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Massachusetts Probate Courts are scheduled to slowly begin re-opening to the public for limited matters in July and August of 2020.



With the number of [coronavirus](#) cases in Massachusetts declining, courthouses in the state are slowly beginning to [reopen for business](#) in ways that will soon impact [family law and divorce](#) cases. On June 24, 2020, Chief Justice of the Probate & Family Court, John D. Casey, [announced a change to Standing Order 2-20](#), which includes a blueprint for courts to resume live, in-person hearings after more than three months of conducting nearly all court business by phone and video conferences.

In-Person Trials and Evidentiary Hearings to Resume July 13th

On July 13, 2020, the Probate Court judges will resume trials and evidentiary hearings in live sessions. However, it is unclear at this time how aggressive individual judges will be in scheduling trials, given the logistical challenges associated with preparing exhibits and scheduling trial witnesses. Attorneys and parties generally know their trial dates months ahead of time.

It remains to be seen if Massachusetts Probate & Family Courts will begin scheduled trials that were delayed by the pandemic immediately after July 13th. Most judges will likely take a somewhat cautious approach in the early days of reopening.

Contempt Hearings and Motions for Temporary Orders Involving Child Custody to Resume on August 10th

On August 10, 2020, Probate Courts may also begin scheduling live hearings for motions for temporary orders involving parenting time and child custody, as well as contempt hearings. It is important to note how qualified and conditional the language of the rule is on reopening. The rule states:

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.

The rule also suggests that individual courts and judges may be “able to conduct additional in-person proceedings”, with more information to be posted on the [Trial Court’s Covid-19 page](#). The new rule also suggests that some courts may not be equipped to re-open, where revised [Standing Order 2-20](#) provides:

Whether it is practicable to address certain case types/events will differ for each [county court] of the Probate and Family Court, and will be based on a variety of considerations.

In addition, the rule makes clear that even after partial re-opening, the court will attempt to keep conducting as many virtual hearings as possible.

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.

Probate Courts May Decline to Hear Some Non-Emergency Matters Before July 13th

As we have covered in our blogs since the pandemic began, Massachusetts courts have engaged in a delicate balance when it comes to hearing non-emergency matters while courts have been closed. The Probate Court's Covid-specific rules and standing orders have continuously stressed that courts will schedule telephone and video hearings on emergency matters including:

- Petitions to appoint a conservator or temporary guardian
- Petitions for marriage without delay
- Motions for temporary orders or [complaints for contempt](#) where it has been shown that there are exceptional circumstances
- Restraining orders and requests to vacate orders

At the same time, Probate Courts have gradually scheduled an increasing number of non-emergency matters for phone and video hearings as the pandemic has unfolded. Accordingly, many non-emergency motions and hearings (such as pretrial conferences) have been scheduled and heard during the pandemic. However, many other non-emergency matters have been postponed or rescheduled by the courts, often based on the unique scheduling issues faced by individual courts and judges.

What Impact Will July and August Deadlines Have on Non-Emergency Filings?

Some attorneys are likely to interpret the August 10th deadline as requiring Massachusetts Probate Courts to schedule hearings on all non-emergency contempt and motions for temporary orders involving parenting time for hearings after August 10, 2020. However, the language in the rule suggests that individual judges and courts will retain a greater degree of flexibility than this. While the new rule provides that Massachusetts Probate Courts *may* schedule live hearings on non-emergency contempt and custody motions, this does not necessarily mean that all non-emergency motions must be scheduled for a live or virtual hearing.

Instead, it seems likely that Probate Courts will gradually move towards live hearings in August while continuing to schedule many non-emergency matters for phone or video hearings. Moreover, it seems likely that individual courts and judges will retain discretion to decline to hear non-emergency matters of every kind based on the circumstances surrounding that particular judge and his or her courthouse.

When Will Live Hearings on Motions to Modify Child Support and Alimony Begin?

Notably absent from the new order is news on when Probate Courts will begin scheduling non-emergency motions for temporary orders pertaining to child support and alimony for live hearings. With the virus creating an unprecedented economic crisis, including a massive spike in unemployment, Probate Court judges are well aware that there is a great deal of “pent up demand” for parties seeking to [modify child support and alimony orders](#). Many judges have already scheduled non-emergency motions for support-related issues by telephone and video conferences, particularly when at least one (and more often two) attorneys are involved in the case.

Most likely, judges will closely observe how well the system handles motions for temporary orders involving child custody before determining when and how to re-open the courts to financial motions. (It is worth noting that motions that address both child custody *and* child support or alimony will qualify for hearing.) One major concern surrounding child support and alimony is whether the [enhanced federal unemployment benefits of \\$600 per week](#) will end on July 31, 2020. If these benefits terminate without further relief, family law practitioners expect a huge spike in complaints to modify child support and alimony, as well as [contempt filings for enforcement](#) of such orders.

How Will Probate Courts Handle In-Person Hearings Once They Resume?

The new orders include a long list of safety measures that Courts will engage in once live hearings resume. The revised Standing Order makes it very clear that virtual hearings are preferred, and that only the people who are absolutely required to attend a meeting or a hearing in the courtroom will be granted entry. This is to reduce the amount of person-to-person contact that can lead

to the transmission of the virus, and will typically be limited to the parties, their attorneys, and any witnesses that will give testimony.

A separate Standing Order issued by the Massachusetts Supreme Judicial Court (SJC) [on June 24, 2020](#) offers more insight into how courts will handle reopening to the public, including the following rules and guidance:

- The physical reopening of courthouses to the public on July 13, 2020 shall be undertaken with diligent regard for the health and safety of court users and personnel, in accordance with protocols established by the Trial Court or the relevant appellate court, as applicable. All court users and personnel shall be subject to appropriate screening before they are allowed to enter a courthouse for purposes of preventing the spread of COVID-19. For the same reason, courthouse staff may monitor the number of people entering and leaving a courthouse to ensure that the number within the courthouse does not exceed the occupancy limits established to protect public health and permit physical distancing. To limit the number of people in a courthouse at any given time, all departments and offices within a courthouse shall coordinate with each other and schedule proceedings in a staggered fashion throughout the day.
- Court personnel, attorneys, parties, witnesses, and other necessary persons as determined by the presiding judge can be physically present in a courtroom for in-person proceedings. The presiding judge shall also determine the method by which members of the public, including the "news media" as defined in Supreme Judicial Court Rule 1:19(2), may access the proceeding, which may include allowing them to sit in the courtroom, provided there is sufficient space for them to maintain appropriate physical distance. Where a virtual hearing is scheduled, no one other than court personnel may be physically present in the courtroom during the virtual hearing without the approval of the judge or clerk-magistrate conducting the hearing. In the absence of exceptional circumstances, as determined by the judge or clerk-magistrate conducting the hearing, no party (or attorney for a party) may be physically present in the courtroom for a scheduled virtual hearing. Where an in-person hearing is scheduled, a judge, upon request, may authorize a participant (an attorney, party, or witness) to appear virtually while other participants appear in person, so long as it is consistent with the protection of constitutional rights. A participant who requests to appear virtually for an otherwise in-person proceeding shall have no grounds to object to other participants appearing in person.
- Because of the increased reliance during the pandemic on cell phones and other personal electronic devices (PEDs) to communicate with courts and

facilitate court proceedings, beginning on July 13, 2020, cell phones and other PEDs shall not be banned from any courthouse. Cell phones and other PEDs must be used in compliance with the rules set forth in [Trial Court Emergency Administrative Order 20-10 \(Order Concerning Trial Court Policy on Possession & Use of Cameras & Personal Electronic Devices\)](#), which was issued on June 24, 2020, and becomes effective on July 13, 2020. The rules shall be posted on the [COVID-19 webpage](#) (see paragraph 17) and at the entrance to each courthouse.

What seems clear is that access to the courts for live hearings on non-emergency matters will be subject to many restrictions, including how many hearings any court will schedule on a given day. Parties insisting on a live hearing will likely face significant delays in obtaining a hearing date; although we simply won't know for sure how scheduling will work until reopening arrives.



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Wide Discretion Given to Individual Probate & Family Court

It can't be emphasized enough that the revised Standing Order only *allows* courts to conduct in-person hearings and trials after July 13; it does not *mandate* it. Individual Probate & Family Courts appear to be given wide discretion about what types of hearings will still be done remotely vs. in person.

It is important to note that individual Probate & Family Courts have continually updated their policies and procedures for the Covid-19 pandemic each time that a new Standing Order from the SJC and/or Probate & Family Court Department has been announced. The last round of county-specific updates were announced on July 11, 2020, and are [available here](#). We anticipate that each county will post new protocols for re-opening in the days and weeks ahead, which will also be published in the [Probate & Family Court section of the Trial Court's Covid-19 response page](#).

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