

## MEMORANDUM

TO: The Members of the Berkshire Bar

FROM: Richard A. Simons, First Justice *Simons* Berkshire Probate and Family Court

DATE: March 24, 2020

RE: Protocols for the Berkshire Division of the Probate and Family Court in light of Standing Order 2-20

---

First of all, I hope this finds all of you healthy and safe.

Secondly, on behalf of the Court, I want to thank you for your (a) understanding and patience as we navigate this crisis; and (b) spirited willingness to assist the Court in helping our litigants, who are already stressed, maneuver through their conflict in this current environment.

The Court has established protocols to implement the strictures of Standing Order 2-20. These protocols are intended to assist you in understanding how the Berkshire Division will be operating during this crisis.

As you know, we are all swimming in uncharted waters. To be sure, unanticipated issues will arise. We view our partnership with the Bar to be essential to the administration of justice in our community. If there are issues that you observe from your vantage point that we have not considered, please use the Domestic Relations/Probate Bench/Bar Committee chaired by Mary F. Courtney, Esq. [MFC@clhlawyers.com](mailto:MFC@clhlawyers.com) to funnel comments to the Court.

Finally, during these trying times stay healthy, practice kindness, and as my idol, Mister Rogers said in his effort to explain 9/11 to children, "Look for the helpers. You will always find people who are helping."

**BERKSHIRE PROBATE AND FAMILY COURT**  
**OPERATIONS UNDER PROBATE AND FAMILY COURT STANDING**  
**ORDER 2-20**

The following protocols are implemented forthwith by First Justice Richard A. Simons and Register Francis B. Marinaro to address access to the Court and temporary case management processes during the COVID-19 pandemic.

**ACCESS TO THE COURT**

Commencing March 18, 2020, the Court is **CLOSED** to all in-person activity, except for emergencies that cannot be handled electronically, by telephone or by video conferencing.

1. There will be a Judge on-call during the Court's regular business hours: Monday through Friday from 8:30 a.m. to 4:30 p.m. in order to hear emergency cases by telephone or video conference. There are very limited circumstances where the Court may conduct in-person hearings. If such in-person hearing is allowed, no other witness may be allowed to enter the building, unless allowed ahead of time by the presiding Judge.
2. If someone believes s/he or his/her client has an emergency that fits within the parameters of Standing Order 2-20, that person should not come to the Court; but instead, should call the Registry at (413) 442-6941 for screening and remote processing of emergency pleadings. **THIS DOES NOT APPLY TO ANY INDIVIDUAL WHO IS IN IMMEDIATE FEAR OF PHYSICAL HARM CONSISTENT WITH THE STANDARDS FOR OBTAINING A RESTRAINING ORDER OR THOSE UNDER A VACATE ORDER.** In those cases, the person may enter the Court to complete the necessary pleadings. Hearings will be conducted by telephone.
3. If someone arrives at the courthouse alleging an emergency as specified in Standing Order 2-20, the signs posted instruct the person to call a telephone number for initial screening by the Register, Assistant Register or Judicial Case Manager. The person will be required to wait outside of the courthouse, or in their vehicle, and will not be permitted into the building while they await the results of the emergency screen.
  - a. If the matter presented is determined to be an emergency requiring immediate judicial action, the individual will be provided with the necessary forms to be completed. After they are submitted, the forms will be reviewed by the Judge who will rule on the matter administratively, hold an immediate telephonic hearing, or provide other orders for hearing.

- b. If the matter presented is determined not to be an emergency, the individual and/or counsel will be sent home to complete forms and file them via e-filing or mail as in the ordinary course.
- c. All requests for Restraining Orders and requests for Vacate Orders are emergencies which shall be heard telephonically once the paperwork is complete. Hearings on the return dates shall be heard, in-person, unless directed otherwise by the Judge.

### **CASE MANAGEMENT PROTOCOLS**

Commencing March 18, 2020 and until further notice, the following will be the protocol for all events currently scheduled or to be scheduled before the Court.

#### **1. TRIALS**

Trials scheduled to begin between March 18, 2020 and May 1, 2020 shall be continued. Counsel/parties will be contacted by the Court about rescheduling.

#### **2. TRIALS IN PROGRESS**

Trials now in progress shall be rescheduled. Parties may request a telephone conference on the next assigned trial date to determine future scheduling to conclude the trial.

#### **3. PRE-TRIAL CONFERENCES, STATUS AND REVIEW CONFERENCES**

All conferences already scheduled between March 18, 2020 and May 1, 2020 will be rescheduled, unless a telephonic conference or video conference hearing is requested and approved pursuant to these protocols.

Parties may jointly make a request to have the Probation Department conduct a dispute intervention session via telephone to resolve their case. If the parties are able to reach a final resolution, the matter will be brought before the Court for a telephonic hearing to reduce the case to a Judgment.

#### **4. CONTEMPTS**

- a. Outside of cases where there are exceptional or exigent circumstances as outlined in Standing Order 2-20, no summonses will be issued for newly filed Contempts with a return date prior to May 1, 2020.
- b. Contempts scheduled for hearing between March 18, 2020 and May 1, 2020 shall be rescheduled to the first available date after May 1, 2020.

## 5. MOTIONS

- a. No non-emergency motions will be scheduled before May 1, 2020, unless otherwise ordered by the Judge assigned to the case per the protocol in this memorandum.
- b. Non-emergency motions that have been scheduled for hearing prior to May 1, 2020, may be decided as follows:
  - i. On the pleadings pursuant to Rule 78, provided that:
    1. Both parties agree in writing to this process;
    2. The Court is provided with one (1) Motion package consisting of the following:
      - a. The Motion, with a separate Memorandum<sup>1</sup> stating the reasons that the Motion should be allowed, the supportive Affidavit of the moving party; and
      - b. A Memorandum in opposition<sup>2</sup> stating the reasons that the Motion should not be allowed, and the supporting Affidavit of the opposing party.
    3. Separately filed Memoranda and/or Affidavits shall not be considered. It is the obligation of the moving party to coordinate the filing of the one (1) permitted Motion package.
  - ii. By telephone or video conference, if necessary and practical as determined by the Court. Contact the Judicial Case Manager or Sessions Clerk assigned to the Judge for information on how the matter will proceed.
  - iii. If not decided as set forth in paragraphs (i) and (ii) above, the matter will be remarked by the parties to a date after May 1, 2020.

## 6. EX PARTE EMERGENCY MOTIONS

- a. Ex parte Motions shall be screened administratively by the Court to determine whether an emergency exists.
- b. If the matter is deemed to require an immediate hearing, the Court shall decide the time, place and manner of the hearing.

---

<sup>1</sup> Motions and Memoranda may not exceed five (5) pages (double spaced) and affidavits may not exceed three (3) pages.

<sup>2</sup> Memoranda in Opposition may not exceed five (5) pages (double spaced) and affidavits may not exceed three (3) pages.

## 7. 209A ABUSE PREVENTION ORDERS

- a. All restraining order requests and requests for Orders to Vacate pursuant to G.L. c. 208, § 34B (including return dates when notice has not been accomplished) shall be heard by telephone or video conference.
- b. All emergency protection orders (G.L. c. 209A and G.L. c. 208, §34B) issued ex parte during the pendency of this Standing Order may only be extended after the Court conducts an in-person hearing.
- c. All emergency protection orders (G.L. c. 209A and G.L. c. 208, §34B) issued at a hearing after notice prior to March 16, 2020 that are due to expire on or after March 16, 2020 shall remain in effect until the matter is rescheduled and heard by the Court.

## 8. UNCONTESTED MATTERS

Matters that have been resolved by agreement may be scheduled for a telephone or video conference pursuant to these protocols.

## 9. THE USE OF PROBATION

The Probation Department stands ready to assist parties and counsel with Dispute Intervention Services telephonically. If parties jointly seek to engage in the Dispute Intervention process on any pending matter, both parties (or both attorneys, if the parties are represented) shall contact Chief Probation Officer Amy A. Koenig or Assistant Chief Probation Officer, Stephen Nickoski at (413) 443-9469 to schedule a telephonic dispute intervention.

## REQUESTING HEARINGS

Commencing March 18, 2020 until further notice, a request for a non-emergency hearing by telephone conference or video conference, in which no other process has been outlined, must be emailed to the Sessions Clerk assigned to the Judge.

### 1. TELEPHONE CONFERENCE

A request for a telephonic hearing on a non-emergency matter already scheduled for hearing before April 30, 2020, shall be made via email to the Sessions Clerk stating in the subject line "Telephonic Hearing Request". You will receive an answer via email. If permitted, the telephonic hearing will be scheduled on a date and time available to the Court.

## 2. VIDEO CONFERENCE PROCEDURE

A request for a video conference hearing on a non-emergency matter already scheduled for hearing before April 30, 2020, shall be made via email to the Sessions Clerk stating in the subject line "Video Conference Hearing Request". The request shall include the case name, docket number and event type, valid email addresses and phone numbers for all participants, and a certification that the participants have a computer, tablet or phone with video capability and microphone/speakers, a working WIFI/internet connection, and the ability to download the "Real Presence" player (for which a link will be sent by email). If permitted, the video conference hearing will be scheduled on a date and time available to the Court.

### EXTENSION OF ORDERS

1. Treatment plans that expire between March 18, 2020 and May 1, 2020 will be administratively extended for 60 days. Administrative extension of treatment plans shall be signed by the Magistrate or Judge. A party may seek to bring the matter forward for good cause upon a demonstration of exigent circumstances via email to the assigned Judge's Sessions Clerk. If such a request is made, it shall be forward to the assigned Judge who may act on the matter administratively, or mark it for a telephonic hearing.
2. Orders for Appointment in Guardianship and Conservator cases that expire between March 18, 2020 and May 1, 2020 will be administratively extended for 60 days. Administrative extension of these Orders shall be signed by the Judge. A party may seek to bring the matter forward for good cause upon a demonstration of exigent circumstances via email to the assigned Judge's Sessions Clerk. If such a request is made, it shall be forward to the assigned Judge who may act on the matter administratively, or mark it for a telephonic hearing.
3. *Sua sponte* custody orders that expire between March 18, 2020 and May 1, 2020 shall be extended 45 days from the expiration date unless a party seeks to bring the matter forward for good cause upon a demonstration of exigent circumstances via email to the assigned Judge's Sessions Clerk. If such a request is made, it shall be forward to the assigned Judge who may act on the matter administratively, or mark it for a telephonic hearing.
4. All orders that were issued prior to the Standing Order and after an adversarial hearing (or the opportunity for an adversarial hearing) that are due to expire prior to April 21, 2020, shall remain in effect until the matter is rescheduled and heard.

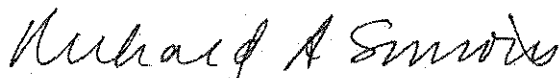
## NEW FILINGS

Commencing March 18, 2020 until further notice, all filings must be made by e-filing or by mail. No filings shall be accepted in person unless otherwise provided for and in the manner provided under these protocols. No events shall be scheduled on any new filings prior to May 1, 2020.

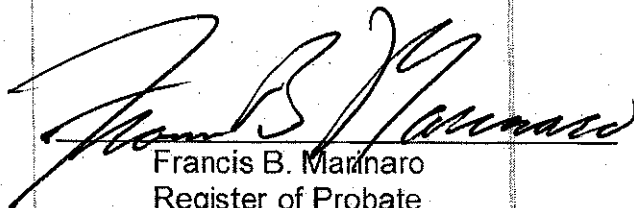
## PROGRAMS AND ORDERS

Commencing March 18, 2020 until further notice or expiration of Standing Order 2-20, the following have been suspended or canceled:

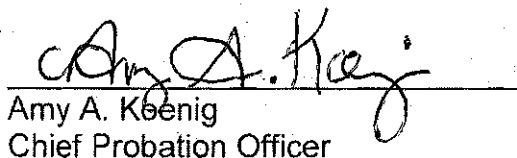
1. All in person Parent Education courses are suspended. Parties may complete their requirement of parent education by completing the 5 hour DVD or online program entitled *KidCare for Co-Parents: An Educational Program for Divorcing Families*.
2. Lawyer for the Day program is suspended until further Order of the Court.
3. Any person who has been ordered to perform community service shall not have to perform such community service until after May 1, 2020.
4. All "seek work" Orders are suspended until further Order.
5. Random drug screens supervised by Probation are suspended until further Order.
6. Conciliation sessions run by the Berkshire Bar are suspended until further Order.
7. *Enhancing Families Through Literature* is suspended until further Order.



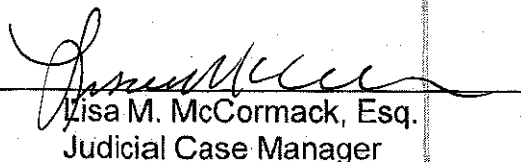
Richard A. Simons  
First Justice



Francis B. Marinaro  
Register of Probate



Amy A. Keenig  
Chief Probation Officer



Lisa M. McCormack, Esq.  
Judicial Case Manager

DATED: March 24, 2020

Contact information:

Judge Simons' Sessions Clerk: Joan Oggiani can be reached at [joan.oggiani@jud.state.ma.us](mailto:joan.oggiani@jud.state.ma.us)

Judge Dacyczyn's Session Clerk: Lisa Marcotte can be reached at [lisa.marcotte@jud.state.ma.us](mailto:lisa.marcotte@jud.state.ma.us)

Lisa McCormack, Judicial Case Manager can be reached at [lisa.mccormack@jud.state.ma.us](mailto:lisa.mccormack@jud.state.ma.us)