Massachusetts Superior Court Rules

and Standing Orders

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Including amendments effective

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Massachusetts Rules of the Superior Court, including Standing Orders & Administrative Directives

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Print sources for rules:

- Annotated Laws of Massachusetts: Court Rules, LexisNexis, annual
- Massachusetts General Laws Annotated, v.43A-43C, West Group, updated annually with pocket parts
- Massachusetts Rules of Court, West Group, annual
- The Rules, Lawyers Weekly Publications, loose-leaf

General Provisions

Rule 1. Effect of These Rules

(Applicable to all cases)

The provisions of these rules, so far as they are the same as those of existing rules, shall be construed as a continuation thereof, and not as new provisions.

Unless a contrary intent appears, the word plaintiff shall include petitioner or libellant, and in criminal cases the Commonwealth, and the word defendant shall include respondent, libellee or co-respondent, and the word attorney or the word counsel shall include a party appearing or acting for himself.

Rule 2. Appearances

(Applicable to all cases)

The name, address, and telephone number of the attorney for every party, or of the party if no attorney appears for him, shall be entered on the docket as they appear upon the paper or papers constituting the appearance, or some paper transmitted to the clerk therewith. Where no address or telephone number of the attorney or party, as the case may be, appears upon the docket, notice to such party may be given by posting the same publicly in the clerk's office or in a room, hall or passage adjacent thereto. The clerk upon request shall post the same.

Rule History

Amended June 26, 1980, effective September 1, 1980.

Rule 3. Authority to Appear

(Applicable to all cases)

The right of an attorney to appear for any party shall not be questioned by the opposite party, unless the objection be taken in writing within ten days after the appearance of such attorney, but the court may permit the objection to be taken later. When the authority of any attorney to appear for any party is demanded, if such attorney declares that he has been duly authorized to appear, by an application made directly to him by such party, or by some person whom he believes to have been authorized to employ him, such declaration shall be evidence of such authority.

Rule 4. Postponement

(Applicable to all cases)

The court need not entertain any motion for postponement, grounded on the want of material testimony, unless supported by an affidavit, which shall state (1) the name, and, if known, the residence, of the witness whose testimony is wanted, (2) the particular testimony which he is expected to give, with the grounds of such expectation, and (3) the endeavors and means that have been used to procure his attendance or deposition; to the

end that the court may judge whether due diligence has been used for that purpose. The party objecting to the postponement shall not be allowed to contradict the statement of what the absent witness is expected to testify, but may disprove any other fact stated in such affidavit. Such motion will not ordinarily be granted if the adverse party will admit that the absent witness would, if present, testify as stated in the affidavit, and will agree that the same shall be received and considered as evidence at the trial or hearing, as though the witness were present and so testified; and such agreement shall be in writing, upon the affidavit, and signed by such adverse party or his attorney. The same rule shall apply, mutatis mutandis, when the motion is grounded on the want of any material document, thing or other evidence. In all cases the granting or denial of a motion for postponement shall be discretionary, whether the foregoing provisions have been complied with or not.

The court will not ordinarily grant a motion for postponement grounded on the absence of a material witness whom it is in the power of the moving party to summon, unless such party has caused such witness to be regularly summoned and to be paid or tendered his travel and one day's attendance.

Rule 5. Jurors

(Applicable to all cases)

Persons summoned as jurors, who are excused because of any statutory exemption, shall be entitled to their fees for travel and attendance; but if excused for any other cause, or if service is postponed, it shall be on condition that no fee shall be allowed where no service is rendered, unless in any special case the court otherwise directs.

When practicable, excuses of jurors shall be presented under oath to the presiding justice in the session to which such jurors are summoned, or, where jurors are held in a central pool, to the justice in charge thereof.

If it is necessary to present such excuses before the return day of the venire, they shall be submitted to the justice assigned to sit in said session, if available, or, where jurors are held in a central pool, to the justice in charge thereof, or to the chief justice; and, if unavailable, by jurors in Suffolk to the justice presiding in the first session without jury; and by jurors in other counties to a justice holding court or resident in such county or an adjoining county. If any juror is excused in any place other than in open court, the justice excusing him shall forthwith notify the clerk of his action and the ground thereof.

The word jurors in this rule shall include grand jurors.

Rule 6. Jury Selection

(Applicable to all cases)

1.

Subject to applicable statutes, rules, and controlling authority, the trial judge in each case has discretion to determine a procedure for examining and selecting jurors designed to maintain juror privacy and dignity, identify explicit and implicit bias, and foster efficiency in the session and among sessions using the same jury pool. This rule provides a standard procedure for each civil and criminal case unless otherwise ordered by the trial judge, while permitting attorneys and self-represented parties a fair opportunity to participate in voir dire so as to identify bias.

2. Conference With the Trial Judge

a.

In civil cases, unless otherwise ordered, the court shall schedule a final trial conference in accordance with Standing Order 1-88, as may be amended from time to time. In criminal cases, unless otherwise ordered, a final pretrial conference shall be scheduled in accordance with Standing Order 2-86. These conferences with the trial judge shortly before trial serve as the primary opportunity to discuss empanelment, including without limitation: the statement of the case to be read to the venire; the extent of any pre-charge on significant legal principles; the method and content of the judge's intended voir dire of jurors; the method and content of any attorney or party participation in voir dire; judicial approval or disapproval of proposed questions or subject matters; any time limits on attorney or party voir dire; the number of jurors to be seated; any agreement to allow deliberation by fewer jurors if seated jurors are dismissed post-empanelment; the content and method of employing any supplemental juror questionnaire; the number of peremptories; and the order and timing of the parties' assertions of challenges for cause and peremptory challenges.

b.

If the court has not scheduled a final trial conference in a civil case or a final pre-trial conference in a criminal case, any party planning to submit a request, proposal, or motion regarding jury selection should request such a conference or submit a motion requesting voir dire procedures in time for a pretrial ruling by the trial judge. All parties shall avoid proposing jury selection procedures (including attorney/party voir dire) for the first time on the day of trial.

3. Voir Dire by Attorneys and Parties

a.

On or before the final trial conference in a civil case or final pre-trial conference in a criminal case, or 5 business days before trial if no such conference is scheduled, the parties shall submit in writing any requests for attorney/party voir dire; motions in limine concerning the method of jury selection; proposed subject matters or questions for inquiry by the parties or trial judge; any proposed supplemental questionnaire; any proposed preliminary legal instructions to the venire or juror panels; the location within the courtroom where jurors and parties will stand or sit during voir dire; and any other matter setting forth the party's position regarding empanelment.

b.

The trial judge shall allow attorney or party voir dire if properly requested at or before the time set forth in paragraph 3(a), above. The trial judge may deem any subsequent request for attorney or party voir dire untimely, but may in the judge's discretion allow the request in the absence of prejudice to any other party or significant impact on trial efficiency or on other sessions using the same jury pool.

c.

When attorney or party voir dire is allowed, the trial judge shall, at a minimum, allow the attorneys or parties to ask reasonable follow-up questions seeking elaboration or explanation concerning juror responses to the judge's questions, or concerning any written questionnaire. After considering the goals set forth in paragraph 1 above, the trial judge should generally approve a reasonable number of questions that (i) seek factual information about the prospective juror's background and experience pertinent to the issues expected to arise in the case; (ii) may reveal preconceptions or biases relating to the identity of the parties or the nature of the claims or issues expected to arise in the case; (iii) inquire into the prospective jurors' willingness and ability to accept and apply pertinent legal principles as instructed; and (iv) are meant to elicit information on subjects that controlling authority has identified as preferred subjects of inquiry, even if not absolutely required.

d.

At the final trial conference in a civil case, or final pre-trial conference in a criminal case (or in a written submission in lieu of such conference), any attorney or party wishing to inquire into any of the following disfavored subjects must explain how the inquiry is relevant to the

issues, may affect the juror's impartiality, or may assist the proper exercise of peremptory challenges:

i. The juror's political views, voting patterns or party preferences;
ii. The juror's religious beliefs or affiliation.

e.

Counsel and Parties May Not Ask:

i. Questions framed in terms of how the juror would decide this case (prejudgment), including hypotheticals that are close/specific to the facts of this case (any hypotheticals that may trigger this rule must be presented to the judge before trial).
ii. Questions that seek to commit juror(s) to a result, including, without limitation, questions about what evidence would cause the juror(s) to find for the attorney's client or the party.
iii. Questions having no substantial purpose other than to argue an attorney's or party's case or indoctrinate any juror(s).
iv. Questions about the outcome in prior cases where the person has served as a juror, including the prior vote(s) of the juror or the verdict of the entire jury.
v. Questions in the presence of other jurors that specifically reference what is written on a particular juror's confidential juror questionnaire.

f.

The trial judge may impose reasonable restrictions on the subject matter, time, or method of attorney or party voir dire and shall so inform the attorneys or parties before empanelment begins.

g.

In approving or disapproving voir dire questions and procedures, the trial judge, on request, should consider whether questions or methods proposed by the attorneys or parties may assist in identifying explicit or implicit bias.

h.

If employing panel voir dire, the trial judge shall determine the procedure and may elect to follow the method set forth in Addendum A or adopt variations thereof. The trial judge may also elect to use some of the methods set forth in Addendum A even if not employing panel voir dire. Nothing in Appendix A restricts the trial judge from selecting an alternative method of voir dire, including but not limited to:

i. Filling empty seats as they arise due to challenges for cause or the exercise of peremptories. The trial judge may do this by clearing additional prospective jurors or filling in from additional already cleared jurors;
ii. The "Walker method": Through panel voir dire or otherwise, the trial judge may clear as indifferent a number of prospective jurors that equals or exceeds the total number of jurors needed, plus alternates, plus the total number of peremptory challenges held by the parties. See Commonwealth v. Walker, 379 Mass. 297, 299 n.1 (1979). But see Commonwealth v. Johnson, 417 Mass. 498, 507–508 (1994).

4. Empanelment

a.

The trial judge shall ask all voir dire questions specifically required by statute, court rule, or controlling authority, but retains discretion as to when and how to do so. The trial judge may allow individual voir dire, panel voir dire, or any combination.

b.

Questioning shall occur through individual voir dire if (i) required by statute, rule, or controlling authority; (ii) inquiry concerns private or potentially embarrassing information; or (iii) questioning would specifically reference what is written on a particular juror's confidential juror questionnaire.

c.

The trial judge should consider some individual voir dire in all cases to (i) determine whether any juror has an impediment concerning hearing, language or visual ability, mental health, or comprehension and to determine whether a reasonable accommodation would enable the juror to serve; (ii) address any private or embarrassing information not disclosed in public portions of the voir dire; or (iii) identify any other impediment to jury service that the trial judge and parties might not observe without personal contact with the juror.

d.

Attorneys and parties shall limit their questioning of any juror(s) to such subject matters and methods as previously approved by the trial judge and shall avoid questions set forth in paragraph 3(e) above, even as follow-up, without court approval.

e. Questions about the Law

i. If the parties have obtained approval to ask voir dire questions about the law, the trial judge shall take appropriate measures to ensure that the jury is accurately and effectively instructed on the law. Such measures may include, but are not limited to:

a brief pre-charge; requiring the questioner to use the words specifically approved by the judge; stating the law in a written supplemental questionnaire; or contemporaneous instructions by the trial judge at the time the question is asked.

ii. If a juror asks counsel a question to clarify an aspect of the law, counsel shall request that the trial judge answer the question; the trial judge may interrupt if counsel attempts to respond to a juror question by instructing on such a point of law.

f.

Any party may object to a question posed by another party by stating "objection," without elaboration or argument. The trial judge may rule on the objection in, or outside of, the juror's presence. The trial judge may, on the judge's own motion, strike or rephrase a party's question and may interrupt or supplement a party's questioning to provide the juror(s) with an explanation of the law or the jury trial process, or to ask any additional questions that the trial judge believes will assist the trial judge in determining the juror's impartiality.

g.

Counsel and the parties must ensure an accurate record of attorney or party voir dire. In an electronically recorded courtroom, counsel must stand near a microphone at all times. During panel voir dire in any courtroom, counsel must also call out the juror seat number (or juror number) of any individual juror who is questioned individually or who responds audibly. Failure to do so may constitute a waiver of any claim of error arising from any inaudible or unattributable portions of the record.

h. Challenges for Cause

i. The court will consider all its observations, including the juror's responses, to determine whether or not the juror will be fair, focus on the facts of the case and follow the law despite a particular viewpoint or experience.

ii. Whether at side bar or during panel inquiry, a juror's "yes" or "no" answer to a question about a viewpoint or experience may not, by itself, support a challenge for cause. If intending to challenge a juror for cause as a result of attorney or party voir dire, the questioner ordinarily should lay an adequate foundation showing that, in light of the information or viewpoint expressed, the juror may not be fair and impartial and decide the case solely on the facts and law presented at trial. The court may inquire further or may decide without further questioning, if the judge believes that the existing record is sufficient to resolve the challenge for cause.

i. Peremptory Challenges

i. After the trial judge finds that each juror stands indifferent, the parties shall exercise their peremptory challenges. The trial judge may require exercise of peremptory challenges after completion of side bar inquiry of an individual juror, after filling the jury box with jurors found to stand indifferent, or at some other time after the trial judge's finding of indifference.

ii. If the trial judge does not expressly rule on a juror's bias or impartiality, the trial judge's direction for the parties to exercise peremptory challenges constitutes an implicit finding that the juror stands indifferent. On request, made after the trial judge's direction but before exercise of a peremptory challenge, the trial judge shall make an explicit finding as to the juror's impartiality.

5. Supplemental Juror Questionnaires

Supplemental juror questionnaires are not protected by G.L. c. 234A, § 23 and cannot be kept confidential without complying with the impoundment procedures set forth in Trial Court Rule VIII. If using supplemental juror questionnaires, the judge shall consider methods to ensure the juror's personal privacy and to promote the candor of responses, including but not limited to asking jurors whether they wish to keep responses confidential, asking the grounds for any such request, and complying with applicable impoundment procedures.

Addendum A: Sample Panel Voir Dire Protocol

1. Pretrial

The trial judge may permit counsel or self-represented parties to question jurors as a group, in a so-called "panel voir dire" procedure. Any attorney or self-represented party who seeks to examine the prospective jurors in panel format shall serve and file a motion requesting leave to do so in accordance with Superior Court Rule 6(3)(a). The motion shall identify generally the topics the moving party proposes to ask the prospective jurors and shall state whether each topic is for individual voir dire or for a panel of jurors. The trial judge may, in the exercise of discretion, require attorneys and self-represented parties to submit the specific language of the proposed questions for pre-approval. The motion and any responsive filing shall also include any proposed language for brief preliminary instructions on principles of law to be given pursuant to paragraph 2(b) below.

2. Initial Stages of Empanelment

Before any questioning of a juror panel by attorneys or self-represented parties, or at such other time as the trial judge deems most appropriate, the trial judge shall:

(a) provide the venire with a brief description of the case, including the nature of the facts alleged and of the claims or charges, including the date and location of the pertinent alleged event(s), and the identity of persons or entities significantly involved;
(b) provide the venire with brief, preliminary instructions on significant legal principles pertinent to the case. Such instructions should include a brief recitation of: the burden and standard of proof; the elements of at least the primary civil claim or at least the most serious criminal charge; if appropriate to the case and requested by counsel or a self-represented party, the elements of any affirmative defense that will be presented to the jury; and, in criminal cases, the defendant's right not to testify or to present any evidence;
(c) explain the empanelment process, describe the nature and topics of the questions that will be posed during panel examination, and inform the jurors that any juror who finds either a particular question or the process of questioning by attorneys or self-represented parties intrusive on the juror's privacy may request that steps be taken to protect the privacy of any information disclosed;
(d) ask all questions required by statute or case law, and any additional questions the trial judge deems appropriate in light of the nature of the case and the issues expected to be raised;
(e) if not previously established, inform the parties of any reasonable time limit the trial judge has set for examination of each panel of prospective jurors by attorneys or self-represented parties, giving due regard to (i) the objective of identifying bias in fairness to all parties; (ii) the interests of the public and of the parties in reasonable expedition, in proportion to the nature and seriousness of the case and the extent of the anticipated evidence; and (iii) the needs of cases scheduled in other sessions drawing on the same jury pool for access to prospective jurors;
(f) ask the clerk to direct into the jury box any juror who appears impartial, based upon initial questioning of the venire and individual voir dire, if any. The trial judge has discretion to seat a juror on a voir dire panel without making a preliminary determination of impartiality.

3. Panel Examination

(a)

As the jury box is filled, and prior to any panel questioning, the clerk shall read into the record which juror, identified by juror number, is seated in which numbered seat in the jury box. All attorneys and self-represented parties at the trial are responsible for correcting any misstatement as to juror numbers and seat numbers being read for the record.

(b)

If the trial judge has not already done so, he or she shall remind the jurors that during such questioning, if any juror seeks, due to privacy concerns, to respond to a question outside the presence of other jurors, the juror may alert the judge to that request.

(c)

Upon request, the trial judge may permit each party to make a brief introductory statement to the venire limited to explaining the process and purpose of the questioning of jurors by attorneys or self-represented parties. During the introductory statement and subsequent questioning, counsel shall not refer to his or her own personal circumstances, personal history, or family, even by way of example. Any examples of what may or may not make a juror biased shall be phrased hypothetically.

(d)

The parties shall then proceed with the panel portion of questioning. Parties with the burden of proof shall conduct their questioning first. In cases with multiple parties on a side, the parties on each side shall agree as to an order in which to proceed. In the absence of agreement, the judge shall assign an order. The attorney or party may pose questions to the entire panel, or to individual members.

(e)

The trial judge and the attorneys participating shall at all times during panel questioning take reasonable steps to ensure that the identity of each juror speaking is adequately maintained on the record, by reference to juror number or seat number. In particular:

i. In an electronically recorded courtroom, the attorney or party shall stand near a microphone; and
ii. When posing questions to, or receiving a response from, any specific juror(s), the attorney or party must identify each such juror(s) by juror seat number (or, less ideally, by juror number). They shall not refer to any juror by name.

(f)

The trial judge may intervene at any time to ensure an accurate record (including recording of seat numbers of jurors who respond to questions), to clarify or instruct on a point of law, or to ensure that panel voir dire proceeds in an orderly, fair, and efficient manner.

(g)

The trial judge may at any time bring an individual juror to sidebar for questioning out of the hearing of other jurors about any potential bias revealed by panel questioning. If a juror is brought to sidebar, the judge may direct all other parties to do their own questioning on the same subject matter at that time to avoid a need to return to sidebar for later questioning

on that subject matter. If the juror's responses to such questioning at sidebar result in a challenge for cause, the judge may rule on the challenge at that time or at the conclusion of all panel questioning. If time limits on panel questioning have been set, the judge may decide whether to exclude all or part of the time spent at side bar from the questioning party's time.

(h)

Any party may object to a question posed by another party by stating "objection," without elaboration or argument. The judge may rule on the objection in the presence of the juror or jurors, or may hear argument and rule on the objection outside the presence or hearing of the juror or jurors.

(i)

Unless the judge specifically allows, there shall be no follow-up questioning of a panel by attorneys or self-represented parties once each has taken his or her turn.

4. Challenges for Cause and Peremptories

(a)

After panel examination by all parties, the trial judge shall hear any further challenges for cause as to any panel members at sidebar.

(b)

Unless the trial judge decides to postpone exercise of peremptories until after voir dire of additional panels, the parties shall then exercise at sidebar any peremptory challenges they have as to any jurors remaining on the panel. The party with the burden shall proceed first, using all peremptories the party seeks to use with that panel. All other parties shall then proceed, using all peremptories each seeks to use with that panel. In civil cases, the judge may alternate sides. The jurors remaining after challenge shall then be directed to a separate location, usually outside the courtroom.

(c)

Upon any challenge for cause, the judge may ask additional questions, with or without further instructions on the law, and may allow opposing counsel further opportunity to question the juror.

5. Additional Panels of Jurors

The same procedures shall apply for all subsequent panels required to seat a full jury, except:

(a) the judge may seat a different number of jurors in a subsequent panel;

(b) the judge may allow a different amount of time for attorney or party voir dire of second and subsequent panels;
(c) if, after the final panel, more than the necessary number of jurors have been declared indifferent and remain unchallenged at the conclusion of those procedures, the jurors shall be seated for trial in the order in which they were originally seated for panel questioning (generally in order of juror number), and the remaining jurors shall be excused; and
(d) the judge has discretion to vary panel voir dire procedures after the first panel in any lawful manner the judge deems fair and efficient.

Rule History

As amended March 21, 1989, effective April 1, 1989; amended July 26, 2017, effective September 1, 2017.

Rule 7. Openings: Use of Pleadings

(Applicable to all cases as indicated)

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. Pleadings shall not go to the jury except by authorization of the court.

Rule History

Amended September 24, 2015, effective January 1, 2016.

Rule 8. Objections to Evidence

(Applicable to all cases)

In civil actions, pursuant to the provisions of Mass. R.Civ.P. 46, and in criminal actions, pursuant to Mass. R.Crim.P. 22, if a party objects to the admission or exclusion of evidence, he may, if he so desires, state the precise grounds of his objection; but he shall not argue or further discuss such grounds unless the court then calls upon him for such argument or discussion.

Rule History

Amended June 26, 1980, effective September 1, 1980.

Rule 8A. Notes by Jurors

(Applicable to all cases)

In any case where the court, in its discretion, permits jurors to make written notes concerning testimony and other evidence, the trial judge shall precede the announcement of permission to make notes with appropriate guidelines. Upon the recording of the verdict or verdicts, the notes of the jurors shall be destroyed by direction of the trial judge. Jurors may also be granted permission by the trial judge to make notes during summation by counsel and during the judge's instructions to the jury on the laws.

Rule History

Adopted effective May 6, 1978.

Rule 9. Motions and Interlocutory Matters

(Applicable to all cases)

All civil motions shall be governed, where applicable, by Superior Court Rules 9A through 9E.

Any criminal motion must be in writing and filed before being placed upon a list for hearing, unless otherwise ordered by the court, or otherwise provided for under Superior Court Rule 61.

In criminal cases the court need not hear any motion, or opposition thereto, grounded on facts, unless the facts are verified by affidavit. No motion to suppress evidence, other than evidence seized during a warrantless search, and no motion to dismiss may be filed unless accompanied by a memorandum of law, except when otherwise ordered by the court.

Rule History

Amended May 6, 1978, effective June 5, 1978; amended June 26, 1980, effective September 1, 1980; amended effective March 1, 1985; amended July 18, 1989, effective October 2, 1989; amended October 6, 2004, effective November 1, 2004.

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 nonparty as a party to the case; (b) the Motion seeks an order or other relief against the nonparty; (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.

(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. No other list of documents need be included in the Rule 9A Package.

(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.

(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, e-mail, or otherwise electronically as permitted by law or rule, 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 provided 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. 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. The exhibits served by the moving party with its Motion Papers must include the consecutive numbering 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 (consecutive page numbering 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.

(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 noncompliant 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. The nature of the emergency must be clearly specified in the 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. 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.

(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.

Rule History

Added July 21, 1988, effective October 3, 1988; amended July 18, 1989, effective October 2, 1989; amended December 6, 1989, effective January 31, 1990; amended December 17, 1991, effective March 1, 1992; amended December 10, 1993, effective January 1, 1994; amended effective April 1, 1998; amended October 6, 2004, effective November 1, 2004; amended January 22, 2009, effective March 2, 2009; amended October 24, 2012, effective January 1, 2013; amended September 24, 2013, effective January 1, 2014; amended February 20, 2014, effective April 1, 2014; amended September 24, 2015, effective January 1, 2016; amended July 26, 2017, effective September 1, 2017; amended July 31, 2018, effective November 1, 2018; amended August 3, 2023, effective September 1, 2023; amended August 25, 2025, effective September 15, 2025.

Rule 9B. Certificates of Service

(Applicable to civil cases)

The last page of every paper served in accordance with Mass. R. Civ. P. 5(a) shall contain a brief statement showing the date 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 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 History

Adopted July 18, 1989, effective October 2, 1989; amended August 3, 2023, effective September 1, 2023.

Rule 9C. Additional Requirements for Dispositive and Discovery 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. 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)(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.

(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.

Rule History

Adopted July 18, 1989, effective October 2, 1989; amended October 6, 2004, effective November 1, 2004; amended June 15, 2007, effective October 1, 2007; amended September 24, 2015, effective January 1, 2016; amended July 31, 2018, effective November 1, 2018; amended June 14, 2021, effective September 1, 2021; amended August 3, 2023, effective September 1, 2023.

Rule 9D. Motions for Reconsideration

(Applicable to Civil Cases)

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.

Rule History

Added December 6, 1989, effective January 31, 1990; amended October 6, 2004, effective November 1, 2004; amended July 26, 2017, effective September 1, 2017; amended August 3, 2023, effective September 1, 2023.

Rule 9E. Motions to Dismiss and Post-Trial Motions

(Applicable to all civil cases.)

Motions to dismiss pursuant to Mass. R. Civ. P. 12 are subject to Rule 9A. Because such motions often are the initial filing in response to a complaint, counterclaim or cross-claim, in order to avoid the entry of a default for failure to respond in a timely fashion, a party responding by a motion to dismiss must serve the motion on all parties pursuant to Superior Court Rule 9A(b)(2) and, in a timely manner, must also file with the court a simple "Notice of Motion to Dismiss" reciting the title of the motion and the date of its service on the parties.

Post-trial motions pursuant to Mass. R. Civ. P. 50, 52, 59 and 60 are subject to Rule 9A. A party serving any such motion must serve the motion on all parties pursuant to Superior Court Rule 9A(b)(2) and, in a timely manner, must also file with the court a simple "Notice of Motion" reciting the title of the motion and the date of its service on the parties.

Rule History

Added October 6, 2004, effective November 1, 2004.

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).

Rule History

Added August 3, 2023, effective September 1, 2023.

Rule 10. Extra Charges by Officers

(Applicable to all cases)

When any officer claims extra compensation in serving a precept, the same shall not be allowed unless the officer return with his precept a bill of particulars of the expenses, with his affidavit that such expenses were actually incurred, and that the charges are reasonable.

Rule 11. Attorney not to Become Bail or Surety

(Applicable to all cases)

No attorney shall become bail or surety in any criminal proceeding in which he is employed, or in any civil action or proceeding whatever in this court except as an endorser for costs.

Rule 12. Attorneys as Witnesses

(Applicable to all cases)

No attorney shall be permitted to take part in the conduct of a trial in which he has been or intends to be a witness for his client, except by special leave of the court.

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.

Rule History

Amended September 24, 2015, effective January 1, 2016.

Rule 14. Exhibits Other Than Hospital Records

(Applicable to all cases)

Exhibits other than hospital records, which are placed in the custody of the clerk shall be retained by him for three years after the trial or hearing at which they were used, subject to an order of confiscation or destruction, unless sooner delivered to the parties or counsel to whom they respectively belong or by whom they were respectively presented or introduced. If in doubt as to the party or counsel entitled to delivery, the clerk may require an agreement of parties or counsel or order of the court, before delivery. The clerk may destroy or discard such exhibits, but not earlier than thirty days after notice by the clerk to the party presenting or introducing such exhibits, requesting him to remove them, nor earlier than three years after such trial or hearing.

Rule 15. Eliminating Requirement for Verification by Affidavit

(Applicable to all cases)

No written statement in any proceeding in this court required to be verified by affidavit shall be required to be verified by oath or affirmation if it contains or is verified by a written declaration that it is made under the penalties of perjury.

Rule 16. Writ of Protection

(Applicable to all cases)

A writ of protection shall issue only upon the application of the person for whom the writ of protection is to be issued, or some person in his behalf, and upon order of the court, and then only in case it is made to appear to the court, by affidavit and any other evidence that the court may require, (1) that the application is made in good faith and for the purpose of

enabling such person to attend this court as a party or witness in some specified case pending, (2) if such person is a party, that such case has not been brought collusively to enable him to obtain a writ of protection, and (3) if such person is a witness, that he has not been required to attend as a witness by his own request or procurement to enable him to obtain a writ of protection.

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. All recordings or transmissions must comply with Rule 1:19 of the Supreme Judicial Court ("Electronic Access to the Courts.").

Rule History

Amended September 24, 2015, effective January 1, 2016.

Rule 18. Impoundment and Personal Identifying Information

(Applicable to all counties)

A. Impoundment

1.

Impoundment in the Superior Court shall be governed by Trial Court Rule VIII (Uniform Rules on Impoundment Procedure ("URIP")), as supplemented by paragraph 2(b), below.

2.

a. Purpose.

Paragraph 2(b) of this Rule makes exceptions to the notice requirement of URIP Rule 13(b), which ordinarily requires that when a person files impounded material, he or she also must file a notice alerting the clerk to that material.

b. Exceptions to Notice Requirement of URIP Rule 13(b).

Because the following materials are impounded by law, and the clerks' offices impound them in the normal course, no Rule 13(b) notice is necessary when filing any of them:

1. an Affidavit of Indigency and Request for Waiver, Substitution or State Payment of Fees & Costs, on the form prescribed by the Chief Justice of the Supreme Judicial Court under G.L. c. 261, § 27B;
2. a Petition for Abortion Authorization under G.L. c. 112, § 12S, or any materials in such matter;
3. an action for judicial review of a decision of the Sex Offender Registry Board, under G.L. c. 6, § 178M, or any materials in such matter; or
4. any confidential document or other material prepared especially for a pre-indictment judicial hearing concerning a grand jury proceeding.

c. Duty of the Clerk.

The clerk shall maintain the impounded material described above in accordance with the clerk's duties prescribed in URIP Rule 9.

B. Personal Identifying Information

3.

Redaction and treatment of personal identifying information shall be governed by Supreme Judicial Court Rule 1:24, as supplemented by paragraph 4 below.

4.

Pursuant to Section 5(c) of Supreme Judicial Court 1:24, personal identifying information contained in administrative records filed by agencies shall be treated as may be provided in Standing Order 1-96, as amended from time to time.

Rule History

Added July 26, 2017, effective September 1, 2017.

Special Provisions for Civil Actions

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.

Rule History

Added September 24, 2015, effective January 1, 2016.

Rule 20. Individual Case Management and Tracking

(Applicable to Civil Actions.)

Any case may receive individual management or tracking so that the parties may secure a cost-effective means to resolve their dispute. To that end, the parties are encouraged to consider and propose options to achieve a less costly and more expeditious resolution of their dispute. This rule sets forth a non-exclusive mechanism to implement any such proposals, while reserving the parties' ability to exercise their full procedural and substantive rights if they so choose.

1.

One or more parties may seek individual case management or tracking pursuant to this rule. If all parties agree, they shall have the right to individual case management to the extent provided in paragraph 2 below. In the absence of unanimity among the parties, any party may request that the judge exercise discretion to adopt individual case management

or tracking in the interest of fair, timely, cost-effective and efficient resolution or litigation of the case.

2.

All parties may agree to each of the following, unless the session judge specifically orders otherwise in writing for good cause:

a. Immediate or early court conference for scheduling or case management (in person or by phone, as requested if feasible).
b. Early, non-binding judicial assessment of the case. The judge who conducts any such assessment will consider whether disqualification as to subsequent matters in the case is appropriate.
c. Immediate scheduling of a prompt and firm trial date (preferably agreed-upon), which the court will make every effort to accommodate.
d. Scheduling of mediation, arbitration or other dispute resolution with a Superior Court approved alternative dispute resolution provider or a private alternative dispute resolution provider.
e. Changes to standard pretrial deadlines, such as changes shortening the tracking order dates, the waiving of certain pre-trial motions such as motions made under Mass. R. Civ. P. 12 or Mass. R. Civ. P. 56 and, in medical malpractices cases, the waiver of the full statutory tribunal either in its entirety or so as to permit a prompt tribunal with the judge alone.
f. Limits on discovery (by way of illustration: specific limitations on the subject matter of discovery, changes in the scope of discovery, procedures governing discovery disputes, limitations on eDiscovery, and the number or length of discovery events).
g. Limits on oral arguments/court appearances not specifically ordered by the motion judge (by way of illustration: decision of categories of motions without argument; providing for telephonic argument). Note that, on specific matters or motions, the judge may still schedule arguments or appearances that s/he anticipates will be necessary or helpful.
h. Trial to a judge without a jury with or without additional conditions (by way of illustration: waiver of detailed written findings of fact and rulings of law; an agreement that expert testimony (in part, for example direct testimony, or in full) may be in writing; or agreement as to the number of witnesses, maximum trial time for each side's evidence and/or total length of trial).
i. Limitations on a trial by jury (such as by way of illustration: agreement to a jury consisting of 6-8 people, waiver of attorney voir dire, or agreement to accept a verdict from fewer than 5/6 of the jurors, an agreement that expert testimony (in part, for example direct testimony, or in full) may be in writing, and agreement as to

the number of witnesses, maximum trial time for each side's evidence and/or total length of trial).

j. Waiver of, or limitations on, the rights to appeal and to file post-trial motions.

k. Any other proposals acceptable to the parties and the court.

3.

One or more parties may, without consent of all parties, move for any order granting the relief set forth in paragraph 2 and may make additional proposals for consideration by the court. Nothing in this rule, however, authorizes the court, over a party's objection, to restrict or deny any right that is protected by rule, statute or constitution.

4.

Any party making a motion under this rule shall do so by serving and filing a Motion For Case-Specific Management ("Individual Case Management Form") pursuant to Superior Court Rule 9A. See Appendix of Forms to the Superior Court Rules, also available for download on the Superior Court's website.

5.

No proposal may extend any deadline beyond the date otherwise provided in Standing Order 1-88, unless the tracking order for that case is itself amended.

6.

Any matter stipulated pursuant to paragraph 2, or order entered pursuant to paragraph 3, may be revised or vacated on motion or by the court on its own motion, for good cause.

7.

Nothing in this rule limits or precludes the right of any party to request a conference pursuant to Mass. R. Civ. P. 16 with or without completion of an Individual Case Management Form. Nor does it limit any party's right to request relief under any other statute, court rule, order or other law.

8.

For purposes of Superior Court Rule 20(2)(h), the phrase "waiver of detailed written findings of fact" means waiver of written judicial findings with the level of detail required by Mass. R. Civ. P. 52(a). It does not mean waiver of findings that provide the equivalent of a jury verdict within the meaning of Mass. R. Civ. P. 49. See also Mass. R. Crim. P. 27 (by analogy only).

Therefore, when the parties agree to waive, in whole or part, detailed findings by the judge in a bench trial, the following rules shall apply:

a. The judge shall, at a minimum, answer special questions on the elements of each claim, at a level of detail comparable to a special jury verdict form pursuant to Mass. R. Civ. P. 49(a), unless the parties explicitly choose, or the judge expressly orders, findings in the form provided by Mass. R. Civ. P. 49(b) (a general verdict accompanied by answer to interrogatories).
b. The parties waive all arguments in the trial court or on appeal that require or depend upon the existence of detailed written findings of fact. Any appellate review of the court's decision and of the judgment entered shall be according to the standard of review that would apply to a verdict by a jury in a case tried to a jury and to the judgment entered thereon. In addition, the parties may agree to waive their rights of appeal in whole or in part.

Rule History

Added October 26, 2016, effective January 1, 2017; amended February 28, 2018, effective March 1, 2018.

Rule 21. Postponement. Costs

(Applicable to civil actions)

When a case is postponed on the motion of one party, against the objection of the other, the granting of the motion may be upon the condition precedent that the moving party shall pay to the adverse party all his costs and such expenses as the court may allow incurred at the same session or upon the same short list in procuring the attendance of witnesses, unless (a) the motion is granted because of unfair or improper conduct of the adverse party, or (b) the moving party shall have given notice of such motion and the grounds thereof in such season as might have prevented the attendance of the witnesses, or (e) the moving party did not discover the grounds of the motion in season to give such notice. The costs and expenses thus paid shall not be included in the bill of costs of the party receiving them.

This rule shall not prevent an adverse party, receiving notice of such motion, from procuring the attendance of his witnesses, if he shall think fit to oppose the motion, or from including the costs for such witnesses in his bill of costs if he shall prevail in the case, even though such motion be granted.

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 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.

Rule History

Amended September 24, 2015, effective January 1, 2016.

Rule 23. [Interlocutory Hearings, General Provision]

Repealed effective January 1, 2015.

Rule 24. [Verdicts]

Repealed effective January 1, 2015.

Rule 25. [Application of Verdict to Counts]

Repealed effective January 1, 2015.

Rule 26. [Motions for Judgment Notwithstanding the Verdict and for New Trial. Hearing. Costs]

Repealed effective January 1, 2015.

Rule 27. [Pre-Trial]

Repealed effective January 1, 2015.

Rule 28. Costs and Terms

(Applicable to civil actions)

[Note: Formerly Rule 18]

In allowing an amendment, removing a default or dismissal, granting a postponement, or making any other interlocutory order, costs may be awarded and terms imposed in the discretion of the court, in addition to any otherwise provided for in these rules.

Rule History

Renumbered July 26, 2017, effective September 1, 2017.

Rule 29. Cover Sheet; Statement as to Damages

(Applicable to civil actions)

1. Cover Sheets.

No Clerk-Magistrate shall accept for filing any Complaint or other pleading which commences a civil action unless accompanied by a civil action cover sheet completed and signed by the attorney or pro se party filing such pleading. The civil action cover sheet shall be in a form approved by the Chief Administrative Justice in consultation with the Chief Justice of the Superior Court.

2. Duty of the Plaintiff.

Upon the cover sheet provided for in paragraph one above, the plaintiff or his counsel shall set forth, where appropriate, a statement specifying in full and itemized detail the facts upon which the plaintiff then relies as constituting money damages. A copy of such civil action cover sheet, including the statement as to damages, shall be served on the defendant together with the complaint. If a statement of money damages, where

appropriate is not filed, the Clerk-Magistrate shall transfer the action as provided in Rule 29(5)(c).

3. Duty of the Defendant.

Should the defendant believe the statement of damages filed by the plaintiff is in any respect inadequate, he or his counsel may file with the answer a statement specifying in reasonable detail the potential damages which may result should the plaintiff prevail. Such statement, if any, shall be served with the answer.

4. Limitation.

A statement of money damages filed pursuant to this rule shall not constitute a judicial admission nor may it be admitted in evidence.

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.

Rule History

Amended effective November 1, 1974; amended effective May 8, 1976; amended January 9, 1979; amended effective August 1, 1984; amended effective March 25, 1986; amended effective November 17, 1986; amended September 24, 2015, effective January 1, 2016.

Rule 30. Interrogatories

(Applicable to civil actions)

Except as otherwise provided by special or standing order, interrogatories may be served within one year after the entry of an action or within such further time as the court may allow.

Each answer to an interrogatory, or objection thereto, shall be preceded by the interrogatory to which it responds.

An application for dismissal or judgment for failure to serve timely answers to original interrogatories, as permitted by Mass.R.Civ.P. 33(a), shall contain a statement showing the date on which such interrogatories were served and that the provisions of the applicable

rules of civil procedure and of this court have been complied with; and such an application relating to failure to serve further answers shall set out the date on which the further answers should have been served. The application shall be verified by affidavit or as provided in Mass.R.Civ.P. 33(a) or 43(d).

Rule History

Amended July 21, 1988, effective October 3, 1988.

Rule 30A. Written Discovery

(Applicable to Civil Actions)

[Note: The former Rule 30A has been renumbered as Rule 9C(b). This rule replaces Standing Order 1-09]

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 (luring 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.

Rule History

Added September 24, 2015, effective January 1, 2016.

Rule 30B. Expert Disclosures

(Applicable to Civil Actions)

(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: the name, address, and qualifications of each expert a party intends to call, the subject matter on which the expert is expected to testify, the substance of all facts and opinions expected, and a summary of the grounds of each expert's opinion as detailed as would be expected in an answer to an expert interrogatory. 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. The information as to any expert set forth in the pre-trial memorandum must be signed by that expert in accordance with Superior Court Rule 30B. A scanned or facsimile signature is sufficient. Any party who has previously made such disclosure in response to an expert interrogatory may satisfy this requirement by appending such response to the pre-trial memorandum. No party may reserve the right to make a later disclosure. A party who fails to comply substantially with the terms of this Rule shall not have the right to call an expert

at trial, but the court in its discretion may permit that party to do so upon such additional terms, if any, that the court may require.

(b) Certification.

In addition to the signature of the party, every disclosure called for by Mass. R. Civ. P. 26(b)(4)(A)(i)regarding any expert who is retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony and whose testimony is to be presented at trial shall be signed by the expert so disclosed. The signature by the expert is a certification that the disclosure accurately states the subject matter(s) on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion to which the expert is expected to testify at trial.

Rule History

Added October 24, 2012, effective January 1, 2013; amended October 26, 2016, effective January 1, 2017; June 14, 2021, effective September 1, 2021.

Rule 31. Consolidation of Superior Court Cases[1]

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").

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[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-Requests 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, s. 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.

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.

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.

Rule History

Added September 24, 2015, effective January 1, 2016.

Rule 32. Certain Appearances Prohibited

(Applicable to civil actions)

The attorney for the plaintiff shall not appear or act for a trustee summoned in trustee process; or for a defendant in matters involving interpleader (Mass. R.Civ.P. 22) or in a proceeding to obtain a declaratory judgment or relief (Mass.R.Civ.P. 57).

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 therefore.
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.

Rule History

Added September 24, 2015, effective January 1, 2016.

Rule 34. Engagements of Counsel

(Applicable to civil actions)

No party shall have a right to a postponement of a trial because of engagement of counsel or for the convenience of counsel or parties, but the court will grant a postponement if counsel is actually engaged before the Supreme Judicial Court or the Appeals Court and may grant a postponement because of engagement of counsel for not more than ten days or until said engagement is concluded.

No other postponement shall be granted to the same counsel except for good cause arising subsequent to the granting of the postponement.

Rule 35. [Certificates of Readiness and Trial Lists]

Repealed effective January 1, 2015.

Rule 36. [Preference on Trial Lists with Jury in Certain Counties Having More Than One Shire Town]

Repealed effective January 1, 2015.

Rules 37, 38, 39, 40, 41 and 42. [Deleted]

Deleted July 21, 1988, effective October 3, 1988.

Rule 43. [Hearing in One County of Cases from Another]

Repealed effective January 1, 2015.

Rule 44. [Hearing in Suffolk of Cases From Other Counties]

Repealed effective January 1, 2015.

Rule 45. [Hearing in Hampden of Cases from Berkshire, Franklin and Hampshire]

Repealed effective January 1, 2015.

Rule 46. [Repealed]

Repealed effective January 1, 1981.

Rule 47. Filing of Papers Upon Judgment

(Applicable to civil actions)

A bill of exchange, promissory note, check, trade acceptance, certificate of deposit or any negotiable instrument, shall be filed with the clerk before judgment thereon shall be entered or execution issued, unless the court otherwise orders.

Such instrument shall not be withdrawn from the files, except upon (1) order of the court, (2) the making by the clerk of a memorandum on such instrument, if practicable, and otherwise on a paper attached thereto, showing the name of the court, the county, the number of the case, the date of judgment, the party or parties against whom judgment was rendered, and the amount thereof, and (3) the filing of a copy of such instrument attested by the clerk.

Any person seeking enforcement of a lost or stolen negotiable instrument must provide sufficient proof in writing that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. No judgment shall enter unless the court makes a finding to that effect pursuant to G. L. c. 106, § 3-309(b).

Rule History

Amended July 31, 2018, effective November 1, 2018.

Rule 48. [Judgments and Decrees after Default for Failure to Appear in Civil Actions]

Repealed effective January 1, 2015.

Special Provisions relating to Masters, Receivers and Arbitrators

Rule 49. Masters

(See Mass.R.Civ.P. 53)

1. Order of Reference.

A master shall be appointed by an order of reference which, after the usual heading, shall be in substantially the following form, unless the court otherwise orders, and shall specifically refer the master to Section 4 of this Rule regarding forfeiture of compensation for failure to file his/her report seasonably.

NON-JURY ACTION

Order of Reference to Master

Ordered that this action be referred to _____ as Master for the conduct of proceedings pursuant to Mass.R.Civ.P. 53 and Superior Court Rule 49.

The Master shall make findings of fact and conclusions of law, and set them forth in his/her report, including all subsidiary findings of fact upon each issue.

He/she need not make findings on damages if he/she determines that there was no liability. Hearings shall begin on or before _____, 20__, and:

a. shall end on or before _____, 20__, or
b. shall proceed from day to day, Saturdays, Sundays, and holidays excepted, until completed.

The report shall be filed on or before _____, 20__.

The Master is referred to Section 4 of Superior Court Rule 49 regarding forfeiture of compensation for failure to file his/her report seasonably.

By the Court (_____, J.)

Clerk

ENTERED:

JURY ACTION

Order of Reference to Master

Ordered that this action be referred to _____ as Master for the conduct of proceedings pursuant to Mass.R.Civ.P. 53 and Superior Court Rule 49.

The Master shall make findings of fact, with subsidiary findings of fact on each issue, including the issue of damages whatever the determination of liability.

Hearings shall begin on or before _____, 20__, and:

a. shall end on or before _____, 20__, or
b. shall proceed from day to day, Saturdays, Sundays, and holidays excepted, until completed.

The report shall be filed on or before _____, 20__.

The Master is referred to Section 4 of Superior Court Rule 49 regarding forfeiture of compensation for failure to file his/her report seasonably.

By the Court (_____ J.)

Clerk

ENTERED:

2. Compensation.

(a)

Compensation of masters, for services performed after July 1, 1985 shall be allowed at the rate of fifty dollars ($50.00) an hour of attendance in a hearing room at the direction of the court, and of actual hearing and preparation of report. In the determination of the court a master may be allowed compensation not exceeding two hours at the rate specified above when an action is disposed of without the necessity of; attendance at court; or an actual hearing, or preparation of a report. Every master's bill shall be itemized as to dates, hours, and services and shall state the name of the justice who ordered the reference.

(b)

If a master's report is not filed within the time provided by Mass. R. Civ. P. 53(g)(2) or any enlargement thereof, unless the court shall otherwise order, the appointment of the master shall be vacated automatically and the master shall be held to have forfeited his/her compensation.

3. Engagement.

An engagement in actual hearing before a master shall have the same standing as an engagement in actual trial before the court, but no protective order for counsel or the master shall issue save by order of the Chief Justice of the Superior Court.

4. Filing of Master's Report; Enlargement of Time; Forfeiting Compensation.

(a)

Pursuant to Mass. R. Civ. P. 53(g)(2), the court may enlarge the time for filing the master's report, but only if the master files a written statement of good and substantial reasons for such enlargement. The justice authorizing an enlargement shall forthwith file with the clerk a statement of his/her reasons for so doing.

(b)

If a master's report is not filed within the time specified by Mass. R. Civ. P. 53(g)(2) or any enlargement thereof, the master's appointment shall, unless the court otherwise orders, lapse automatically, and the master shall be held to have forfeited his/her compensation.

5. Supervision of Master.

The clerk shall keep a docket upon which shall be entered every case referred to a master. The court may call such docket or any part thereof at any time.

In cases referred to a master in which a statement by the referring or another justice is required by this Rule or Mass. R. Civ. P. 53, the clerk shall enter upon such docket the following:

(a) the statement by the referring justice as to the special reasons why the case was referred to a master not upon the Standing List.
(b) the statement by the objecting party containing the grounds for objecting to the persons appointed as master; and
(c) the statement by the justice granting an enlargement of time for the filing of the report of a master containing the reasons why the enlargement has been granted.

In each case referred to a master in which a justice or objecting party has filed a statement of reasons or objections in accordance with the provisions of this Rule or Mass. R. Civ. P. 53, the clerk shall report in summary written form to the Chief Justice, quarterly, the name of the case, the nature of the case, the name of the master appointed, and the statements of the referring or other justice or party which are of record.

The clerk shall place upon the list for hearing upon motions and other interlocutory matters, at the session for or including civil business without jury within the county to be held on or next after the first Monday of March and the first Monday of September in every year, every case in which the appointment of a master was made more than four months before such first Monday and his/her report has not been filed. The list shall state the name of such master, the date of his/her appointment, and the reason for placing the case upon said list. The clerk shall mail such list to the parties and such officer. Such cases shall be called at such session.

At any call of such docket or of such cases or at any other time, the court may make any order deemed proper to promote justice and prevent delay, including an order that the case proceed without regard to engagements of counsel, and an order removing such master.

6. Special Masters.

The Chief Justice of the Superior Court or a justice of the court with the approval of the Chief Justice may appoint a special master to deal with administrative or other special matters. His/her compensation shall be paid at the rate provided in section 2 of this Rule.

Rule History

Amended effective May 8, 1976; amended May 6, 1978, effective July 1, 1978; June 26, 1980, effective September 1, 1980; amended effective January 1, 1983; July 1; 1985.

Rule 50. Exhibits (Master's Cases)

(Applicable to civil actions)

The clerk's office shall accept into the care and custody of the clerk, all exhibits which have been offered before a master during the course of a hearing and duly marked at said hearing by said master.

Said exhibits must be presented in the clerk's office by said master personally. Appropriate notations and cross references will be made in the exhibit record book, and upon the docket to this effect.

The master will be required to fill out an exhibit record card in the clerk's office when depositing exhibits. Rule 14 shall govern.

Rule 51. Receivers

(Applicable to civil actions)

Every receiver, within thirty days after his appointment, shall file a detailed inventory of the property of which he has possession or the right to possession, with the estimated values thereof, together with a list of the encumbrances thereon; and also a list of the creditors of the receivership and of the party whose property is in the hands of the receiver, so far as known to him.

Every receiver shall file, not later than the fifteenth day of February of each year, a detailed account under oath of his receivership to and including the last day of the preceding year, substantially in the form required for an account by a conservator in the probate courts, together with a report of the condition of the receivership. He shall also file such further accounts and reports as the court may order.

When an attorney at law has been appointed a receiver, no attorney shall be employed by the receiver or receivers except upon order of court, which shall be made only upon the petition of a receiver, stating the name of the attorney whom he desires to employ and showing the necessity of such employment.

No order discharging a receiver from further responsibility will be entered until he has settled his final account.

Upon application for appointment of a receiver, the party seeking the receiver shall pay into Court the sum of $500.00, or such other amount as the Court may allow, for the use of the receiver when appointed to guarantee his or her expenses, disbursements and compensation. No process on the application for appointment of a receiver shall issue before payment of said sum. The Clerk shall pay said sum to the receiver when appointed and the receiver shall account for the disposition thereof in his or her required accountings. If the application for appointment of a receiver is denied, the Clerk shall repay to the plaintiff, or the plaintiff's attorney, the sum so deposited.

Rule History

Amended effective September 3, 1991; amended June 24, 2009, effective July 1, 2009.

Rule 52. [Reference to Arbitration. Award; Objections and Recommittal]

Repealed effective January 1, 2015.

Special Provisions for Criminal Cases

Rule 53. Assignment of Counsel

(Applicable to criminal cases)

1. All Cases.

If any party appears in the court in a matter in which the laws of the Commonwealth or the rules of the Supreme Judicial Court establish a right to be represented by counsel, the judge shall follow the procedures established in Supreme Judicial Court Rule 3:10.

2. Murder Cases.

Upon the determination by a judge that a person accused of murder in the first or second degree is to be provided counsel by the Committee for Public Counsel Services pursuant to Supreme Judicial Court Rule 3:10 and G.L. c. 211D, s. 8, the clerk shall notify the chief counsel of the Committee for Public Counsel Services for purposes of the assignment of the case to either the Public Counsel Division or Private Counsel Division, subject to the approval of the justice making the determination of indigency.

Rule History

Amended effective May 8, 1976; amended effective October 22, 1977; amended May 6, 1978, effective July 1, 1978; amended effective January 1, 1981; amended effective November 17, 1986.

Rule 54. Experts in Criminal Cases

(Applicable to criminal cases)

The court will not allow compensation for the services of an expert or expert witness for the defense in a criminal case unless an order of the court or a justice, naming such expert or expert witness and authorizing his employment, was made before he was employed. Such order shall not be made without notice to the district attorney in charge of the case, and an opportunity to be heard.

Rule 55. Experts in Criminal and Delinquent Children Cases

(Applicable to criminal cases and cases of delinquent children)

The court will not allow compensation as an expert witness to a salaried medical examiner or a salaried physician of a penal institution or place of detention unless it appears by the certificate of the district attorney that he has testified as an expert.

The court will allow no fee to a salaried physician of a penal institution or place of detention for making an examination into the mental condition of a person held in custody therein or for a report or medical certificate as to such condition.

Rule 56. Conditions of Probation

(Applicable to criminal cases)

The general conditions of probation shall be set forth in a standard form approved by the Justices of the Superior Court, which may be modified by the sentencing judge in his or her discretion.

Rule History

Amended March 27, 2019, effective May 1, 2019.

Rule 57. [Repealed]

Repealed effective May 1, 2019.

Rule 58. [Repealed]

Repealed effective May 1, 2019.

Rule 59. Waiver of Indictment

(Applicable to criminal cases)

The form for an application to waive indictment under the provisions of G.L. Chapter 263, s. 4A shall be as follows:

COMMONWEALTH OF MASSACHUSETTS

_____ ss. _____20__

COMMONWEALTH

v.

_____

APPLICATION TO WAIVE INDICTMENT

To the Honorable the Justices of the Superior Court:

Respectfully represents said defendant that on _____, 20__, he was (committed) (bound over) (complained of) for trial in the Superior Court under the provisions of (G.L. c. 218 § 30) (G.L. c. 219 § 20) (St.1934 c. 358) by the (Court of _____) (Hon._____, Trial Justice _____) (District Attorney for the _____ District) upon a complaint numbered_____ of 20___ charging him with a crime not punishable by death; that he desires to waive indictment upon said charge and now applies for leave to waive such indictment and for prompt arraignment on such complaint.

_____

_____

I hereby consent to the foregoing application.

District Attorney for the _____ district.

Approved By the Court _____ Clerk.

Rule 60. Plea of Not Guilty

(Applicable to criminal cases)

A plea of not guilty, whether voluntarily made by the defendant or entered by order of the court, shall not be deemed to be a waiver of matters in bar or abatement or an admission of the validity of the indictment or complaint. A defendant at the time of the entry of such plea, or within ten days thereafter or within such further time as the court may order, may file such motions and other pleadings relating to matters in bar or abatement or to the validity of the indictment or complaint as he may desire without at any time retracting the plea of not guilty.

Lack of jurisdiction or the failure of the indictment or complaint to charge an offense may be raised at any time during the pendency of the proceedings.

Rule 61. Motions for Return of Property and to Suppress Evidence

(Applicable to criminal cases)

Motions for the return of property and motions to suppress evidence shall be in writing, shall specifically set forth the facts upon which the motions are based, shall be verified by affidavit, and shall otherwise comply with the requirements of Mass.R.Crim.P. 13.

Such motions shall be filed within seven days after the date set for the filing of the pre-trial conference report pursuant to Mass.R.Crim.P. 11(a)(2), or at such other time as the court may allow.

Rule History

Amended June 26, 1980, effective September 1, 1980.

Rule 61A. Motions for Post-Conviction Relief

(Applicable to criminal cases)

(A) Contents of the Motion.

Motions for post-conviction relief filed under Mass.R.Crim.P. 30 shall contain (1) an identification by county and docket number of the proceeding in which the moving party was convicted, (2) the date the judgment of conviction entered, (3) the sentence imposed following conviction and (4) a statement of the facts and grounds on which the motion is based. The motion shall also contain (5) a statement identifying all proceedings for direct review of the conviction and the orders or judgment entered and (6) a statement identifying all previous proceedings for collateral review of the conviction and the orders or judgments entered.

(B) Docket of Proceedings and Transmission of Papers.

After docketing, the Clerk shall attach to all such motions a copy of the docket of the proceedings that resulted in the conviction and shall forward the motion, and accompanying papers, to the Justice who presided at the trial from which the conviction resulted and to the office of the District Attorney or to the Attorney General responsible for prosecuting the case. If the Justice who presided at the trial has retired, or is otherwise unavailable, the Clerk shall forward the motion and accompanying papers to the Regional Administrative Justice for the county in which the conviction occurred.

(C) Response to Motion.

Unless otherwise ordered by the court, the Commonwealth shall file a response within thirty days, or in the case of a motion for a new trial for a defendant who has been convicted of first degree murder, within ninety days, of the Clerk's forwarding the motion to the Commonwealth pursuant to paragraph (B).

(D) Action on Motions.

The court may act upon any motion in the manner it deems appropriate and as authorized by Mass. R. Crim. P. 30. Motions that do not comply with the requirements of paragraph (A) hereof may, upon motion of the Commonwealth or the court's own motion, be summarily denied, without prejudice to renewal when filed in accordance with those requirements.

Rule History

Adopted February 9, 2001, effective March 1, 2001; amended July 8, 2020, effective August 1, 2020.

Rule 62. Appearance

(Applicable to criminal cases)

An attorney who, before the return day, has entered an appearance in behalf of a defendant in a criminal case in the Superior Court, may withdraw his appearance within fourteen days after the return day, provided that the attorney who shall represent the defendant at trial files an appearance simultaneously with such withdrawal. An attorney shall not withdraw his appearance otherwise, except by express leave of court.

Rule History

Amended June 26, 1980, effective September 1, 1980.

Rule 63. Recording of Grand Jury Proceedings

(Applicable to criminal cases)

All testimony given before a grand jury shall be recorded by a court reporter appointed by a justice of the Superior Court, who shall be sworn, or recorded electronically by a method approved by the Trial Court. Unless otherwise ordered by the court, transcripts of the record of the testimony shall be furnished only as required by the district attorney or attorney general.

Rule History

Amended July 8, 2020, effective August 1, 2020.

Rule 64. Appellate Division. Procedure and Forms

(Applicable to criminal cases)

Appeals to the appellate division, under G.L. Chapter 278, as amended, shall be signed by the person sentenced, on forms herein established to be furnished by the clerk.

Upon the imposition of a sentence which may be reviewed, the clerk shall forthwith advise the person sentenced of his right, within ten days to appeal to the appellate division for a review of the sentence or sentences imposed, notwithstanding that the execution of such sentence or sentences is stayed pending appeal or suspended with a term of probation, and shall make an entry on the docket that the person has been so advised.

The clerk shall forthwith notify the justice who imposed the sentence, of any appeal, and likewise shall notify the appellate division of any appeal.

If new process issues as a result of action by the appellate division, it shall recite the original sentence, sentences or disposition and set forth any amendment thereof.

The clerk of the appellate division shall send notice of the final action by the appellate division to the appellant, the superintendent of the correctional institution in which the appellant is confined, the clerk of the court in which judgment was rendered, the justice who imposed the sentence appealed from and the chief justice.

The appellate division shall hear appeals for the review of sentences only in those cases in which a claim of appeal has been filed within ten days after the date of the imposition of sentence.

Notwithstanding withdrawal of counsel's appearance for other purposes, counsel representing a defendant at sentencing shall continue to do so in any appeal to the Appellate Division of the Superior Court, unless (a) specifically excused by the court, or (b) successor counsel enters an appearance with the Appellate Division.

The appellate division, upon its own motion, or on written motion of the prosecutor, filed within sixty days of a resentencing, may revise or revoke any resentence if the appellate division determines that any part of the resentence was illegal.

The forms for appeal under the provisions of G.L. Chapter 278, Section 28B, shall be as follows:

- **Appeal from sentence to Massachusetts Correctional Institution, Cedar Junction**
- **Appeal from sentence of more than 5 years to Massachusetts Correctional Institution Framingham**

Rule History

Amended effective July 1, 1986. Amended March 5, 2020, effective April 1, 2020; amended April 1, 2025, effective May 1, 2025.

Rule 65. Claim of Appeal

(Applicable to criminal cases)

After imposing judgment and sentence in a case which has gone to trial on a plea of not guilty, the judge or clerk shall forthwith advise the defendant of his right to appeal, and the clerk shall execute a statement in writing to that effect.

The clerk shall have no duty to advise the defendant of any right of appeal after sentence is imposed following a plea of guilty or nolo contendere.

Defendant's counsel shall be responsible for perfecting and prosecuting the appeal unless such counsel is relieved of that responsibility, after a hearing on counsel's motion to withdraw.

An appeal under General Laws Chapter 278, Section 28 shall be claimed within thirty days after the judgment from which the appeal is taken.

Rule History

Amended October 22, 1977, effective January 1, 1978; amended May 30, 1990, effective July 1, 1990.

Rules 66 and 67. [Repealed]

Repealed effective September 1, 1980.

Rule 68. Arguments

(Applicable to criminal cases)

In trials of criminal cases the arguments of each party shall be limited to thirty minutes; but the court may reasonably reduce or extend the time.

Rule 69. Examination of Witnesses

(Applicable to criminal cases)

Unless otherwise permitted by the court, the examination and cross-examination of each witness shall be conducted by one counsel only for each party, and the counsel shall stand while so examining or cross-examining.

Rule 70. Requests for Instructions or Rulings

(Applicable to criminal cases)

Requests for instructions or rulings in trials or hearings with or without jury shall be made in writing before the closing arguments unless special leave is given to present requests later.

The question whether the court should order a verdict shall be raised by a motion, and not by a request for instructions.

Rule 71. Depositions -- Commissions

(Applicable to criminal cases so far as depositions may be taken by statute. See G.L. c. 277, secs. 76-77)

Editor's Note: G.L. c. 277, §§ 76-77 were repealed by St.1979, c. 344, § 42, an emergency act, approved June 30, 1979, and by § 51 made effective July 1, 1979. For derivation and subject matter of the repealed sections, see M.G.L.A. c. 277, §§ 74-77.

Upon application by a defendant, the court will grant commissions to take the depositions of witnesses residing out of the Commonwealth. Such a defendant may, on application to the clerk, obtain a commission, directed to any commissioner appointed by the governor of the Commonwealth to take depositions in any other of the United States, or to any justice of the peace, notary public or other officer legally empowered to take depositions or affidavits in the state or country where the deposition is to be taken, or to such other person as the court may order. Unless otherwise ordered, such depositions shall be taken upon interrogatories filed by such defendant, and upon cross- interrogatories, if any, filed by the Commonwealth, which interrogatories and cross-interrogatories shall be annexed to the commission. Such defendant shall file his interrogatories in the clerk's office, give notice thereof to the Commonwealth, with a copy of the interrogatories, and file an affidavit of such notice in the clerk's office. The cross-interrogatories, if any, shall be filed within seven days after the giving of such notice, or within such further time as the court may order, and a copy shall be given to such defendant. When a deposition is taken and certified by any person as an officer or person to whom the commission was directed, if it shall be objected that such person was not the one to whom the commission was directed, the burden of proof shall be on the party so objecting. But if an objection be made to the authority of a person taking the deposition without such commission, the burden of proof of such authority shall be on the party producing the deposition.

Rule 72. Deposition – Manner of Taking

(Applicable to criminal cases so far as depositions may be taken by statute. See G.L. c. 277, secs. 76-77)

Editor's Note: G.L. c. 277, §§ 76-77 were repealed by St.1979, c. 344, § 42, an emergency act, approved June 30, 1979, and by § 51 made effective July 1, 1979. For derivation and subject matter of the repealed sections, see M.G.L.A. c. 277, §§ 74-77.

Where a deposition is taken on interrogatories, the commissioner shall take such deposition in a place separate and apart from all other persons, and shall permit no person to be present, during such examination except the deponent himself, and such

disinterested person, if any, as he may think fit to appoint as a clerk or stenographer to assist him in reducing the deposition to writing. The commissioner shall permit no person to communicate by interrogatories or suggestions with the deponent while giving his deposition. The commissioner shall put the several interrogatories and cross-interrogatories to the deponent in their order, and shall take the answer of the deponent to each, fully and clearly, before proceeding to the next; and shall riot read to the deponent, nor permit the deponent to read, a succeeding interrogatory, until the answer to the preceding has been fully taken down. The clerk, on issuing a commission to take a deposition on interrogatories, shall insert the substance of this rule therein; or shall annex this rule, or the substance thereof, to the commission, by way of notice and instruction to the commissioner.

Depositions shall be opened and filed by the clerk when received.

Special Provisions for Certain Other Proceedings

Rule 73. Medical Malpractice Cases

(Applicable to all counties)

(applicable to all cases subject to G. L. c. 231, § 60B (medical malpractice))

1. Offer of Proof; Failure to File.

a.

Within 15 days after each defendant's answer has been filed in a case subject to G.L. c. 231, § 60B, the plaintiff(s) shall file the offer of proof with the clerk and provide a copy to the defendant(s). The parties may agree to a different deadline, in a written stipulation filed with the court. For purposes of cases referred for a tribunal from other trial court departments, or the federal courts, the date of docketing of the referral in the Superior Court shall be substituted for the date of filing of the answer.

b.

Upon a plaintiff's failure to file a timely offer of proof, the court may find, upon motion of a party or its own initiative, that the plaintiff has failed to present sufficient evidence to raise a legitimate question of liability appropriate for judicial inquiry as to the defendant who

filed the answer. A plaintiff's failure to file a timely offer of proof shall waive the plaintiff's right to a tribunal before entry of such a finding by the court.

c.

By motion, or on its own initiative, the court may schedule a prompt conference in addition to, or in lieu of, the procedures set forth in parts 2-6, below.

2. Demand for Tribunal; Notice to Massachusetts Medical Society; Duties of Party Demanding a Tribunal.

a.

Any party who demands a tribunal under § 60B ("Filing Party") shall file a document entitled "Demand for Tribunal" within 30 days of the filing of the answer, after reviewing the offer of proof, if any. The Demand for Tribunal shall specify each respect, if any, in which the Filing Party claims that the offer of proof fails to raise a legitimate question of liability appropriate for judicial inquiry.

b.

Any defendant's failure to file a timely Demand for Tribunal shall waive that defendant's right to a tribunal.

c.

If the defendant is a licensed physician or a medical institution or facility:

i The Demand for Tribunal shall (A) specify the field of medicine in which the alleged injury occurred and (B) list each county where the defendant practices and each county where the defendant resides, or if the defendant is a medical institution or facility, shall list the county where the institution or facility is located. The Filing Party shall consult with all other parties, and if there is disagreement about the field of medicine or county, shall include all fields and counties identified by any party.

ii The Filing Party shall, simultaneously with filing, serve the Demand for Tribunal on all parties of record or their counsel and the Massachusetts Medical Society ("Society"). Any Demand for Tribunal sent to the Society shall state prominently that:

1 A medical malpractice tribunal will occur if the Society timely submits a case-specific list consisting of the name(s) of physicians representing the field of medicine in which the alleged injury occurred and licensed to practice medicine and surgery in the commonwealth under the provisions of section two of chapter one hundred and twelve; and that the list shall consist only of physicians who practice medicine outside the county where the defendant practices or resides or

if the defendant is a medical institution or facility outside the county where said institution or facility is located; and

2 The Court considers a submission timely if the Society provides the information to the clerk, with copies to all parties or their counsel, within 30 days of receiving the Demand for Tribunal.

d.

If the defendant is not a licensed physician, the Filing Party shall obtain a case-specific list from the pertinent source approved by the Chief Justice of the Superior Court and provide it to the clerk within 90 days after the answer is filed, with advance notice to other parties, who may participate if they choose.

e.

For purposes of this rule, a "case-specific list" means: (1) if the defendant is a physician, a list of physicians who meet the criteria appearing in par. 2.c.ii.1 or (2) if the defendant is not a physician, a list consisting of the name(s) of representatives of the field of medicine in which the alleged injury occurred who are licensed to practice in that field under the laws of the Commonwealth; provided that the list shall consist only of such representatives who practice outside the county where the defendant practices or resides.

3. Tribunal.

The clerk shall schedule the tribunal as soon as practicable upon receipt from the Society (or the Filing Party under paragraph 2(d)) of the information required by paragraph 2(c) or 2(d). The clerk shall send notice of the date and time of the tribunal hearing to all parties or their counsel, listing the panel members' names and contact information. The plaintiff shall send a copy of the offer of proof to each panel member at least 5 days before the tribunal hearing.

Until the clerk receives a case-specific list of eligible and available physicians or medical providers, the clerk has no statutory responsibility to schedule a tribunal, but may, in the exercise of discretion, choose to devote available resources in a timely manner to identify an eligible physician or medical provider member of the tribunal.

4. Delay in Providing the Case-Specific List of Physicians or Medical Providers to the Clerk.

If the clerk does not receive a case-specific list of providers within 90 days after the answer is filed, the clerk shall schedule a hearing before a single judge to determine whether the offer of proof, if properly substantiated, is sufficient to raise a legitimate question of liability

appropriate for judicial inquiry or whether the plaintiff's case is merely an unfortunate medical result. Such determination shall be without prejudice to reconsideration by a full tribunal, consisting of medical member, attorney, and judge, as provided in part (2) of the next sentence hereof. If the clerk later receives a case-specific list of providers, then: (1) if the hearing has not already occurred, it shall occur before a full tribunal; (2) if the hearing has already occurred, and if any party files a motion for reconsideration by a full tribunal, the court shall allow such motion unless it determines that allowing the motion would unduly delay the trial.

5. Voluntary Waiver of Tribunal.

Any party may waive a right to a § 60B tribunal consisting of three members, without thereby waiving any other rights or arguments in the case. If the plaintiff waives the tribunal, the court shall require posting of a bond in the statutory amount, without prejudice to the right of either party to move to increase or reduce the amount of the bond. If the defendant waives the tribunal, the court may allow the plaintiff(s) to proceed without a bond and need not schedule any further § 60B hearing with respect to that defendant. Upon waiver of the tribunal, the clerk shall send an informational copy of the complaint and offer of proof to the Board of Registration in Medicine with a clear disclaimer that no tribunal occurred under § 60B because the defendant waived the tribunal but reserved all rights to challenge the claims in the offer of proof at trial.

6. Stay.

a.

No medical malpractice lawsuit is automatically stayed pending a tribunal decision, but a session judge may enter a stay, upon motion in compliance with Superior Court Rule 9A, if the Demand for Tribunal identifies a serious issue with the offer of proof and the plaintiff does not post a bond.

b.

Notwithstanding subparagraph a, in the absence of a court order, no defendant is required, over objection, to take any action if the plaintiff does not timely post a bond (i) after failing to file a timely offer of proof or (ii) after a tribunal finding adverse to the plaintiff as to that defendant.

7. Trial Assignment Conference; Case-Specific Management.

a.

Notwithstanding Standing Order 1-88, the parties in all medical malpractice cases shall appear at a trial assignment conference, to be scheduled by the court not later than 18 months after filing of the complaint. The parties shall be prepared to commit to a trial date within the tracking order, as well as to dates for expert disclosures. At the trial assignment conference, the court and parties will also select a date for a final pretrial conference at which they will file a pretrial memorandum and discuss the case's potential for resolution. The parties must discuss the potential for resolution with their clients and any other entity or individual with settlement authority, before the pretrial conference.

b.

Any party who seeks to advance the case for earlier determination pursuant to G.L. c. 231, § 59C, may file a Motion For Case-Specific Management pursuant to Superior Court Rule 20 and Standing Order 1-88(B)(2), in compliance with Superior Court Rule 9A.

8. Judicial Discretion.

After considering the impact on prompt resolution of the case and all other equities, the judge may waive any of these requirements or extend any of these deadlines. In ruling on a motion for waiver, the judge may require the moving party to demonstrate good cause and may impose conditions to facilitate timely resolution of the case or to protect the rights of any party opposing the waiver.

9. Other Rights.

Nothing in this Rule shall be construed to limit the right of any party under generally applicable statutes, rules, orders, or other law to assert or oppose any dispositive or other motion, serve any discovery request, or request a conference under Rule 16 or otherwise at any time. For purposes of this rule, any plaintiff or defendant whose claim or liability is entirely vicarious or derivative has no separate right to a tribunal beyond that asserted by the principal(s), and shall, together with the principal(s), be considered as a single party.

Rule History

Added November 7, 2017, effective January 1, 2018; amended July 8, 2020, effective August 1, 2020.

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 History

Added June 14, 2021, effective September 1, 2021.

Rule 75. [Procedure in Election Petitions]

Repealed effective January 1, 2015.

Special Provisions for Divorce Cases

Rule 76. [Divorce Proceedings]

Repealed effective June 14, 2021.

Rule 77. [Trial Lists of Divorce Cases in Suffolk]

Repealed effective June 14, 2021.

Standing Orders (in reverse chronological order)

Standing Order 1-23: E-Filing Policies and Procedures for Civil Actions

(Adopted January 13, 2023, effective February 1, 2023.)

Introduction

The Superior Court adopts these policies and procedures for electronic filing (e-filing) in designated civil actions. Instructions on e-filing through www.eFileMA.com and a list of case types in which e-filing is permitted are posted on the Superior Court's webpage, eFiling in the Superior Court.[1] Filers must comply with this Standing Order and S.J.C. Rule 1:25: Massachusetts Rules of Electronic Filing,[2] as well as other applicable Massachusetts Court Rules and Orders. Neither this Standing Order nor the Massachusetts Court Rules authorizes filing by e-mail.

E-filing involves three main steps, addressed in more detail below. First, the filer uploads documents to eFileMA, which delivers the documents to the clerk's office for review. If the

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[1] www.mass.gov/guides/efiling-in-the-superior-court#-which-cases-can-be-efiled-in-the-superior-court? The webpage includes a hyperlink to eFileMA, with training videos, helpful tips, and other resources, and includes a hyperlink to the Guide on How to eFile at the Superior Court, with additional information about e-filing.

[2] www.mass.gov/supreme-judicial-court-rules/supreme-judicial-court-rule-125-massachusetts-rules-of-electronic-filing

documents are too large, eFileMA automatically rejects them and notifies the filer of the problem. Second, the clerk's office reviews the documents for compliance with technical requirements of Massachusetts Court Rules and Orders, including S.J.C. Rule 1:25, and this Standing Order. If the filing does not comply, the clerk's office may reject the filing and notify the filer of the problem. Third, if the clerk's office accepts the documents, the documents will be docketed.

I. Uploading documents to eFileMA

A. PDF format required

E-filed text documents must be in searchable Portable Document Format (PDF). Word-processed documents should be electronically converted to PDFs, not scanned. Any scanned PDF must be made searchable using optical-character-recognition software, such as Adobe Acrobat, with a resolution of 200 dots per inch (dpi), in black and white. No PDF shall be locked or password protected.

B. Size limits on e-filings

The size limit for a single e-filed document is 25 megabytes (MB), and for a single e-filed envelope is 50MB. If a filing exceeds the limit, eFileMA automatically rejects the filing and notifies the filer of the problem. The filer may divide a large document or envelope into smaller parts to fall within the limit. Separate parts of a document or envelope must be clearly labeled sequentially as, for example, "Volume 1 of 2."

C. Rule 9A compliance

E-filed civil motions must comply with Superior Court Rule 9A,[3] unless they fall within an exception under Rule 9A(d) (emergency motions, ex parte motions, motions for appointment of special process server, motions involving incarcerated parties). See E-Filing Instructions for 9A Package and for Summary Judgment.[4]

D. No duplicate copies

No filer shall provide any duplicate or "courtesy" copies of e-filed documents, either electronically or in hard copy, unless expressly requested by the clerk or permitted by the presiding judge.

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[3] www.mass.gov/superior-court-rules/superior-court-rule-9a-civil-motions
[4] www.mass.gov/doc/efiling-instructions-for-9a-package-and-for-summary-judgment/download

E. Emergency filings and requests for immediate attention

E-filed documents will be processed by the clerk's office as soon as reasonably possible, but filers should expect that most e-filed documents will take twenty-four to forty-eight hours or more to be reviewed and, if accepted, docketed. For emergency motions or other matters of an urgent nature—for instance, an affidavit submitted in opposition to a preliminary injunction motion that is scheduled to be heard by the court in less than twenty-four hours—the filer must alert the court in the following three ways:

1. On the eFileMA screen that says "Enter the details for this filing," in the space labeled "Filing Description," the filer must type in all capital letters "EMERGENCY FILING" or "IMMEDIATE REVIEW REQUESTED," as applicable, as the first words of the description.
2. The top of the first page of the e-filed document must state, in boldface type, "Emergency Filing," or "Immediate Review Requested."
3. The filer must notify the clerk's office with a telephone call.

F. Impounded documents

Impounded documents, under Trial Court Rule VIII: Uniform Rules on Impoundment Procedure, shall be filed with the clerk's office in hard copy form only. No impounded document or motion to impound shall be e-filed.

II. Clerk's review

The clerk shall review each filing for compliance with Massachusetts Court Rules and Orders, including S.J.C. Rule 1:25, and this Standing Order, before entering the filing on the docket. The clerk shall notify the filer if the filing was accepted or rejected. The clerk may reject any non-compliant filing, may identify the error, and may set a deadline for the filer to resubmit the document in a compliant format. Submission of an e-filed document that is rejected for non-compliance shall not toll any statute of limitations or other mandatory or statutory deadline for filing such document. S.J.C. Rule 1:25, Rule 5.

III. Time documents deemed filed

When the clerk accepts a document and dockets it, the document shall be considered filed with the court at the time filing was acknowledged through eFileMA, as follows: an accepted document uploaded to eFileMA by 11:59 p.m. on a weekday shall be deemed filed on that date or, if it is a weekend or legal holiday, on the next court business day.

Standing Order 1-22: Videoconferencing of Court Events

(Adopted August 12, 2022, effective September 1, 2022)

(Applicable to All Courts)

1. Introduction

This Standing Order is effective September 1, 2022, and rescinds and supersedes Superior Court Standing Order 1–20, which became effective February 1, 2020, and Superior Court Standing Order 421, which became effective July 12, 2021. This Standing Order shall remain in effect until further order of the court.

Consistent with constitutional, statutory, and other applicable rights, and in the interest of justice, certain criminal and civil proceedings may be conducted by videoconference pursuant to this Standing Order.

2. Criminal Cases

A. Presumptive Videoconference Hearings

Hearings in criminal cases are presumptively held by videoconference for:

- bail hearings for persons in custody who waive physical presence in the courtroom;
- bail reviews and non-testimonial hearings for reviews of G.L. c. 276, § 58A dangerousness determinations for persons in custody;
- hearings on G.L. c. 276, § 58A motions without witnesses;
- status and scheduling conferences;
- discovery conferences, including hearings on non-evidentiary motions (where a hearing is warranted, and defendant waives physical presence);
- pretrial conferences; and
- probation status conferences.

B. Presumptive In-Person Hearings

Hearings in criminal cases are presumptively held in person for:

- initial bail hearings for persons not in custody;
- 58A dangerousness hearings with witnesses;
- motions to dismiss and suppress;
- plea conferences and plea hearings pursuant to Mass. R. Crim. P. 12;

- Daubert-Lanigan hearings;
- final trial conferences, including motions in limine;
- trials;
- sentencing hearings; and
- initial and final probation violation hearings.

C. Arraignments

There is no presumptive method for conducting an arraignment. Judges are encouraged to conduct arraignments by videoconference where the defendant is in custody and waives physical presence, absent reasons for the defendant and counsel to be physically present.

D. Conversion of Presumptive In-Person Hearings to Videoconference Hearings in Criminal Cases

A criminal hearing designated as presumptively in person pursuant to this Standing Order may be held by videoconference in a judge's discretion, consistent with constitutional, statutory, and other applicable rights. A judge should consider the nature of the proceeding, including whether it is testimonial, evidentiary, or requires a credibility determination; any agreement of the parties; and waiver of any right to physical presence.

3. Civil Cases

A. Presumptive Videoconference Hearings

Hearings in civil cases are presumptively held by videoconference for:

- initial case management conferences;
- discovery disputes, motions to compel, motions for protective order (if hearing warranted);
- scheduling conferences;
- final pretrial conferences;
- motions to dismiss;
- motions to amend complaint (if hearing warranted);
- motions for default judgment/assessment of damages; and
- motions to set aside default (if hearing warranted).

Medical malpractice tribunals are presumptively held by videoconference.

B. Presumptive In-Person Hearings

Hearings in civil cases are presumptively held in person for:

- injunction hearings, including ex parte motions for injunctions;
- hearings on equitable motions, including motions for attachment, trustee process, reach and apply;
- proceedings involving credibility determinations;
- motions for summary judgment;
- Daubert-Lanigan hearings;
- final trial conferences, including motions in limine; and
- trials.

C. Conversion of Presumptive In-Person Hearings to Videoconference Hearings in Civil Cases

A civil hearing designated as presumptively in person pursuant to this Standing Order may be held by videoconference in a judge's discretion and for good cause.

4. Conversion of Presumptive Videoconference Hearing to In-Person Hearing

A judge may order that a criminal or civil hearing designated as presumptively held by videoconference pursuant to this Standing Order be held in person if the judge determines that such a hearing is necessary for fair and efficient resolution of a matter.

5. Hybrid Proceedings

A "hybrid" proceeding, where some participants appear in person and others appear by videoconference, may be held on request and in the discretion of the court, and consistent with constitutional, statutory, and other applicable rights. Any participant who requests to appear by videoconference at an in-person proceeding shall have no grounds to object to any other participant appearing in person.

6. Self-Represented Litigants

For any videoconference hearing involving a self-represented litigant with limited access to, or limited facility with, videoconference technology, the court shall facilitate participation by videoconference or shall offer an alternative means of participation.

7. Public Access

Information on public access to virtual proceedings shall be available from the Superior Court Clerks' Offices.

Standing Order 1-21: Uniform Procedures Regarding Petitions for Abortion Authorization Under G.L. c.112, § 12R

(Adopted December 30, 2020, effective January 1, 2021.)

(Applicable to All Counties)

1.

This Standing Order repeals and replaces Superior Court Standing Order 5-81.

2.

Upon the filing of a petition under G.L. c. 112, § 12R (hereinafter § 12R), the Clerk of Courts or Clerk-Magistrate(clerk) shall immediately bring the matter to the attention of the judge in any session assigned to hear emergency civil matters, or to the Regional Administrative Justice (RAJ) or designee, who will either hear the petition or assign it to another judge for hearing.

If the petition is filed in a county in which no judge is then available, the clerk shall immediately notify the RAJ or the Administrative Office of the Superior Court (AOSC) of the pending petition. The RAJ or AOSC shall take such action as is necessary to arrange for prompt hearing in a location accessible to the petitioner or via teleconference.

The court shall appoint counsel for any petitioner who appears without counsel, unless the petitioner chooses to proceed without counsel. Costs and fees shall be waived. Counsel shall contact the clerk as soon as possible to schedule a hearing at a time during court hours when the petitioner is able to appear, either in person or by teleconference at the petitioner's option. The matter shall be given priority over all other cases then pending so that the court may reach a decision promptly and without delay to serve the best interests of the petitioner. AOSC shall provide a standard form petition and affidavit, to be available on the Trial Court's public website and in all clerks' offices for easy access by petitioners and their counsel.

3.

The court may appoint a guardian ad litem for the petitioner or may make such other orders as necessary, under Mass. R. Civ. P. 17(b), but shall take care to avoid any delay that may result from such orders and to ensure prompt determination of the petition.

4.

All proceedings pursuant to § 12R shall be confidential. All papers, other than the affidavit referred to herein, shall be designated anonymously in the name of Mary Moe. An affidavit bearing petitioner's true name and her signature shall accompany the petition, and shall be kept in a sealed envelope or other container, identifiable by the docket number of the petition. If the petitioner is unable to sign the affidavit herself, counsel may sign the petitioner's name on the affidavit, so indicating by counsel's initials. All papers, recordings, transcripts, and any other records of the proceeding, including electronic records, shall be impounded.

The clerk shall undertake to ensure that the petitioner's contact with the clerk's office is confidential and expeditious to the fullest extent practicable. Each clerk shall designate one or more staff person(s) to be available at all times during court hours to receive and process § 12R petitions, answer questions from a petitioner or her counsel in a private setting either in person or by telephone, and assist the petitioner or her counsel in expeditiously presenting her petition to the court.

5.

The judge may conduct the hearing in person or via teleconference at the petitioner's option. If the petitioner opts for a hearing by teleconference, the court shall conduct the hearing by videoconference unless the petitioner is unable to access videoconference technology; in that event the court shall conduct the hearing by telephone. All hearings under § 12R, whether in-person or by teleconference, shall be conducted in the judge's lobby or other private setting. If it is necessary to conduct a hearing in a courtroom, the courtroom shall be closed to the public, and the petitioner and her counsel, if present in person, shall be escorted to and from the courtroom by the most private route available. All hearings shall be recorded electronically by means of a portable electronic recording device or by equivalent means.

6.

The judge shall make specific factual findings and legal conclusions supporting the decision and shall order that the record of the proceeding, including the judge's findings and conclusions, be maintained. The AOSC shall provide a standard form for the making of such findings and order, which shall be available to all judges.

7.

The court shall give the petitioner or counsel a copy of the court's order bearing the docket number, and a copy of the petitioner's sealed affidavit bearing the same docket number.

8.

If a medical emergency or other substantial cause necessitates that a hearing under § 12R occur outside of normal court hours, the petitioner or her counsel shall contact the Massachusetts State Police to obtain access to the Judicial Response System (JRS).

Standing Order 1-96: Processing and Hearing of Complaints for Judicial Review of Administrative Agency Proceedings

(Adopted effective April 8, 2002; amended December 5, 2014, effective February 1, 2015; amended December 2, 2016, effective January 1, 2017; amended December 10, 2020, effective December 10, 2020.)

(Applicable to Civil Actions in All Counties)

In order to facilitate and clarify the orderly processing and hearing of Complaints for Judicial Review of Administrative Agency Proceedings, it is ORDERED, effective December 10, 2020 that:

1.

Claims filed in the Superior Court seeking judicial review of administrative agency proceedings on the administrative record pursuant to the standards set forth in G.L. c. 30A, § 14, G.L. c. 249, § 4, or similar statutes, whether joined with a claim for declaratory relief under G.L. c. 231A, or any other claim, shall be heard in accordance with the following procedures.

2.

The administrative agency whose proceedings are to be judicially reviewed shall, by way of answer, file the original or certified copy of the record of the proceeding under review (the record) within ninety (90) days after service upon it of the Complaint. Such record "shall consist of (a) the entire proceedings, or (b) such portions thereof as the agency and the parties may stipulate, or (c) a statement of the case agreed to by the agency and the parties." G.L. c. 30A, § 14(4). Upon service of a Complaint, the agency shall notify all parties of procedures for acquiring a transcript of the hearing testimony. The agency shall also inform the parties of their obligation to provide a transcript, or portions thereof, to the court if alleging that an agency's decision is not supported by substantial evidence or is arbitrary

or capricious, or is an abuse of discretion. A request for a copy of the transcript must be made by a party within thirty (30) days after service of the Complaint, and such transcript or portion thereof shall be made part of the record. The Agency's certified record shall include any transcript that has been prepared but need not include a transcript of any untranscribed proceeding or portion thereof in the absence of a timely transcript request.

The court may assess the expense of preparing the record as part of the costs in the case. G. L. c. 30A, § 14(4). Additionally, "the court may, regardless of the outcome of the case, assess any one unreasonably refusing to stipulate to limit the record, for the additional expenses of preparation caused by such refusal." G. L. c. 30A, § 14(4). The court may require or permit subsequent corrections or additions to the record when deemed desirable. G. L. c. 30A, § 14(4). The Court may alter the time for filing the record for good cause shown on an appropriate motion.

2A.

Records of Administrative Proceedings, filed by the administrative agency, shall comply in full with Supreme Judicial Court Rule 1:24, if practicable given size and applicable filing deadlines. Otherwise, the agency should:

(a) Make reasonable efforts to segregate, redact and file publicly all portions of the record that can practicably be redacted within the filing deadline, including in all cases a redacted copy of the decision under review; and
(b) separately file all other portions in one or more volumes, each having a first page that bears the legend: "FILED UNDER PROVISIONAL MOTION TO IMPOUND," together with such a motion, which need not be served pursuant to Superior Court Rule 9A. Documents bearing that legend shall NOT be impounded without a hearing in compliance with Trial Court Rule VIII, but shall be segregated from the rest of the file in the same manner already employed by clerks' offices for third-party production of medical records, phone records and the like. The clerk shall note the existence of the segregated volume(s) on the docket sheet. The provisional motion to impound will be forwarded to the session judge for Rule VIII notice, hearing and findings ONLY if a non-party seeks to review the documents.

Notwithstanding the above, an agency need not redact from an administrative record any material that is in a public record.

3.

The following motions raising preliminary matters must be served in accordance with Superior Court Rule 9A not later than twenty (20) days after service of the record by the administrative agency.

(a) Motions authorized by Mass. R. Civ. P. 12(b) or 12(e).
(b) Motion for leave to present testimony of alleged irregularities in procedure before the agency, not shown in the record (G.L. c. 30A, § 14(5)).
(c) Motion for leave to present additional evidence (G.L. c. 30A, § 14(6)).

Any party failing to serve such a motion within the prescribed time limit, or within any court-ordered extension, shall be deemed to have waived any such motion (unless relating to jurisdiction) and the case shall proceed solely on the basis of the record. Any such motion shall be promptly resolved in accordance with Superior Court Rule 9A. If the motion specified in (c) is allowed, all further proceedings shall be stayed until the administrative agency has complied with the provisions of G.L. c. 30A, § 14(6).

4.

A claim for judicial review shall be resolved through a motion for judgment on the pleadings, Mass. R. Civ. P. 12(c), in accordance with Superior Court Rule 9A except as otherwise provided by this Standing Order, unless the Court's decision on any motion specified in part 3 above has made such a resolution inappropriate. A plaintiff's Rule 12(c)motion and supporting memorandum shall be served within thirty (30) days of the service of the record or of the Court's decision on any motion specified in part 3 above, whichever is later. A defendant's response shall be deemed to include a cross-motion for judgment on the pleadings pursuant to Mass. R. Civ. P. 12(c) (which should be noted in the caption of the response) and shall be served within thirty (30) days after service of the plaintiff's motion and memorandum. The plaintiff shall then promptly file the motion materials in accordance with Superior Court Rule 9A. The Court may alter the time to serve or file for good cause shown. Memoranda shall include specific page citations to matters in the record.

5.

The Clerk or her/his designee will schedule a hearing date after receiving the motion materials. No pre-trial conference will be held, and no pre-trial memorandum filed, unless specifically ordered by the Court. No testimony or other evidence shall be presented at the hearing, and the review shall be confined to the record. A party may waive oral argument

and submit on the brief by filing a written notice. Such waiver by a party shall not affect the right of any other party to appear and present oral argument.

Standing Order 1-88: Time Standards (Seventh Amended)

(Effective March 1, 2007; amended December 2, 2016, effective January 1, 2017; amended August 4, 2017, effective September 1, 2017; amended January 6, 2020, effective February 1, 2020; amended January 13, 2023, effective February 1, 2023.)

(Applicable to All Counties)

A. General considerations

Responding to and complying with the directive of the Supreme Judicial Court for ". . . an attack on excessive delay and excessive cost of court proceedings . . ." and in an effort to "secure the just, speedy and inexpensive determination of every action," Mass. R. Civ. P. 1, the Justices of the Superior Court, through our Chief Justice, hereby adopt these time standards as a standing order of the Superior Court ("Standing Order"). The Court recognizes that the litigation process is memory dependent. To the extent that memory dims or becomes unreliable over prolonged periods of time, a just determination may be jeopardized. The concept of early and continuous judicial supervision and control is intended to enhance the quality of litigation and ensure that justice is fairly rendered.

This Standing Order recognizes that there are viable alternative methods of dispute resolution that may avoid delay and reduce the expense inherent in court proceedings, such as mediation, arbitration, summary jury trials, mini-trials, and reference to masters. Such alternate methods of dispute resolution are compatible with the case management objectives of these time standards. Nothing in this Standing Order shall act as a bar to any form of early intervention by the Court to identify cases suitable for alternative dispute resolution.

The Court recognizes and is sensitive to the impact that this Standing Order will have on local legal culture. We have meticulously avoided intrusion into this rich culture except to the extent necessary to preserve to the Court its responsibility to manage the pace of litigation without disturbing the harmony of the trial bar.

Accordingly, it is hereby ORDERED that:

1. All civil actions filed in the Superior Court shall be subject to the provisions of this Standing Order.

2. This Standing Order is applicable to all counties.
3. The Court will schedule trial dates for both jury and jury-waived cases on its own initiative.

B. Track designations

1. Tracks Based Upon the Nature of the Case

a.

All civil actions shall be designated for purposes of this Standing Order as falling within one of three tracks based on the nature of the case:

- Fast Track ("F")
- Average Track ("A")
- Accelerated Track ("X")

A list of case types with track designations, noted in parentheses, appears at the end of this Standing Order.

b.

The plaintiff shall indicate the nature of the action and the appropriate track designation on the Civil Action Cover Sheet.[1]

c.

For good cause shown, a party may move that a case be designated to a track other than the track selected by the plaintiff on the Civil Action Cover Sheet. The motion shall comply with Superior Court Rule 9A, and shall be referred to the attention of the Session Judge.

2. Individual Track

a.

By order of the Court, or stipulation of the parties, a civil action shall be assigned to an individual track, which shall supersede the requirements of this Standing Order, provided that all deadlines in the individual track occur no later than the tracking order dates applicable to the case type, as established by Part F of this Standing Order, Tracking Deadlines, below.

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[1] As a result of an amended complaint, crossclaim, counterclaim, or third-party action, a case may, for example, change from a simple motor vehicle tort (“F” track) to a product liability case (“A” track), warranting a motion to change the designation to the longer track.

b.

Any party wishing assignment to an individual track must complete and submit the form "Motion for Case-Specific Management" appearing in the Appendix of Forms to the Superior Court Rules and available for download on the Superior Court's webpage. See Superior Court Rule 20.

c.

The Session Judge will endorse the Motion for Case-Specific Management in accordance with Superior Court Rules 9A and 20.

C. Tracking orders

While the clerk shall provide notice to all parties and their counsel of the track designation and corresponding tracking deadlines, the final responsibility for obtaining information from the clerk about the designation of the case and the corresponding tracking order shall rest with each party. Notification shall occur as follows:

1. The Civil Action Cover Sheet shall alert parties to the existence of this Standing Order and to the track designations.
2. After the plaintiff has filed an action and in accordance with the track designated by the plaintiff, the clerk shall issue a tracking order establishing the tracking deadlines for completion of the stages of litigation. Specific dates for the tracking deadlines shall be included in the tracking order. The Court shall send the tracking order to counsel of record by email and to self-represented litigants by email or regular mail.
3. After 90 days from the filing of the action, the clerk shall forward a copy of the tracking order to all counsel of record. Counsel who appear in the action after the expiration of 90 days shall be responsible for knowing the tracking deadlines for completing the stages of the litigation.
4. All motions shall be filed within the time prescribed by the tracking order unless the moving party first moves for and obtains leave of Court to file beyond the designated tracking deadline.[2]
5. All pleadings, appearances, and other papers filed by counsel of record shall be accompanied by counsel's Board of Bar Overseers (BBO) Number.[3] The BBO Number shall appear immediately after counsel's signature, address, email address, and telephone number.

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[2] This provision places the responsibility of "timely filing" documents on the attorneys and relieves the clerks of the initial responsibility of determining if documents are filed in violation of time standards. The clerk's office is not responsible for returning improperly filed papers.

[3] This requirement helps the Court schedule trials and notify counsel of case events electronically.

D. Amendments to the tracking orders

This Standing Order anticipates that there will be instances when the designation of a case to a particular track is inappropriate or the tracking deadlines cannot reasonably be met. The Court recognizes that there are cases which by their nature require special tracking deadlines, and the system is sufficiently flexible to accommodate these cases as follows:

1. Amendments to the tracking order of a case may be granted on motion, filed in accordance with Superior Court Rule 9A, and for good cause shown.
2. All motions to amend a tracking deadline shall be referred to the attention of the Session Judge for decision. Motions (or oppositions thereto) shall be submitted on the papers, without oral argument, unless otherwise ordered.

E. Rule 16 conferences

This Standing Order also recognizes that the parties may benefit from a conference under Mass. R. Civ. P. 16 to address matters that may aid in resolving a case or reducing the duration or expense of litigation. Any party may ask the Court for a Rule 16 conference and such requests will be honored if reasonable. The Court may also schedule a Rule 16 conference on its own initiative. Rule 16 conferences may be held by videoconference, in accordance with Standing Order 1-22, or by telephone, by arrangement with the Court.

F. Tracking deadlines

The following tracking deadlines shall be mandatory except as modified by order of the Session Judge or Regional Administrative Justice.[4] Documents filed outside the tracking deadlines without leave of court need not be acted on by the Court, even if filed by agreement between the parties. The tracking deadlines for F and A Track cases will be calculated from the date of filing of the complaint.

1. After Designation to Fast (“F”) Track:

a. Three months (90 days)

- Service shall be completed on all parties.
- All returns of service shall be filed.

[4] Wherever the term Regional Administrative Justice is used in this Standing Order, it shall include his or her designee.

- If service is not made on a defendant within 90 days after filing of the complaint, the action shall be dismissed as to that defendant without prejudice unless the Court has found good cause to extend the time for service.[5]

b. Four months (120 days)

- Rule 12, 15,[6] 19, and 20 motions shall be served.
- If no answer or motion to dismiss is filed by a defendant within 120 days of the filing of the complaint, the clerk shall issue a default as to that defendant and notify all parties of the default, unless the Court has found good cause to extend the time to file the answer or motion to dismiss.[7] Nothing in this Standing Order bars the earlier issuance of a default when legally appropriate. When appropriate, cases will be ordered for assessment of damages.

c. Five months (150 days)

- Rule 12, 15, 19, and 20 motions shall be filed with the Court.

d. Six months (180 days)

- Rule 12, 15, 19, and 20 motions shall be heard by the Court.

e. Ten months (300 days)

- All discovery requests shall be served and non-expert depositions completed.[8] Requests for admissions are not included within this deadline but a party may not request of an adverse party the admission of more than thirty factual assertions after this deadline, except with leave of court.

f. Eleven months (330 days)

- All motions for summary judgment shall be served. Nothing in this Standing Order bars summary judgment motions from being served earlier in the litigation.

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[5] The clerk will enter the dismissal automatically, under the authority of this Standing Order, and will give notices as required.

[6] This provision does not affect the power of the Court to allow amendments to pleadings where "justice appears to require such amendment." Lewis v. Russell, 304 Mass. 41, 45 (1939). The party seeking to amend late must obtain leave from the Session Judge and make a good faith showing of inability to move in a timely fashion.

[7] The clerk shall enter the default automatically, under the authority of this Standing Order, and shall give notices as required.

[8] A party may not have responded to timely-filed requests for discovery at this juncture and accordingly motions to compel production of that discovery continue to be appropriate. Non-expert depositions, however, must be held and completed on or before this date. This Standing Order does not change the duty of a party to supplement, under the provisions of Mass. R. Civ. P. 26(e).

g. Twelve months (360 days)

- All motions for summary judgment shall be filed.

The remaining tracking deadlines assume that a motion for summary judgment has been filed. If no summary judgment motion is filed, earlier tracking deadlines may be set by the Court.

h. Sixteen months (480 days)

- A final pre-trial conference shall be conducted by the Court.[9] A joint pre-trial memorandum shall be filed with the Court no less than five business days before the final pre-trial conference. A firm trial date shall be set at the final pre-trial conference.
- The minimum requirements of the joint pre-trial memorandum are attached to and made part of this Standing Order as Appendix A, "Notice to Appear for Final Pre-Trial Conference."

i. Twenty-two months (660 days)

- The case shall be resolved and judgment shall issue.

2. After Designation to Average ("A") Track:

a. Three months (90 days)

- Service shall be completed on all parties.
- All returns of service shall be filed.
- If service is not made on a defendant within 90 days after filing of the complaint, the action shall be dismissed as to that defendant without prejudice, unless the Court has found good cause to extend the time for service.

b. Four months (120 days)

- Rule 12, 19, and 20 motions shall be served.
- If no answer or motion to dismiss is filed by a defendant within 120 days of the filing of the complaint, the clerk shall issue a default as to that defendant and notify all parties of the default, unless the Court has found good cause to extend the time to file the answer or motion to dismiss. Nothing in this Standing Order bars the earlier issuance of a default when legally appropriate. When appropriate, cases will be ordered for assessment of damages.

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[9] Some summary judgment motions are sufficiently complex to require additional judicial time to render a decision. In other cases, the parties may seek some additional discovery or may contemplate the filing of summary judgment. The case should nonetheless continue on track and be brought to the attention of the conference judge for his or her consideration and action.

c. Five months (150 days)

- Rule 12, 19, and 20 motions shall be filed with the Court.

d. Six months (180 days)

- Rule 12, 19, and 20 motions shall be heard by the Court.

e. Fourteen months (420 days)

- Rule 15 motions shall be served.

f. Fifteen months (450 days)

- Rule 15 motions shall be filed and resolved, with or without a hearing.

g. Twenty-four months (720 days)

- All discovery requests served and non-expert depositions completed. Requests for admissions are not included within this deadline but a party may not request of an adverse party the admission of more than thirty factual assertions after this deadline, except with leave of court.

h. Twenty-five months (750 days)

- All motions for summary judgment shall be served.

i. Twenty-six months (780 days)

- All motions for summary judgment shall be filed.

The remaining tracking deadlines assume that a motion for summary judgment will be filed. If no summary judgment motion is filed, earlier tracking dates can be set by the Court.

j. Thirty months (900 days)

- A final pre-trial conference shall be conducted by the Court. A joint pre-trial memorandum shall be filed with the Court no less than five business days before the pre-trial conference. A firm trial date shall be set by the final pre-trial conference judge.
- The minimum requirements of the joint pre-trial memorandum are attached to and made part of this Standing Order as Appendix A, “Notice to Appear for Final Pre-Trial Conference.”

k. Thirty-six months (1,080 days)

- The case shall be resolved and judgment shall issue.

3. After Designation to Accelerated ("X") Track:

- All X Track cases seeking judicial review of administrative agency proceedings on the administrative record pursuant to the standards set forth in G. L. c. 30A, § 14, G. L. c. 249, § 4, or similar statutes are governed by Standing Order 1–96, and the tracking deadlines set forth in that Order. Those tracking deadlines are as follows:
    - No later than 90 days after service of the complaint, the administrative agency whose decision is at issue shall file a record of the proceeding.
    - No later than 20 days after service of the record, all motions to dismiss or for a more definite statement under Mass. R. Civ. P. 12(b) or (e), all motions for leave to present testimony of alleged irregularities in the procedure before the agency that are not shown in the record under G. L. c. 30A, § 14(5), and all motions for leave to present additional evidence under G. L. c. 30A, § 14(6) shall be served, in accordance with Superior Court Rule 9A.
    - No later than 30 days after service of the record or the Court's decision on any motion specified above, whichever is later, the plaintiff shall serve a motion for judgment on the pleadings under Mass. R. Civ. P. 12(c), in accordance with Superior Court Rule 9A, unless otherwise ordered.
    - No later than 30 days after service of the motion for judgment on the pleadings, the defendant shall serve an opposition.
- All X Track cases under G. L. c. 123A, § 12 (SDP initial commitment) shall be governed by the deadlines set forth in G. L. c. 123A or as otherwise established by law.
- Unless an earlier date is required by law, all disputes in X Track cases shall be resolved and judgment shall issue no later than 12 months (360 days) after the filing of the complaint.

G. Cases not reached for trial

Any case not reached for trial or otherwise disposed within the prescribed tracking deadline shall be referred to the attention of the Regional Administrative Justice, who shall coordinate with the Session Judge to ensure a speedy disposition within the session or reassignment to another session.

The Regional Administrative Justice shall maintain a record of all cases not tried or otherwise not disposed as required under this Standing Order, setting forth the reason for the trial delay and the action taken to resolve the matter.

H. Final trial conference before jury trial

1.

Shortly before each jury trial, the Court shall hold a final trial conference, unless otherwise ordered by the Session Judge or Regional Administrative Justice. The clerk shall schedule the final trial conference to occur before the trial judge whenever possible and shall notify all parties of the time, date, and location of the final trial conference. The final trial conference may be held by videoconference, in accordance with Standing Order 1–22, or by telephone, by arrangement with the Court.

2.

In cases to be tried by a jury, the clerk's notice ("Notice to Appear for Final Trial Conference") shall inform the parties that:

a. The purpose of the final trial conference is to discuss the matters set forth in Superior Court Rule 6(2)(a) and other matters that may arise at trial, including without limitation those matters set forth in subparagraph 2(b) below, as well as the estimated length of the trial; any scheduling constraints affecting witnesses or other trial participants; any need for an interpreter for a party or witness, including the specific language involved and the date and time when interpretation is required; the number of jurors to be seated; any agreement to allow deliberation by fewer jurors if seated jurors are dismissed post-empanelment; the content and method of employing any supplemental juror questionnaire; the number of peremptories; the order and timing of the parties' assertions of challenges for cause and peremptory challenges; and any other matter affecting the efficiency and fairness of the trial.
b. Not less than five business days before the final trial conference, the parties shall submit the following, unless otherwise ordered by the Court:
    i. a final joint witness list showing each witness's city or town of residence, unless doing so would endanger the witness's safety;
    ii. a final joint statement of the case to be read to the jury;
    iii. a joint list of agreed exhibits(this is required for both jury and bench trials, as stated in the "Notice to Appear for Final Pre-Trial Conference, Part C. Future Filings," see Appendix A);
    iv. a list of contested exhibits(this is required for both jury and bench trials, as stated in the "Notice to Appear for Final Pre-Trial Conference, Part C. Future Filings," see Appendix A);
    v. a copy of any deposition transcript to be offered at trial with objections highlighted. The transcript should include notes in the margins briefly explaining the grounds for any objections and the responses given by the proponent of the

testimony, for action by the Court (this is required for both jury and bench trials, as stated in the "Notice to Appear for Final Pre-Trial Conference, Part C. Future Filings," see Appendix A);

vi. any proposed voir dire questions to be asked by the Court;

vii. any motion requesting voir dire procedures, including the proposed method and subject matter of any attorney or party voir dire, and any proposed supplemental juror questionnaire;

viii. any requested pre-charge to be given by the judge before or during empanelment, or immediately after the jury is sworn;

ix. any motions in limine, particularly those affecting empanelment or opening statements, and stating whether each motion in limine is opposed, partially opposed, or unopposed;

x. any stipulation to be read to the jury.

c. Trial counsel for the parties and any self-represented parties must confer sufficiently in advance of the final trial conference to discuss the matters set forth in subparagraphs 2(a) and 2(b) above, and to file the required information in the Court no less than five business days before the final trial conference.

Standing Order 2-86: Criminal Case Management

(Adopted February 4, 1986; amended effective September 7, 2004; amended June 1, 2009, effective September 8, 2009.)

(Applicable to All Counties to Cases Initiated by Indictment on or after September 8, 2009)

I. Purposes

To improve procedures in criminal cases in the Superior Court.

To promote uniformity in practice throughout the Commonwealth.

To insure compliance with the provisions and aims of the Rules of Criminal Procedure and Rules of the Superior Court.

To recognize that a defendant's right to speedy trial, and the public, including victims and witnesses, interest in a timely, fair and just resolution of criminal cases, is best achieved by application of uniform and consistent time standards for the conduct of criminal cases in Superior Court.

To encourage the cooperation between the court, the prosecuting attorneys and the defense bar with a view towards a just and efficient disposition of criminal cases.

To provide guidelines for application in the great majority of cases, recognizing that a judge, in the exercise of discretion, may adjust or extend time periods in individual cases to insure a defendant's right to fair trial and the effective assistance of counsel, as well as, the protection of public safety.

To identify non-trial cases at the earliest stage so as to encourage their timely disposition with consequent savings of public and private resources.

II. Arraignments

Arraignment will ordinarily take place in the first session by the judge presiding in that session, except in such counties utilizing a magistrate session pursuant to G. L. c. 221, §§ 62B and 62C in which case arraignment shall occur before the magistrate, or in a room list session in such counties utilizing a room list system for the assignment of cases.

An arraignment in Superior Court shall be conducted according to Mass. R. Crim. P. 7. After entry of the defendant's plea to the charges, the judge or magistrate shall schedule dates for a mandatory pre-trial conference and a mandatory pre-trial hearing, the latter to occur within 90 days of arraignment for an "A" track case, 135 days of arraignment for a "B" track case, and 180 days of arraignment for a "C" track case.

At arraignment, the clerk shall issue a Notice of Presumptive Track Designation in the form of a Scheduling Order, setting forth dates at or before which certain events shall occur. The presumptive track designation shall be determined based solely on the lead indictment or charge unless a judge, for good cause shown, determines that a different track designation shall apply. In addition, the judge or clerk shall set forth dates for the filing and hearing of discovery motions and shall set a date for the filing of the Certificate of Compliance under Mass. R. Crim. P. 14(a)(3).

III. Case Track Designations

Cases shall be assigned a presumptive case track at arraignment that will establish a presumptive time period for disposition of the case. Cases shall be designated "A", "B", or "C" track cases based on the offense charged in the indictment, and on consideration of any extenuating or special circumstances raised by the parties. In the event more than one charge exists, the case track shall be the longest track determined by reference to the charges.

There shall be three criminal case tracks as follows:

"A"

- Assaults and batteries (non-sexual)

- Breaking and entering
- Burglary
- Civil rights offenses
- Destruction of property
- Firearms offenses
- Larcenies
- Mayhem
- Narcotics offenses (other than Trafficking/Subsequent Offenses)
- Operating under the influence

"B"

- Arson
- Embezzlement
- Fraud
- Home invasion
- Larcenous scheme
- Robberies
- Sexual offenses other than rape
- Motor Vehicle Homicide
- Trafficking/Subsequent Offense Narcotics

"C"

- Kidnapping
- Manslaughter
- Murder
- Rape

Accessories to specific offenses, assaults with the specific intent to commit other offenses, attempts, cases carrying enhanced penalties, and conspiracies shall receive the same case track designations as provided for the underlying offenses.

The clerk shall enter the case track designation on the court's electronic docket, and shall enter the scheduled dates for pre-trial and trial proceedings in a Scheduling Order.

IV. Automatic Discovery

Automatic discovery, as defined by Mass. R. Crim. P. 14(a), shall be provided, or notice thereof given, at arraignment if possible, or thereafter at the earliest time possible, in the exercise of due diligence, in order to permit the Commonwealth and the defendant

sufficient time in advance of the pre-trial conference to evaluate the case and meaningfully participate in a pre-trial conference.

V. The Pre-Trial Conference

The prosecuting attorney and defense counsel shall confer prior to the scheduled pre-trial hearing in order to conference the case and to prepare a written pre-trial conference report. In accordance with Mass. R. Crim. P. 11(a), the defendant shall be available for attendance at the pre-trial conference. Further, the court may require the conference to be held at court under the supervision of a judge or magistrate. The pre-trial conference may occur on the same day as the pre-trial hearing provided that the prosecution has furnished discovery to the defendant at least seven days prior to the pre-trial hearing.

The parties shall discuss those matters set forth in Mass. R. Crim. P. 11(a)(1), and shall reflect the results of the conference in the written conference report filed in accordance with Mass. R. Crim. P. 11(a)(2). Counsel shall also discuss whether the case can be disposed of by means of a plea and, if so, shall propose a date for change of plea within the conference report. Except where the parties have tentatively reached an agreement to resolve the case by change of plea, counsel shall set forth within the conference report proposed dates for any anticipated pretrial events (motion filing and hearing dates, etc.) and a proposed trial date which shall be determined according to the designated case track for the lead charge of the indictment.

VI. The Pre-Trial Hearing

Counsel who are going to try the case shall attend the pre-trial conference and pre-trial hearing and shall personally sign the conference report. In all cases the defendant shall be available for the pre-trial hearing in the courthouse, and shall sign the completed conference report when necessary to waive constitutional rights or when the report contains stipulations as to material facts. The conference report shall be tendered to the first session judge for his examination and approval before the clerk accepts it for filing.

The first session or room list judge shall personally meet with counsel and examine the proposed conference report so as to bring it into conformity with the spirit and language of Mass. R. Crim. P. 11. The judge shall determine the likelihood of trial, its length, and the issues in dispute. At this hearing the judge has the responsibility to foster plea negotiations within constitutional parameters and may, in her discretion, send the case to any available criminal session for a pre-trial hearing, and the judge sitting in the receiving session shall conduct the pretrial hearing.

At the pre-trial hearing, the judge shall confirm the case track designation assigned at arraignment or designate a different track in accordance with Section III. In the event the parties are unable to resolve the case and seek further dates, the judge shall thereafter establish dates for the filing of any disputed motions, hearing dates, a final pre-trial conference, and a trial date. In the event that such dates are scheduled in a session other than the first or room list session, such dates shall be tentative until approved by the first session or room list judge.

VII. Final Case Track Designation

At the pre-trial hearing, the judge shall confirm the case track designation assigned at arraignment or designate a different track in accordance with Section III. In the event the parties are unable to resolve the case and seek further dates, the judge shall thereafter establish dates for the filing of any disputed motions, hearing dates, a final pre-trial conference, and a firm trial date. In the event that such dates are scheduled in a session other than the first session, such dates shall be tentative until approved by the first session or room list judge.

In confirming the final case track designation applicable to the case, the judge may consider whether any special circumstances exist to warrant placing the case on an alternate track. Special circumstances may be raised orally by counsel at the pre-trial hearing or may be set forth in a written submission to the court. Special circumstances include, but are not limited to: unavailability of a victim or essential witness; information relating to the victim's capacity to testify at trial within the time frame established by the case track; issues relating to a defendant's competency to stand trial or criminal responsibility; the need for a change of venue based on pretrial publicity; existence of multiple defendants; anticipated delays occasioned by necessary forensic or scientific testing (e.g. DNA testing, drug analysis of multiple samples, etc.); necessity for extended pre-trial hearings such as Daubert/Lanigan, Dwyer/Lampron, Adjutant, Blaisdell-type hearings, or similar proceedings; but not including motions to dismiss or motions to suppress statements, evidence, search warrants, or identifications. Counsel shall be afforded an opportunity to be heard regarding the existence of any special circumstance.

After consideration of special circumstances, the judge shall confirm the final case track designation applicable to the case and shall so designate on the record. Cases designated on the "A" Track shall presumptively be tried within 180 days of arraignment. Cases designated on the "B" Track shall presumptively be tried within 270 days of arraignment. Cases designated on the "C" Track shall presumptively be tried within 360 days of arraignment.

Following the court's determination of the final case track designation, the judge, in consultation with counsel, shall schedule a trial date, falling within the presumptive time periods set forth above. The judge shall also schedule dates for any contemplated pre-trial proceedings as reflected in the pre-trial conference report, and shall schedule a final pre-trial conference fourteen days prior to the assigned trial date. The selection of a trial date by trial counsel, either as reflected in the pre-trial conference report or following the pre-trial hearing, shall be deemed to be the equivalent of the district attorney placing the case on the trial list under G.L. c. 278, §1, and in accordance with Mass. R. Crim. P. 11 (a)(1)(C), shall not be changed without express permission of the court.

VIII. Amendments to the Scheduling Order

The court recognizes that there are cases which by their very nature and complexity require special tracking standards and, as well, that unanticipated events may delay the trial of a case or require that a previously determined date be extended or continued. Therefore, a Scheduling Order may, from time to time and for good cause shown, be amended upon oral motion of the parties. Special consideration for extending a Scheduling Order shall be given when the request is jointly made by the prosecutor and defense attorney and supported by good cause. All requests for an enlargement or limitation of a scheduled event shall in the first instance, be made by oral motion to the judge sitting in the session where the case is assigned. If the session judge hearing the motion denies the motion to enlarge or amend the Scheduling Order, the aggrieved party may file a motion for reconsideration with the session judge who heard the oral motion. The motion for reconsideration shall be in writing and set forth a statement specifying in detail the facts upon which the moving party then relies in support of said motion. The motion for reconsideration, and any opposition thereto, shall be submitted on the briefs without personal appearance or oral argument by counsel within seven days of the denial or the oral motion.

In the event the Scheduling Order is amended, the clerk shall enter the amended dates in the court's electronic docket and shall revise the Scheduling Order accordingly.

IX. Early Disposition Procedure

At any time within 45 days of the pre-trial conference, counsel may advance the case for an early disposition by notifying the first session or room list clerk who shall schedule the case for a hearing.

X. Final Pre-Trial Conference

A final pre-trial conference shall be held fourteen days prior to the scheduled trial date. Trial counsel shall attend the final pre-trial conference. Prior to the conference, counsel

shall meet for the purpose of preparing a Joint Pre-trial Memorandum, which shall be filed with the court at the time of said final pre-trial conference. Unless all counsel agree otherwise, counsel for the Commonwealth shall be responsible for preparing and circulating the first draft of the memorandum which shall contain the following component parts:

(1) Agreed statement of facts to be read to the jury during impanelment. (If counsel are unable to agree, each attorney shall submit a proposed statement of facts);
(2) Proposed stipulations of the parties;
(3) List of names of prospective witnesses;
(4) List of proposed exhibits;
(5) Statement of disputed legal issues, including but not limited to evidentiary issues (i.e. privilege, immunity, fresh complaint testimony, rape-shield, etc.);
(6) List of anticipated pre-trial or trial motions to be heard by the trial judge;
(7) Whether the defendant or any witness is in custody, and if so, where;
(8) Whether the defendant or any witness requires an interpreter or other similar needs and, if so, the language or service sought; and
(9) Estimated length of trial.

XI. Continuances of Trial Date

A motion to continue a trial date, once set or confirmed by the court, shall be in writing and supported by good cause in conformity with Mass. R. Crim. P. Rule 10. Such motion shall include the following:

(a) whether the motion is a joint motion; and if not a joint motion, state, if known, whether there is opposition;
(b) the defendant's custody status;
(c) the specific grounds for the requested continuance, including when counsel learned of the grounds necessitating the request;
(d) the date when the case was first assigned a trial date;
(e) whether the trial date has been previously continued and, if so, the number of such continuances and the reasons therefor.

Special consideration for continuing a trial date shall be given when a motion to continue is jointly made by the prosecutor and defense attorney.

If the judge denies any motion to continue the trial, the judge shall state the reasons for such denial.

XII. Procedures Applicable to the First Session

In counties utilizing a first session the following procedures shall apply. In counties utilizing a room list system of case assignments, the room list session shall perform the proceedings described below.

The first session shall receive all presentments by the grand jury, shall conduct all arraignments, bail reviews, dangerousness hearings, and other pre-trial hearings and proceedings. The first session judge may utilize a magistrate's session to conduct arraignments, bails and pretrial proceedings as assigned by the first session judge, and may also transfer cases to available criminal sessions for discrete events (e.g. a pre-trial conference or pre-trial hearing). All trial dates shall be set in the first session and all motions for continuance or amendment to the case track designation shall take place in the first session.

The first session judge shall assign cases scheduled for trial to the criminal trial sessions then sitting. Ordinarily, cases involving defendants in custody, defendants whose pre-trial liberty is reasonably believed to present unusual risks to society, and cases given priority by statute (i.e., criminal proceedings for sex crimes involving child victims or witnesses), shall be given priority.

Once in every two months, the Regional Administrative Justice or his/her designee shall conduct a tracking review of all cases that have been scheduled but not reached for trial within the presumptive time, as amended or extended by the court. All such cases shall be prioritized for trial at the earliest available date.

XIII. Multi-Location, Single Session, and Specialized Session Counties

In those counties where from time to time there are only single judge criminal sessions or counties where there are specialized sessions, the duties imposed upon the first session judge by part XII may be modified as necessary.

XIV. Judicial Discretion

It is understood that specific situations may arise from time to time which require some variation from the procedures set forth above. In the interest of justice and to address specific concerns in unusual circumstances, and in the promotion of judicial efficiency, the first session judge, in his or her sound discretion, may extend the time periods and alter procedural requirements herein before mandated.

XV. Effect of this Standing Order

The procedures set forth herein are intended to facilitate the timely, fair and accurate resolution of criminal cases and to ensure the efficient use of court resources. They do not supplant any existing rule of criminal procedure or statute. A defendant's statutory right to a speedy trial is determined by Mass. R. Crim. P. 36 and not by reference to this Standing Order.

Standing Order 1-83: Civil Action Cover Sheets

(Adopted December 1, 1983.)

(Applicable to all counties)

In order to facilitate court case data collection and the transfer procedure in the Superior Court Department in the several counties of the Commonwealth pursuant to G.L. c. 231, s. 102C and Rule 29 of the Superior Court Department (1974) as amended, it is hereby ORDERED that:

1. The Clerk-Magistrate of the Superior Court Department in each county shall make available a "Civil Action Cover Sheet." Form MTC 002 shall be used for that purpose.
2. The Clerk-Magistrate not accept for filing any Complaint or other Pleading (hereafter "Complaint") which commences a civil action unless accompanied by a Civil Action Cover Sheet completed and signed by the attorney or pro se party filing such pleading.
3. The Clerk-Magistrate, however, is authorized to accept for filing a Complaint without a Civil Action Cover Sheet submitted therewith if the Clerk-Magistrate is satisfied by representation of the offering counsel or pro se party, by averments, in the Complaint, or otherwise, that the Statute of Limitations will run before the filing of the Civil Action Cover Sheet can be accomplished. In such event, the Civil Action Cover Sheet shall be filed within ten (10) days thereafter.
4. Failure to file the Civil Action Cover Sheet within that time will result in the imposition by the court of sanctions in the form of costs.
5. The Clerk-Magistrate is further directed to report periodically, in writing, to the Administrative Justice of the Superior Court Department, actions in which there has been a failure to comply with the notice to file a Civil Action Cover Sheet.
6. The Clerk-Magistrate is authorized to rely upon the representations contained in a Civil Action Cover Sheet as to the amount of damages claimed or expected in determining whether to transfer civil actions to the District Court Department. The Clerk-Magistrate is further authorized to transfer to the District Court Department

any Civil Action in which the Clerk-Magistrate finds that there is a willful failure to comply with the notice to file a Civil Action Cover Sheet.

Standing Order 9-80: Requests for Special Assignment of Justices to Civil Actions

(Adopted December 1, 1980; amended August 25, 1988, effective October 1, 1988; amended January 17, 2000, effective February 28, 2000.)

(Applicable to All Counties. Applicable to All Civil Actions.)

In order to facilitate and clarify the orderly processing of requests by counsel for assignment of certain civil actions to a justice to be specially designated for pre-trial or trial proceedings or both, it is hereby ORDERED that the following uniform procedure is to be employed:

1. Definition. The term "party" shall mean the attorney of record for a party, if represented by counsel, or, if the party is not represented by an attorney, the party acting pro se.
2. If all of the parties agree that a particular civil action should be specially assigned to a justice of the Superior Court, designated by the Chief Justice of the Superior Court, they shall jointly complete and execute a "Request for Special Assignment of a Justice" in the form annexed hereto marked "Request A" Request A shall in each instance be accompanied by a copy of the current docket entries.
3. If a party (but not all of the parties) desires such a special assignment, the party(ies) seeking the assignment shall complete and execute a "Request for Special Assignment of a Justice" in the form annexed hereto marked "Request B." Request B shall in each instance be accompanied by a copy of the current docket entries.
4. Request A, fully completed, shall be submitted by the parties to the Chief Justice for his/her consideration and action thereon.
5. Request B, fully completed, shall be submitted by the requesting party(ies) to the Chief Justice for his/her consideration and action thereon. The submitting party(ies) shall notify all nonassenting parties of the submission to the Chief Justice; nonassenting parties will have seven days from receipt of the Request to submit a letter to the Chief Justice in opposition to the Request succinctly stating the grounds for the opposition thereto. Additionally, nonassenting parties may also recommend judges who would be acceptable for the special assignment should the request be approved by the Chief Justice.

6. Even if all parties have agreed, in his/her discretion the Chief Justice may require a conference with the parties before taking action on a Request. If so, the parties will be notified seasonably of time and place.
7. The Chief Justice will notify all parties of his/ her decision on each Request submitted, and, if allowed, of the identity of the justice specially appointed.

This standing order supercedes Standing Order 9-80 dated August 25, 1988.

Request A

COMMONWEALTH OF MASSACHUSETTS

_____ ss. SUPERIOR COURT

CIVIL ACTION NO._____

_____

vs.

_____

JOINT REQUEST FOR SPECIAL ASSIGNMENT

[Pursuant to Standing Order No. 9-80, as Amended]

All of the parties to the above-entitled action jointly request that this case be assigned to a justice of the Superior Court to be specially designated by the Chief Justice to conduct proceedings herein. A copy of the current docket entries is attached hereto.

1. List all parties (including third-parties) and counsel of record.

Plaintiffs / Counsel

_____

_____

Defendants / Counsel

_____

_____

2. Please provide a brief description of the case.

3. Why should this case be specially assigned? Are there any novel issues or questions of law? What is the expected length of the trial?

4. Counsel (parties) have conferred and all agree that the following judges would be acceptable for this special assignment1:

1.

2.

3.

4.

5.

6.

_____

_____

(Counsel for) All Plaintiffs

_____

_____

(Counsel for) All Defendants

Dated:

(1) It is understood that the Chief Justice reserves the right, however, to designate any justice of the court.

Request B

COMMONWEALTH OF MASSACHUSETTS

_____ ss. SUPERIOR COURT

CIVIL ACTION NO._____

_____

vs.

_____

REQUEST (NON-JOINT) FOR SPECIAL ASSIGNMENT

[Pursuant to Standing Order No. 9-80, as Amended]

The following parties to the above-entitled action request that this case be assigned to a justice of the Superior Court to be specially designated by the Chief Justice to conduct the proceedings herein. A copy of the current docket entries is attached hereto.

1. List all parties (including third-parties) and counsel of record.

Plaintiffs / Counsel

_____

_____

Defendants / Counsel

_____

_____

2. Please provide a brief description of the case.

3. Why should this case be specially assigned? Are there any novel issues or questions of law? What is the expected length of the trial?

4. List the names of all parties opposing this request:

5. The requesting party suggests that the following judges would be acceptable for this special assignment[1]:

1.

2.

3.

4.

5.

6.

_____

[1] It is understood that the Chief Justice reserves the right, however, to designate any justice of the court.

_____

_____

Attorneys for the requesting party(ies).

Dated:

Administrative Directives

Administrative Directive No. 25-1: Requesting Judicial Relief under the Uniform Arbitration Act, G. L. c. 251

(Adopted effective September 2, 2025)

Pursuant to G. L. c. 221, § 87 and S.J.C. Rule 1:12, the Superior Court hereby promulgates Administrative Directive 25-1: Requesting Judicial Relief under the Uniform Arbitration Act, G. L c. 251.

Chapter 251, which governs arbitration agreements, allows a party to "apply" for a court order to compel or stay arbitration, or to confirm, vacate, or modify an arbitration award, among other things. G. L. c. 251, §§ 2, 2A, 3, 11, 12, and 13. The statute provides that applications for judicial relief "shall be by motion," G. L. c. 251, § 15, rather than by trial. See Uniform Arbitration Act (2000) Comment to § 5 (explaining that requests for judicial relief under both the Uniform Arbitration Act and the Federal Arbitration Act "generally are conducted by motion practice and are not subject to the delays of a civil trial"). The Uniform Arbitration Act, on which Chapter 251 is based, relies on local law for initiating an arbitration action in court if no such action is already pending between the parties. See id. ("in some States there may be different means of initiating arbitration actions, such as filing a petition or a complaint, instead of or along with a motion or application").

Under Massachusetts procedure, "[a] civil action is commenced by (1) mailing to the clerk of the proper court by certified or registered mail a complaint and an entry fee prescribed by law, (2) filing such complaint and an entry fee with such clerk, or (3) submitting the complaint to the court through the court's electronic filing system accompanied by electronic payment of the entry fee pursuant to the Massachusetts Rules of Electronic Filing." Mass. R. Civ. P. 3. Accordingly, if no such civil action is already pending between the parties, a party seeking relief under Chapter 251 must file and serve a complaint requesting

the relief sought, under Mass. R. Civ. P. 3 and 4 (using Codes E05 or E99, as appropriate, on the Civil Action Cover Sheet). After the complaint has been served and any answer or motion to dismiss has been filed, or the time for doing so has expired, and the matter remains unresolved, a motion may be filed consistent with Superior Court Rules 9C and 9A seeking relief under Chapter 251. If a civil action concerning an arbitration agreement is already pending between the parties, a party seeking relief under Chapter 251 must file a motion in the pending action, serve it under Mass. R. Civ. P. 5, and comply with Superior Court Rules 9C and 9A. This procedure comports with the purpose of Chapter 251 to allow the court to resolve requests for judicial relief by motion instead of by trial.

Administrative Directive No. 24-1: Superior Court Business Litigation Sessions

(Adopted effective April 5, 2024)

Filing the Action

If a plaintiff seeks acceptance of a case into the BLS, the plaintiff shall file the complaint, together with a BLS Civil Action Cover Sheet, with the Suffolk County Civil Clerk's Office. The BLS Civil Action Cover Sheet must explain the nature of the dispute, specify the amount in controversy, and articulate the reasons the plaintiff believes the case should be accepted into the BLS. Failure to file a BLS Civil Action Cover Sheet will cause the case to be assigned to a Suffolk County civil session in accordance with the Court's usual practice. A copy of the completed BLS Civil Action Cover Sheet shall be served on all defendants with the summons and complaint.

Venue Not a Bar to Requesting Acceptance into the BLS

A plaintiff may seek acceptance into the BLS even if venue does not lie in Suffolk County.

Although nothing in this Administrative Directive changes the statutory requirements for venue, the BLS Administrative Justice does not consider venue when determining whether to accept a case into the BLS because improper venue may be waived.

The filing of a complaint in Suffolk County and its acceptance into the BLS does not prevent any party from moving to dismiss or transfer the case for improper venue. Upon such a motion and a determination that venue is improper, the case shall be transferred in accordance with G. L. c. 223.

Failure to file such a motion within the time limits prescribed by Mass. R. Civ. P. 12(h)(1) shall constitute a waiver of improper venue.

Acceptance into the BLS

Once a case has been filed for which the plaintiff seeks acceptance into the BLS, the clerk shall forthwith bring the complaint and BLS Civil Action Cover Sheet to the attention of the BLS Administrative Justice, who will decide whether to accept the case into the BLS.

If a case is accepted into the BLS, a Notice of Acceptance into the Business Litigation Session shall be issued and the case shall be assigned to either BLS1 or BLS2.

If a case is not accepted into the BLS, a Notice of Denial of Acceptance into the Business Litigation Session shall be issued, and the case shall be assigned, or returned (in the case of a transfer request), to a regular civil session.

(a) New Cases Seeking Emergency Relief or a Short Order of Notice

If the plaintiff is seeking immediate relief of some kind, whether on an ex parte basis or through a short order of notice, the BLS Administrative Justice will decide if the case is accepted into the BLS and, if so, ensure that the judge in the BLS session to which the case is assigned promptly rules on the request for emergency relief or for a short order of notice. If the case is not accepted into the BLS, then the case will be assigned to a regular Suffolk civil session, and the request shall be handled by the judge assigned to that session.

(b) Factors Relevant to Accepting Cases Into the BLS

Cases that fall within any of the following categories may be accepted into the BLS in the sound discretion of the BLS Administrative Justice, based principally on the complexity of the case and the need for substantial case management:

a.1 claims relating to the governance and conduct of internal affairs of entities
a.2 claims relating to employment agreements
a.3 claims relating to liability of shareholders, directors, officers, partners, etc.
b.1 shareholder derivative claims
b.2 claims relating to or arising out of securities transactions
c.1 claims involving mergers, consolidations, sales of assets, issuance of debt, equity and like interests
d.1 claims to determine the use or status of, or claims involving, intellectual property
d.2 claims to determine the use or status of, or claims involving, confidential, proprietary or trade secret information
d.3 claims to determine the use or status of, or claims involving, restrictive covenants
e.1 claims involving breaches of contract or fiduciary duties, fraud, misrepresentation, business torts or other violations involving business relationships
f.1 claims under the U.C.C. involving complex issues

g.1 claims arising from transactions with banks, investment bankers and financial advisers, brokerage firms, mutual and money funds

h.1 claims for violation of antitrust or other trade regulation laws, including class actions

h.2 claims of unfair trade practices involving complex issues, including class actions that do not involve personal injury

i.1 professional malpractice claims other than claims for personal injury or death

j.1 claims by or against a business enterprise to which a government entity is a party

k.1 other claims involving complex issues or that require close case management, including but not limited to insurance coverage or reinsurance, construction, commercial lease disputes, real estate and consumer matters.

Transfers into the BLS

(a) Requests to Transfer into the BLS from Another Suffolk County Superior Court Session

If a plaintiff files an action in Suffolk County and does not seek to have the case accepted into the BLS, any party may file a motion, in compliance with Superior Court Rules 9C and 9A, in the session to which the case is assigned requesting a transfer to the BLS. The motion must explain the nature of the dispute, specify the amount in controversy, and articulate the reasons the party believes the case should be transferred to and accepted into the BLS. If the motion is granted by the judge in the session, the clerk of that session shall promptly bring the case to the attention of the BLS Administrative Justice, who will decide whether to accept the case into the BLS in accordance with the procedure described above.

(b) Requests to Transfer into the BLS from a Superior Court Session Outside of Suffolk County

If a plaintiff files an action outside of Suffolk County, any party may file a motion, in compliance with Superior Court Rules 9C and 9A, in the session to which the case is assigned requesting a transfer to the BLS. The motion must explain the nature of the dispute, specify the amount in controversy, and articulate the reasons the party believes the case should be transferred to and accepted into the BLS. If no party opposes the motion, the failure to oppose shall be deemed a waiver of any defense of improper venue. If the motion is granted by the judge sitting in the session, the Clerk of Courts for that county shall promptly bring the case to the attention of the BLS Administrative Justice, who will decide whether to accept the case into the BLS in accordance with the procedure described above.

(c) Sua Sponte Transfers into the BLS

A case filed in any Suffolk County session may be transferred to the BLS by a sua sponte order of (1) the BLS Administrative Justice, or (2) the judge sitting in the session to which the case is assigned after that judge has consulted with the BLS Administrative Justice as to the propriety of a transfer. Transfer from a regular civil session shall be pursuant to a written Order of Referral coupled with an endorsement by the BLS Administrative Justice accepting or denying the transfer.

A case filed outside of Suffolk County may be transferred to the BLS by a sua sponte order of (1) the BLS Administrative Justice, or (2) the judge sitting in the session to which the case is assigned after that judge has consulted with the BLS Administrative Justice as to the propriety of a transfer, as long as either venue lies in Suffolk County or, after consultation with all parties, no objection to venue is made.

Video Conferencing Options for Cases Outside of Suffolk County

Superior Court Standing Order 1-22 identifies matters that presumptively are to be held by video conference in civil actions (including scheduling and case management conferences, discovery motion hearings, and hearings on motions to dismiss or amend), and other matters that presumptively are to be held in-person (including hearings on motions seeking a preliminary injunction or prejudgment security, proceedings involving credibility determinations, summary judgment hearings, Daubert-Lanigan hearings, final trial conferences, and trials). It also provides that a judge has discretion to order that hearings that are presumptively designated as in-person be held by video conference where there is good cause to do so. BLS judges thus have discretion to accommodate attorneys and parties located outside of Suffolk County by converting presumptively in-person events to video conference events upon a showing of good cause.

To facilitate the transfer of cases from outside of Suffolk County that are appropriate cases for the BLS, counsel may, when requesting to transfer the case to the BLS, also seek an order, supported by good cause, that identifies and requests that certain pre-trial events that presumptively are to be held in-person be held primarily by video conference instead.

Rule 16 Conference Upon Acceptance into the BLS

After a case has been accepted into the BLS, and as soon as each defendant has filed a responsive pleading or has been defaulted for failure to do so, the parties shall notify the clerk of the assigned BLS session.

In response to such notice, or sua sponte, the clerk shall promptly schedule a Rule 16 conference to establish a tracking order appropriate to the case.

The parties shall confer with each other before the Rule 16 conference in an attempt to agree upon, or narrow their differences as to, a proposed tracking order that will allow the case to be litigated and tried as efficiently as possible; shall carefully and fully consider the individual case management techniques outlined in Rule 20 of the Superior Court Rules; and, in advance of the hearing, shall submit a joint filing reflecting agreed or disparate proposals for case management, a tracking order, and an agenda for the conference.

Administrative Directive No. 18-1: Recording of criminal proceedings

(Adopted May 3, 2018, effective July 1, 2018. Amended January 22, 2019, effective February 1, 2019.)

All proceedings in criminal cases in the Superior Court shall be recorded by either an electronic recording system or a per diem court reporter. The means of recording a particular proceeding is an administrative matter, to be determined by the Chief Justice's designee within the Administrative Office of the Superior Court (AOSC).

Whenever feasible, criminal trials, except those identified pursuant to paragraph (1) or (2) herein, shall be recorded by an electronic recording system operated by an authorized monitor, who shall be responsible for ensuring that a complete, accurate and audible record is generated.

When a monitor is not available due to staffing or other constraints, the clerk, assistant clerk or other authorized employee of the clerk's office shall operate the electronic recording system in substantially the same manner as a monitor.

Whenever feasible, AOSC shall assign a per diem court reporter to record the following proceedings:

1. Jury Trials of charges of homicide, rape, or sexual offenses against minors; in which a defense of lack of criminal responsibility is raised; or in which two or more defendants, represented by separate counsel, are joined for trial.
2. Any other evidentiary proceeding, or portion thereof, if special circumstances relating to the particular proceeding raise a serious question as to whether electronic recording will provide an adequate record. A judge or clerk who identifies such a proceeding shall promptly bring it to the attention of the Regional

Administrative Justice, who may make a request to AOSC for assignment of a per diem court reporter, identifying the special circumstances giving rise to the request.

A per diem court reporter's assignment shall be complete (1) in the case of a trial, at the end of the business day during which the case is submitted to the jury; (2) in the case of any other proceeding, upon conclusion of the proceeding for which the reporter was assigned. Per diem court reporters will not be assigned to attend a trial after a case has been submitted to a jury on a previous date.

For each proceeding for which assignment of a per diem court reporter is sought, the clerk shall submit a request to AOSC, in a form provided by AOSC, at least seven days prior to the scheduled date. When a per diem court reporter is assigned, the record produced by such court reporter shall be the official record. If the judge so directs, the clerk will also operate the electronic recording system for administrative purposes only.

This administrative directive does not affect any proceeding recorded by a temporary official court reporter appointed as such, upon motion of one or more parties and at their expense, pursuant to G. L. c. 221, § 83 (2nd para.). The record produced by such court reporter shall be the official record. If the judge so directs, the clerk will also operate the electronic recording system for administrative purposes only.

This administrative directive also does not affect the right of a criminal defendant to have a court reporter record a proceeding at the defendant's expense pursuant to G. L. c. 221, § 91B, if no per diem court reporter is assigned. In any such instance the proceeding shall also be recorded by the electronic recording system, and the record produced by the electronic recording system shall be the official record.

This administrative directive will take effect on or before July 1, 2018. It will be reviewed at quarterly intervals thereafter, and will be revised as the Court deems warranted in light of experience with transcripts produced from electronic recordings.

Administrative Directive No. 14-2: Preservation of court reporter records and recordings of civil proceedings[1]

(Effective July 1, 2014.)

[1] Title added on May 11, 2018.

Pursuant to G.L. c. 221, § 87, it is hereby ORDERED that all stenographers and court reporters (hereinafter "court reporter"), whether serving in an official, temporary or per diem capacity, shall preserve for a period of at least six years all original notes, tapes, discs, and other means used to record, electronically or by any other method, any civil proceeding in the Superior Court. Such materials shall be clearly labeled by case name, docket number, date and court session. The court reporter, upon request, shall advise the court, in writing, as to the method by which all of such materials are preserved, the present location thereof, and the procedure and manner in which such materials shall be turned over to the court upon the death, disability, retirement, or termination of the court reporter.

A court reporter storing such notes at one or more court locations shall maintain them at said location(s) only if such notes were generated within the six year retention period required by this regulation. Thereafter, such notes shall be stored and retained by the court reporter at a different location and for a term that the court reporter deems appropriate.

Administrative Directive No. 14-1: Preservation of court reporter records and recordings of criminal proceedings

(Adopted effective January 1, 2014.)

Pursuant to G.L. c. 221, § 87, it is hereby ORDERED that all stenographers and court reporters (hereinafter "court reporter"), whether serving in an official, temporary or per diem capacity, shall preserve in perpetuity all original notes, tapes, discs, and other means used to record, electronically or by any other method, any criminal proceeding in the Superior Court.

Such materials shall be clearly labeled by date, court session, and parties. The court reporter shall advise the Administrative Office of the Superior Court, in writing, as to the method by which all such materials are preserved, the present location thereof, and the procedure and manner in which such materials shall be turned over to the court upon the death, disability, retirement, or termination of the court reporter.

Administrative Directive No. 92-1: Civil actions filed by inmates[1]

(Adopted effective May 1, 1992.)

This administrative directive is implemented to address the unique problems that often accompany a civil action that is filed by someone who is incarcerated. Its aim is to promote a just and speedy resolution of these civil actions by ensuring:

1. That upon filing, the complaint is entered expeditiously and appropriate notice is sent.
2. That all named parties receive actual notice of the litigation.
3. That the cases proceed in a timely and cost effective manner.

Accordingly, it is ordered that upon the filing of the complaint, the Clerk is to pass upon the sufficiency of the affidavit of indigency (in almost all cases, the prisoner is indigent but has access to limited funds) and if indigent, to authorize service of process by certified mail on all named defendants - copy to the Attorney General. With notification of this action the Clerk is to provide the plaintiff with the appropriate number of blank summonses. It is the obligation of the plaintiff to provide the requisite number of copies of the complaint and to complete the summons to perfect service. In those rare instances wherein the plaintiff has no access to funds (ex. not in the general population of the prison) service may be authorized by regular mail and the Court is to provide the appropriate number of blank summonses.

With the notice of the Court's action, the plaintiff is also to be notified of what is required in filing a return of service and of the waiving of that part of Superior Court Rule 9A which requires the packaging of motions and responses thereto.

When a complaint filed by an inmate requests other than money damages, the complaint is to be reviewed by a justice for whatever action he or she deems appropriate. For example, it is in the discretion of the justice to decide a request for a preliminary injunction upon submissions and not require the presence of the inmate.

This administrative directive is to take effect forthwith.

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[1] Title added, and references to attachments relating to court forms deleted, on May 11, 2018.

Rules Governing Persons Authorized to Admit to Bail Out of Court

Rule 1 Definitions

A. **"Bail Magistrate"** is a person authorized to admit to bail out of court, including a clerk-magistrate or assistant clerk of the Superior Court, District Court, or Boston Municipal Court who has registered with the Office of Bail Administration, a bail commissioner inside or outside of Suffolk County, or, if appointed by the Governor in accordance with G.L. c. 221, § 53 or G.L. c. 218, § 36, a master in chancery or a justice of the peace, respectively.

B. **"Jurisdiction"** refers to the territory within which a bail magistrate may set or take bail or release on personal recognizance.

C. **"Division"** refers to the Brighton, Central, Charlestown, Dorchester, East Boston, Roxbury, South Boston, or West Roxbury Division of the Boston Municipal Court.

D. **"Home Court"** - with respect to bail commissioners, it refers to the district court or county listed in their commissions of appointment. With respect to Superior Court clerk-magistrates and assistant clerks, it refers to the superior courthouse in the county where their designated office is located. With respect to District or Boston Municipal Courts clerk-magistrates and assistant clerks, it refers to the district or division, respectively, listed in their commissions or the district or division to which they are regularly assigned.

E. **"Professional Bondsman"** refers to a person or agent for a corporation who acts as a bail or surety for a defendant in a criminal case and who has received, has been promised, or expects to receive a fee, pay, or reward for acting as bail or surety. Such person must be approved and registered as a professional bondsman by the Superior Court.

Rule 2

The Chief Justice of the Superior Court shall establish a Superior Court Committee on Bail for the purpose of appointing bail commissioners, drafting rules governing bail magistrates, overseeing the bail magistrates, and enforcing compliance by all bail magistrates with applicable statutes and rules.

Rule 3

The purpose of setting terms for any pre-trial release is to assure the presence at court of the person released. Any person charged with an offense other than an offense punishable by death, or for any offense on which a warrant of arrest has been issued by the Superior Court, is required by law to be released on his personal recognizance pending trial unless the person setting the terms of release determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required. In making a determination as to whether to release a person on personal recognizance or bail, the bail magistrate shall consider the factors set forth in G.L. c. 276, § 58. Each decision shall be reached on the basis of all available information pertaining to the factors set forth in the statute.

Rule 4

These rules shall apply only to out of court releases by bail magistrates on personal recognizance or bail. They shall apply even when the setting of bail was done by another if the taking of bail is done by them.

Rule 5

Bail magistrates shall comply with all laws governing their activities, including the provisions set forth in these rules. Failure to comply with such laws or rules may result in the suspension or termination of the power of the bail magistrate to admit persons to bail.

Rule 6

All bail magistrates shall comply with any training and educational requirements established by the Office of Bail Administration.

Rule 7

Clerk-magistrates and assistant clerks of the Superior, District, and Boston Municipal Courts who admit persons to bail must register with the Office of Bail Administration on a form approved by the Superior Court before exercising the authority of a bail magistrate. Any of the above who fails to so register shall not be authorized to admit persons to bail.

Clerk-magistrates and assistant clerks of the Superior, District, and Boston Municipal Courts and bail commissioners employed by the court shall not permit their out of court bailing activities to interfere with their regular court duties or attendance in court.

While clerk-magistrates must maintain the proper functioning of their offices, they shall not unreasonably restrict or exclude an assistant clerk from participating in out of court bailing.

Rule 8

The jurisdiction of clerk-magistrates and assistant clerks of the Superior Court shall be limited to the county in which they are elected or appointed, respectively. They may admit to bail any person held within their county even when such person is held on charges outside of that county.

Rule 9

The jurisdiction of clerk-magistrates or assistant clerks of the District and Boston Municipal Courts to admit a person to bail shall be limited to the district or division, respectively, to which they are appointed. They may admit to bail any person held within their district or division even when such person is held on charges outside of that district or division.

Rule 10

The jurisdiction of bail commissioners to admit a person to bail shall be limited to the geographical area contained in their commission. They may admit to bail any person held within their geographical area even when such person is held on charges outside of that geographical area.

Rule 11

The jurisdiction of masters in chancery and justices of the peace to admit a person to bail shall be limited to the county or judicial district, respectively, to which they are appointed. They may admit to bail any person held within their county or judicial district even when such person is held on charges outside of that county or judicial district.

Rule 12

The jurisdiction of clerk-magistrates or assistant clerks of the District and Boston Municipal Courts may be extended to any other judicial district or division, respectively, by written permission of the Chief Justice of their court. A copy of the application for such permission shall be sent to the Office of Bail Administration by the applicant, and if approved, a copy of the permission shall be forwarded to the Office of Bail Administration by the Chief Justice of such court.

Rule 13

The jurisdiction of bail magistrates may be temporarily extended to any other judicial district or division by a Justice of the Superior Court upon notification by the Office of Bail Administration that emergency coverage is required. Such coverage authorizations shall be for a specific period of time, but may be extended in the same manner as originally authorized.

Rule 14

The fee charged by a bail magistrate is governed by G.L. c. 262, § 24. The statute provides that such fee shall be received only by the bail magistrate who goes to the place of detention and completes the release. Fee splitting arrangements are prohibited.

This rule does not prohibit the taking of bail or releasing on personal recognizance for less than the maximum fee or without charge. However, if a fee is charged, payment shall be made in advance of the release.

The bail magistrate shall release a person without charging a fee if circumstances justify the release and the person is not able to pay the fee.

Clerk-magistrates and assistant clerks of the Superior, District, and Boston Municipal Courts and bail commissioners employed by the court shall not receive any fee or compensation, in addition to their salaries, for releasing a prisoner on bail or on personal recognizance during regular court hours.

Rule 15

A bail magistrate shall not receive anything other than the statutory fee for admitting a person to bail.

Rule 16

Unless restricted by the Superior Court or the Chief Justice of the District or Boston Municipal Courts, all bail magistrates are entitled to participate fairly in the out of court bailing activity in their jurisdiction, so long as they are willing and able to respond to all calls for their services with reasonable promptness.

In order to effectuate the purposes of this rule and to provide prompt out of court bailing services to all jails and holding facilities in a jurisdiction, the Justices of the Superior Court

Committee on Bail may prepare and implement a plan for such coverage. All bail magistrates authorized in a jurisdiction affected by such a plan shall comply with it.

The bail magistrate shall not unduly delay the release of a defendant for the purpose of stacking or combining multiple defendants for release at a police holding facility or jail.

Rule 17

A bail magistrate shall not respond to calls for their services from a professional bondsman, surety agent, or money lender. A bail magistrate may only respond to calls from a defendant, someone calling on the defendant's behalf, a defendant's attorney, or the authorities at a jail or facility holding the defendant.

Rule 18

A bail magistrate shall only administer an oath or affirmation if the affiant is physically present. An oath or affirmation shall not be administered by telephone.

Rule 19

A bail magistrate shall not delegate the authority to admit a defendant to bail to a police officer, jail official, professional bondsman, or any other person.

Rule 20

A bail magistrate shall perform the duties impartially, with dignity and in a manner that befits the performance of a judicial act.

Rule 21

A bail magistrate shall administer an oath to a defendant admitted to bail, and to each person accepted as surety, that such person will perform the requirements of his recognizance or bond.

Oaths administered in the course of admitting a defendant to bail shall be given with solemnity and dignity.

Rule 22

A bail magistrate must ensure that each defendant has his own recognizance. Two or more defendants cannot be joined in one recognizance, even if they are jointly charged with the same crime. Each recognizance must be accompanied by a separate affidavit.

Footnote: Superior Court Rules Governing Professional Bondsmen, Rule 22

No bondsman shall become or at any time be surety in criminal cases for an amount of bail greater than the fair value of his property or the property of the company he represents, less encumbrances and liabilities, as stated in:

(a) His application for approval and registration, or
(b) If he has been required to make a statement under Rule 21, in the most recent statement so required and made.

Rule 23

A bail magistrate shall not accept as surety a bondsman who has received, who has been promised, or who expects to receive pay or reward for acting as surety unless such proposed surety is at the time duly registered as a professional bondsman.

If the surety offered is an agent of a surety company, the bail magistrate shall, before accepting the surety, satisfy himself that the company is authorized to act as surety in criminal cases in the Commonwealth; that it is financially sound; that the agent purporting to bind the surety company in recognizance is properly authorized to do so; that the surety company will deal fairly with the defendant in all respects; and that there are no conditions indicating that the surety company is likely to lose interest in assuring a defendant's presence in court.

Rule 24

A bail magistrate shall verify that a professional bondsman has registered with the Superior Court, and that such bondsman has the necessary assets to satisfy his outstanding bail bond obligations.

Rule 25

A bail magistrate shall not accept as surety any professional bondsman if it appears that such bondsman's obligations as surety in criminal cases will be greater than the limit set by Rule 22 of the Superior Court's Rules Governing Professional Bondsmen (1991).

Rule 26

If the security offered is of the kind authorized by G.L. c. 276, § 79, a bail magistrate shall make careful inquiry as to the ownership of such property.

Rule 27

A bail magistrate shall not accept as surety any person who has previously been rejected as surety by any bail magistrate in the same proceeding.

Rule 28

A bail magistrate shall satisfy himself beyond a reasonable doubt that the person offered as surety is the person he claims to be.

Rule 29

The bail magistrate shall take all necessary steps to make certain that all persons admitted to bail and all sureties fully understand their obligations. This applies especially where such persons are not familiar with the English language. Bail magistrates must be equally certain that they understand the responses made by the persons admitted to bail or sureties under examination.

Rule 30

A bail magistrate shall not be a creditor of a defendant or a surety.

Rule 31

A bail magistrate shall not, directly or indirectly, provide substantive legal advice to a defendant whom he is admitting to bail as to any matter concerning the defendant's case. A bail magistrate may provide general procedural information to the defendant.

Rule 32

A bail magistrate shall not admit a person to bail in any proceeding in which he has acted or expects to act as counsel, nor shall he act as counsel in any proceeding in which he has at any time admitted such person to bail.

Rule 33

A bail magistrate shall not accept as surety any attorney or any such attorney's relative or employee if such attorney is directly or indirectly employed by the person being admitted to bail.

Rule 34

A bail magistrate shall not offer or give any gift, compensation, or reward to anyone for procuring or influencing the selection of a bail magistrate or for selecting any particular attorney or professional bondsman.

Rule 35

A bail magistrate is prohibited from taking or receiving any gift, commission, pay, or reward, tangible or intangible, from any person who lends money or offers bonds, bank books, or other securities to a person in custody or to any other person for the benefit of the defendant for use in depositing bail or security.

Rule 36

A bail magistrate is prohibited from procuring or recommending a particular professional bondsman or a person to lend the defendant money or property.

Rule 37

A bail magistrate is prohibited from referring a defendant to any attorney, a firm of attorneys, or other advisor, nor shall he, directly or indirectly, contact any such person on a defendant's behalf.

Rule 38

A bail magistrate shall not, directly or indirectly, lend or procure the lending of money, bonds, bank books, or other securities to a defendant or to any person for the benefit of the defendant for use in depositing as bail or security with himself or any other bail magistrate, or for use in paying, rewarding, or giving security to any professional bondsman, attorney, or other advisor.

Rule 39

A bail magistrate who releases an individual in custody on personal recognizance or on bail shall advise him of G.L. c. 276, § 82A, which provides that a person who fails to appear in court without sufficient excuse shall be punished by a fine of not more than $10,000 or by imprisonment in a house of correction for not more than one year, or both, in the case of a misdemeanor, and by a fine of not more than $50,000 and imprisonment in a state prison

for not more than five years, or a house of correction for not more than two and one-half years, or by fine and imprisonment, in the case of a felony.

Rule 40

All bail magistrates shall maintain a dedicated checking account with the bail magistrate's name and the title "Bail Magistrate" listed on numbered checks. It shall be used exclusively for depositing and transferring bail funds, and must be of a type where monthly statements include a page or pages showing copies of cancelled checks. A bail magistrate is prohibited from commingling personal funds with bail funds collected and deposited into the dedicated account. A bail magistrate may use personal funds to pay required bank fees. All bail funds not delivered to a court the following day shall be deposited into the dedicated checking account at the earliest feasible time. Bail funds to be delivered to courts outside of the bail magistrate's home court must be transferred using a check from the dedicated bail account and shall include on the check's memo line the defendant's name and docket number if available.

No later than five days after the dedicated bail account has been opened, the bail magistrate shall notify the Office of Bail Administration in writing of the name of the bank and the account number. A complete and accurate written register of account activity must be maintained at all times. The bail magistrate shall forward to the Office of Bail Administration copies of monthly statements from the dedicated bail account within seven days of receipt.

Separate checks must be used for each recognizance document transferred.

Rule 41

A bail magistrate may accept bail from a defendant or surety in the form of cash, a bank check, treasurer's or cashier's check, or U.S. Government money order made payable only to the bail magistrate authorizing the release.

Rule 42

The bail magistrate shall deliver all recognizances, certificates (affidavits) of sureties, other necessary documents, and all money, bank books, bonds and other security deposited with the bail magistrate to the clerk-magistrates' offices of the appropriate courts within the time frames established by this rule.

If the defendant is required to appear at the bail magistrate's home court, the bail magistrate shall deliver the recognizance, bail funds, and all other related items to the court no later than 8:30 a.m. on the next court day.

If the defendant is required to appear at a court outside the bail magistrate's home court, the bail magistrate shall deliver the recognizance, bail funds, and all other related items to the court by 4:30 p.m. on the third business day after the day on which the release was authorized. In addition, the bail magistrate must send by facsimile transmission or other electronic means a copy of the recognizance form to the appropriate court within 24 hours of the release. This responsibility may be satisfied where the jail or police authorities fax the recognizance, but the ultimate responsibility remains with the bail magistrate.

Rule 43

All certificates (affidavits) of sureties required by G.L. c. 276, § 61, and any amendments thereof that may be made, shall comply with all requirements of the statute. All sureties shall answer the following questions under an oath administered by the bail magistrate:

- "Have you received or been promised pay or reward for acting as surety in this case?"
- "Do you expect to receive pay or reward or a promise of pay or reward for your becoming surety in this case?"
- "Are you approved and registered with the Superior Court as a professional bondsman?"
- (This question is to be answered whether or not the other answers of the surety indicate that he is acting for hire.)
- "Have you become bail or surety in criminal cases on five separate occasions during the now current calendar year?"

The surety, pursuant to G.L. c. 276, § 61, must complete an inventory of his net worth, including a full and detailed description of all personal and real property. A bail magistrate shall make careful inquiry as to the surety's ownership of such property. For example:

A. Motor vehicles, full information as to:
   (a) mortgages, liens, and other encumbrances;
   (b) engine number;
   (c) make, type, mileage, and year of manufacture;
   (d) nature of use being made of it;
   (e) location of garage where it is usually kept; and
   (f) assessed value, if any;

B. Shares of capital stock of corporations, full information as to:
   (a) exact corporate name of corporation;
   (b) name of state of incorporation;
   (c) class of stock, whether common or preferred;
   (d) par value of each share of stock;
   (e) market value of the stock and whether listed on any stock exchange. If not listed, state where there is a market for the stock;
   (f) whether or not the stock stands in the surety's name on the books of the corporation. If not in the surety's name, in whose name;
   (g) whether or not the stock is subject to any existing pledge, mortgage, or other lien and, if it is, for how much and to whom and the nature of the obligation for which it is security; and
   (h) whether or not dividends have been regularly paid on the stock and if so, how much in each of the last three years.

Rule 44

A bail magistrate shall submit a report on forms approved by the Superior Court, to the Office of Bail Administration by the second Monday of the month accounting for the total number of releases, i.e. cash bail releases, releases on personal recognizance, and releases for money owed to a court, that were authorized during the prior calendar month. Such report shall also include the totals of cash bail, bail fees, and other funds collected. The Superior Court may at any time amend such forms to require that additional information be reported.

The forms to be used for this purpose are the Bail Report Cover Sheet and the report page (yellow copy) from the recognizance form approved by the Court pursuant to G.L. c. 276, § 65. They are attached hereto and included by reference as part of these rules.

All bail magistrates on active status shall submit a report each month even if no releases have been authorized during that reporting period.

Rule 45

A bail magistrate may request to be placed on inactive status as a bail magistrate by submitting a written request for inactive status with the Office of Bail Administration. A bail magistrate on inactive status shall not be authorized to admit anyone to bail out of court. The Office of Bail Administration shall notify all police holding facilities and jails within a bail magistrate's jurisdiction of his inactive status.

A bail magistrate on inactive status may return to active status by submitting a written request to the Office of Bail Administration. A bail magistrate's inactive status will be reactivated upon acknowledgment in writing by the Office of Bail Administration. The Office of Bail Administration may require a bail magistrate to participate in training sessions before being returned to active status.

Rule History

Effective July 1, 2014.