

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:
March 5, 2021
 3. Date Approved & Promulgated by the Supreme Judicial Court:
June 14, 2021
 4. Rule or Rules, or Amendments Thereto, Approved and Promulgated:
Amendments to Superior Court 9C and 30B, New Rule 74, and
Repeal of Rules 76 and 77, as described in the enclosed
letter dated March 5, 2021 from Chief Justice Judith
Fabricant.
 5. Effective Date:
The repeal of Rules 76 and 77 is effective immediately.
The amendments to Rules 9C, 30B and new Rule 74 are
effective September 1, 2021.

(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, 13th Floor
Boston, MA 02108

Judith Fabricant
Chief Justice

Elaina M. Quinn
Deputy Court Administrator

March 5, 2021

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 9C and 30B, New Rule 74,
and Repeal of Rules 76 and 77**

Dear Justice Gaziano:

I submit for approval by the Supreme Judicial Court the following proposals:

- Amendment to Rule 9C, Additional Requirements for Dispositive and Discovery Motions
 - This amendment would change the first sentence of 9C(a), expanding the rule to require counsel to confer in advance of filing any motion except for those governed by Rule 9A(d) and Standing Order 1-96.
- Amendment to Rule 30B, Expert Disclosures
 - This amendment would add a new last sentence to 30B(a), making explicit that the requirement of including expert disclosures in the pretrial conference memorandum does not excuse parties from answering expert interrogatories, as required by Mass. R. Civ. P. 26(b)(4) and 33.
- New Rule 74, Civil Asset Forfeiture
 - The new rule primarily seeks to ensure that those with an interest in property subject to forfeiture receive actual notice of the forfeiture proceeding.

- Repeal of Rule 76, Divorce Proceedings
- Repeal of Rule 77, Trial Lists of Divorce Cases in Suffolk
 - Repeal of these rules is recommended because the Superior Court no longer has jurisdiction over such proceedings. G. L. c. 215, § 3, as amended by St. 1986 c. 462, § 15 (“Probate courts have exclusive original jurisdiction of actions for divorce or for affirming or annulling marriage.”).

The justices of the Superior Court gave preliminary approval to these proposals at the Court’s semi-annual business meeting on December 4, 2020, by Zoom. The proposals were posted for comment on the Superior Court’s website on December 8, 2020, and notice was sent to Massachusetts Lawyers Weekly the same day. The Court set a deadline of January 15, 2021, for submitting comments. No comments were received.¹ On February 26, the Court met by Zoom and voted to make a minor amendment to new Rule 74 by substituting “criminal proceeding” where “criminal trial” appeared, to reflect the reality that most criminal cases are resolved without a trial. The Court also voted to submit Rule 74, as amended, and the other proposals to the SJC for its approval.

The Superior Court requests that the SJC approve these proposed rules changes **effective June 1, 2021**. 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

Judith Fabricant

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

¹ In the posting for public comment, the proposal concerning Rule 30B(a) mistakenly included a minor rephrasing of the first sentence in addition to the proposed new last sentence. The inadvertent rephrasing was not material, and, in any event, no comments were received.

Rule 9C

Current Text:

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. . . .

Proposed Amended Text:

Rule 9C. Counsel to Confer Prior to Filing Motions

(a) **General Rule:** Counsel for each of the parties shall confer in advance of filing any motion, except motions governed by Rule 9A(d) and Standing Order 1-96, and make a good faith effort to narrow areas of disagreement to the fullest extent. . . .

Rule 30B

Current Text:

Rule 30B. Expert Disclosures

(a) **Timing.** Unless the parties agree or the court in the interests of justice orders otherwise, each party shall set forth the following information in the pre-trial conference memorandum: . . .

Proposed Amended Text:

Rule 30B. Expert Disclosures

(a) **Timing.** Unless the parties agree or the court in the interests of justice orders otherwise, each party shall set forth the following information in the pre-trial conference memorandum: . . .
. Nothing in this rule excuses a party from answering expert interrogatories pursuant to Mass. R. Civ. P. 26(b)(4) and 33 or any court order.

Proposed Rule 74

Rule 74. Civil Asset Forfeiture

(Applicable to all cases seeking asset forfeiture pursuant to G.L. c. 94C, § 47; G.L. c. 90, § 24W; G.L. c. 257, §§ 1-14; G.L. c. 265, § 56; or any other statute authorizing civil asset forfeiture)

1. **Notice.** The Commonwealth shall file, simultaneously with every petition for forfeiture of any asset pursuant to G.L. c. 94C, § 47 or any other statute: (a) a motion for an order of notice, with a proposed order of notice; and (b) an affidavit indicating the basis on which the Commonwealth identified persons with an interest in the property and their addresses. The affidavit shall demonstrate that the Commonwealth diligently searched for persons with an interest in the property and for places where such persons will receive actual notice of the proceeding.

The proposed order shall provide for notice to each potential claimant, including: each person (a) from whose possession the asset was seized; (b) who holds registered or recorded title to the asset; or (c) who, according to information known or within the possession, custody or control of the Commonwealth, has or may claim an interest in the asset. If the person to be served is represented by counsel in the forfeiture proceeding or in a related criminal proceeding, the Commonwealth shall also serve notice on that person's counsel.

The proposed order shall provide for service of notice to each potential claimant within ten business days after issuance of the order. The Commonwealth shall serve notice on an incarcerated person in hand by a custodial officer at the place of incarceration or by certified or registered mail requiring a signed receipt, addressed to the potential claimant at the place of incarceration. The Commonwealth shall serve notice on a person who is not incarcerated either in hand or by certified or registered mail requiring a signed receipt, addressed to the potential claimant at a location where the potential claimant will receive actual notice. The court may order alternate or additional methods of service.

The requirements of this section, as to the contents of the order of notice and the manner of service, supplement any additional requirements of the statute governing the forfeiture proceeding.

2. **Affidavit of Notice and Request for Hearing.** Within thirty days after giving notice to a potential claimant, the Commonwealth shall file an affidavit indicating the place and manner in which it gave notice. If the Commonwealth gave notice by certified or registered mail, it shall attach the signed return receipt to the affidavit of notice. The Commonwealth shall simultaneously file a request that the court hold a hearing on the petition to address the interest of the person so notified. The request shall include any information available to the Commonwealth indicating whether the potential claimant is incarcerated and whether such person requires the services of an interpreter.
3. **Prompt Hearing.** The court shall hold a hearing as to the interest of each potential claimant promptly but not less than two weeks after the Commonwealth notified the potential claimant of the proceeding. Upon motion of any potential claimant, the court may continue the hearing pending the conclusion of any criminal proceeding related to the petition.

4. **Notice of Resolution of Criminal Case.** If the court continues the hearing on a petition pending the conclusion of a related criminal proceeding, the Commonwealth shall notify the court in writing within thirty days of the entry of judgment in, or other resolution of, the related criminal proceeding and shall request a prompt hearing on the petition. Failure to do so may result in the dismissal of the petition.
5. **Default.** If the Commonwealth seeks a default judgment, it shall do so pursuant to Mass. R. Civ. P. 55(b)(2). The Commonwealth shall make diligent efforts to ascertain whether, at the time of the motion hearing, the party against whom it seeks a default judgment is incarcerated and whether any address to which it mails notice of the motion hearing is a place where the potential claimant will receive actual notice. The Commonwealth shall file an affidavit with its motion for default judgment identifying the efforts it has made and the information it has obtained. Prior to ordering entry of default judgment against any potential claimant, the court shall determine that the documentation provided by the Commonwealth establishes diligent efforts to provide actual notice of the hearing to the defaulting potential claimant.

Rule 76

Current Text:

Rule 76. Divorce Proceedings

(Includes cases of divorce and proceedings for the annulment or affirmation of marriage)

The applicable statutes and the rules of the Probate Court shall apply to divorce proceedings and proceedings for the annulment or affirmation of marriage brought in this court.

Proposed Action:

Repeal

Rule 77

Current Text:

Rule 77. Trial Lists of Divorce Cases in Suffolk

(Applicable to cases of divorce and proceedings for the annulment or affirmation of marriage in Suffolk)

The divorce list in Suffolk will be taken up in a divorce session at such times as the chief justice may designate, precedence being given to uncontested cases unless the court otherwise orders. Cases may be placed upon the list for the divorce session in Suffolk in the manner provided for the placing of cases on the list in counties other than Suffolk by Rule 37, and motions and other interlocutory matters in cases on the divorce docket in Suffolk may be placed upon the list for hearing thereon at the divorce session in Suffolk in the manner provided for the placing of such matters on the list in counties other than Suffolk by Rule 38.

Proposed Action:

Repeal