

REPORTER'S NOTES

MASSACHUSETTS RULES OF CIVIL PROCEDURE

Rule 3. Commencement of Action

Reporter's Notes--2021

In light of the adoption of the Massachusetts Rules of Electronic Filing (Mass. R. E. F.) (Supreme Judicial Court Rule 1:25, effective September 1, 2018), Rule 3 has been revised to reflect a third method to commence a civil action. Under Mass. R. E. F. 6(a), a party may initiate a civil action through the court's electronic filing ("e-filing") system. Such an action shall be deemed to be filed and commenced if submitted through the e-filing system by 11:59 p.m. on a business day (unless rejected by the court or submitted on a Saturday, Sunday, or legal holiday). Mass. R. E. F. 4(c)(1) and (2). Reference should be made to the Mass. R. E. F. for details.

A sentence has been added to Rule 3 to reflect the provisions of G.L. c. 261, § 27C, regarding waiver of the filing fee on the ground of indigency. The statute provides that if an affidavit of indigency "is filed with the complaint or other paper initiating the proceeding, the clerk shall receive the complaint or other paper for filing and proceed as if all regular filing fees had been paid." G.L. c. 261, § 27C(1). The statute states that the filing fee is "conditional" until the court grants or denies the request for waiver and if the request is denied, the statute allows the fee to be paid within five days.

Rule 4. Process

Reporter's Notes--2021

With the adoption of the Massachusetts Rules of Electronic Filing (Mass. R. E. F.) (Supreme Judicial Court Rule 1:25, effective September 1, 2018), parties may electronically file case initiating documents and may serve documents on other parties electronically. However, where a case is electronically filed, service of process must be accomplished consistent with the provisions of Rule 4, i.e., through a sheriff or deputy sheriff, constable, or person specially appointed by the court. See Rule 4(a) (unless there is written consent or the court has otherwise ordered); Mass. R. E. F. 6(c). There is no electronic service of process on a defendant.

Rule 6 of the Mass. R. E. F. provides as follows:

(c) Service of Case Initiating Documents Shall Be By Conventional

Methods. Unless otherwise determined by the court, or unless the responding party has consented in writing to accept electronic service or service by some other method, case initiating documents shall be served by conventional methods, together with a notice to the responding party stating the case has been electronically commenced.

Rule 5. Service and Filing of Pleadings and Other Papers

Reporter's Notes--2021

In light of the adoption of the Massachusetts Rules of Electronic Filing (Mass. R. E. F.) (Supreme Judicial Court Rule 1:25, effective September 1, 2018), changes were made to Rule 5.

Rule 5(a). A sentence was added to Rule 5(a) to refer to Rule 7(a) of the Mass. R. E. F. regarding the requirements of service of electronically filed documents on all parties.

Rule 5(b). Language was added to Rule 5(b) to permit service of electronically filed documents on parties through the Electronic Filing Service Provider (Mass. R. E. F. 7(b)). In addition, a sentence was added to allow the parties to agree in writing to service of documents by e-mail. Such an agreement may provide for some, or all, documents to be served by e-mail.

Rule 5(f). The amendment to Rule 5(f) deals with untimely filings resulting from technological failures of the Electronic Filing Service Provider (Mass. R. E. F. 15).

Rule 6. Time

Reporter's Notes--2021

In light of the adoption of the Massachusetts Rules of Electronic Filing (Mass. R. E. F.) (Supreme Judicial Court Rule 1:25, effective September 1, 2018), Rule 6(e) has been added to provide for an additional three days to respond or to take action after a document has been served electronically, similar to the additional three days applicable after service by mail (Rule 6(d)). This three-day period is set forth in Mass. R. E. F. 7(e). The additional three-day period applies whether the document is served using the court's e-filing system or using some other method of electronic service, such as e-mail if the parties have agreed in writing to service by e-mail. See Rule 5(b), as amended in 2021.

Rule 10. Form of Pleadings

Reporter's Notes--2021

Rule 10(f) has been added to require that electronically filed documents be in compliance with the Massachusetts Rules of Electronic Filing (Mass. R. E. F.). See Mass. R. E. F. 9 regarding format and content and Mass. R. E. F. 10 regarding maximum size for electronic documents and legibility considerations.

Rule 11. Appearances and Pleadings

Reporter's Notes--2021

Rule 11(a) has been subdivided into (1) and (2). Rule 11(a)(1) contains the language previously in Rule 11(a), with some changes.

The third sentence of the prior version of Rule 11(a) stated: "A party who is not represented by an attorney shall sign his pleadings and state his address, telephone number, and e-mail address if any." The requirement of an "e-mail address if any" was added to the rule in 2010. In 2014, the Supreme Judicial Court amended Rule 4:02 of the Rules of the Supreme Judicial Court to require that an attorney filing a registration statement with the Board of Bar Overseers must include a business e-mail address. Therefore, the words "if any" were removed from the cognate sentence in Rule 11(a)(1) and the word "business" was added. Attorneys should use the same e-mail address in their pleadings as on file with the Board of Bar Overseers.

In addition, stylistic changes were made in Rule 11(a)(1) to delete references to "he," "his," and "him" that appeared in the pre-amendment version of Rule 11(a). No substantive changes were intended as a result of these stylistic changes.

Rule 11(a)(2) addresses electronic signatures where a pleading has been filed electronically pursuant to the Massachusetts Rules of Electronic Filing (Mass. R. E. F.). Under Mass. R. E. F. 13(a), documents filed electronically must include a scan of a handwritten signature, an electronically inserted image, or an /s/ block with the name of the signatory.

Rule 77. Courts and Clerks

Reporter's Notes--2021

The addition of Rule 77(f) is intended to allow the clerk or the court to use electronic signatures and electronic notifications as set forth in Rule 14 of the Massachusetts Rules of Electronic Filing.