



PAULA M. CAREY  
CHIEF JUSTICE

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT  
PROBATE AND FAMILY COURT DEPARTMENT  
ADMINISTRATIVE OFFICE  
JOHN ADAMS COURTHOUSE  
BOSTON, MA 02108

Tel: (617) 788-6600  
Fax (617) 788-8995

## Notice Inviting Comment

### Proposed Amendments to Rule 412 of the Supplemental Rules of the Probate and Family Court

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#### **NOTICE Proposed Amendments to Rule 412 of the Supplemental Rules of the Probate and Family Court**

Chief Justice Paula M. Carey, along with the Probate and Family Court Bench/Bar Committee on Rules, solicits comments on proposed amendments to Rule 412 of the Supplemental Rules of the Probate and Family Court.

The proposed changes to Rule 412, Joint Petition for Modification of Child Support Judgment, would expand the rule to allow parties to modify any judgment or temporary order of the Probate and Family Court where the parties are in agreement, the agreement is in writing, and all other requirements of the rule are met.

A redlined version of the proposed amendments to Rule 412, showing the additions and deletions to the current rule, and the text of how Rule 412 would appear with the proposed amendments, appear below.

Comments on the proposed amendments should be directed to the Probate and Family Court Bench/Bar Committee on Rules, c/o Evelyn Patsos, Esq., and sent via facsimile to (617) 788-6605 or by email to [evelyn.patsos@jud.state.ma.us](mailto:evelyn.patsos@jud.state.ma.us) on or before **Friday, February 15, 2013**.

**RULE 412. UNCONTESTED ACTIONS TO MODIFY A JUDGMENT OR ORDER JOINT PETITION FOR MODIFICATION OF CHILD SUPPORT JUDGMENT**

In order to facilitate uncontested actions to modify a judgment or order, including, but not limited to, actions to modify ~~for~~ child support consistent with the Child Support Guidelines, the following uniform procedure is to be employed:

(a) The parties shall ~~jointly~~ file with the court a ~~j~~Joint ~~p~~Petition to modify a ~~for Modification of Child Support j~~Judgment or a joint motion to modify an order, on a form approved by the Probate and Family Court. ~~Said~~The petition or motion shall be accompanied by:

- (1) an agreement setting forth the agreed upon modification(s), which must be notarized if modifying a judgment;
- (2) complete and accurate financial statements signed by each party, and counsel, if any, pursuant to Supplemental Probate and Family Court Rule 401, with W- 2's attached, if financial issues are being modified;
- (3) a complete and accurate Cchild Ssupport Gguidelines Wworksheet, if child support or medical insurance is being modifiedand;
- (4) a written assent from the Department of Revenue Child Support Enforcement Division as the IV-D agency when a party, and/or a dependent child, is a current recipient of public assistance or owes a past-due child support debt assigned to the Commonwealth, and any term relating to child support or medical insurance is being modified;
- (5) any other assent or document required by statute or court rule; and
- (36) a proposed judgment or order on a form approved by the Probate and Family Court, if the child support is being paid by wage assignment, a complete order for support and health care coverage reflecting the child support amount agreed upon in the petition.

(b) Formal notice or service shall not be required.

~~(b) (c) The Joint Petition for Modification of Child Support Judgment and accompanying documents shall be filed with the court. No~~ Neither party shall mark the joint petition or joint motion for hearing. In the event that the court believes that a hearing is necessary or

helpful to a disposition of the petition matter, the court will set the time and date for the hearing and will notify the parties within twenty-one fourteen (2114) days of the filing of the joint petition or motion. If the pleadings are deficient or incomplete, an in-person hearing will be required.

(~~d~~) A ~~j~~Joint ~~p~~Petition ~~for Modification of Child Support Judgment or joint motion that which~~ is not ~~set down scheduled~~ for ~~a~~ hearing ~~in accordance with paragraph (b) hereof~~ will be decided on the papers filed in accordance with this rule within thirty fourteen (3014) days of ~~the such~~ filing ~~of the joint petition~~.

(~~e~~) A judgment or order entered on a ~~The j~~Joint ~~p~~Petition ~~for Modification of Child Support Judgment or joint motion involving child support if allowed by the court,~~ will be entered in the State Case Registry pursuant to G.L. c. 119A, § 4.

(~~f~~) This rule cannot be applied to actions governed by G. L. c. 209A.

Adopted June 5, 2003, effective September 2, 2003; amended December 14, 2011, effective January 2, 2012; amended \_\_\_\_\_, effective \_\_\_\_\_.

### **Reporter's Notes-2003**

This new Rule allows for a simplified process by which parties may agree to modify a judgment for child support consistent with the Child Support Guidelines. Entry of the case in the State Case Registry pursuant to section (d) necessitates the filing of a State Case Registry form if the parties have not previously filed the form.

### **Reporter's Notes-2013**

The Rule is expanded to allow parties to modify a judgment or order of the Probate and Family Court where the parties are in agreement, the agreement is in writing, and all other requirements of this Rule are met. The 2013 amendments to the Rule will allow the court to handle more cases administratively. Section (d), as referenced in the 2003 Reporter's Notes, is now section (e).

## **RULE 412. UNCONTESTED ACTIONS TO MODIFY A JUDGMENT OR ORDER**

In order to facilitate uncontested actions to modify a judgment or order, including, but not limited to, actions to modify child support consistent with the Child Support Guidelines, the following uniform procedure is to be employed:

(a) The parties shall file with the court a joint petition to modify a judgment or a joint motion to modify an order, on a form approved by the Probate and Family Court. The petition or motion shall be accompanied by:

- (1) an agreement setting forth the agreed upon modification(s), which must be notarized if modifying a judgment;
- (2) complete and accurate financial statements signed by each party, and counsel, if any, pursuant to Supplemental Probate and Family Court Rule 401, with W- 2's attached, if financial issues are being modified;
- (3) a complete and accurate Child Support Guidelines Worksheet, if child support or medical insurance is being modified;
- (4) a written assent from the Department of Revenue Child Support Enforcement Division as the IV-D agency when a party, and/or a dependent child, is a current recipient of public assistance or owes a past-due child support debt assigned to the Commonwealth, and any term relating to child support or medical insurance is being modified;
- (5) any other assent or document required by statute or court rule; and
- (6) a proposed judgment or order on a form approved by the Probate and Family Court.

(b) Formal notice or service shall not be required.

(c) Neither party shall mark the joint petition or joint motion for hearing. In the event that the court believes that a hearing is necessary or helpful to a disposition of the matter, the court will set the time and date for the hearing and will notify the parties within twenty-one (21) days of the filing of the petition or motion. If the pleadings are deficient or incomplete, an in-person hearing will be required.

(d) A joint petition or joint motion that is not scheduled for a hearing will be decided on the papers filed in accordance with this rule within thirty (30) days of such filing.

(e) A judgment or order entered on a joint petition or joint motion involving child support will be entered in the State Case Registry pursuant to G.L. c. 119A, § 4.

(f) This rule cannot be applied to actions governed by G. L. c. 209A.

Adopted June 5, 2003, effective September 2, 2003; amended December 14, 2011, effective January 2, 2012; amended \_\_\_\_\_, effective \_\_\_\_\_.

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