternate method defined by the order. In person classes are postponed until at least May 1, 2020. Parents with questions about the parent education class can contact Christine Yurgelun of the Administrative Office of the Probate and Family Court at: christine.yurgelun@jud.state.ma.us.

Emergency Orders and Contact Information by County

The Courts have published separate instructions and contact information for filing emergency motions and other matters as follows:

Order by County (Click to View)	Email by County	Phone by County
- Barnstable	barnstableprobate@jud.state.ma.us	(508) 375-6710
- Berkshire When Court is Open	berkshireprobate@jud.state.ma.us	(413) 442-6941
- Berkshire When Court is Closed	berkshireprobate@jud.state.ma.us	(413) 442-6941
- Bristol	bristolprobate@jud.state.ma.us	(508) 977-6040
- Dukes	dukesprobate@jud.state.ma.us	(508) 627-4703
- Essex When Court is Open	correspondences@jud.state.ma.us	Salem: (978) 740-4143 Lawrence: (978) 686-9692
- Essex When Court is Closed	correspondences@jud.state.ma.us	Salem: (978) 740-4143 Lawrence: (978) 686-9692
- Franklin	franklinprobate@jud.state.ma.us	(413) 775-7460
- Hampden When Court is Open	hampdenprobate@jud.state.ma.us	(413) 748-7600
- Hampden When Court is Closed	hampdenprobate@jud.state.ma.us	(413) 748-7600
- Hampshire When Court is Open	hampdenprobate@jud.state.ma.us	(413) 748-7600

- Hampshire When Court is Closed	hampshireprobate@jud.state.ma.us (413) 586-8500
- Middlesex	middlesexprobate@jud.state.ma.us (617) 768-5800
- Nantucket	nantucketprobate@jud.state.ma.us (508) 228-2669
- Norfolk	norfolkprobate@jud.state.ma.us (781) 830-1278
- Plymouth	plymouthprobate@jud.state.ma.us (508) 897-5400
- Suffolk When Court is Open	suffolkquestions@jud.state.ma.us (617) 788-8300
- Suffolk When Court is Closed	suffolkquestions@jud.state.ma.us (617) 788-8300
- Worcester	worcesterpfc@jud.state.ma.us (508) 831-2200

To see if your court is temporarily closed, visit the [Trial Court's temporary court closures page](#).

Tips and Observations from Massachusetts Probate & Family Attorneys (Updated 4/10/2020)

Despite the tidal wave of new rules, orders and instructions from Massachusetts Probate & Family courts in the last month, many unknowns remain for attorneys and litigants. Below are some tips and observations from our attorneys. Please note that in this rapidly changing environment, all of the following could be replaced with new orders, instructions and common practices at virtually any time.

Please note that the following observations are offered for informational purposes only. Individuals should direct all questions to their [county's Probate & Family Court by phone or email](#).

- **Filing Emergency Motions by Email.** Although each court has provided rules for filing emergency matters, the level of detail in each county's order varies. In general, we are told that the preferred method for filing emergency matters is currently email. If the filing requires specific forms (such as a 209A restraining order), individuals should send an email to the court requesting the forms. For domestic relations cases, emergency motions should be accompanied by an affidavit or sworn statement explaining why there is an emergency. Emergency modifications should include a Complaint for Modification, an Emergency Motion and affidavit of emergency. Emergency Contempts should include a Complaint for Contempt and affidavit of emergency. Email filers must include a phone number. Court staff will respond by phone or email with feedback, including a time for a telephone conference with a judge.
- **What constitutes an "emergency" during the outbreak?** Although each court has issued its own instructions for emergency filings, the state's [Probate &](#)

[Family Court Coronavirus FAQ](#) provides a helpful general definition: “*You may be asked to write a statement explaining your emergency. “**Exceptional/exigent circumstances**” mean that the matter is serious and immediate, and that significant harm may occur if the case cannot be filed and heard. The Court may tell you that you need to give someone notice before a hearing can be held.*” Individuals are instructed to contact their court by [phone or email](#) if they are unsure if there is an emergency. Court forms are [available here](#).

- **E-Filing for Contest Divorce Filings Expanded.** Massachusetts attorneys have been able to “e-file” complaints for divorce in Massachusetts for some time. We are told that the state’s [e-file system](#) is now available to self-represented individuals. In addition to filing a contested Complaints for Divorce, we are told that e-filing is now the preferred method for filing motions, financial statements and other pleadings in open divorce cases. Unfortunately, the e-file system is not available for modification and contempt filings. (Parties/counsel who e-file pleadings should not file the same pleadings by mail or email. File using only one method to prevent confusion.)
- **Filing 1A Joint Petitions for Divorce.** All Massachusetts courts continue to accept Joint Petitions for Divorce by Mail. Many courts appear to be accepting 1A filings [by email](#) (but see 4/10/2020 update below re hearings in Barnstable, which is currently restricted to **mailed** pleadings.) For filings by email, it is important to include a phone number for the Court, as at least some courts are calling individuals so that the filing fee can be paid by credit card. Prior to filing by email, parties are encouraged to contact the court by phone or email to confirm that email filings (and payment by filing fees by credit card over phone) are accepted in that county. Individuals who submit 1A petitions by email should not mail copies of the same petition to the court.
- **Hearings to Approve Separation Agreements for 1A Divorces.** Separation Agreements filed by Joint Petition require a hearing before a judge before they can be approved. All courts have delayed hearings on 1A divorce agreements. However, some counties appear to be scheduling telephone hearings for judges to approve 1A agreements. Agreement with ambiguities or errors are less likely to be approved by a telephone hearing. It is essential to provide the court with accurate and easy to find contact information (phone and email) for both parties. Many courts are not presently scheduling 1A hearings at this time. Please be courteous and patient when asking if a telephone hearing is available in your county. Courts will schedule hearings on a first filed, first heard basis.
- **4/10/20 Update:** Barnstable Probate & Family Court has announced that it will begin scheduling hearings to approve Joint Petition (1A) divorce agreements that are filed **after** April 13, 2020. The new policy in Barnstable **requires joint petitions to MAIL their documents** and filing fee to the Court and

does not appear to be available to individuals who email joint petitions to the Court at this time.

- **Parties encouraged to file Complaints for Modification immediately.** Although courts are not hearing non-emergency motions on Complaints for Modification, courts are strongly encouraging parties not to delay in filing Complaints for Modification and Motion for Temporary Orders following job loss or any other change in circumstances. We are hearing that judges are likely to grant retroactive relief back to the date of filing. Moreover, non-emergency motions are likely to be scheduled for hearings in the order they are received when courts re-open. All courts accept filing of Complaints for Modification by mail (with a check for the filing fee enclosed). Most courts are accepting non-emergency Complaints for Modification [by email](#), with Court staff calling email filers to pay filing fees by credit card over the phone.
- **Parties encouraged to file Complaints for Contempt immediately.** As with modifications, Massachusetts courts are not hearing non-emergency Complaints for Contempt at this time. However, courts continue to accept new filings by mail, and we are told that hearings will be scheduled for contempts on first-filed, first heard basis. Most courts are accepting non-emergency Complaints for Contempt [by email](#), with Court staff calling email filers to pay the summons fee by credit card over the phone.
- **Service by Email for Complaints for Contempt/Modification.** We are told that many courts are administratively allowing motions for alternate service, in which a party/attorney asks to serve a complaint for contempt/modification of summons on the opposing party by email due to the coronavirus crisis. Such motions should be filed with the complaint, include the opposing party's email address, and request administrative approval by the court without the need for a hearing. Courts continue to docket and process complaints as they arrive, and to issue summons.
- **Some courts may be closed completely due to quarantining rules.** Although courts are closed to in person hearings, most courts remain staffed and operating. However, a steady stream of courts have been forced to close for 14-day periods due to one or more staff member experiencing symptoms. The court maintains a [running list of closed courthouses here](#). Individuals or attorneys who are unable to contact their court directly should call the state-wide Help Line at 833-91COURT, which is staffed from 8:30am – 4:30pm, Monday through Friday. Individuals seeking a restraining order when their Probate Court is closed should first contact their local District Court, then contact the [SAFEPLAN Program](#).

- **Motions can be decided on pleadings by request.** We hear that most judges will decide almost any issue “on the pleadings” (i.e. based on written filings without hearing) if both parties agree. Parties should file a Joint Motion for Decision on the Pleadings along with each party’s motion/opposition with a supporting affidavit.
- **Judges will schedule telephone hearings on some non-emergency matters if the parties agree.** Although courts are not generally hearing non-emergency matters, some judges may schedule telephone hearings on non-emergency matters if the parties agree. Counsel and parties are advised to contact the court before preparing extensive pleadings, as judges may not be available.
- **Other than Separation Agreements, most signed stipulations and agreements will be entered without a hearing.** Although Separation Agreements still require a hearing, most stipulations for temporary orders, as well as agreements for judgment entered on modification, contempt and 209C actions will be allowed by the court without a hearing. Parties/counsel may need to file a joint motion to allow stipulation.
- **Videoconferencing options limited.** Although the court is to hearing matters via video conferencing, we are hearing that budgetary issues and staff limitations are preventing the widespread adoption of video hearings in the Probate Courts. The use of telephone conference hearings is widespread.

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Jason V. Owens
Partner & Senior Counsel

More Coronavirus Coverage from Lynch & Owens

The attorneys of Lynch & Owens have been blogging about the impact of the coronavirus on divorce and family law issues, as well as Massachusetts Probate & Family Courts, since the earliest days of the pandemic. Our coverage has been featured in the [New York Times](#) and the [Boston Globe](#). Check out the links below for more Covid-19 coverage from Lynch & Owens.

Coronavirus Impacts on Family Law:

- [Nine Ways to Plan for Divorce During Quarantine \(5/13/20\)](#)
- [Ask Our Attorneys: How has the Coronavirus Impacted Family Law in Massachusetts? \(5/6/20\)](#)
 - [Coronavirus News: Enforcing Child Support and Alimony Orders During the Crisis \(4/7/20\)](#)
 - [Massive Coronavirus Layoffs Trigger Child Support and Alimony Reductions Across MA and US \(3/19/20 with updates\)](#)
 - [Coronavirus Court Closures: How Covid-19 is Shutting Courts in Divorce and Family Law Cases \(3/14/20 with updates\)](#)
 - [Can Coronavirus Fears Allow Parents to Cancel Court-Ordered Visitation? \(3/2/20 with multiple updates\)](#)
 - *Massachusetts Probate & Family Court Updates:*
 - [Coronavirus News: Mass. Probate & Family Courts Release Tidal Wave of New Rules \(4/9/20 with multiple updates\)](#)
 - [Coronavirus News: County-by-County Info for Massachusetts Probate & Family Courts \(3/26/20 with multiple updates\)](#)
 - [Massachusetts Trial Court Announces Comprehensive Response to Coronavirus for MA Courts \(3/15/20 with updates\)](#)
 - *Mediation and Coronavirus:*
 - [Mediation is the Best Divorce Option During the Coronavirus Crisis \(4/15/20\)](#)
 - [Court Filings and Covid-19: How to File Agreements in MA Probate & Family Courts During Crisis \(4/9/20\)](#)
 - [Surviving Coronavirus: Video Mediation for Divorce and Family Law Issues \(3/19/20\)](#)
 - *Other media featuring Lynch & Owens and coronavirus:*
 - [NY Times: For Divorced Parents, Navigating Coronavirus Is a Balancing Act \(3/27/20\)](#)
 - [Boston Globe: For divorced couples with children, coronavirus creates added challenges \(4/10/20\)](#)

A Message to Our Readers Outside of Massachusetts

As a Massachusetts law firm, much of the information provided in our blogs is tailored to Massachusetts law and practices. Although portions of this and our other [blogs covering coronavirus-related issues](#) are likely to be broadly

applicable outside of Massachusetts, it is important to note that every state has its own specific body of law and domestic relations best practices that can differ from Massachusetts in important ways. The options available to individuals facing domestic relations concerns during the coronavirus outbreak may also be greatly impacted by [local court closures](#) and government restrictions that are specific to your area, such as state-mandated quarantine and shelter in place orders. Please consult with a legal professional in your state for guidance.

Coronavirus Related Legal Services at Lynch & Owens

Lynch & Owens has adjusted our service delivery model in response to the coronavirus crisis. In addition to providing traditional divorce and family representation, during the outbreak, we are focused on delivering rapid-response legal services (including same-day service) to clients facing emergency financial and child-related issues, as well as assisting self-represented clients with document preparation and filings while the courts are closed for most regular business.

Clients can schedule same-day, 1-hour paid consultations with our attorneys by phone and we are accepting retainers as low as \$750 for additional consultation services. We are also offering same-day video mediation for parents, spouses and former spouses who are seeking to mediate coronavirus-related issues such as visitation, parenting time, and child support and alimony orders impacted by layoffs and unemployment. Our staff and attorneys have full remote access to all our office's resources in the event of mandatory quarantine or shelter-in-place order.

Please see our dedicated **Coronavirus Legal Services page** and [Coronavirus Mediation Services page](#) for more about services provided by Lynch & Owens and South Shore Divorce Mediation during the coronavirus crisis.

About the Author: [Jason V. Owens](#) is a Massachusetts divorce lawyer and family law attorney for Lynch & Owens, located in [Hingham](#), Massachusetts and [East Sandwich](#), Massachusetts. He is also a mediator for [South Shore Divorce Mediation](#).

Schedule a consultation with [Jason V. Owens](#) today at [\(781\) 253-2049](tel:7812532049) or send [him an email](#).

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