

COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

At the Supreme Judicial Court holden at Boston within and for said Commonwealth on the twentieth day of July, in the year of two thousand and twenty-one:

present,

<u>KIMBERLY S. BUDD</u>)	Chief Justice
)	
<u>FRANK M. GAZIANO</u>)	
)	
<u>DAVID A. LOWY</u>)	Justices
)	
<u>ELSPETH B. CYPHER</u>)	
)	
<u>SCOTT L. KAFKER</u>)	
)	
<u>DALILA ARGAEZ WENDLANDT</u>)	
)	
<u>SERGE GEORGES, JR.</u>)	

ORDERED: That the Massachusetts Rules of Civil Procedure adopted by order dated July 13, 1973, as amended, to take effect on July 1, 1974, are hereby amended as follows:

Rule 3

By striking the text of Rule 3 and inserting in lieu thereof the following text:

A civil action is commenced by (1) mailing to the clerk of the proper court by certified or registered mail a complaint and

an entry fee prescribed by law, (2) filing such complaint and an entry fee with such clerk, or (3) submitting the complaint to the court through the court's electronic filing system accompanied by electronic payment of the entry fee pursuant to the Massachusetts Rules of Electronic Filing. Actions brought pursuant to G.L. c. 185 for registration or confirmation shall be commenced by filing a surveyor's plan and complaint on a form furnished by the Land Court. Waiver of the entry fee on the ground of indigency may be sought in accordance with G.L. c. 261, § 27C.

Rule 5(a)

By inserting the following sentence at the end of Rule 5(a):

Any document filed through the court's electronic filing system must be served on all other parties and must include a certificate of service pursuant to Rule 7(a) of the Massachusetts Rules of Electronic Filing.

Rule 5(b)

By inserting the following two sentences after the second sentence of Rule 5(b):

Service may also be made through the Electronic Filing Service Provider pursuant to Rule 7(b) of the Massachusetts Rules of Electronic Filing. The parties may agree in writing to make and receive service by e-mail.

Rule 5(f)

By striking Rule 5(f) and inserting in lieu thereof the following Rule 5(f):

(f) Effect of Failure to File. Except as provided in Rule 15 of the Massachusetts Rules of Electronic Filing, if any party fails within five days after service to file any paper required by this rule to be filed, the court on its own motion or the motion

of any party may order the paper to be filed forthwith; if the order be not obeyed, it may order the paper to be regarded as stricken and its service to be of no effect.

Rule 6

By inserting the following new Rule 6(e):

(e) Additional Time after Electronic Service. Whenever parties have the right or are required to do some act or take some proceedings within a prescribed period after the service of a notice or other papers upon them and the notice or paper is served upon them electronically, through the Electronic Filing Service Provider pursuant to Rule 7(b) of the Massachusetts Rules of Electronic Filing or otherwise, three (3) days shall be added to the prescribed period.

Rule 10

By inserting the following new Rule 10(f):

(f) Electronically Filed Pleadings. A document filed electronically shall comply with the provisions of the Massachusetts Rules of Electronic Filing.

Rule 11(a)

By striking Rule 11(a) and inserting the following new Rule 11(a):

(a) Signing.

(1) In General. Every pleading of a party represented by an attorney shall be signed by at least one attorney who is admitted to practice in this Commonwealth in the attorney's name. The address of each attorney, telephone number, and business e-mail address shall be stated. Parties who are not represented by an attorney shall sign their pleadings and state their address,

telephone number, and e-mail address if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of any attorney to a pleading constitutes a certificate that the attorney has read the pleading; that to the best of the attorney's knowledge, information, and belief there is a good ground to support it; and that it is not interposed for delay. If a pleading is not signed, or is signed with intent to defeat the purpose of this Rule, it may be stricken and the action may proceed as though the pleading had not been filed. For a willful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

- (2) Electronic Signatures. A pleading that is filed electronically may be signed electronically in accordance with the provisions of the Massachusetts Rules of Electronic Filing.

Rule 77

By inserting the following new Rule 77(f):

(f) Massachusetts Rules of Electronic Filing. The provisions of this rule shall be administered and interpreted in a manner consistent with the provisions of Rule 14 of the Massachusetts Rules of Electronic Filing regarding electronically signed orders, judgments, and notifications.

The amendments accomplished by this order shall take effect on September 1, 2021.

ORDERED:

<u>KIMBERLY S. BUDD</u>)	Chief Justice
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<u>FRANK M. GAZIANO</u>)	
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)	
<u>DAVID A. LOWY</u>)	Justices
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<u>SERGE GEORGES, JR.</u>)	

REPORTER'S NOTES

MASSACHUSETTS RULES OF CIVIL PROCEDURE

Rule 3. Commencement of Action

Reporter's Notes--2021

In light of the adoption of the Massachusetts Rules of Electronic Filing (Mass. R. E. F.) (Supreme Judicial Court Rule 1:25, effective September 1, 2018), Rule 3 has been revised to reflect a third method to commence a civil action. Under Mass. R. E. F. 6(a), a party may initiate a civil action through the court's electronic filing ("e-filing") system. Such an action shall be deemed to be filed and commenced if submitted through the e-filing system by 11:59 p.m. on a business day (unless rejected by the court or submitted on a Saturday, Sunday, or legal holiday). Mass. R. E. F. 4(c)(1) and (2). Reference should be made to the Mass. R. E. F. for details.

A sentence has been added to Rule 3 to reflect the provisions of G.L. c. 261, § 27C, regarding waiver of the filing fee on the ground of indigency. The statute provides that if an affidavit of indigency "is filed with the complaint or other paper initiating the proceeding, the clerk shall receive the complaint or other paper for filing and proceed as if all regular filing fees had been paid." G.L. c. 261, § 27C(1). The statute states that the filing fee is "conditional" until the court grants or denies the request for waiver and if the request is denied, the statute allows the fee to be paid within five days.

Rule 4. Process

Reporter's Notes--2021

With the adoption of the Massachusetts Rules of Electronic Filing (Mass. R. E. F.) (Supreme Judicial Court Rule 1:25, effective September 1, 2018), parties may electronically file case initiating documents and may serve documents on other parties electronically. However, where a case is electronically filed, service of process must be accomplished consistent with the provisions of Rule 4, i.e., through a sheriff or deputy sheriff, constable, or person specially appointed by the court. See Rule 4(a) (unless there is written consent or the court has otherwise ordered); Mass. R. E. F. 6(c). There is no electronic service of process on a defendant.

Rule 6 of the Mass. R. E. F. provides as follows:

(c) Service of Case Initiating Documents Shall Be By Conventional

Methods. Unless otherwise determined by the court, or unless the responding party has consented in writing to accept electronic service or service by some other method, case initiating documents shall be served by conventional methods, together with a notice to the responding party stating the case has been electronically commenced.

Rule 5. Service and Filing of Pleadings and Other Papers

Reporter's Notes--2021

In light of the adoption of the Massachusetts Rules of Electronic Filing (Mass. R. E. F.) (Supreme Judicial Court Rule 1:25, effective September 1, 2018), changes were made to Rule 5.

Rule 5(a). A sentence was added to Rule 5(a) to refer to Rule 7(a) of the Mass. R. E. F. regarding the requirements of service of electronically filed documents on all parties.

Rule 5(b). Language was added to Rule 5(b) to permit service of electronically filed documents on parties through the Electronic Filing Service Provider (Mass. R. E. F. 7(b)). In addition, a sentence was added to allow the parties to agree in writing to service of documents by e-mail. Such an agreement may provide for some, or all, documents to be served by e-mail.

Rule 5(f). The amendment to Rule 5(f) deals with untimely filings resulting from technological failures of the Electronic Filing Service Provider (Mass. R. E. F. 15).

Rule 6. Time

Reporter's Notes--2021

In light of the adoption of the Massachusetts Rules of Electronic Filing (Mass. R. E. F.) (Supreme Judicial Court Rule 1:25, effective September 1, 2018), Rule 6(e) has been added to provide for an additional three days to respond or to take action after a document has been served electronically, similar to the additional three days applicable after service by mail (Rule 6(d)). This three-day period is set forth in Mass. R. E. F. 7(e). The additional three-day period applies whether the document is served using the court's e-filing system or using some other method of electronic service, such as e-mail if the parties have agreed in writing to service by e-mail. See Rule 5(b), as amended in 2021.

Rule 10. Form of Pleadings

Reporter's Notes--2021

Rule 10(f) has been added to require that electronically filed documents be in compliance with the Massachusetts Rules of Electronic Filing (Mass. R. E. F.). See Mass. R. E. F. 9 regarding format and content and Mass. R. E. F. 10 regarding maximum size for electronic documents and legibility considerations.

Rule 11. Appearances and Pleadings

Reporter's Notes--2021

Rule 11(a) has been subdivided into (1) and (2). Rule 11(a)(1) contains the language previously in Rule 11(a), with some changes.

The third sentence of the prior version of Rule 11(a) stated: "A party who is not represented by an attorney shall sign his pleadings and state his address, telephone number, and e-mail address if any." The requirement of an "e-mail address if any" was added to the rule in 2010. In 2014, the Supreme Judicial Court amended Rule 4:02 of the Rules of the Supreme Judicial Court to require that an attorney filing a registration statement with the Board of Bar Overseers must include a business e-mail address. Therefore, the words "if any" were removed from the cognate sentence in Rule 11(a)(1) and the word "business" was added. Attorneys should use the same e-mail address in their pleadings as on file with the Board of Bar Overseers.

In addition, stylistic changes were made in Rule 11(a)(1) to delete references to "he," "his," and "him" that appeared in the pre-amendment version of Rule 11(a). No substantive changes were intended as a result of these stylistic changes.

Rule 11(a)(2) addresses electronic signatures where a pleading has been filed electronically pursuant to the Massachusetts Rules of Electronic Filing (Mass. R. E. F.). Under Mass. R. E. F. 13(a), documents filed electronically must include a scan of a handwritten signature, an electronically inserted image, or an /s/ block with the name of the signatory.

Rule 77. Courts and Clerks

Reporter's Notes--2021

The addition of Rule 77(f) is intended to allow the clerk or the court to use electronic signatures and electronic notifications as set forth in Rule 14 of the Massachusetts Rules of Electronic Filing.