

ALL IN THE FAMILY

Legal blog on all aspects of Family Law and Divorce in Massachusetts and Rhode Island

The Massachusetts Parentage Act – Next Steps and Room for Litigation

BY CATHERINE E. SPANU • MAY 29, 2025

The Massachusetts Parentage Act ("MPA") went into effect on January 1, 2025. Since then, lawyers, judges, and court personnel have been grappling with its implementation and interpretation. No cases addressing the MPA have yet reached the appellate courts, where precedent can be set, but at the trial court level, the Probate and Family Court has issued forms to be used in connection with the MPA, which are available on the court's website.

MPA FAMILY LAW FORMS

The forms issued by the court to be used in actions to establish parentage of a child and to establish de facto parentage are particularly detailed in terms of the information that needs to be included. For example, the Complaint to Establish De Facto Parentage requires:

- information about the child's household members, including their names and dates of birth;
- the names and contact information for all of the child's parents, guardians, and legal custodians, and other parties to the action;
- information that might indicate to the court whether the plaintiff has "standing," or has a legal right to file the complaint;
- specific facts that support the claim for de facto parentage;
- that the plaintiff include what they're asking the court to do in addition to being determined to be a legal parent to the child (for example, for the court to issue a new birth certificate or a change to the child's name); and
- that the plaintiff "verify" the complaint, which means it must be signed under the penalties of perjury, affirming that the facts asserted in the complaint are true and accurate.

Similarly, the Complaint to Establish Parentage includes a variety of different sections, such as:

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- information about the child, the plaintiff, the relationship between the child and the plaintiff, and the defendant;
- the identity of the person the plaintiff is asking the court to determine to be the child's legal parent; and
- what the plaintiff is seeking in terms of legal custody, physical custody, a parenting plan, support, and various other relief.

ROOM FOR LITIGATION

Because the MPA makes significant additions to G.L. c. 209C, which mostly addresses custody proceedings relating to children who are born to unmarried parents (along with changes to other statutes), there is significant room for litigation and for the appellate courts to determine what specific language in the MPA means and to then interpret the legislature's intent with respect to various terms. For example:

- Under the MPA, a person claiming to be a child's de facto parent may file a motion seeking a temporary order of "contact" between themselves and the child. The MPA does not use the words "custody" or "parenting time," which are terms the Probate and Family Courts are familiar with, in the context of divorces and other family law proceedings. What does "contact" mean in this context? Is it different from "parenting time"?
- A person claiming to be a de facto parent must show that they "resided with the child as a regular member of the child's household for not less than three years or 40 per cent of the child's life, whichever is shorter; provided, however, that the period is not less than two years; provided further, that the court may, in its discretion, accept a shorter period in extraordinary circumstances for good cause shown." Does a person meet this requirement if they moved in and out of the household over a period of time? What if they were absent for weeks at a time, or months? What would "extraordinary circumstances for good cause shown" look like? Would a person who functioned as a stay-at-home parent to an infant but who is not the infant's biological parent be able to meet this requirement?
- A person claiming to be a de facto parent must also show that they "engaged in consistent caregiving of the child, including, but not limited to, shaping the child's daily routine, addressing the child's developmental needs and providing for the child's education and medical care, individually or cooperatively with another parent." The MPA gives some examples of what "consistent caregiving" means in the context of de facto parentage, but what other examples could someone provide of specific caregiving that would meet the standard? How involved does someone claiming to be a de facto parent need to be in making decisions for the child? What percentage of a child's medical appointments, for example, would that person need to attend to show consistent caregiving in terms of the child's medical care?
- A person claiming to be a de facto parent must show that they "undertook full and permanent responsibilities of a parent of the child without expectation or payment of financial compensation." Presumably, then, a babysitter or even a family member who is paid to care for the child would not be a de facto parent, but what does "full and permanent" mean? What if the person claiming to be a de facto parent traveled frequently for work?
- A person claiming to be a de facto parent must show that they "established a bonded and dependent relationship with the child that is parental in nature." What type of relationship is parental in nature (but not a legal parental relationship such as by birth or adoption)?
- Where two or more persons have competing claims of parentage or challenges to parenthood, the court will consider the "nature of the relationship between the child and each person." What does the court need to understand with respect to each relationship between a child and a person claiming to be a parent in order to determine who should be considered a child's legal parent?
- Where two or more persons have competing claims of parentage or challenges to parenthood, the court will also consider the "basis for each person's claim to parentage of the child." Are some bases stronger than others? Is a genetic relationship more significant than a person claiming to be a parent but who has no genetic relationship to the child? Would a person providing significant caregiving responsibilities and having a strong parent-like relationship with the child but no genetic relationship be a stronger basis than a person who had limited caregiving responsibilities and a genetic relationship?

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- What about the “harm to the child if the relationship between the child and each person is not recognized?” How will the court assess harm to the child? What facts or considerations will be relevant here?

Given the length and detail in the provisions of the MPA that add sections to G.L. c. 209C, anyone looking to be recognized as a child’s parent or de facto parent under the MPA should consult with an experienced family law attorney. With all of the room for litigation in the MPA, together with the level of detail issued on the forms and in particular the Complaint to Establish De Facto Parentage and Complaint to Establish Parentage, litigants should have their potential claims assessed and considered by experienced counsel prior to filing.

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