

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.

RALPH D. GANTS
Chief Justice

-
1. Court Submitting Rules for Approval:

Superior Court

2. Date Rules Submitted for Approval:

May 4, 2018

3. Date Approved & Promulgated by the Supreme Judicial Court:

July 27, 2018

4. Rule or Rules, or Amendments Thereto, Approved and Promulgated:

Amendments to Superior Court Rules 9A and 9C, as attached hereto.

5. Effective Date:

The amendments are effective as to all motions served on or after November 1, 2018.

(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.)

DATE RECEIVED:

Rules approved and promulgated: Amendments to Superior Court
Rules 9A and 9C, as attached hereto.

APPROVAL:

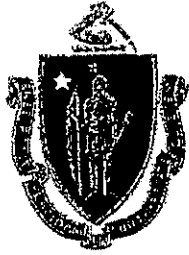
<u>RALPH D. GANTS</u>)	Chief Justice
)	
<u>BARBARA A. LENK</u>)	
)	
<u>FRANK M. GAZIANO</u>)	Justices
)	
<u>DAVID A. LOWY</u>)	
)	
<u>KIMBERLY S. BUDD</u>)	
)	
<u>ELSPETH B. CYPHER</u>)	
)	
<u>SCOTT L. KAFKER</u>)	

COMMENTS: Effective Date - The amendments are effective as to
all motions served on or after November 1, 2018.

DATE:

Please forward completed form and copy to:

Clerk, Supreme Judicial Court for the Commonwealth



COMMONWEALTH OF MASSACHUSETTS
THE SUPERIOR COURT
THREE PEMBERTON SQUARE
BOSTON, MA 02108

JUDITH FABRICANT
CHIEF JUSTICE

TELEPHONE
617-788-7301

May 4, 2018

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 Changes to Superior Court Rules 9A and 9C

Dear Justice Gaziano:

I submit for approval by the Supreme Judicial Court the following proposed rules changes:

1. amendments to Superior Court Rule 9A (Civil Motions); and
2. amendments to Superior Court Rule 9C (Additional Requirements for Dispositive and Discovery Motions).

These proposals were posted for comment on the Superior Court's website on December 20, 2017, and notice was sent to Massachusetts Lawyers Weekly on the same day. The Court set a deadline of February 15, 2018, for submitting comments. The Superior Court Rules and Forms Committee reviewed comments and recommended (1) adoption of the proposed amendments to 9A, with minor changes; and (2) adoption of the proposed amendments to Rule 9C as published, with no additional changes.

The Committee sent its recommendations to all justices of the Superior Court in advance of the Court's semi-annual business meeting on April 28, 2018. At that meeting, the justices discussed the proposed amendments to Rules 9A and 9C and voted to approve the amendments

for submission to the SJC for its approval. Below is a summary of the proposed amendments that were approved for submission to the SJC.

1. Proposed Amendments to Superior Court Rules 9A

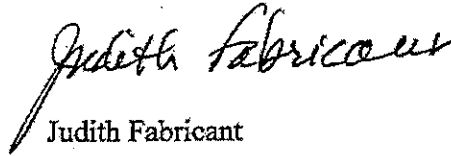
The amendments to Rule 9A are intended to simplify the rule and reorganize it for ease of use. Among the changes are requiring the parties to confer before filing emergency motions or dispositive motions (consistent with proposed amendments to Rule 9C, see below); requiring moving parties to notify third parties of any motion to add them as defendants or affecting their rights; changing the standards and procedures for determining whether to hold a hearing on a motion; allowing parties to consent to electronic service; and clarifying the provision regarding reply memoranda and oppositions to motions to strike and cross-motions. The amendments also streamline summary judgment procedures by limiting the 9A(b)(5) statement of material facts to 20 pages and to information material to summary judgment (background information may be included in the 20-page memorandum in support of the motion); and barring opposing parties from asserting additional facts in the statement of material facts (but allowing additional facts in the memorandum), except in cross-motions for summary judgment.

2. Proposed Amendments to Superior Court Rule 9C

The amendments to Rule 9C require the parties to confer before serving dispositive motions as well as discovery motions, to narrow areas of disagreement to the fullest extent. Concerning motions under Mass. R. Civ. P. 12, the parties must 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. Concerning motions under Mass. R. Civ. P. 56 or 41(b)(2)(second sentence), the parties must discuss whether the moving party should refrain from making any motion qualifying for decision without a hearing under Superior Court Rule 9A(b)(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.

The Superior Court requests that the SJC approve these proposed rule changes **effective September 1, 2018**. I would be happy to discuss any questions you may have, or provide any additional information. Thank you for your consideration.

Very truly yours,


Judith Fabricant

cc: Chief Justice Paula M. Carey
Hon. Thomas F. McGuire, Jr., Chair, Superior Court Rules and Forms Committee
Christine Burak, Esq., Secretary of the Rules Committee

Proposed Changes to Superior Court Rules 9A and 9C

Superior Court Rule 9A: Civil Motions

(Applicable to civil actions)

(a) Motion Practice and Format of Papers.

(1) Motions. A moving party must serve with the motion, which shall contain a request for a hearing (if desired), (1) a separate memorandum stating the reasons, including supporting authorities, that the motion should be granted and (2) affidavits or other exhibits evidencing facts on which the motion is based. These papers are referred to below as the "Motion Papers." The moving party shall initiate a conference with the other parties for all dispositive and discovery motions subject to Rule 9C. Motions for summary judgment must also comply with section (b)(5), below.

(2) Oppositions to Motions. A party opposing a motion may serve (1) a memorandum in opposition that includes a statement of reasons, with supporting authorities, that the motion should not be allowed, together with a request for a hearing (if desired) and (2) affidavits or other exhibits evidencing facts on which the opposition is based, as well as (3) any cross-motion (including but not limited to a motion to strike) and (4) memorandum and affidavits supporting the cross-motion. These papers are referred to below as the "Opposition."

(3) Reply/Opposition to Motion to Strike. The moving party may file a reply memorandum limited to matters raised in the opposition that were not and could not reasonably have been anticipated and addressed in the moving party's initial memorandum ("Reply"). The moving party may also file an opposition to any motion to strike or cross-motion. No other reply or surreply submission shall be filed without leave of court, which will be granted only in exceptional circumstances.

(4) Facts Verified by Affidavit. The court need not consider any motion, opposition, or reply based on facts unless the facts are verified by affidavit, are otherwise apparent in the record, or are agreed to in a writing signed by the interested parties or their counsel.

(5) Format and Length of all Papers Except Exhibits. All papers addressed by this Rule 9A, except exhibits, must conform to the following requirements:

(i) Paper size. Papers must be on 8 1/2" by 11" paper.

(ii) Typeface. Papers must be in 12-point, double-spaced type. The caption, footnotes, and indented quotations may be single-spaced in 12-point type.

(iii) Title. The title of each document must appear on the first page next to or below the caption.

(iv) Length. The memorandum supporting the motion or cross-motion and the memorandum in opposition may not exceed 20 pages, and the reply may not exceed 5 pages. Any appendix permitted by Superior Court Rule 9C(b) is not included in the page limit. Nor is an addendum that sets forth, verbatim and without argument, pertinent excerpts from key documents, statutes, regulations or the like.

(v) Email Addresses. Each attorney or self-represented party filing motion or opposition papers must include his or her email address on the papers, or certify in the filing that he or she does not have an email address.

(6) Leave of court. Advance leave of court is required to exceed the page limit or file a surreply. All requests for leave of court must: (1) be captioned as a pleading, (2) not exceed one page in length (not counting the caption and title), (3) state the grounds and specific relief sought (e.g., a specific proposed new page limit) and (4) include a certificate of service. The request must be sent directly to the session clerk, ATTN: Session Judge. The request must be served on all other parties, but the court need not await a response to such request before ruling. Any leave granted to the moving party for additional pages applies to the opposing party's memorandum as well, unless otherwise ordered. The title of any surreply and any memorandum exceeding 20 pages must note the date on which leave was allowed.

(7) No Automatic Extension of Time Pending Leave of Court. A request for leave of court under Paragraph (a)(6) does not extend the date for filing the Rule 9A Package (See Rule 9A(b)(2)) to which it relates, unless the court orders otherwise or all parties agree.

(8) Attorney Certifications. All dispositive and discovery motions shall include the certificate required by Superior Court Rule 9C.

(b) Procedure for Serving and Filing Motions.

(1) Service.

(i) General: All Motion Papers, Oppositions, and Replies must be served on all parties and filed with the clerk in accordance with the procedure set forth in this Paragraph (b). Compliance with this Paragraph shall constitute compliance with the "reasonable time" provisions of the first sentence of Mass. R. Civ. P. 5(d)(1).

(ii) When Service on Non-Parties is Required: Papers must be served on specifically named non-parties in compliance with this Rule if (a) the Motion seeks to add the non-party as a party to the case; (b) the Motion seeks an order or other relief against the non-party; (c) the issues affect the personal information or other interests of the non-party. The non-party need not be served, however, if excused by a court order issued in advance for cause or if a statute or rule expressly authorizes ex parte relief.

(iii) Electronic Service: Motion and opposition papers may be served entirely electronically if the parties agree in writing to the method of service and the electronic format. The parties should note on their filings “served via email” so that scanned signatures are accepted by the court, except that all papers signed under penalties of perjury must bear original signatures when filed with the clerk. The agreement may be revoked only upon 10 days written notice to all parties. All 9A certifications must be filed in hard copy with original written signatures.

(2) The Rule 9A Package.

(i) The parties must cooperate in filing with the court a “Rule 9A Package.” The Rule 9A Package consists of the original Motion Papers, the Opposition, and the Reply, any other papers for which leave of court is granted under Paragraph (a)(6), and any appendices or other papers permitted or required by this Rule, statute, or order of the court.

(ii) Time for Filing or Withdrawal of the Motion. Within 10 days of service of the Opposition, the moving party must either (1) file the Rule 9A Package with the court or (2) notify all parties that the motion has been withdrawn and will not be filed. If the moving party does not receive an Opposition within 3 business days after expiration of the time permitted for service of an Opposition, then the moving party must file with the clerk the Motion Papers together with an affidavit reciting compliance with this Rule and receipt of no Opposition in a timely fashion, unless the moving party withdraws the motion and has so notified all parties.

(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.

(3) Time Periods in General. The time periods prescribed below apply unless a different time period is set by statute or order of the court. Where papers are served by mail, these time periods are extended by 3 days in accordance with Mass. R. Civ. P. 6(d).

(4) Motions Except Motions for Summary Judgment.

(i) Time for service of Opposition All Oppositions must be served no later than 10 days after service of the Motion Papers.

(ii) Effect of cross-motion/motion to strike. The provisions of Paragraph (b)(4)(i) apply to cross-motions (including motions to strike) served with the Opposition to a motion. When a cross-motion is brought, the time for filing the Rule 9A Package for the original motion is extended to be coterminous with the date for filing the cross-motion. The Rule 9A Packages for the original motion and the cross-motion must be filed together by the original moving party.

(5) Motions for Summary Judgment.

(i) Statement of facts. A motion for summary judgment must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue to be tried, set forth in consecutively numbered paragraphs, with page or paragraph references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents ("Statement of Facts"). Only such facts as are material to deciding the motion shall be included in the Statement of Facts.

The Statement of Facts as served shall not exceed 20 pages in length and shall not include:

a. Background facts not material to decision of the motion. Such facts may be included in a party's memorandum of law even though they are not in the statement.

b. Quotations from any contract, trust, agreement, or other transactional document, or any characterizations of the document (except if admissible through percipient witnesses). The Statement of Facts may only establish the existence and authenticity of the document and the date it became effective.

c. Quotations from any statute, regulation or rule.

Quotations from material described in paragraphs b and c may be included, without argument or commentary, in an addendum to the party's memorandum of law.

This Statement of Facts must be a separately captioned document. Failure to include the Statement of Facts constitutes grounds for denial of the motion. The Court may disregard a Statement of Facts in whole or part if it is unnecessarily long or otherwise materially out of compliance with this rule.

(ii) Service of motion papers. The moving party must serve a copy of its Motion Papers, and the Moving Party's Statement of Facts, on every other party. The Moving Party's Statement of Facts must also be sent contemporaneously in electronic form by email to all parties in Rich Text Format (RTF) or such other format as to which the parties agree. The email transmission of the Moving Party's Statement of Facts is excused if (1) the moving or any opposing party is self-represented, (2) the attorney for the moving party certifies in an affidavit that he or she does not have access to email, or (3) the attorney for the moving party certifies in an affidavit that an opposing party's attorney has no email address or has not disclosed his or her email address.

(iii) Opposition. Within 21 days after service of the Motion Papers, any party opposing the motion must serve on the moving party the original and one copy of the Opposition, and must serve on all other parties one copy of the Opposition.

(A) Response to Moving Party's Statement of Facts. The Opposition may include a response to the Moving Party's Statement of Facts. The opposing party must reprint the Moving Party's Statement of Facts and set forth a response directly below the appropriate numbered paragraph, including, if the response relies on opposing evidence, page or paragraph references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents. The response to the numbered paragraphs shall be limited to stating whether a given fact is disputed and, if so, cite to the specific evidence, if any, in the Joint Appendix that demonstrates the dispute. It shall not:

- a. Deny a fact unless the party has a good faith basis for contesting it.
- b. Include a statement that a fact is not supported by the materials cited by the moving party, unless the responding party has a good faith basis for contesting it.
- c. Include commentary on whether the fact asserted is relevant or material to any issue raised in the case, although a responding party may indicate, where appropriate, that the fact is admitted only for the purposes of the summary judgment motion.
- d. Assert any additional facts. Additional facts may be included in the response only in the manner provided in section (b)(5)(iii)(B) below.
- e. Make legal arguments or advocacy-oriented characterizations concerning the sufficiency, relevance or materiality of the moving party's factual proffers.

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 in this Paragraph (b)(5)(iii)(A).

(B) Statement of additional facts. Opposing parties who argue that additional facts warrant denying summary judgment shall include those facts in the opposition memorandum, each to be supported with page or paragraph references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents. They may not submit a separate statement of additional facts, except in support of a cross-motion for summary judgment.

(C) Service of response to statement of facts. The opposing party's response to the Moving Party's Statement of Facts must be served contemporaneously by email as described in (b)(5)(ii) above, unless such service is excused.

(D) Exhibits for Joint Appendix. Where the opposing party relies upon evidence not included in the exhibits served with the Motion Papers, the opposing party must serve the moving party with such evidence in the form of new exhibits for inclusion in the Joint Appendix, in accordance with Paragraph (b)(5)(v) below.

(E) Citation of evidence. The opposing party must cite to the Joint Appendix in accordance with Paragraph (b)(5)(v) below.

(iv) Filing of Rule 9A Package.

(A) Joint Appendix and Statement of Facts. The Rule 9A Package must also include the Joint Appendix and a Consolidated Statement of Facts, which must include the opposing party's responses to the Moving Party's Statement of Facts. Similarly, in cases with multiple parties, all parties moving or opposing summary judgment shall coordinate their statements and responses so that there shall be a single statement and response covering all motions. Unless the obligation to send the Moving Party's Statement of Facts or the response thereto in electronic form has been excused, only the Consolidated Statement of Facts (and not any intermediate versions thereof) may be filed so that the court has only a single document.

(B) Service of Statement of Facts and Joint Appendix. Upon filing the Rule 9A Package, the moving party must serve on the opposing parties the Notice of Filing described below and the following, in paper and electronic form, unless electronic form is excused: (1) the Consolidated Statement of Facts filed with the clerk; (2) the Joint Appendix, unless the parties otherwise agree

(C) Effect of cross-motion/motion to strike. The provisions of Paragraph (b)(5)(i)-(iv) apply to cross-motions for summary judgment and any other cross-motion (including a motion to strike) served with the Opposition to a motion for summary judgment. A separate Consolidated Statement of Facts must be served with any cross-motion for summary judgment. All parties moving for or opposing summary judgment shall coordinate their statements and responses so that there shall be a single consolidated document containing the respective statements of material facts and responses thereto. When a cross-motion (including motion to strike) is brought, the time for filing the Rule 9A Package for the original motion is extended to be coterminous with the date for filing the cross-motion. The Rule 9A Packages for the original motion and the cross-motion must be filed together by the original moving party.

(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. 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 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 off-set tab dividers). The opposing party must serve the original and one copy of those new exhibits with its Opposition.

(B) Certification. The initial moving party must certify that the Joint Appendix includes all exhibits served with the Opposition, except for any exhibit(s) designated by the opposing party but not provided to the moving party. The burden is on the opposing party to move to file any designated exhibit not timely submitted. All memoranda of law filed in support of or in opposition to a motion for summary judgment shall reference the exhibit numbers as well as a paragraph in the statement of material facts.

(vi) Decision on Certain Motions Without A Hearing. The following types of summary judgment motions may, in the court's discretion, be denied on the papers without a hearing notwithstanding Rule 9A(c)(3) (but shall not be granted without a hearing unless the hearing is waived):

- (1) Multiple summary judgment motions by a single party, or subsequent summary judgment motions by parties sharing similar interests and making the same arguments as those the court has already resolved.
- (2) Motions for partial summary judgment that will save little or no trial time, will not simplify the trial and will not promote resolution of the case.
- (3) Motions for summary judgment where a genuine dispute of material fact is obvious on the face of the papers.

(vii) Sanctions for noncompliance. The court need not consider any motion or opposition that fails to comply with the requirements of this Rule, may return non-compliant submissions to counsel with instructions for re-filing, and may impose other sanctions for flagrant violations of the Rule.

(c) Hearings on Motions.

(1) Marking. If the court believes that a hearing is necessary or helpful to a disposition of the motion, the court will set the time and date for the hearing and notify the parties.

(2) Request for Hearing. A request for a hearing must set forth any statute or rule of court which, in the judgment of the submitting party, requires a hearing on the motion, as well as any reason why the court should hold a hearing. After reviewing the motion, the court will decide whether a hearing should be held and, if a hearing is to be held, will notify the parties

in accordance with Paragraph (c)(1). Failure to request a hearing shall be deemed a waiver of any right to a hearing afforded by statute or court rule.

(3) Presumptive Right to Hearing. Requests for hearings on the following motions will ordinarily be allowed: Attachments (Rule 4.1), Trustee Process (Rule 4.2), Dismiss or Judgment on the Pleadings (Rule 12), Adopt Master's Report (Rule 53), Summary Judgment (Rule 56), Injunctions (Rule 65), Receivers (Rule 66), and Lis Pendens (G.L. c. 184, sec. 15). Motions that are not set down for hearing in accordance with Paragraph (c) will be decided on the papers filed in accordance with this Rule.

(d) Exceptions. The provisions of this Rule do not apply to the following motions:

(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.

(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.

(3) Motions governed by E-filing Rules: A motion governed by a Statute or a Court rule or order for e-filing is exempt from any requirement of this Rule to the extent inconsistent with such e-filing requirements.

(4) Review of Decision of Administrative Agency: Motions governed by Standing Order 1-96, to the extent the standing order specifies alternate procedures.

Superior Court Rule 9C: Additional Requirements for Dispositive and Discovery Motions

(a) General Rule: Counsel for each of the parties shall confer in advance of serving any motion under Mass. R. Civ. P. 8(a), 12 (except Rule 12(c) motions in administrative appeals), 26, 37, 41(b)(2)(first sentence) or 56 and make a good faith effort to narrow areas of disagreement to the fullest extent. Counsel for the party who intends to serve the motion shall be responsible for initiating the conference, which conference shall be by telephone or in person. All such motions shall include a certificate stating that the conference required by this Rule was held, together with the date and time of the conference and the names of all participating parties, or that the conference was not held despite reasonable efforts by the moving party to initiate the conference, setting forth the efforts made to speak by telephone or in person with opposing counsel. Motions unaccompanied by such certificate will be denied without prejudice to renew when accompanied by the required certificate.

(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)(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.

(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.