

The Process of Exchanging Information In Family and Probate Court

Discovery, Mandatory Disclosure, and Subpoenas

The information provided in this booklet does not constitute legal advice and is based on the laws of Massachusetts as of the publication date. It is always advisable to seek legal advice from an attorney. **A list of resources for low-income people is on the last page.**

This booklet was produced by Neighborhood Legal Services, Inc., with assistance from the Massachusetts Law Reform Institute and with funding from the Massachusetts Bar Foundation and the Massachusetts Legal Assistance

Corporation.

© Neighborhood Legal Services
May, 2000

If you are involved in a case in Family and Probate court, this booklet gives you information about:

Section 1: What is Discovery? 2

Section 2: What is Mandatory Disclosure? 3
 Your Obligations and the Opposing Parties’ Obligations 3
 How Can I Use the Information I Have Gathered from
 Mandatory Disclosure 4
 Financial Statement 4
 Federal and State Tax Returns 7
 Four Most Recent Pay Stubs 7
 Documentation About Health Insurance Availability 8
 Statements of Assets 9
 Loan or Mortgage Applications 9
 Other Statements of Assets or Liabilities 9

Section 3: What is a Subpoena? 10
 Subpoena Testificandum 10
 Subpoena Duces Tecum 10
 How Do I Issue a Subpoena? 10
 How Do I Use the Information I Get By Subpoena? 11 .

Section 4: Formal Discovery: 12
 Depositions 12
 Keeper of the Record Depositions 13
 Interrogatories 14
 Request for Production of Documents 14
 Request for Admissions 15

Section 5: Turning What You Got Into Evidence 16
 Relevance 16
 Witnesses 16
 Hearsay 17
 Non-Hearsay 17
 Exception to the Hearsay Rule 18
 Admissible Records 18

Section 6: Dictionary of Legal Terms 20

Section 7: Sample Forms 23

Section 1

What is Discovery?

Discovery is the means by which the parties in a court action gather information from each other so that they can build a stronger case and improve their chances of getting the Court to order what they are looking for. Discovery makes it possible for you to gain access to information and documents in the possession of the other party. It also makes it possible for the other party to gain access to information in your possession. In some cases you will not need to perform discovery beyond what is required of *mandatory disclosure*. In others, it will be important to your case. Discovery is especially important when there are *contested issues* or *assets*.

This booklet will discuss three levels of discovery; each progressively more complex: mandatory disclosure, subpoenas, and formal discovery. All discovery is controlled by rules of court which are somewhat complicated and difficult to apply. If your case is one which requires even some basic discovery, we suggest that you consult an attorney as attorneys are trained to decipher and apply the rules of discovery.



If you are unable or unwilling to retain an attorney to assist you, you should at least consult with one. This booklet is not intended to be a substitute for an attorney but a guide to assist you in the legal process. The information in this booklet does not constitute legal advice as it is general in nature and may apply differently to different facts. The information may also be dated and you should check the publication date before relying upon it.

Please note that effective January 1, 2000, in all divorce and separate support cases, both parties are prohibited from transferring or otherwise disposing of **any** property they have except in certain limited situations. For more information about this you should consult Supplemental Probate Court Rule 411 or an attorney. (See sample form at page ???)

Section 2

What is Mandatory Self Disclosure?

In domestic relations cases there is some information that the court requires you to automatically provide to the opposing party. This is called *mandatory disclosure*.

Your Obligations and the Opposing Party's Obligations

Beginning December 1, 1997, all parties to any domestic relations case are required to deliver to the other party, within 45 days of service of the *summons*, copies of the following documents:

- ' Financial Statement;
- ' Federal and State income tax returns for the prior three years;
- ' statements for the prior three years for all bank accounts;
- ' your four most recent payment stubs;
- ' documentation concerning the cost and nature of available health insurance coverage;
- ' statements for the prior three years concerning securities, pensions, IRA's and similar assets;
- ' loan or mortgage applications submitted within three years prior to filing; and
- ' financial statements and statements of assets and liabilities prepared by either party within three years of filing.

You are responsible for providing to the other party any and all of the documents relating to these matters. In addition, the law requires that you provide updated documents and information in these areas if the information changes.

If you do not have these documents, you are required to explain to the other party, in writing, why you do not have the documents and what you did to try and get them. You are expected to make reasonable efforts to get any of the documents you do not currently have. See sample responses to mandatory disclosure at pages ???

Remember: make copies for your records of all you send to the other party or his or her attorney

How Can I Use What I Have Gathered From Mandatory Disclosure?

The information gathered through mandatory disclosure can be effectively used to assist you in your case.

U financial statement

The financial statement is the single most important financial document in any domestic relations case. You and the opposing party are required to exchange financial statements within 45 days from the date the defendant is served with the *Domestic Relations Summons*. In addition, any time you go to Family and Probate Court on any financial matters, you are required to file an updated financial statement. If nothing has changed since your previous financial statement, you can simply re-date and re-sign the previous one.

The financial statement is divided into 12 sections and very valuable information can be extracted from the various parts. All judges are very serious about this form and make sure that it is filled out carefully. If something is missing, demand the information.

Of all the information you receive through any discovery, the Financial Statement is the most important and will automatically be considered by the Court and *accepted into evidence*. Additionally, the financial statement provides basic information which you can investigate further by *subpoena* if necessary. Please see the sample financial statement at pages ????????

p *income information*

Sections 1 - 7 should give you clear information about the opposing party's employer, income payroll deductions and income from the previous year. Please note that the form requires that the previous year's W-2 forms be attached. In calculating child support, the amount listed as income will be used in the *child support guidelines* to calculate how much child support should be paid. Please see sample child support guidelines at pages ????????

Uses for income information listed on the financial statement

You can use the income information to show that a person has an *ability to earn* a certain amount. If, for instance, a person's W-2 forms state that he or she earned \$25,000 in the previous year but now that person is stating that he or she earns much less or nothing, you can argue to the Court that he or she should be expected to make the same amount as before.

p *expense information*

Section 8 lists all of the weekly expenses such as housing, food, clothing, automobile and any other weekly costs. Section 9 lists any counsel fees paid. The Court will look at this information to see how much the person filling it out needs.

Uses for expenses information listed on the financial statement

You can use the expense information to show that you are not able to make ends meet on the current income you have. You can also use it to argue that the opposing party has extra income or fewer expenses. For instance, if the other party is living with friends or family, his or her living costs will be very low. Since the judge is bound to stick to the child support guidelines and can only vary 2% either way, this argument will only be useful in divorce cases where one party is seeking alimony or in a contempt or modification case where one party is being brought to court for *contempt* or is claiming he or she can no longer pay the amount ordered. This information may also be helpful in a child support case in order to show the judge that an order $\pm 2\%$ from the guidelines is necessary; for example owing to regular special expenses.

p *assets*

Section 10 lists all of the *assets* held by the person filling it out whether they own it entirely or with someone else. The Court is interested in this information because it shows what property there is to be divided or what money and assets other than regular income is available.

Uses for assets information listed on the financial statement

You can use the information provided here to evaluate what assets may be available for division in a divorce case or what assets may be available as child support in cases involving children. You can use the information provided to check against what you receive through mandatory disclosure. There may be something listed on the financial statement which you have not received through mandatory disclosure. For instance, the financial statement may state that there is a 401(k) retirement account but you have not received copies of any statements as required by the rules of mandatory disclosure. If you know the other party is not being truthful about the values of the assets listed, this is a good place to get information so that you can subpoena the information you need. (See the section about subpoenas below.) If there are discrepancies between what you know to be true and what shows up on the financial statement, remember that this document is signed under the pains and penalties of perjury and you should point out all irregularities to the judge.

p *liabilities*

Section 11 lists all liabilities. Liabilities are debts and financial obligations. Any debt or obligation you have must be listed here even if it is from before the marriage. Common debts are: credit card debts, loans, mortgages, amounts owed to friends and family and amounts owed for utilities etc. In all cases, the Court will want to know how extended you are. In divorce cases, the Court is just as interested in dividing liabilities as in dividing assets. Take the time to fill this section out on your financial statement and to review this section after receiving it from the opposing party.

Uses for liabilities information listed on the financial statement

You can use the information provided in this section to show how saddled you are with debts or how few debts the opposing party has. The question of your ability to borrow may come up in a contempt case where there is an *arrearage*.

Please Note: When a debt is divided by agreement or court order, the *creditor* is not bound by this agreement or order and may come after you for the money. Be sure you address what will happen in this case. Many agreements have what is referred to as a *hold harmless clause* for protection in such cases.

p *signing the financial statement*

Section 12 is where you sign the financial statement. Please note that the language above the signature states that you are signing it under the pains and penalties of perjury. It shows how seriously the court takes the document.

Uses for the fact that the financial statement is signed

Remember, this document is signed under the pains and penalties of perjury and signing it when you know something is not true can result in criminal proceedings against you. You can point out any misrepresentations to the judge. Remember, once you or the opposing party is established as being deceitful or untruthful, it taints everything you tell the Court.



Most importantly, of all the documents you receive through mandatory disclosure, the financial statement is guaranteed to be admitted at a trial.

For more information about filling out a financial statement, please see
How to Fill Out a Financial Statement (Short Form)
in this series of brochures produced by Neighborhood Legal Services.

U **federal and state tax returns**

Mandatory disclosure also requires that the parties exchange tax returns from the previous three years.

The information in the tax returns will, in some cases, tell even more than a financial statement about where a person's money goes.

Getting a tax return can be relatively simple if you have signed it. You can request a copy from the person who prepared it, if any, or you can request a copy from the IRS. You may get a summary of the form but do not hesitate to call the IRS customer service line if there is something you do not understand.

Complicated tax returns, however, are extraordinarily difficult to read and we recommend that you seek the services of an accountant for this purpose.

Uses for federal and state tax returns

In most cases with simple tax returns, you can use the information to show that there is a history of earning a certain amount - or not earning a certain amount. Just as with the W-2s provided in section 7, you can use past earnings as proof of how much the opposing party has the ability to make. You may also find income from other sources which may not have been listed on the financial statement such as income from a second job or a work bonus.

See Sample Tax Forms and W-2 forms at pages ????

U four most recent pay stubs from all jobs

The four most recent pay stubs are helpful to check against the financial statement. Often times people under-report their income on the financial statement and the pay stubs help you show this discrepancy.

Uses for four most recent pay stubs

Again, you can use this information to show earning capacity. Also, in some cases, the pay stub will say how much a person is contributing for health care or for other items such as retirement, a loan program, etc. It is also sometimes possible to identify how much vacation or sick time someone has accrued by looking at a pay stub. This may give you reason to seek further information by subpoena.

**U
do
cu
m**

entation about health insurance availability

The law requires that the person who does not have the couple's children living with him or her provide health insurance if it is available at a reasonable cost. Many employers provide health insurance at no cost or some cost to the employee. The information covered by this rule is intended to help the Court decide if there is health insurance available at a reasonable cost.

Please note that this rule applies even though one or all of the parties may be eligible for MassHealth (Medicaid).

Uses for documentation about health insurance availability

This information can be used to make sure that the children or spouse of a person with health care available, are getting adequate health benefits.

U statements of assets

Mandatory disclosure requires the parties to exchange all statements from any securities, pensions, IRAs and similar assets from the prior three years.

Uses for statements of assets

Again, this information can be used to check against the financial statement. Also, the statements may show if money was withdrawn from any of these accounts in the three years leading up to the court case. You can also use this information to check against what was reported in the financial statement. The statements should show if there has been any significant deposit or withdrawal from the account. If you are married, you may be entitled to some portion of the account.

U loan or mortgage applications

The law requires any loan or mortgage applications submitted by either party in the last three years to be exchanged. Often times people indicate an earning capacity on a loan application which they are not willing to admit on a financial statement. They may also list assets or other property as security on a loan application but not on their financial statement.

Uses for mortgage and loan applications

Loan and mortgage applications are extremely useful because the applicant will invariably present his or her financial status in the most favorable light possible. So if a party is inclined to under-report his or her income on the financial statement, that same person will show a significantly higher income on a mortgage or loan application. There may also be assets listed that do not show up on the financial statement.

U other statements of assets or liabilities

Finally, mandatory disclosure requires the exchange of any other financial statements or statements of assets and liabilities prepared by either party in the previous three years. For instance, the opposing party may have filled out an application for a credit card or may have been required to disclose all assets and liabilities in another court case or to apply for some services. All this information must be disclosed.

Uses for other statements of assets or liabilities

Again, these can be used to cross-check entries on the financial statement. Depending upon the purpose of the financial statement, the incentive may be to show a larger rather than a smaller income.

It is critical to point out that although you receive documents and information through mandatory disclosure, there is a detailed and complex method for getting many of them *admitted into evidence*. It is beyond the scope of this brochure to teach you the rules of evidence and how to get documents admitted. This is a subject and skill that takes years of training and schooling for attorneys to master. You

Section 3

What is a Subpoena?

A *subpoena* is a written command from the Court for someone to appear at a certain place and time to give oral and / or written information. Some people will appear in court to testify if you simply ask them. If you feel that someone you would like to testify will not come voluntarily, you can subpoena them. Unless you feel very confident that a person will appear voluntarily, you should subpoena him or her. If the person is cooperative and you are still not absolutely sure she or he will come to court, issue the subpoena and explain that this is a court formality.

With a subpoena, a witness can be compelled both to give testimony and to bring documentary evidence with him or her to court. You can subpoena anyone with relevant information to come to court and testify. You should consider what information each witness can provide and how they can help your case. There are two different types of subpoenas: *Subpoena ad testificandum* and *Subpoena duces tecum*.

U subpoena ad testificandum, commonly referred to as a subpoena

This is the typical subpoena and simply orders someone to be at a certain place at a certain time to give testimony about a certain matter.

U subpoena duces tecum

A subpoena duces tecum is a command for someone to bring certain documents to a place at a certain time so that they can be reviewed and explained.

How Do I Issue a Subpoena?

A subpoena can be issued by any *court clerk*, *notary public*, or *justice of the peace*. In order to subpoena a witness, you will need to complete a form. These forms are available at stationary stores. A sample of the form is provided at page ????

Although you can request a person's presence at a deposition or at court, you will note that the form asks for the date, time and place of the court hearing you are asking the witness to attend. Please note that you can also subpoena a *keeper of the records* if there is relevant information you believe that person may have. This is a request that a person who is in charge of certain documents bring them to a deposition. Please see the Depositions section under Formal Discovery for more information about a *keeper of the records deposition*.

Once the form is completed, you must bring it to one of the above people to a court clerk, notary public or justice of the peace to notarize it. After it has been *notarized*, bring the form to a sheriff, constable, or other *process server* who will then deliver a copy of the subpoena to the witness or leave it at his or her residence. You will have to pay a fee for this service. In addition, the law requires that you pay witnesses who travel to court to testify. The sheriff or constable can provide you with the exact costs. If you are low income, you may be eligible for a waiver of the costs associated with subpoenaing a witness. Check with the court personnel to determine if you are eligible for a fee waiver based on your income.

Another kind of subpoena is useful if there are business records that you need. For example, at a hearing on child support, you may need to subpoena the other party's employer to bring payroll records to prove income. This kind of subpoena is called a "keeper of the records" subpoena and must be very specific about what records must be brought. Sometimes, the person subpoenaed will offer to provide you with the information instead of going into court. Sometimes, simply getting copies of the documents from the keeper of the records instead of having her or him appear will not be enough to allow you to introduce the records into evidence. You should consult with an attorney if you find yourself in this situation.

How Do I Use the Information I Got By Subpoena?

It is critical to point out that although you receive documents and information through subpoena, there is a detailed and complex method for getting many of them *admitted into evidence*. It is beyond the scope of this brochure to teach you the rules of evidence and how to get documents admitted. This is a subject and skill that takes years of training and schooling for attorneys to master. You

Section 4

Formal Discovery



Formal discovery is very complex and rules driven. Attorneys have had years of formal education to learn these rules and procedures. It is not possible to explain those rules and procedures in a page or two of this brochure. This chapter is not intended to tell you how to conduct formal discovery, it is merely intended to give general information so that you are more informed about the system and how it works. If your case will likely involve significant formal discovery, please seek the assistance of an attorney.

Many times the information you need can be obtained by simply asking for it. Don't forget to try this before embarking on the more complicated and difficult process of formal discovery.

After mandatory disclosure is complete, you still have an opportunity to gain information that has not already been provided. You do this by undertaking *formal discovery*. There are many different means of formal discovery, each focusing on obtaining a specific kind of information or document. The following is a list of some discovery options and their uses.

Depositions

A *deposition* is a way to get testimony, under oath, from a witness, outside of a court hearing. The parties meet at a location selected by the party asking for the deposition with their attorneys (if any) and a person called a *witness*. The witness may be one of the parties or anyone else with useful information. The witness answers questions asked by either an attorney or by the party seeking the deposition if there is no attorney. The attorney or the other side can then ask questions of the witness. There is usually a *stenographer* present who makes a typewritten *transcript* of the deposition with all of the questions and answers. The transcript is then given to the witness who can read it to make sure that it is correct as to what he or she said. The witness then signs the transcript. The purpose of a deposition is to gather testimony under oath from the witness. The questions that you ask the witness will help you to get the information that you need.

How a Deposition Works

- % In most cases you must wait until 30 days after the defendant is served to request a deposition.
- % You must give at least 7 days notice (plus 3 for mailing) to all parties to a case.
- % If you are asking for a person to bring documents, you must give at least 30 days notice (plus 3 for mailing).
- % The person wanting to call the deposition:
 - " selects a date
 - " chooses a location
 - " arranges for a court reporter
 - " sends a subpoena to the person being deposed
(See sample subpoenas at pages ????)
 - " sends a notice of deposition to all parties.
(See sample notice of deposition at page)
- % At the deposition the court reporter swears in the witness.
- % The party calling the deposition questions the witness
- % The parties can object to irrelevant questions, questions which ask a person to incriminate him or herself and questions not "reasonably likely to lead to discoverable material."
- % Except in extreme circumstances, even if an objection is made, the question must be answered.
- % Anyone wishing to receive a copy of the deposition transcript must order it from the court reporter.

Please see sample forms at pages ????

U Keeper of the Records Depositions

A keeper of the records deposition is simply a deposition of a person in the position who is charged with keeping records. The most common example of a keeper of records is the person in charge of the payroll at a given company. When a keeper of the records receives a subpoena to a deposition, he or she usually calls the person issuing the subpoena and asks if he or she can send the documents instead of coming to the deposition. This is common practice. However, you should make sure that the keeper of the records is available to answer any questions you may have about reading the documents and you should be sure that the keeper of records knows that there is a possibility that he or she may be called as a witness at trial.

Interrogatories

Interrogatories are written questions provided to the opposing party. You can write a list of questions that you have for the other party and submit it to him or her or to his or her attorney. The opposing party responds to the questions in writing and under oath. Be aware that the opposing party may not answer all of the questions as he or she may believe that some of the information is *privileged* or some of the questions are improper. (See below for a discussion of privileged information.) The judge decides any disputes about what questions can be asked and what information is required to be provided.

How Interrogatories Work

- % Interrogatories can only be sent to the opposing **party**.
- % You can only serve 30 interrogatories but you can serve several sets so long as the total does not exceed 30.
- % Interrogatories can be served at any time after the service of the summons and complaint.
- % The opposing party is given 30 days to answer the questions fully and under oath.

Please see sample interrogatories at pages ?????

Request for Production of Documents and Things

A *Request for Production of Documents and Items* is a written request made to the opposing party or their attorney, if they have one. The request must specify what documents or items you want the opposing party to provide to you. The opposing party must provide you with the documents or items you request unless some of the information is *privileged* or irrelevant. (See below for a discussion of privileged information.)

How a Request for Production of Documents Works

- % Requests for production of documents can only be served on the opposing **party**.
- % The request can be for the production or inspection of documents or things.
- % The request may be made at any time after the complaint has been filed.
- % The opposing party has 30 days to respond except that he or she is not required to respond earlier than 45 days after service of the summons and complaint.

Please see sample forms at pages?????

Request for Admissions

A *Request for Admissions* is a written request made to the opposing party or his or her attorney. An *admission* is a fact or claim that the party is willing to agree is true so that it doesn't need to be determined later by the Court. Admissions help to narrow the facts and issues that must be decided later by the Court. The request should state what you would like the other party to admit. Admissions are useful because it means that there is less to argue about later. The party must either admit the fact is true, deny the fact is true, or state that they do not have enough information to know whether or not the fact is true.

How Admissions Work

- % Admissions can be served only on the opposing **party**.
- % Requests for admissions may be made only for the purposes of the pending action.
- % The opposing party has 30 days to answer except that she or he is not required to answer earlier than 45 days from service of the summons and complaint.
- % If the opposing party does not answer in 30 days, the matter is assumed to be admitted.

Section 5

Turning What You Got Into Evidence

The process of turning the materials you received through discovery into “evidence” which will be admitted at trial is quite complicated as mentioned over and over in this brochure. Again, we re-iterate that if your case requires asking the Court to review a lot of documents, or to sift through a lot of testimony, you are best advised to seek the services of an attorney.

Although it is beyond the scope of this brochure to explain how to get documents and testimony admitted into evidence, a few basic rules will help you understand a little bit of what to expect.

Relevance

The most basic rule of evidence is that a fact must be relevant to the case to be considered by the court. In most instances, relevance is just as it seems. *Relevance* is defined as anything that tends to prove or disprove a fact of consequence in the case. In domestic relations or family law cases relevance is very broad, especially where there are children involved. If you plan to present something to the Court which you feel the other side may claim is irrelevant, be prepared to explain why you think it is relevant.

Witnesses

In order for a witness to testify, he or she must be *competent*. Competence is defined as someone who has the ability to perceive, remember, communicate, and tell the truth about a fact or event. There is no automatic age limitation for competence but as a general rule where children are the subject of litigation, judges will not allow them to testify in court. Where the Court finds that the input of the children is essential, it will appoint a *Guardian Ad Litem* (GAL) to investigate and make recommendations to the court. This way the child or children will talk with the GAL and she or he will then report to the court.

There are formal rules on how to ask questions of a witness. Generally, you cannot ask *leading questions* of your own witnesses (the ones you call). This means that you cannot ask a question which suggests an answer. Yes and no questions generally fall into this category. However, when you are questioning a witness who is called by the other side or who is opposing you, you can ask questions much more broadly. Be careful not to ask several questions at once, to be too argumentative or to ask misleading questions.

Most people do not understand that the Court is interested in opinions only where a witness has special qualifications or where opinion is commonly accepted and helpful to the Court. For example, the court will only want to hear your opinion on who should have custody of a child or how much a house is worth if the witness is established as an expert witness. An expert is a person who has training and experience in the field they are testifying about. But if the question refers to something which is common knowledge to which most people are able to tell the court will allow it. For example, the court will allow non experts to testify about how fast a car was going or how cold it was out.

Remember, although you may have convinced a judge that your expert is an expert, you must also make sure your expert is believable and that his or her testimony will be heard.

Hearsay

Almost any statement made out of court is hearsay. Almost any written document is hearsay. Hearsay is defined as “any out of court statement offered to prove the truth of the matter asserted in it. Hearsay is not admissible in court because it is considered to be unreliable. However, there are some complicated rules which allow some statements or documents to be admitted into evidence because they are more likely than not to be reliable.

Non-Hearsay

Certain statements are not considered hearsay either because they are not offered to assert the truth of the statement or because they have simply been excluded as hearsay by law. Such categories of statements include:

- U** **Legally Operative Facts** such as: “I accept,” or “I do.”
- U** **Warnings** such as: “Stop, you stole my ring.”
- U** **Statements Indicating State of Mind** such as: “I am Jesus.”
- U** **Admissions By a Party Opponent** either by statement , silence or actions.

Exceptions to the Hearsay Rule

As mentioned above, there are certain exceptions to the hearsay rule which allow some statements to be admitted into evidence. Such categories of statements include:

- U Statements by a Party Opponent
- U Statements Against Interest
- U Statements of a Dying Person
- U Statements about the Speaker's State of Mind
- U Prior Statements By a Witness
- U Recorded Past Recollection
- U Certain Official Records (discussed below)

Admissible Records

Any written document is an out of court document and is likely hearsay. However, there are some documents the Courts think are reliable and will allow into evidence if certain things are done first.

The first question you must ask about any evidence is whether it is relevant. The next question is whether a document is what you say it is. You must *authenticate* a document. Many business, medical or other records are admissible in court despite the fact that they are hearsay if the following requirements are met:

- U the record was made in good faith;
- U the record was made in the regular course of business;
- U it was normal to make the entry at the time it was made
- U the record was made before the court case started.

| |
|---|
| <p>NOTE: There are still very complicated procedures you must follow to have these records admitted into evidence. You should consult an attorney if you are in this situation</p> |
|---|

Privileges

Privilege is a legal principle which prevents a person from testifying in court because of a protected relationship. The law recognizes that there are certain relationships which need to be protected and recognized as confidential. The following is a list of privileges:

- U Marital Privilege
- U Attorney Client Privilege

- U Doctor / Patient Privilege
- U Psychotherapist / Patient Privilege
- U Social Worker / Client Privilege
- U Clergy / Penitent Privilege

In General, the law recognizes that conversations which take place in the context of these relationships are not expected to be revealed in court. The procedures for exercising these privileges is quite complicated but you should be aware that the person giving the confidential information is the only one who can waive the privilege or allow the other person to testify in court. With the marital privilege, both spouses hold the privilege.

Like all complicated rules there are many complicated exceptions. We cannot describe all the exceptions here but in general you should keep in mind that if there is a third person in the room, a conversation may not be considered confidential and therefore may not be privileged. Also keep in mind that if you do not assert your privilege or allow some privileged information to be disclosed in court, you may be waiving your right to assert the privilege later.

Please keep in mind that this is a very simple explanation of very complicated rules. It is not intended to be a lesson on the rules of evidence. Instead, it is simply meant to inform you of some issues that may arise. If your case involves any of these issues, consult an attorney immediately

We hope this information is helpful to you. Please consult the last pages for a list of resources for low-income people and a list of other publications available in this series.

Dictionary of Legal Terms

Ability to Earn. When the court determines that a person can earn a certain amount even though he or she does not currently earn that amount.

Accepted (or Admitted) Into Evidence. The legal term meaning that a document or testimony can be properly considered by a judge.

Admission: Something that the parties are willing to agree is true so that it does not need to be determined later by the Court.

Arrearage:

Assets. Any property, accounts cash or things of value which a person has or has available to him or her. In divorce cases all things owned by either party at any time while the parties are married is considered marital property or “assets” to be decided by the court.

Authenticate. The legal term used to describe the process of showing that a document is what a party says it is. .

Child Support Guidelines. A formula established by the Courts to determine how much child support should be paid. It takes into account the gross incomes of the parties, the number of children and the age of the oldest child.

Competent

Contested Issues. Disputes between the parties that they are not able to resolve and which a judge is asked to decide.

Court Clerk: A person who works in the court who you bring the originals of your legal papers to and who files them in your case file.

Contempt. The willful disobedience of a court order where that person had the ability to comply.

Creditor. A person to whom another owes money.

Deposition. The testimony of a witness, taken in writing under oath, before some judicial officer.

Discovery: A legal process before trial that allows parties in a lawsuit to get information from one another. Discovery can include interrogatories, depositions, request for production of documents and / or admissions.

Domestic Relations Summons: See Summons.

Financial Statement: A court form that parties must fill out in any case involving money (such as child support) to explain their financial situation to the court.

Formal Discovery: The process by which the parties in a case seek information from one another. See also **Discovery**.

Guardian Ad Litem (GAL). A person appointed by the court to investigate certain issues regarding the children and to make a report and recommendation to the court. A GAL can be any impartial person but is usually a mental health professional or an attorney.

Hold Harmless Clause. Legal language in an agreement which states that if one party does not do what he or she is supposed to and the other must pay to fix things, the party who did not do what she or he was supposed to will reimburse the other. This language usually appears when parties are dividing debts and one agrees to pay the whole thing. Since the court does not have the power to tell the *creditor* who he or she can collect from, the creditor may come after one person when another has agreed to pay. If this happens, the person who was supposed to pay must *hold the other harmless* or pay him or her back whatever they had to pay.

Interrogatories: Written questions asked to the opposing party.

Justice of the Peace: A judicial magistrate having the power to certify certain documents and administer oaths.

Keeper of the Records. The person in any given company or agency who is charged with making entries into records or otherwise keeping them in order.

Keeper of the Records Deposition. A deposition designed to get the information a keeper of records may have and to ask any questions which may arise.

Leading Questions. Questions which point to a specific answer.

Mandatory Disclosure: Rule whereby parties are required by law to exchange certain documents within 45 days of service of the summons. These include tax returns, pay stubs, bank statements, health insurance documents, statements of securities and pensions, loan or mortgage applications, and financial statements.

Notarized: A document that has been taken in front of a notary public or a justice of the peace where an oath has been administered and a signature and seal placed upon it.

Notary Public: A public officer whose function it is to administer oaths and to certify, by his signature

and seal, certain documents.

Privileged: Information that the law protects from disclosure.

Process Server: A person who delivers legal documents to the person you are bringing a case against. The job of process server is often carried out by sheriffs and constables.

Relevance

Request for Admissions: A written request made to the opposing party for them to agree to the truth of certain items so as to eliminate the need to adjudicate those issues in court.

Request for Production of Documents and Items: A written request made to the opposing party for them to provide you with certain specified documents or items.

Stenographer: A person certified by the court to record testimony.

Subpoena: A command to a person to appear at a certain time and place to give testimony on a certain matter.

Summons: A written notification to be served on a person warning them to appear in court on a specified day and time or to file a written answer to a complaint filed in court.

Transcript: A typewritten record of a witness's testimony provided by the stenographer.

Witness: A person called to testify under oath about a certain matter.

Sample forms Index - In Order Mentioned

Samples of the following documents are included in this appendix.

Financial Statement
Child Support Guidelines
Sample State and Federal Tax Returns
Sample W-2 Form
Sample Pay Stub
Subpoena
Subpoena Duces Tecum
Deposition Subpoena
Notice of Deposition
Sample Interrogatories
Sample Request for Production of Documents
Sample Admissions

Helpful Phone Numbers

Lawyer-for-the-Day

Provides free assistance at the Courthouse in preparing forms and documents

Salem Division
36 Federal Street, Salem, MA 01970
Call the court at (978) 744-1020

*Monday, Tuesday, Wednesday
and Thursday mornings*

Lawrence Division
Fenton Judicial Center, 2nd Floor
2 Appleton Street, Lawrence, MA 01840
Call the clerk's office at (978) 686-9692

No regular schedule.

Legal Services

Provides free legal services for those who are income eligible.

Neighborhood Legal Services, Inc.
37 Friend St., Lynn, MA 01902
(781) 599-7730

*Provides direct representation, Pro Se
Divorce Clinic, and Helpline advice
to Southern Essex County*

Merrimack Valley Legal Services, Inc.
11 Lawrence St., Lawrence, MA 01840
(978) 687-1177

*Provides family law services to
Northern Essex County*

Reduced Fee Lawyer Referral Programs

Provides referrals to lawyers who charge reduced fees. Call for eligibility requirements:

Boston Bar Association (*Greater Boston*)
16 Beacon St., Boston, MA 02108
(617) 742-0625, (800) 392-6164

Mass. Bar Association (*statewide*)
20 West St., Boston, MA 02111
(617) 542-9103

National Lawyer's Guild
14 Beacon Street, Suite 407
Boston, MA 02108
(617) 227-7008

Essex County Bar
36 Federal Street
Salem, MA 01970
(978) 741-7888

The Child Support Enforcement Division (CSE) of the Department of Revenue (DOR)

Provides assistance in establishing paternity and collecting child support.

Essex Division
36 Federal Street
Salem, MA 01970
(978) 744-1020

Lawrence Division
Fenton Judicial Center, 2nd Fl.
2 Appleton St., Lawrence, MA 01840
(978) 686-9692 (*open only Mon. & Wed. 8-1*)

Essex County Probate and Family Court, Pamela Casey O'Brien, Register

Salem Division
36 Federal St., Salem, MA 01970
(978) 744-1020

Lawrence Division
Fenton Judicial Center, 2nd Fl.
2 Appleton St., Lawrence, MA 01840

The Family Law How-to Series includes:

Copies of these booklets are available at the Lawyer for the Day and Legal Services programs listed inside this booklet.

-
- The Process of Exchanging Information in Family and Probate Court
 - Divorce and the Alternatives
 - The Department of Social Services: Seeking Services, the 51A Investigation and Consumer Rights During an Investigation
 - Name Changes
 - Grandparent Visitation
 - What Is Best for Your Child: Working Through Child Custody and Visitation Issues
 - Information About How to File Papers and Complete a Case in Essex Probate and Family Court
 - How to Fill Out a Financial Statement
 - Information About How to Establish Paternity
-