

COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

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

present,

<u>KIMBERLY S. BUDD</u>)	Chief Justice
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)	
<u>FRANK M. GAZIANO</u>)	
)	
)	Justices
<u>SCOTT L. KAFKER</u>)	
)	
)	
<u>DALILA ARGAEZ WENDLANDT</u>)	
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<u>SERGE GEORGES, JR.</u>)	
)	
)	
<u>ELIZABETH N. DEWAR</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 63

By deleting the current Rule 63 and inserting in lieu thereof the attached Rule 63.

The amendments accomplished by this order shall take effect on April 1, 2024.

ORDERED:

<u>KIMBERLY S. BUDD</u>)	Chief Justice
)	
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<u>FRANK M. GAZIANO</u>)	
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)	Justices
<u>SCOTT L. KAFKER</u>)	
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<u>DALILA ARGAEZ WENDLANDT</u>)	
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<u>SERGE GEORGES, JR.</u>)	
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<u>ELIZABETH N. DEWAR</u>)	

MASSACHUSETTS RULES OF CIVIL PROCEDURE

Rule 63. Unavailability of a Judge; Receipt of Verdict

(a) Unavailability. If by reason of death, sickness, resignation, removal, recusal, or other unavailability, a judge before whom a trial has commenced is unable to perform the duties to be performed by the court, then any other judge regularly sitting in or assigned to the court in which the trial was commenced may complete the trial, on assignment by the Chief Justice of such court or the Chief Justice's designee; but the replacement judge has discretion to grant a new trial if the judge determines that he or she is unable to perform the required duties.

(b) Receipt of Verdict. Any judge properly sitting in, appointed to, or assigned to that court may receive a verdict of the jury.

MASSACHUSETTS RULES OF CIVIL PROCEDURE

Rule 63. Unavailability of a Judge; Receipt of Verdict

Reporter's Notes--2024

At the request of the Chief Justice of the Superior Court, the Supreme Judicial Court Rules Committee asked the Standing Advisory Committee on the Rules of Civil Procedure to consider recommending amendments to Rule 63. Rule 63 previously allowed the designation of another judge to deal with matters that arose in a civil action *after* a verdict or after the filing of findings of fact and conclusions of law in a case where the trial judge had become disabled.

The Chief Justice of the Superior Court had requested that Rule 63 be amended to make civil practice consistent with criminal practice. Rule 38 of the Massachusetts Rules of Criminal Procedure allows replacement of a judge *during* a jury trial where the trial judge is unable to proceed “by reason of death, sickness, or other disability.” The Standing Advisory Committee on the Rules of Civil Procedure agreed that Rule 63 should be broadened to deal with incapacity of a judge at any time in the litigation process. The change in Rule 63 is consistent with the directive in Rule 1 that the rules of procedure “be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”

The amendment divides Rule 63 into two parts, (a) and (b).

Rule 63(a) allows the Chief Justice of the court (or the Chief Justice's designee) to assign another judge to complete a trial where the trial judge has become “unavailable” after a trial has begun. As had been previously provided by the former language of Rule 63, the replacement judge has discretion to grant a new trial if the judge determines that he or she is unable to perform the required duties.

Rule 63(b) deals with verdicts. It allows any judge of the court to receive a jury verdict. There is no requirement of incapacity or disability to do so. For example, where the trial judge is out of the courthouse when a verdict is returned, any other judge of that court may receive the verdict.

The title of Rule 63 has been changed to reflect the division of the rule into two parts. The rule was formerly titled “Disability of a Judge.”