

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:

July 22, 2015

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

September 24, 2015

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

Amendments to Rules 7, 9A, 9C, 13, 17, 22, 29, and 30A; new Rules 19, 30A, 31, and 33; and repeal of Standing Orders 1-06, 1-07, and 1-09, all as attached hereto. Action on proposed new Superior Court Rule 17A is deferred.

5. Effective Date:

January 1, 2016

(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.)



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

JUDITH FABRICANT
CHIEF JUSTICE

TELEPHONE
617-788-7301

July 22, 2015

Honorable Robert J. Cordy
Chair of the Rules Committee
Supreme Judicial Court
John Adams Courthouse, Suite 2200
One Pemberton Square
Boston, MA 02108

RE: Request for Changes to Several Superior Court Rules

Dear Justice Cordy:


I submit for approval by the Supreme Judicial Court, the attached proposed amendments to Superior Court Rules 7, 9A, 13, 17, 22, and 29; the combining and renumbering of current Rules 9C and 30A; the adoption of new Superior Court Rules 17A (to replace current Superior Court Standing Order 2-87) and 19; and the adoption of new Superior Court Rules 30A, 31, and 33, in substitution for Superior Court Standing Orders 1-09, 1-06, and 1-07, respectively.

Except for Superior Court Rule 19, all proposed changes were published for comment in the Massachusetts Lawyers Weekly (posted online on January 29, 2015; printed in February 2, 2015 issue) and on the Superior Court's website (posted on or about December 26, 2014). Comments were accepted through March 1, 2015. The Superior Court requests that the SJC approve new Superior Court Rule 19 - Out of Location/Region/County Transfers - without the need for publication because the proposed change affects only the administrative assignment of cases to various locations, and does not otherwise affect the general public. This new Rule will replace five rules that were repealed (former Rules 36, 43, 44, 45, and 48) in 2014.

After reviewing the comments received, the Superior Court's Rules Committee made changes only to proposed Superior Court Rule 17A - Official Record of Superior Court Proceedings. The proposed rule as so revised would operate consistently with the new electronic recording system (known as "FTR") that is in the process of being implemented throughout the Trial Court. The proposed changes to all of the Superior Court rules, including the additional changes made to Rule 17A, were presented to and approved by the justices of the Superior Court at the Court's semi-annual business meeting on May 2, 2015.

The Superior Court requests that the SJC approve the proposed changes **effective January 1, 2016**. Please call me if you have any questions or need additional information. Thank you for your consideration.

Very truly yours,


Judith Fabricant

encl.

cc: Chief Justice Paula M. Carey
Christine Burak, Esq., Secretary of the Rules Committee
Hon. Douglas H. Wilkins, Chair, Superior Court Rules Committee

**PROPOSED SUPERIOR COURT RULES
TO BE AMENDED, RENUMBERED, OR ENACTED
(proposed effective date- January 1, 2016)**

**PROPOSED AMENDMENT TO
SUPERIOR COURT RULE 7 -
OPENINGS: USE OF PLEADINGS**

To conform the rule to St. 2014, c. 254, propose to delete the final sentence and add new last sentence (**in bold**).

Rule 7. Openings: Use of Pleadings

The opening statement shall be limited to fifteen minutes, unless the court for cause shown shall extend the time.

The court in its discretion may permit, or in a civil action require, a defendant to make an opening statement of his defense before any evidence is introduced.

The court may order that the pleadings be summarized in an opening statement but not be read to the jury. ~~No reference to the ad damnum shall be made by counsel nor shall pleadings go to the jury except by authorization of the court.~~ **Pleadings shall not go to the jury except by authorization of the court.**

PROPOSED AMENDMENTS TO
SUPERIOR COURT RULE 9A - CIVIL MOTIONS

I. **Delete current Rule 9A(a)(3):**

~~(3) *Reply and Sur-reply Memoranda.* A reply memorandum may be filed only with leave of court. Such leave must be sought within 5 days of service of a memorandum in opposition. A reply memorandum shall be limited to addressing matters raised in the opposition that were not and could not reasonably have been addressed in the moving party's initial memorandum. In view of the limitations upon a reply memorandum, a sur-reply is strongly disfavored and may not be filed without leave of court sought within 5 days of service of the reply. To request leave of court, a party shall send a letter to the Session Judge setting forth the grounds to support the request and shall serve the letter on all other parties. If leave is granted, the requesting party shall serve notice of the grant of leave with its reply memorandum or sur-reply.~~

Replace with:

(3) *Reply and Sur-Reply Memoranda.* Where the opposition raises matters that were not and could not reasonably have been addressed in the moving party's initial memorandum, the moving party may file a reply memorandum not to exceed five typed double-spaced pages, which shall be limited to addressing such matters. No other reply or surreply shall be allowed without leave of court, which is strongly disfavored. To request leave of court, a party shall address a short request (not more than one double-spaced page and captioned as a pleading) directly to the Session Clerk, ATTN: Session Judge, setting forth the grounds to support the request, and shall serve the request on all other parties.

II. **Add to Rule 9A(b)(2), fifth sentence, ", and any reply up to five pages,"** so that the sentence reads:

... Upon receipt of the opposition and associated documents, if any, the moving party shall attach the original of the opposition and associated documents, **and any reply up to five pages**, to the original motion and associated documents and within 10 days shall file with the clerk the combined documents ("the Rule 9A package"), unless ...

III. Add as a new penultimate sentence to Rule 9A(b)(5)(ii), "Upon filing of a consolidated Rule 9A(b)(5) statement, the parties' original 9A(b)(5) statement and response should not be filed." so that it reads:

. . . Where the obligation to send the statement of material facts in electronic form has been excused, the response to the statement of material facts may be in a separate document. **Upon filing of a consolidated Rule 9A(b)(5) statement, the parties' original 9A(b)(5) statement and response should not be filed.** For purposes of summary judgment, the moving party's statement of a material fact shall be deemed to have been admitted unless controverted as set forth in this paragraph.

PROPOSED AMENDMENT TO
SUPERIOR COURT RULE 13 - HOSPITAL RECORDS

Propose to **add** new second paragraph (in bold).

Rule 13. Hospital Records

(First paragraph applicable to civil actions only; remainder
of rule applicable to all cases)

Any party, or his attorney, in any action for personal injuries, may file an application for an order for a copy of any hospital records of a party, together with a copy of the proposed order and an affidavit that he has notified the other party, or his attorney, of his intention to file said application seven days at least prior to said filing and that he has not received any objections in writing thereto. The order shall issue as of course upon the receipt of such application.

In the event of an objection, no order shall issue unless the parties comply with Superior Court Rule 9A.

When a hospital record, or any part thereof, is received in evidence, the record shall be returned to the hospital upon the conclusion of the trial unless the court otherwise orders.

If the court orders the retention of the hospital record, it shall remain in the custody of the clerk, who shall give a receipt therefor. The record shall be released to the hospital, upon the giving of a receipt to the clerk.

PROPOSED AMENDMENTS TO
SUPERIOR COURT RULE 17 - RECORDING DEVICES

Propose to amend rule to conform to SJC Rule 1:19 ("Electronic Access to the Courts") by **deleting** the final sentence and **adding** a new sentence (**in bold**).

Rule 17. Recording Devices
(Applicable to all cases)

No person shall use or have in his possession or under his control in the chambers or lobby of a justice or justices of the court, or in any courtroom or other place provided for a hearing or proceeding of any kind on any action or matter pending before the court, or before any master, arbitrator, or any other person appointed by the court, any mechanical, electronic or other device, equipment, appliance or apparatus for recording, registering or otherwise reproducing sounds or voices, unless prior authorization for such use or possession is granted by the justice then having immediate supervision of such courtroom or other place. ~~Every order granting such authorization shall be upon condition that no such recording or reproduction may be used to impeach, discredit or otherwise affect the authenticity or accuracy of the record of such action or proceeding or of the transcript therein made by the official court reporter.~~ **All recordings or transmissions must comply with Rule 1:19 of the Supreme Judicial Court ("Electronic Access to the Courts").**

PROPOSED AMENDMENTS TO
SUPERIOR COURT RULE 22 - MONEY PAID INTO COURT

Propose to **delete** “five hundred dollars (\$500)” and replace it with “**five thousand dollars (\$5,000)**” (in bold) and **add** a second paragraph (in bold).

Rule 22. Money Paid Into Court
(Applicable to civil actions)

Money paid into court shall be in the custody of the clerk, whose duty it shall be to receive it when paid under the authority of law or rule or order of the court. Any deposit of money in excess of ~~five hundred dollars (\$500)~~ **five thousand dollars (\$5,000)** paid into court shall be deposited in an interest bearing bank account. He shall pay it as directed by the court; but money paid into court upon tender or otherwise for the present and unconditional use of a party, shall be paid, on request, without special order, with any interest which has accrued thereon, to such party, at whose risk it shall be from the time when it is paid into court. Money payable to a party may be paid to his attorney of record, if authorized by the court.

If money paid into court, through interpleader or otherwise, goes unclaimed for 30 days after the claim(s) of every party to the funds has been eliminated by default or court order, the clerk shall schedule the matter for an assessment hearing, after which the session justice may enter a final judgment escheating the funds to the Commonwealth, provided that no such judgment shall provide for escheat sooner than three years after payment of the funds into court as provided in G. L. c. 200A, § 6.

PROPOSED AMENDMENTS TO
SUPERIOR COURT RULE 29 - COVER SHEET:
STATEMENT AS TO DAMAGES

Delete current Rule 29(5):

5. Power of the Court.

~~(a) Should it appear from the statement or statements of damages filed as provided above, or from any subsequent amendments thereto, that there is no reasonable likelihood that recovery will exceed twenty-five thousand dollars (\$25,000) if the plaintiff prevails, then the court of its own motion, without prior notice to the parties, shall transfer the action for trial as provided in sub-paragraph (c) below.~~

~~(b) Should it appear to the court during the hearing of any motion or other pre-trial event of any nature whatsoever that there is no reasonable likelihood, notwithstanding the representations made in any statement of damages, that recovery will exceed twenty-five thousand dollars (\$25,000) then the court of its own motion, after advising counsel of the same and affording a summary hearing thereon, may transfer the action for trial as provided in sub-paragraph (c) below.~~

~~(c) An action shall be transferred pursuant to this rule (i) to the court from which such action was previously removed, if any; (ii) if such action was originally entered in the Superior Court to any District Court, including the Boston Municipal Court, in which it could have been brought under the provisions of G. L. c. 223, § 2; or (iii) as directed by the Chief Administrative Justice.~~

Replace with:

5. Power of the Court.

Should it appear from the statement(s) of damages filed as provided above, or from any subsequent amendments thereto, that there is no reasonable likelihood that recovery by the plaintiff will meet the amount necessary to proceed in the Superior Court under G.L. c. 212, §§ 3 and 3A, then the court, after receiving written responses from the parties and after a hearing, if requested by any party, may dismiss the case, in which case the clerk shall proceed as provided in G. L. c. 212, § 3A.

PROPOSE TO COMBINE AND RENUMBER
SUPERIOR COURT RULES
RULE 9C - SETTLEMENT OF DISCOVERY DISPUTES
AND
RULE 30A - MOTIONS FOR DISCOVERY ORDERS

Propose renumbering current text of Rule 9C as paragraph 9C(a), and renumbering current text of Rule 30A, without change in text, as Rule 9C(b).

Rule 9C. Settlement of Discovery Disputes

(a) Counsel for each of the parties shall confer in advance of serving any motion under Mass. R. Civ. P. 26 or 37 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 contain 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.

~~Rule 30A. Motions for Discovery Orders~~

(b) All motions arising out of a party's response to an interrogatory or 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 contained in an appendix to the brief.

PROPOSE ADOPTING NEW
SUPERIOR COURT RULE 17A - OFFICIAL
RECORD OF SUPERIOR COURT PROCEEDINGS

The proposed *new* rule will replace the current Superior Court Standing Order 2-87 on "Electronic Recordation of Proceedings." Nothing in the rule affects the clerks' existing duty to refuse any request to release impounded material. As the first sentence of part 4(a) of proposed Rule 17A states, "recordings made by the clerk are presumptively available to the parties and the public unless impounded or otherwise deemed non-public by statute, rule or binding appellate precedent." (emphasis added) As the next-to-last sentence of that subpart says, the rule refers only to "publicly available recordings" which "shall be released."

Rule 17A. Official Record of Superior Court Proceedings

1. Definitions

- a. The term "Court Reporter" means an official court reporter assigned to the session, any per diem court reporter approved by the Superior Court or a temporary official reporter appointed by the session judge pursuant to G.L. c. 221, § 83.
- b. The term "Approved Court Transcriber" means a person on the "Trial Court Approved Transcriber List" managed by the Office of Transcription Services.
- c. The term "Office of Transcription Services" or "OTS" means the Office of Transcription Services of the Trial Court or any successor unit responsible for transcription of Superior Court proceedings.
- d. For purposes of Mass. R. A. P. 8(b)(3)(ii), a copy of the recording made by the session clerk, whether on compact disk or other physical or electronic medium, shall constitute the "cassette."

2. Court Reporters

- a. When a Court Reporter records the proceeding, the sole official transcript in the Superior Court is a transcript produced by the Court Reporter.
- b. In the absence of an assigned Court Reporter, the session judge may appoint a temporary court reporter pursuant to G.L. c. 221, § 83.

- c. Unless otherwise expressly ordered by the court, the presence of a certified court reporter actively recording the proceedings without objection by the parties shall be deemed an appointment of that reporter as a temporary official court reporter pursuant to G.L. c. 221, § 83.

3. Audio or Visual Recordings

In the absence of a Court Reporter, the proceedings shall be recorded by audio or audiovisual means on a recording device or system approved by the Chief Justice of the Trial Court or designee. In that event, the following rules apply:

- a. The session clerk or other designee of the Clerk Magistrate will operate the recording equipment. The Clerk Magistrate or designee shall have the care, custody and control of all recordings.
- b. The Clerk Magistrate or designee shall ensure that a daily copy (CD or DVD) of the audio of each session digitally recorded is made and retained; provided that the Chief Justice of the Trial Court or designee may approve an alternative and equally effective method for technological or other reasons.
- c. The sole official transcript in the Superior Court is a transcript produced and certified by an Approved Court Transcriber prepared from those recordings unless otherwise ordered by the Court, except as provided in Mass. R. A. P. 8(b)(3). The official transcript may be in paper or electronic form, in accordance with any applicable Trial Court record retention policy.
- d. Counsel and self-represented persons shall assist in creating an audible record by using the microphones provided and shall be responsible for requesting the session judge, when necessary, to instruct other counsel, witnesses or others as to the proper use of the microphones in order to insure an audible record. Counsel, self-represented persons, clients, witnesses and all other attendees shall also be responsible to mute microphones when necessary to protect against recording of communications protected by the attorney-client or other privilege.

4. Release of Recordings

- a. Audio or audiovisual recordings made by the clerk are presumptively available to the parties and the public unless impounded or otherwise deemed non-public by statute, rule or binding appellate precedent. Upon receiving a request for a recording, the clerk shall review the docket entries and any log or other system designed for tagging non-public information to avoid release of any such non-public information and to ensure compliance with any order sealing, impounding, or otherwise precluding or limiting access to all or any portion of the recording. Upon receipt of a recording, the person who requested it ("requestor") shall review the recording, docket entries and the case file for the same purpose.

The Clerk shall notify the requestor that any use, retention or dissemination of non-public information is unlawful and may result in sanctions, including contempt. Unless otherwise ordered by the court, all publicly available recordings shall be released (i) by consent of all parties, (ii) without further notice if the requestor is entitled to proceed ex parte by statute, rule, binding appellate precedent or court impoundment order, (iii) after 10 days notice to all parties without receipt or notice of an opposition, as verified in writing by the requestor, or (iv) pursuant to Mass. R. A. P. 8(b)(3)(ii) and part 5 below. The court may also approve earlier release of the recording upon a sworn showing of an emergency and such notice as time permits.

- b. If any party, counsel or requestor has reason to believe that any requested recording may contain (i) inadvertently recorded confidential communications, (ii) other information protected by law from disclosure or (iii) material that should be released only in transcript form, s/he shall file forthwith a writing with the clerk, stating the basis of the belief and attaching all evidentiary and legal support. In the event of such a notification or an opposition to release, the clerk will not release the recording without an order of the judge who presided over the recorded proceeding, or in his or her absence, the session judge. The court has the discretion to rule on the objection on the papers or after hearing.
- c. All parties or attorneys objecting to release of a recording on the ground that their privileged or confidential communications may have been recorded shall presumptively bear the burden and expense of redacting such communications from any recording provided under this Rule, unless otherwise ordered by the court.
- d. A person or entity moving to make public any official or unofficial recording that is not presumptively available to the public has the burden to show why doing so would serve the interests of justice in the particular case or is required by law. Among other things, the Court shall consider and, if appropriate, protect against: (1) the possible presence of audible confidential communications or impounded information on the recordings; (2) the possibility of public confusion due to multiple versions of the "record" of a proceeding; (3) potential modification of the recordings or preparation of transcripts from recordings by untrained persons who are not under a professional or legal obligation to prepare the record without misrepresentation, bias or omissions; and (4) the possible use or misuse outside the courtroom in a manner that could materially embarrass, humiliate, intimidate or invade the privacy or peace of mind of individuals. The Court may require the moving party to reimburse the Commonwealth for any employee time or expense required to review the recording for potentially confidential, embarrassing, intimidating or humiliating material.

5. Release of Recordings for Transcription on Appeal

- a. Unless opting to proceed pursuant to paragraph b of this paragraph, an appellant orders the recording "from the clerk" of this court for purposes of Mass. R. A. P. 8(b)(3)(i), by submitting a request to OTS on the applicable OTS form simultaneously with the filing of the notice of appeal. That method fully suffices to order the recording as long as the appellant discloses that request in a timely-filed transcript order form pursuant to Mass. R. A. P. 8(b).
- b. Any appellant who chooses to submit a request directly to the clerk for copies of recordings under Mass. R. A. P. 8(b)(3)(i) shall state whether the appellant intends to ask the appellee to agree upon an individual or firm to prepare the transcript pursuant to Mass. R. A. P. 8(b)(3)(ii). In the absence of such a statement and subsequent timely-filed document designating the agreed transcriber, the Clerk shall designate OTS as the transcriber, except as may be provided in procedures promulgated by the Chief Administrative of the Trial Court pursuant to Mass. R. A. P. 8(b)(3)(ii), fourth sentence.
- c. If, for any reason, OTS does not produce or provide for the transcription, any party submitting an order for the recording under Mass. R. A. P. 8(b)(3)(ii) shall simultaneously (or in advance) comply with paragraph 4 above, but shall not delay compliance with Mass. R. A. P. 8(b)(3)(ii).

6. Retention of Recordings

Recordings shall be preserved in criminal matters in perpetuity and in civil matters for six years after entry of final judgment (which, in the event of an appeal, shall be the final judgment after rescript).

7. Motions for Enforcement or Relief

Motions for enforcement of, or relief from, the above provisions, or for correction or supplementation of the transcript of a trial or motion hearing, shall be made to the trial or motion judge who presided over the session, if possible. Otherwise, such motions shall be made to the then-sitting session judge.

PROPOSE ADOPTING NEW
SUPERIOR COURT RULE 19 -
OUT OF LOCATION/REGION/COUNTY TRANSFERS

The proposed *new* rule will replace five rules that were repealed in 2014 (former Superior Court Rules 36, 43, 44, 45 and 48). This change will affect only the administrative assignment of cases to various locations, and does not otherwise affect the general public.

Rule 19. Hearing in One Location, County or Region of Cases From Another
(Applicable to civil actions)

Unless otherwise ordered by the Chief Justice of the Superior Court, each Regional Administrative Justice ("RAJ") or delegee shall have the authority to designate particular case(s) or categories of cases for hearing or trial in any location within the county (or for hearing, decision or non-jury trial within any multi-county Region), upon compliance with the statutory notice and posting requirements of G. L. c. 212, § 14A, and, if necessary to do so, shall serve as the Chief Justice's delegee for that limited purpose under G. L. c. 212, § 14A. With the advance approval of the Chief Justice of the Superior Court, a RAJ may also transfer a case or class of cases for hearing out of his or her region.

PROPOSE ADOPTING NEW SUPERIOR COURT RULE 30A
IN SUBSTITUTION FOR SUPERIOR COURT
STANDING ORDER
1-09 (Written Discovery)

Propose adopting as new **Superior Court Rule 30A Written Discovery** the verbatim text of Superior Court Standing Order 1-09 - Written Discovery, without substantive change and with the preface, "Applicable to Civil Actions."

SUPERIOR COURT RULE 30A. WRITTEN DISCOVERY
(Applicable to Civil Actions)

1. Uniform definitions in discovery requests.

(a) Incorporation by Reference and Limitations. The full text of the definitions set forth in paragraph (1)(c) is deemed incorporated by reference into all discovery requests, but shall not preclude (i) the definition of other terms specific to the particular litigation; (ii) the use of abbreviations; or (iii) a narrower definition of a term defined in paragraph (1)(c).

(b) Effect on Scope of Discovery. This rule is not intended to broaden or narrow the scope of discovery permitted by the Massachusetts Rules of Civil Procedure.

(c) Definitions. The following definitions apply to all discovery requests, unless otherwise ordered by the court:

(1) *Communication.* The term "communication" means the transmittal of information (in the form of facts, opinions, ideas, inquiries, or otherwise).

(2) *Document.* The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Mass. R. Civ. P. 34(a). An earlier draft is a separate document within the meaning of this term.

(3) *Identify (With Respect to Persons).* When referring to a natural person, to "identify" means to give, to the extent known, the person's (a) full name, (b) present or last known address, and (c) the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(4) *Identify (With Respect to Entities)*. When referring to an entity, to "identify" means to give, to the extent known, (a) the entity's full name, including (when not apparent from the name) the nature of the entity, e.g. corporation, limited liability corporation, partnership, or professional corporation, (b) present or last known address of its headquarters or principal place of business, and (c) the state in which the entity is incorporated or otherwise created. Once an entity has been identified in accordance with this subparagraph, only the name of that entity need be listed in response to subsequent discovery requesting the identification of that entity.

(5) *Identify (With Respect to Documents)*. When referring to documents, to "identify" means to give, to the extent known: (a) the type of document; (b) the general subject matter; (c) the date of the document; (d) the author or authors, according to the document; and (e) the persons to whom, according to the document, the document (or a copy) was to have been sent.

(6) *Parties*. The term "plaintiff" or "defendant," as well as a party's full or abbreviated name or a pronoun referring to a party, mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, and subsidiaries. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

(7) *Person*. The term "person" means any natural person or any business, legal, or governmental entity.

(8) *Concerning*. The term "concerning" means referring to, describing, offering evidence of, or constituting.

(9) *State the Basis or State all Facts*. When an interrogatory calls upon a party to "state the basis" of or "state all facts" concerning a particular claim, allegation, or defense (or uses comparable language), the party shall provide a substantial summary of the factual basis supporting the claim, allegation, or defense at the time the interrogatory is answered. The summary shall: (a) identify the essential acts or failures to act forming the substance of the claim, allegation, or defense, (b) identify the persons and entities that, through firsthand information or possession of documents, are the sources of the party's information regarding the claim, allegation, or defense, and (c) when one or more documents is the basis of the claim, allegation, or defense, such as a written contract in a contractual claim or defense, or a written misrepresentation in a misrepresentation claim, identify (or provide as part of the interrogatory answer a copy of) each such document. In stating the basis, a party may not withhold information from the interrogatory answer because it derives from attorney work product or was obtained in anticipation of litigation if the party intends to offer this information at trial.

2. Objections to Interrogatories.

General objections to interrogatories are prohibited. Each objection to an interrogatory shall be specific to that interrogatory and shall have a good faith basis. If a party refuses to answer an interrogatory, the party shall so state and identify each objection asserted to justify the refusal to answer. If a party, after having asserted an objection, answers the interrogatory, the answer shall state either: (a) notwithstanding the objection no information has been withheld from the answer, or (b) information has been withheld from the answer because of the objection. Where information has been withheld from the answer, the objecting party shall describe the nature of the information withheld and identify each objection asserted to justify the withholding.

3. Objections to Requests for the Production of Documents and Things.

(a) Where a party serves a response to a request for production of documents and things under Mass. R. Civ. P. 34 before production is completed, the response may include general objections. However, where general objections are made, the responding party shall prepare and serve a supplemental response no later than 10 days after the completion of production.

(b) Once production is completed, general objections to requests for production of documents and things are prohibited. As to each request, the supplemental response shall state either: (i) notwithstanding prior general objections, all responsive documents or things in the possession, custody, or control of the responding party have been produced; (ii) after diligent search no responsive documents or things are in the possession, custody, or control of the responding party; or (iii) the specific objection made to the request. When specific objection is made, the response shall describe the nature of all responsive documents or things in the possession, custody, or control of the responding party that have not been produced because of the objection. Where a privilege log is required by Mass. R. Civ. P. 26(b)(5) or court order, the log shall be served with the supplemental response, unless the requesting party waives entitlement to the log or agrees to a later date for service.

(c) In the initial written response, the responding party shall articulate with clarity the scope of the search conducted or to be conducted. If the scope of the search changes during production, the responding party in the supplemental written response shall articulate with clarity the change in scope. If the scope of the search does not include all locations, including electronic storage locations, where responsive documents or things reasonably might be found, the responding party shall explain why these locations have been excluded from the scope of the search.

PROPOSE ADOPTING NEW RULE 31
IN SUBSTITUTION FOR SUPERIOR COURT STANDING
ORDER 1-07 (Consolidation of Superior Court Cases)

Propose adopting as new **Superior Court Rule 31 Consolidation of Superior Court Cases** the verbatim text of Superior Court Standing Order 1-07 - Consolidation of Superior Court Cases, without substantive change and with the preface, "Applicable to Civil Actions."

SUPERIOR COURT RULE 31. CONSOLIDATION OF SUPERIOR COURT CASES¹
(Applicable to Civil Actions)

A motion to consolidate cases under Mass. R. Civ. P. 42(a) shall be served, in accordance with Superior Court Rule 9A, upon all parties in the cases proposed to be consolidated. The original motion, opposition(s), and other related documents shall be filed and the motion decided in the earliest-filed case. Notice of such filing, together with a copy of the documents filed, shall be filed in the later-filed case(s). A copy of the ruling on the motion to consolidate shall be filed in each of the cases proposed to be consolidated.

If the motion to consolidate is allowed, the cases will be consolidated in the session where the earliest-filed case is pending unless (a) the judge in that session orders, in the interest of justice or with the consent of all parties, that the cases be consolidated in a session where a later-filed case is pending, and (b) the judge in that other session agrees to accept the consolidated cases. The order for consolidation shall specify the session in which the cases will be consolidated ("the consolidating session").

Unless the judge of the consolidating session otherwise orders, the earliest-filed case in the session in which the cases are consolidated shall be designated the "lead case" and the other case(s) shall be designated the "consolidated case(s)." In documents filed in the lead or consolidated cases, the case caption shall identify the lead case first. Below the lead case caption shall be written the words, "**CONSOLIDATED WITH,**" in capital letters and in bold print. Below those words shall appear the case captions for the consolidated cases, in the order they were filed, with the earliest-filed case listed first. Regardless of the length of the case caption, the title of the document, identifying what it is, shall appear on the first page.

¹ This Rule applies only to the consolidation of Superior Court cases. The consolidation of a Superior Court case with a case from a different judicial department is governed by Trial Court Rule XII- Request for Interdepartmental Judicial Assignments. However, please note that Trial Court Rule XII does not apply when the related actions that are the subject of the consolidation request are in the Superior Court, the District Court, and/or the Boston Municipal Court. The appropriate procedure in such cases is for the parties to file a motion pursuant to G.L. c. 223, § 2B to transfer the case in the District Court or the Boston Municipal Court to the Superior Court and then to file a motion to consolidate under Mass. R. Civ. P. 42(a). See Trial Court Rule XII, ¶ 8.

An order of consolidation is also an order of transfer. Once the cases are consolidated, the consolidating session is responsible for the lead case and all consolidated cases. If the lead case or any consolidated case(s) had been filed in different counties, the case file(s) shall be promptly transferred to the Clerk for the county in which the consolidating session is located. The Clerk shall then open a new case file in that county for each transferred consolidated case, shall assign a new docket number, and shall make all appropriate entries on the docket, including the entry reflecting the ultimate disposition of the case. The Clerk for the county in which any transferred case had been located shall reflect the transfer on the original docket and close the transferred case.

Unless the judge of the consolidating session otherwise orders, a party filing any document in either the lead case or any consolidated case shall file one set of original documents in the lead case, and a copy of each such document, clearly marked as a copy, in each consolidated case. The Clerk shall make appropriate entries on the docket of the lead case and each consolidated case.

Within thirty (30) days following entry of an order of consolidation, the judge of the consolidating session shall conduct a conference under Mass. R. Civ. P. 16 to establish a Tracking Order for the consolidated cases and to address other matters raised by the consolidation.

PROPOSE ADOPTING AS NEW SUPERIOR COURT 33
IN SUBSTITUTION FOR STANDING ORDER
1-06 (Continuances of Trial)

Propose adopting as new **Superior Court Rule 33 Continuances of Trial** the verbatim text of Superior Court Standing Order 1-06 - Continuances of Trial, without substantive change and with the preface "Applicable to Civil Actions."

RULE 33. CONTINUANCES OF TRIAL
(Applicable to Civil Actions)

The following procedure shall apply to requests for continuances of trial.

1. No trial continuance shall be granted without the specific approval of the Justice in the session in which the case is pending or, in the event the session Justice is not available, of the Regional Administrative Justice (or designee thereof) in the County in which the case is pending.

2. Any request for a trial continuance shall be in the form of a written motion, with notice to all parties.

3. A motion for a trial continuance shall:

- a. identify the party or parties seeking the continuance, and state, if known, whether there is any opposition;
- b. state the grounds for the requested continuance; and
- c. state whether continuances have been sought previously by any party, and, if so, the number of times and the reasons therefor.

4. If the grounds for the requested trial continuance include any ground identified in Rule 4 of the Rules of the Superior Court, the motion shall comply with that rule.