

Mandatory Self-Disclosure

Through the implementation of Supplemental Probate Court Rule 401 and Rule 410, the Probate and Family Court has taken steps to reduce its "paper work" burden by requiring both parties to exchange certain documents on a "voluntary" basis. For the person who may not have much information about the family assets, expenses and finances, Rules 401 and 410 ensure that this critical information is shared promptly, allowing him or her to understand the issues involved in the case. For the party who may have control over the family assets, expenses and finances, Rules 401 and 410 force an immediate identification of possible financial concerns, possibly prompting a quicker resolution of these issues. In any event, Rules 401 and 410 self-disclosure should alleviate the need for your respective attorneys to make formal demands for the production of documents, thereby reducing legal fees and costs for both of you.

Rule 401

Supplemental Probate Court Rule 401(a) requires that, within forty-five (45) days from the date of service of the summons in a case where assets or financial relief are involved, you must provide the other party with a "complete and accurate financial statement showing, insofar as possible, the assets, liabilities and current income and expenses of both parties and children involved in the case." The Probate and Family Court has two forms that must be used, a "short" form for those earning under \$75,000 per year and a "long" form for those earning over \$75,000 per year. Draft copies of these forms with schedules for additional information are included in this packet for your convenience.

Under Rule 401(b), if there is to be a hearing seeking temporary orders or a pre-trial conference, each party is obligated automatically to provide the other with a financial statement "no later than two (2) business days prior to the hearing or the conference without the necessity of a request for such statements."

Rule 401(d) requires the court to "impound" these financial statements or keep them separate from the other papers in the case and they "shall not be available for public inspection." Both parties, their attorneys, court personnel and employees of the Massachusetts Department of Revenue may review these financial statements.

Rule 401(e) requires the financial statements to be signed by you under the penalties of perjury as well as to be certified by us as being true, accurate and complete.

Rule 401 (f) permits either party to request the other party, upon ten (10) days notice, "to furnish a signed, current financial statement to the court with a copy to the requesting party." No request can be made within ninety (90) days of a prior request, except by order of the court.

Rule 410

Similarly, Supplemental Probate Court Rule 410 requires you and the other party to comply with certain mandatory self-disclosure within forty-five (45) days from the date of service of the summons.

Rule 410 (a)(1) requires you to provide us with copies of certain documents if these documents are

in your possession, so that we can provide those to the other party, including:

- Copies of your federal and state income tax returns and schedules for the past three (3) years and any non-public, limited partnership and privately held corporate returns for any entity in which either party has an interest together with all supporting documentation for tax returns, including but not limited to w-2's, 1099's, K-1, Schedules C and E;
- Copies of statements for the past three (3) years for all bank accounts held in the name of either party individually or jointly, or in the name of another person for the benefit of either party, or held by either party for the benefit of your minor child(ren);
- Copies of your four (4) most recent pay stubs from each employer for whom you have worked;
- Copies of documentation regarding the cost and nature of health insurance coverage available to you for the benefit of you or your family;
- Copies of your statements for the past three (3) years for any securities, stocks, bonds, notes or obligations, certificates of deposit owned or held by either party or held by either party for the benefit of your minor child(ren), 401K statements, IRA statements, and pension plan statements for all accounts listed on your financial statement;
- Copies of any loan or mortgage applications made, prepared or submitted by either party within the last three (3) years prior to the filing of the complaint; and
- Copies of any financial statement and/or statement of assets and liabilities prepared by either party within the last three (3) years prior to the filing of the complaint.

Rule 410(a)(2) further requires you and the other party to supplement all disclosures as material changes occur during the progress of the case. Neither party is permitted to file any discovery motions prior to making his or her own initial self-disclosure.

Rule 410(b) provides that, if you do not have some or any of the documents which should be in the self-disclosure or if you have not been able to obtain them in a timely fashion, you must state in writing, under the penalties of perjury, the specific documents which are not available, the reasons the documents are not available, and what efforts have been made to obtain the documents. As more information becomes available to you about these documents, you have a continuing duty to supplement your responses. If the documents are in your control, for example you can obtain them by calling your accountant, attorney, financial advisor, bank or credit card company, you are obligated to make those requests!

We will review your obligations under Rule 401 and Rule 410 with you in more detail as we prepare your case. In some situations, we will work with the other party and his or her attorney to waive all or part of the mandatory self-disclosure provisions as applicable. We recommend that you begin to gather copies of all documents used in the preparation of your draft financial statement as soon as practicable.

We also recommend that you use the attached worksheet as a guide when you compile the Rule 410 materials.

RESPONSES TO SUPPLEMENTAL RULE 410
MANDATORY SELF-DISCLOSURE

- a. The parties' federal and state income tax returns and schedules for the past three (3) years and any non-public, limited partnership and privately held corporate returns for any entity in which either party has an interest together with all supporting documentation for tax returns, including but not limited to W-2's, 1099's, 1098's, K-1, Schedule C and Schedule E.

_____ I have attached copies of all such documents within my control or custody to these responses.

_____ I have no such documents within my control or custody, and, despite my best diligent efforts, have not been able to obtain copies of the same in a timely manner.

_____ I do not believe that such documents exist because _____

- b. Statements for the past three (3) years for all bank accounts held in the name of either party individually or jointly, or in the name of another person for the benefit of either party, or held by either party for the benefit of the parties' minor child(ren).

_____ I have attached copies of all such documents within my control or custody to these responses.

_____ I have no such documents within my control or custody, and, despite my best diligent efforts, have not been able to obtain copies of the same in a timely manner.

_____ I do not believe that such documents exist because _____

- c. The four (4) most recent pay stubs from each employer for whom the party worked.

_____ I have attached copies of all such documents within my control or custody to these responses.

_____ I have no such documents within my control or custody, and, despite my best diligent efforts, have not been able to obtain copies of the same in a timely manner.

_____ I do not believe that such documents exist because _____

- d. Documentation regarding the cost and nature of available health insurance coverage.

_____ I have attached copies of all such documents within my control or custody to these responses.

_____ I have no such documents within my control or custody, and, despite my best diligent efforts, have not been able to obtain copies of the same in a timely manner.

_____ I do not believe that such documents exist because _____

- e. Statements for the past three (3) years for any securities, stocks, bonds, notes or obligations, certificates of deposit owned or held by either party or held by either party for the benefit of the parties' minor child(ren), 401K statements, IRA statements, and pension plan statements for all accounts listed on the Rule 401 financial statement.

_____ I have attached copies of all such documents within my control or custody to these responses.

_____ I have no such documents within my control or custody, and, despite my best diligent efforts, have not been able to obtain copies of the same in a timely manner.

_____ I do not believe that such documents exist because _____

- f. Copies of any loan or mortgage applications made, prepared or submitted by either party within the last three (3) years prior to the filing of the complaint for divorce.

_____ I have attached copies of all such documents within my control or custody to these responses.

_____ I have no such documents within my control or custody, and, despite my best diligent efforts, have not been able to obtain copies of the same in a timely manner.

_____ I do not believe that such documents exist because _____

- g. Copies of any financial statement and/or statement of assets and liabilities prepared by either party within the last three (3) years prior to the filing of the complaint for divorce.

_____ I have attached copies of all such documents within my control or custody to these responses.

_____ I have no such documents within my control or custody, and, despite my best diligent efforts, have not been able to obtain copies of the same in a timely manner.

_____ I do not believe that such documents exist because _____

I understand that I must supplement these disclosures as material changes occur during the progress of the case. I sign these responses under the penalties of perjury.

Client