

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

Kimberly S. Budd  
Chief Justice

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1. Court Submitting Rules for Approval:  
Superior Court
  2. Date Rules Submitted for Approval:  
May 2, 2023 and December 13, 2022
  3. Date Approved & Promulgated by the Supreme Judicial Court:  
August 3, 2023
  4. Rule or Rules, or Amendments Thereto, Approved and Promulgated:  
Amendments to Superior Court Rules 9A, 9B, 9C, and new Rule 9F, as described in the enclosed letter dated May 2, 2023 from Chief Justice Heidi E. Brieger. Also, amendment to Superior Court Rule 9D as described in the enclosed letter Dated December 13, 2022 from Chief Justice Heidi E. Brieger.
  5. Effective Date:  
The amendments to Superior Court Rules 9A, 9B, 9C, 9D and new Rule 9F are effective on September 1, 2023.

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)



**THE TRIAL COURT OF MASSACHUSETTS  
SUPERIOR COURT**

Suffolk County Courthouse  
Three Pemberton Square, 13<sup>th</sup> Floor  
Boston, MA 02108

**Heidi E. Brieger**  
Chief Justice

**Elaina M. Quinn**  
Deputy Court Administrator

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May 2, 2023

Hon. Frank M. Gaziano  
Chair of the Rules Committee  
Supreme Judicial Court  
John Adams Courthouse, Suite 2200  
One Pemberton Square  
Boston, MA 02108

**RE: Request for Amendments to Superior Court Rules 9A, 9B, 9C, and New Rule 9F**

Dear Justice Gaziano:

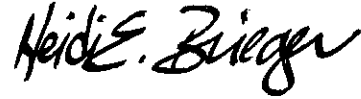
I submit for approval by the Supreme Judicial Court proposals to amend Superior Court Rules 9A, 9B, and 9C, and to promulgate new Rule 9F.

The Rule 9A amendments provide guidance on how to file exhibits attached to a motion or included in an appendix. Amendments to other sections of 9A and 9C are similarly technical. The Rule 9B amendments inform the bar of the need to identify and list the parties served, and removes the general language regarding service upon “attorney of record . . . .” Proposed new Rule 9F addresses information to be included in any motion to enlarge the tracking order deadlines—for example, the number of prior motions, a brief summary of discovery to date, and a statement of what remains to be done.

The justices of the Superior Court gave preliminary approval to these proposals at the Court’s semi-annual business meeting on December 2, 2022. The proposals were posted for comment on the Superior Court’s website on December 12, 2022, and notice was sent to Massachusetts Lawyers Weekly the same day for publication. The Court set a deadline of February 15, 2022, for submitting comments. The Superior Court Rules and Forms Committee reviewed the comments received and recommended adoption of the proposed amendments as published, with no additional changes. At the Court’s education conference on April 29, 2023, the justices voted to submit the amendments to the SJC for approval.

The Superior Court requests that the SJC approve these proposed amendments **effective July 14, 2023**. I would be happy to discuss any questions you may have or provide any additional information. Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink that reads "Heidi E. Brieger". The signature is written in a cursive, flowing style.

Heidi E. Brieger

cc: Chief Justice Jeffery A. Locke  
Hon. Thomas J. Perrino, Chair, Superior Court Rules and Forms Committee  
Christine Burak, Esq., Secretary of the Rules Committee

# Proposed Amendments to Superior Court Rules 9A, 9B, and 9C, and Proposed New Superior Court Rule 9F

## Rule 9A. Civil Motions

- **Rule 9A(b)(2)(iii) Notice of filing.**

The moving party must give prompt notice of the filing of a Rule 9A Package by serving all parties with a copy of a notice of filing in a separate document that lists the title of each document included in the Rule 9A Package, and by filing the notice with the Rule 9A Package. No other list of documents need be included in the Rule 9A Package.

- **New Rule 9A(b)(2)(iv) Exhibits.**

Exhibits, attached to a motion, memorandum or affidavit, or contained in a separate appendix, must be separated from one another by off-set tab dividers, or page markers if filed electronically, and the pages of the exhibits must be consecutively numbered. If more than one exhibit is included, a Table of Contents or Exhibit Index shall precede the exhibits.

- **9A(b)(5)(iii)(A) Response to Moving Party's Statement of Facts. (last paragraph)  
(summary judgment rule)**

\* \* \* \*

Where the obligation to send the Moving Party's Statement of Facts in electronic form has been excused, the response thereto may be in a separate document. For purposes of summary judgment, each fact set forth in the moving party's statement of facts is deemed to have been admitted unless properly controverted in the manner ~~forth~~ provided in this Paragraph (b)(5)(iii)(A).

- **9A(b)(5)(v)(A) Contents, Format, Citation, and Service. (for Joint Appendix)  
(summary judgment rule)**

**(v) Joint Appendix**

**(A) Contents, format, citation, and service**

All exhibits referred to in the memoranda supporting or opposing a motion or cross-motion for summary judgment, or in the Consolidated Statement of Facts, must be filed as a single joint appendix, which must include an index of the exhibits ("Joint Appendix"). The initial moving party, with the cooperation of each opposing party, is responsible for assembling the Joint Appendix and index. All pages of the Joint Appendix must be consecutively numbered by page, and each exhibit must be separated by an off-set tab divider, or page marker if filed electronically. Unless all the pages of the Joint Appendix are consecutively numbered by page, each exhibit must be separated by an off-set tab divider.—The exhibits served by the moving party with its Motion Papers must include ~~either~~ the consecutive numbering ~~or~~ and offset tabs. Where an opposing party relies upon any evidence included in the moving party's exhibits, the opposing party must cite to that evidence using the form of designation of the moving party. If the opposing party

designates new exhibits in accordance with Paragraph (b)(5)(iii)(D), it must serve those new exhibits, together with an index of the new exhibits, on the moving party with the Opposition, and it must serve the index on the moving party in electronic form (unless electronic service is excused). Those new exhibits must begin with the next consecutive designation following the last designation by the initial moving party (~~whether~~ consecutive page numbering ~~or~~ and off-set tab dividers). The opposing party must serve the original and one copy of those new exhibits with its Opposition. If the summary judgment package is e-filed, the moving party is responsible for delivering a courtesy copy of the Joint Appendix to the Session Clerk, if the clerk or hearing judge requests.

- **Rule 9A(d)(1) Ex parte, emergency, and other motions.**

A party filing an ex parte motion, emergency motion, or motion for appointment of a special process server is excused from compliance with Paragraph (b) of this rule. Ex parte motions must be served within 3 days of a ruling on the motion. Emergency motions, other than ex parte motions, must be served on all parties forthwith upon filing; provided, however, that a party filing an emergency motion shall certify in the motion that it has made a good faith effort to contact and confer with all parties regarding the subject of the motion, and shall set forth in the motion whether any party assents to or opposes the emergency motion. The nature of the emergency must be clearly specified in the motion.

- **Rule 9A(d)(2) Motions Involving Incarcerated Parties.**

Administrative Directive No. 92-1, which governs civil actions filed by a plaintiff who is incarcerated, exempts that part of subdivision (b)(4)(i) of this Rule that requires the filing of the Rule 9A package. Such exemption also applies to motions in civil actions where a defendant is incarcerated and self-represented, but all parties, incarcerated or not, must serve copies upon all other parties in the case. Upon release, a previously incarcerated party shall promptly file and serve notice of change of address. All provisions of Rule 9A shall take effect (a) for the previously incarcerated party, the day of release; and (b) for the non-incarcerated party, the day of notification of the other party's release.

## **Rule 9B. Certificates of Service**

The last page of every paper served in accordance with Mass. R. Civ. P. 5(a) shall contain a brief statement showing the date ~~on which and manner in which~~ service of the paper was made ~~on each other party and manner of service of the paper; the names and addresses (mailing or email) of all counsel (or parties) served; and the party represented by each counsel served.~~ The statement may be in the following form:

~~I hereby certify that a true copy of the above document was served upon (each party appearing pro se and) the attorney of record for each (other) party by mail (by hand) on (date).  
(Signature).~~

I hereby certify that on [date] a true copy of the above document was served by  
[hand/mail/email] upon:

Attorney name [or pro se party's name]

Address [mailing or email]

Attorney for \_\_\_\_\_ [or pro se party]

## **Rule 9C. Additional Requirements for Dispositive and Discovery Motions**

- **Rule 9C(b) Dispositive motions.**

When conferring about any motion under Mass. R. Civ. P. 12, counsel for each of the parties shall make a good faith effort to narrow areas of disagreement that may be resolved through amendment of the pleading, curative action in respect to defective service, or other means related to the subject of the motion to dismiss. When conferring about any motion under Mass. R. Civ. P. 56 or 41(b)(2) (second sentence), counsel for each of the parties shall discuss whether the moving party should refrain from making any motion qualifying for decision without a hearing under Superior Court Rule 9A(b)(5)(vi) and make a good faith effort to narrow areas of disagreement that may be resolved through amendment of the pleading, a stipulated dismissal of specified claims or parties, or otherwise.

- **Rule 9C(c) Discovery Disputes.**

All motions arising out of a party's response to an interrogatory or a request for admission or arising out of a party's response to, or asserted failure to comply with, a request for production of documents shall be accompanied by a brief. With respect to each interrogatory or request at issue, the brief shall set forth separately and in the following order (1) the text of the interrogatory or request, (2) the opponent's response and (3) an argument. Alternatively, the text of the interrogatory or request and the opponent's response may be provided in an appendix to the brief, as long as the brief includes an argument addressed to each interrogatory or request. No argument may be included in the appendix.

## **New Rule 9F. Requests to Amend Tracking Order**

All motions seeking to amend the Tracking Order to permit additional discovery must identify the following: (1) the number of times the Tracking Order has previously been enlarged in the case; (2) a brief summary of the discovery that has been conducted to date; (3) the discovery remaining to be conducted; (4) a brief summary of the nature of the claims in the case; and (5) any other information deemed relevant by the movant(s).



THE TRIAL COURT OF MASSACHUSETTS  
SUPERIOR COURT

Suffolk County Courthouse  
Three Pemberton Square, 13<sup>th</sup> Floor  
Boston, MA 02108

Heidi E. Brieger  
Chief Justice

Elaina M. Quinn  
Deputy Court Administrator

December 13, 2022

Hon. Frank M. Gaziano  
Chair of the Rules Committee  
Supreme Judicial Court  
John Adams Courthouse, Suite 2200  
One Pemberton Square  
Boston, MA 02108

**RE: Request for Amendments to Superior Court Rule 9D: Motions for Reconsideration**

Dear Justice Gaziano:

I submit for approval by the Supreme Judicial Court a proposal to amend Superior Court Rule 9D: Motions for Reconsideration. The amendments clarify the proper bases for motions for reconsideration and establish page limits for motions and oppositions.

The justices of the Superior Court gave preliminary approval to these proposals at the Court's semi-annual business meeting on December 3, 2021. The proposals were posted for comment on the Superior Court's website on December 7, 2021, and notice was sent to Massachusetts Lawyers Weekly the same day. The Court set a deadline of January 31, 2022, for submitting comments. The Superior Court Rules and Forms Committee reviewed comments and recommended adoption of the proposed amendments as published, with no additional changes. At the Court's business meeting on December 2, 2022, the justices voted to submit the amendments to the SJC for approval.

The Superior Court requests that the SJC approve these proposed amendments **effective March 1, 2022**. I would be happy to discuss any questions you may have or provide any additional information. Thank you for your consideration.

Very truly yours,

Heidi E. Brieger

cc: Chief Justice Jeffery A. Locke  
Hon. Thomas J. Perrino, Chair, Superior Court Rules and Forms Committee  
Christine Burak, Esq., Secretary of the Rules Committee

[Proposed Amendments to Superior Court Rule 9D]

Rule 9D. Motions for Reconsideration

(Applicable to all civil cases)

**Original version (last amended 2017):**

Motions for reconsideration shall be served and processed consistent with Rule 9A. Such motions seeking reconsideration of motions made pursuant to Mass. R. Civ. P. 50(b) , 52(b) , 59(b) , 59(e) or 60(b) are considered made or served for purposes of those rules on the date of service pursuant to Rule 9A.

Additionally, the words "MOTION FOR RECONSIDERATION" shall appear clearly in the title of the motion. Upon filing, the clerk shall transmit the motion and supporting papers to the Justice who decided the original motion, but if that Justice has retired or is otherwise unavailable, the clerk shall transmit the motion to the Regional Administrative Justice for the region where the case is pending. If, upon reviewing the motion and supporting documents, the Justice who decided the original motion desires to hold a hearing on the motion for reconsideration, he or she may schedule a hearing thereon. Alternatively, he or she may refer the motion for reconsideration to the Regional Administrative Justice for the region where the case is pending.

**Changes to original version by proposed amendments:**

A Motion for Reconsideration shall be based on (1) newly discovered evidence that could not be discovered through the exercise of due diligence before the original motion was filed; (2) a change of relevant law; or (3) a particular and demonstrable error in the original ruling or decision. A Motion for Reconsideration shall otherwise raise no new grounds for relief not raised in the original motion or opposition and shall not reiterate previously advanced arguments. Motions for reconsideration~~Reconsideration shall be served and processed consistent with Rule~~Rules 9A- Such motions seeking reconsideration of motions made pursuant to Mass. and 9C. A Motion for Reconsideration shall identify, in the first paragraph, the newly discovered evidence, change of relevant law, or particular and demonstrable error in the original decision on which the motion is based. A Motion for Reconsideration based on a particular and demonstrable error in the original ruling or decision must be~~R. Civ. P. 50(b) , 52(b) , 59(b) , 59(e) or 60(b) are considered made or served for purposes of those rules on the date of service pursuant to Rule 9A- within 21 days of entry of the original ruling or decision.~~

Additionally, the~~A Motion for Reconsideration and supporting memorandum shall be contained in a single document and shall not exceed 10 pages in length. The words "MOTION FOR RECONSIDERATION" shall appear clearly in the title of the motion. Any opposition shall not exceed 10 pages in length. Upon filing, the clerk shall transmit the motion and supporting papers to the Justice who decided the original motion, but if that Justice has retired or is otherwise unavailable, the clerk shall transmit the motion to the Regional Administrative Justice for the region where the case is~~



pending. If, upon reviewing the motion and supporting documents, the Justice ~~who decided the original motion~~ desires to hold a hearing on the motion for reconsideration, he or she may schedule a hearing thereon. Alternatively, he or she may refer the motion for reconsideration to the Regional Administrative Justice for the region where the case is pending.

Motions seeking reconsideration of decisions made pursuant to Mass. R. Civ. P. -50(b), 52(b), 59(b), 59(e) or 60(b) are considered made or served for purposes of those rules on the date of service pursuant to Rule 9A, provided that the moving party shall also simultaneously file and serve a "Notice of Motion for Reconsideration" in the same manner as provided in the final sentence of Rule 9E.

**Clean copy of proposed amended version:**

A Motion for Reconsideration shall be based on (1) newly discovered evidence that could not be discovered through the exercise of due diligence before the original motion was filed; (2) a change of relevant law; or (3) a particular and demonstrable error in the original ruling or decision. A Motion for Reconsideration shall otherwise raise no new grounds for relief not raised in the original motion or opposition and shall not reiterate previously advanced arguments.

Motions for Reconsideration shall be served and processed consistent with Rules 9A and 9C. A Motion for Reconsideration shall identify, in the first paragraph, the newly discovered evidence, change of relevant law, or particular and demonstrable error in the original decision on which the motion is based. A Motion for Reconsideration based on a particular and demonstrable error in the original ruling or decision must be served pursuant to Rule 9A within 21 days of entry of the original ruling or decision.

A Motion for Reconsideration and supporting memorandum shall be contained in a single document and shall not exceed 10 pages in length. The words "MOTION FOR RECONSIDERATION" shall appear clearly in the title of the motion. Any opposition shall not exceed 10 pages in length. Upon filing, the clerk shall transmit the motion and supporting papers to the Justice who decided the original motion, but if that Justice has retired or is otherwise unavailable, the clerk shall transmit the motion to the Regional Administrative Justice for the region where the case is pending. If, upon reviewing the motion and supporting documents, the Justice desires to hold a hearing on the motion for reconsideration, he or she may schedule a hearing thereon. Alternatively, he or she may refer the motion for reconsideration to the Regional Administrative Justice for the region where the case is pending.

Motions seeking reconsideration of decisions made pursuant to Mass. R. Civ. P. 50(b), 52(b), 59(b), 59(e) or 60(b) are considered made or served for purposes of those rules on the date of service pursuant to Rule 9A, provided that the moving party shall also simultaneously file and serve a "Notice of Motion for Reconsideration" in the same manner as provided in the final sentence of Rule 9E.