



THE COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT
ADMINISTRATIVE OFFICE
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November 20, 2007

Hon. Herbert P. Wilkins
11 Edmonds Road
Concord, MA 01742

Re: Access to Justice Report

Dear Chief Justice Wilkins:

I commend your efforts to highlight the ways in which the Massachusetts Courts can increase access to justice for all residents of the Commonwealth. The Probate and Family Court has been at the forefront of efforts to ensure that our Courts are accessible to all. In particular, because of the tremendous increase in the last decade in the number of unrepresented litigants appearing in our Court, we have developed many initiatives and programs to ensure that these litigants have meaningful access to the Probate and Family Court. I attach a copy of a report relative to Pro Se Litigants in the Probate and Family Court. The report provides an overview of pro se initiatives; dynamics of pro se practice in our Court; the approximate number and percentage of cases filed by pro se plaintiffs and the detail of the services for pro se and all litigants available in our Courthouses.

In addition to describing for you in the attached report the significant number of programs that exist in the Probate and Family Court which expand access to justice, I would like to address specific aspects of the report and how they relate to the continued efforts of the Probate and Family Court to promote access to justice for all residents of the Commonwealth.

Right to counsel in Guardianship Proceedings

The review of guardianship matters in the Access to Justice report seems premised on the conclusion that there currently exists a right to counsel in all guardianship proceedings. In particular, the report suggests that section 5 of Rule 3:10 of the Supreme Judicial Court grants a blanket right to counsel in all guardianship proceedings. Our analysis suggests that this is an overly broad reading of S.J.C. Rule 3:10.

Based on our analysis, we conclude that S.J.C. Rule 3:10 (5) (Section 5) must be read along with S.J.C. Rule 3:10 (2) which requires a statutorily based, or S.J.C. rule-based, right to counsel. S.J.C. Rule 3:10 is a procedural rule created to guide courts by providing a procedure to implement G.L. c.211D, the statute relating to the establishment of the Committee for Public Counsel Services.

S.J.C. Rule 3:10 (1) sets forth the definitions that apply in Rule 3:10. Section (i) defines a “party”, in relevant part, as any person with a right to counsel. When applying this definition to Section 5 it is apparent that a statute or separate S.J.C. rule must exist to authorize a right to counsel before S.J.C. Rule 3:10 should be applied. S.J.C. cases addressing the assignment or a right to counsel do not cite to S.J.C. rule 3:10, rather they cite to the statutorily-based right to counsel. See Commonwealth v. Nieves, 446 Mass. 583, 591 (2006), citing G.L.c.123A, secs.12(d) and 13(c)), and Commonwealth v. Bruno, 432 Mass. 489, 509(2000), citing to G.L.c.123A, sec.12(d).

The Probate and Family Court is not opposed to any discussion of the right to counsel in certain civil matters, including guardianships, and in fact would support such a right, although, practically, funding must be provided if such a right were granted. Our Court is currently participating in the Boston Bar Association’s Task Force on Expanding the Right to Counsel in Civil Legal Matters, chaired by Attorney Mary Ryan, where these issues are being discussed.

Domestic Violence

Every division provides specialized assistance to victims of domestic violence. Some divisions have SAFEPLAN programs, some have legal services programs, and others have specially trained staff assisting victims of domestic violence.

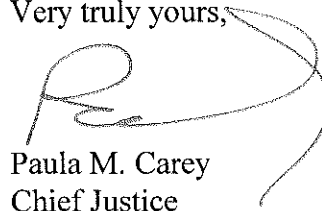
The Probate and Family Court participates in an interdepartmental working group to address issues of common concern regarding procedures under G.L. c.209A and to further the cooperation among Trial Court Departments in implementing our joint jurisdiction in 209A matters. The work of the group will hopefully generate policy and procedure interdepartmentally where it is currently lacking. The working group is likely to develop draft legislation to eliminate the current interdepartmental complexity when an order of one Court is amended by another, provide procedures to improve transmittal of ex parte orders to the police for service, a policy to encourage uniformity in judges’ decisions on whether to make an order returnable in the District Court, the Probate and Family Court, or the Boston Municipal Court.

Report Recommendations

The Probate and Family Court is already actively engaged in processes designed to meet many of the goals embodied in the report recommendations. We are piloting the Limited Assistance Representation model in three divisions. We provide meaningful assistance to the public in every one of our divisions, and are leaders in the Trial Court in assisting unrepresented litigants. While there is always more work to be done, it is important to recognize the efforts that the Registers of Probate, the First Justices, Chief Probation Officers, and all the staff of the Probate and Family Court have taken to increase access to justice in the Probate and Family Court.

I would be happy to meet with you anytime to discuss the work of the Probate and Family Court Department in increasing access to justice for the residents of the Commonwealth.

Very truly yours,

A handwritten signature in black ink, appearing to be 'P. Carey', with a long, sweeping flourish extending to the right.

Paula M. Carey
Chief Justice

PMC/im

cc: Hon. Margaret H. Marshall, Chief Justice, Supreme Judicial Court
Hon. Robert A. Mulligan, Administrative Office of the Trial Court
Francis S. Moran, Jr., Legal Counsel to the Chief Justice