

Standing Order 3 - 11
Modification Pilot Program
for IV-D cases filed in the Probate and Family Court
As Amended May 15, 2013

In an effort to explore the possibility of streamlining the modification process in the Probate and Family Court, the following procedures will be implemented for all IV-D cases that seek a modification of child support and/or medical support.

A. Application

These procedures apply to all IV-D cases filed in the Probate and Family Court, including those filed by private counsel, parties on a pro se basis and/or by DOR, that involve a request for modification of child and/or medical support only.

These procedures do not apply to complaints for modification that seek a change in custody and/or visitation, nor can these procedures be used to address the issues of custody and/or visitation.

B. Forms and Procedures

For cases that have previously gone to judgment:

1. A unified, one-page form that combines a complaint for modification and motion for temporary orders for child or medical support only may be filed. The unified complaint and temporary motion form will be accompanied by a summons establishing a hearing date on the return day. The hearing date will be set by the Court when issuing the summons.

OR

2. A complaint for modification of child or medical support only (no motion) may be filed. Those parties who choose not to use the unified form, may use the simplified complaint form. The summons for this complaint will establish a date for a case management conference. The date of the case management conference will be no earlier than 45 days from the date the complaint was filed. The case management conference date will be set by the Court when issuing the summons.

For cases where there is an open complaint and a support order has previously been established:

1. A simplified form for a motion for further temporary orders is available. The hearing date will be set by the Court and included on the motion.

C. Service

Notwithstanding the form filed, service by first-class mail will be used on a routine basis for all IV-D cases seeking a modification of child or medical support only. When serving a Complaint for Modification with Motion for Temporary Orders form or a Complaint for Modification form, service shall be made on the party no later than 10 days prior to the date of the hearing or case management conference. When serving a motion for further temporary orders, service shall be made on the party, or attorney, if applicable.

D. Proof of Notice for Complaint for Modification with Motion for Temporary Orders and Complaint for Modification only

1. A certificate of service must be filed with the Court on or before the date of the hearing or case management conference. The certificate of service shall include who was served, the address to which service was mailed, and the date service was mailed. If the defendant is served in hand, the certificate of service must also be filed. The certificate of service shall include who was served, and the date, time and place service was made.
2. If the defendant does not appear for the hearing or case management conference in response to first-class mail service, a judge may still proceed if there is proof of actual notice. Proof of actual notice, includes, but is not limited to, (a) the responding party filed an answer to the complaint for modification; (b) the responding party called DOR to inquire about the upcoming hearing/matter; or (c) the filing party testifies that the responding party contacted him or her in response to the complaint. A judge may decline to go forward and hear the case if not satisfied that actual notice occurred.
3. If proof of actual notice is not established at the hearing or case management conference, the Court shall then require service under the existing Massachusetts procedures for domestic relations cases. See Mass. R. Dom. Rel. P. 4 (d). A new summons shall be issued on the date of the hearing or case management conference by the Registry or a judicial case manager.

E. Effect of Non-attendance

1. If one party does not attend the hearing or case management conference, and the other party does attend but the matter cannot go forward, upon receipt of information verifying the amounts, the judge may require the non-attending party to pay the costs and/or lost wages of the attending party.
2. If the plaintiff/requesting party or, after proof of actual notice, the responding party does not attend the hearing or case management conference, the judge may enter a default support and/or medical support order.
3. If, in a case where the Department of Revenue is not providing assistance with the modification to the plaintiff, the plaintiff does not attend the hearing or case management conference but the defendant does, and the plaintiff has not filed a Motion to Continue, the Court may dismiss the Complaint for Modification with Motion for Temporary Orders or Complaint for Modification.
4. If, in a case where the Department of Revenue is not providing assistance with the modification to the plaintiff, neither party appears for the hearing or case management conference, and neither party has filed a Motion to Continue, the Court may dismiss the Complaint for Modification with Motion for Temporary Orders or Complaint for Modification.

F. Reissuance of Initial Summons

There may be circumstances where judicial or Registry staff may determine that it is appropriate to reissue an initial summons that may be mailed. These circumstances include, but are not limited to, if (a) the plaintiff did not have the defendant's correct address and now has it, and/or (b) the plaintiff requests a new hearing or case management conference date, prior to the scheduled date.

G. Implementation Dates

These procedures, as revised, will remain in effect in the Bristol Division.

As of May 15, 2013, these procedures will be implemented in the Barnstable Division.

As of July 1, 2013, these procedures will be implemented in the Hampshire and Norfolk Divisions.

As of August 1, 2013, these procedures will be implemented in the Dukes, Franklin, Nantucket and Plymouth Divisions.

As of September 3, 2013, these procedures will be implemented in the Berkshire, Middlesex, and Worcester Divisions.

As of October 1, 2013, these procedures will be implemented in the Essex and Hampden Divisions.

As of November 1, 2013, these procedures will be implemented in the Suffolk Division.

Effective Date: May 16, 2011. Revised Date: May 15, 2013.