

## **GLOSSARY OF SOME COMMON TERMS**

### **COMPLAINT -**

1. In civil cases: The first paper, or pleading, filed with the court, in which the plaintiff gives the reasons for the suit.
2. In criminal cases: A written accusation, made under the penalties of perjury, that a crime has been committed and that probable cause exists to believe that the named person is guilty of the offense. A criminal complaint may be filed by the police or by a private party who files an application for criminal process with the clerk-magistrate.

**COMPLAINT FOR MODIFICATION** - A complaint filed to change an existing order or judgment due to a change in circumstances. For example, complaints for modification are frequently used in domestic relations cases to revise custody arrangements as the children age and their needs change.

**CARI** - "Court Activity Record Information." A computerized database maintained by the Office of the Commissioner of Probation containing a record of all criminal and some civil court actions related to a particular person. A CARI report lists a particular individual's involvement as a party in all of the courts of the Commonwealth. See **CORI, CJIS, WMS**.

**CORI** - Criminal Offender Record Information. Data maintained by the Department of Criminal Justice Information Services detailing an individual's criminal history, including charges and dispositions. A CORI report is a computer printout of an individual's CORI data. See **CARI, CJIS, WMS**.

**CERTIFICATE OF SERVICE** - A signed statement by a party making a motion or filing a pleading that all parties to the case have been properly informed that the motion or pleading has been filed, and have been served with a copy of the motion or pleading.

**EVIDENTIARY HEARING** - A hearing at which evidence is presented, as opposed to a hearing at which only matters of law are addressed.

**EX PARTE** - Latin for "one side only." Involving only one party to a case, without prior notice to any other party. *Ex parte* actions are generally allowed only in emergency situations.

1. *Ex Parte* Communication: A communication between the court and one party to a case, made without prior notice to any other party.
2. *Ex Parte* Injunction: An injunction issued upon the request of one party to a case, without prior notice to any other party.
3. *Ex Parte* Motion: A motion made to the court by one party to a case without prior notice to any other party.
4. *Ex Parte* Order: A temporary order made by the court without notice to the other side. An *ex parte* order is typically valid until the other side has an opportunity to appear before the court. In Massachusetts, *ex parte* orders are most commonly issued to prevent domestic violence under c. 209A, in which case the order is normally valid for up to ten days, until the defendant receives notice of the order and has the opportunity to be heard.

**FEE-GENERATING APPOINTMENT** - An appointment by a court that will generate a fee for the person appointed, paid either by the court or by the party involved, such as an appointment as guardian *ad litem*.

**GUARDIAN AD LITEM** - A guardian "for the suit" (Latin), appointed by the court to promote and protect the interests of a person affected by the litigation. Examples:

1. A guardian *ad litem* may be appointed to represent the interests of a minor or incompetent person who is a defendant in a civil action, or who is a party to or affected by a domestic relations or juvenile court proceeding.
2. A guardian *ad litem* may be appointed to represent the interests of any person in any proceeding in the Probate and Family Court. Sometimes a court appoints a guardian *ad litem* to protect the interests of an unascertained, unknown, unborn, or disappeared person.
3. A guardian *ad litem* may be appointed by a court to investigate some aspect of the facts of a case related to a minor or incompetent person and to report back to the court regarding the results of the investigation.

**HEARSAY EVIDENCE** - Testimony in court about a statement made outside of court, offered to prove the truth of the matter asserted in the statement. Hearsay is generally inadmissible, although there are numerous exceptions to the rule against hearsay.

**IMPOUND** - To keep some or all of the papers, documents or exhibits in a case separate from the case file and unavailable to the public. Impoundment must be ordered by a judge and is normally allowed only on motion, and only if the moving party shows that allowing public access to the information in question would be harmful, but some material in some types of cases is automatically impounded.

**IN HAND** - In some cases, a summons, subpoena or other document must literally be placed in the hand of the person to whom it is addressed in order to be properly served, referred to as "in hand" service of process.

**IRRETRIEVABLE BREAKDOWN** - A ground for divorce which does not assign fault to either party. If the parties agree on the grounds for divorce and have a written agreement on all issues (including child custody, child support, alimony and the division of assets), a divorce for irretrievable breakdown may be granted based on a joint petition for divorce pursuant to G.L. c. 208, § 1A, often referred to as a "1A divorce." If the parties are unable to reach an agreement prior to filing for divorce, one person can file a complaint for divorce alleging irretrievable breakdown of the marriage, pursuant to G.L. c. 208, § 1B, often referred to as a "1B divorce."

**JUDICIAL CASE MANAGER** - Formerly known as "assistant registers", judicial case managers are appointed by the First Justice in each Division of the Probate and Family Court. Their duties may vary from division to division but courtroom duties generally include calling cases, swearing in witnesses, keeping statistics, entering exhibits, checking files for trial readiness and keeping cases moving in an orderly fashion. Judicial case managers also review stipulations, uncontested domestic relations and probate matters and make recommendations regarding these matters to judges. They may also advise judges, attorneys and the general public on procedural matters.

**MOTION** - A request made to a court in the course of a legal case seeking an order or decision on some aspect of the case. The person making the motion is known as the "moving party." Motions may be made in writing or orally. For example:

1. Motion *in limine*: Latin for "at the threshold." A motion made before trial to determine ahead of time whether a particular piece of evidence will be admissible at trial.
2. Motion to compel: A motion seeking to force the other party to comply with a discovery request.
3. Motion to suppress: A motion made before a criminal trial asking the court to exclude evidence that will be offered by the prosecutor at trial because it was obtained in violation of the defendant's constitutional rights.
4. Motion to quash: See **QUASH**.

**MOTION SESSION** - A court session exclusively devoted to hearing and deciding motions.

**MOVING PARTY** - The party who makes a motion.

**NEXT FRIEND** - Similar to a guardian ad litem, a next friend may be appointed by the court to represent, defend or prosecute the interests of a minor or incompetent person. A child's parents may also file suit as the child's next friend without a court appointment. Sometimes referred to as acting "on behalf of" or "OBO" the minor or incompetent person.

**NOTICE** -

1. Notice of appeal: The written notice filed by a party to request that an appellate court review a decision or judgment made by a Trial Court. The original is filed with the Trial Court Department or Division where the case originated, which prepares the record on

appeal to send to the appellate court. The Massachusetts Rules of Criminal and/or Civil Procedure dictate how a party properly files a notice of appeal.

2. Notice of hearing: A written notice to a party of the time, date, place, and subject matter of an upcoming court proceeding.
3. Notice to quit: A written notice by a landlord to a tenant demanding that the tenant vacate the property. The notice to quit terminates the tenancy. Depending on the grounds for the eviction, the notice to quit will give the tenant a specific number of days to move out of the premises. A properly served notice to quit is required in most cases before a tenant can be evicted.

**PLEADINGS** - In a civil action, the papers that set forth the parties' claims and defenses. The plaintiff's pleadings state his or her claims against the defendant. The defendant's pleadings state his or her defenses to the plaintiff's claims and any counterclaims he or she may have. There are other, less common, types of pleadings, such as a third-party complaint.

**REGISTER OF PROBATE** - The elected official in the Probate and Family Court of each county who serves a role similar to that of a clerk in other Departments of the Trial Court. The Register's office is referred to as the Registry of Probate. The case files in domestic relations, probate and other cases over which the Probate and Family Court has jurisdiction are kept there.

**RETURN OF SERVICE** - A report by a sheriff, deputy sheriff or process server recording the manner in which he or she served a process or order of the court. The return of service is filed with the court to prove that service was made.

**SERVICE OF PROCESS** - The delivery of writs, orders or other documents to the party to whom they are addressed, usually by a process server (a constable or a deputy sheriff.) Forms of service include:

1. In-hand service: Delivering the documents directly into the hand of the addressee.
2. Last and usual service: Leaving the documents at the last and usual residence of the addressee.
3. Service by publication: Publishing the summons or other notice as a legal advertisement in a designated newspaper, used when the party to be served is absent or is a nonresident.

**SESSIONS CLERK** - A court employee who works in the courtroom assisting the judge running the court session.

**TEMPORARY ORDER** - An order issued in the early stages of a domestic relations case to ensure that any children involved are cared for appropriately and that both parties have enough money to take care of themselves and any children. The order remains in effect until there is a trial or an agreement that results in a judgment that divides any assets, orders spousal support and/or child support, and establishes custody and visitation arrangements.

**UNDER ADVISEMENT** - Under consideration. When a matter has been heard by a judge but the judge has not yet rendered a decision, the judge is said to have taken the matter "under advisement."