

MASSACHUSETTS RULES OF CIVIL PROCEDURE

RULE 11. APPEARANCES AND PLEADINGS; SIGNATURES

DRAFT Reporter's Notes--2024

The 2024 amendments to Rule 11 allow parties and attorneys to affix electronic signatures to pleadings and other documents in matters governed by the Massachusetts Rules of Civil Procedure. Electronic signatures are already authorized for cases using the court's Electronic Filing Service Provider by Rule 13 of the Massachusetts Rules of Electronic Filing (Supreme Judicial Court Rule 1:25). For cases not governed by the electronic filing rules, electronic signatures were previously authorized by an Order of the Supreme Judicial Court issued at the beginning of the COVID-19 pandemic. Updated Order Authorizing Use of Electronic Signatures by Attorneys and Self-Represented Parties, issued June 10, 2020 ("Updated Order") (replacing an earlier order issued March 25, 2020). See <https://www.ma-appellatecourts.org/docket/OE144>.

A survey of the bar conducted during the pandemic by the Supreme Judicial Court regarding various emergency COVID-19 orders showed that 94.87% of participants favored the use of electronic signatures.

As discussed later, unlike the Updated Order, the 2024 rule does not allow electronic signatures on affidavits from third persons.

The 2024 amendments do not address (nor are intended to prohibit) the common practice where an attorney, after having obtained authority to do so, signs the name of another attorney to a motion, stipulation, or other paper, together with a notation indicating that the other attorney's name was signed with authority to do so. Examples include instances where (1) an attorney who does not intend to appear in a proceeding may sign the name of another attorney in the firm or organization who is unable to sign because the attorney is away or otherwise unavailable or (2) an attorney signs the name of an attorney for another party on a joint or assented-to motion, stipulation, or the like.

Title to Rule 11.

To reflect the revisions to Rule 11 regarding electronic signatures, the title of Rule 11 has been updated to include the word "signatures."

Rule 11(a)(1).

A sentence has been added to Rule 11(a)(1) specifying that personal pronouns may be included in a pleading, consistent with Supreme Judicial Court Rule 1:08, discussed later. The provision allowing personal pronouns likewise applies to motions and other papers as provided in the rules. Rule 7(b)(2).

Rule 11(a)(2).

Rule 11(a)(2) restates the language regarding verification of pleadings and affidavits that was contained in prior Rule 11(e).

Prior to the 2024 amendment, Rule 11(a)(2) stated that pleadings filed pursuant to the Massachusetts Rules of Electronic Filing may be signed electronically. That sentence has been stricken in light of revised Rule 11(a)(3), which allows electronic signatures in all cases governed by the Massachusetts Rules of Civil Procedure.

Rule 11(a)(3).

Rule 11(a)(3) allows the use of electronic signatures in three instances: (1) signing of pleadings by attorneys and self-represented parties (Rule 11(a)(3)(A)); (2) signing of pleadings by attorneys providing assistance to self-represented parties in legal aid programs (Rule 11(a)(3)(B)); and (3) verified pleadings and affidavits of parties (Rule 11(a)(3)(C)). By virtue of Rule 7(b)(2), electronic signatures are likewise authorized for motions and other papers.

The rule does not allow non-parties to sign pleadings or affidavits electronically.

Language in existing Rule 11(a)(1) allows the filing of a motion to strike a pleading where it “is not signed, or is signed with intent to defeat the purpose of this Rule.” This language would likewise provide a mechanism to challenge an electronic signature that was not authorized by or otherwise is in violation of amended Rule 11(a)(2). See paragraph 9 of the Updated Order, which states that where “a party has a good faith basis to believe that an electronic signature was not authorized by the attorney, self-represented party, or other person whose signature it purports to be, a challenge may be raised promptly by way of motion.”

Rule 11(a)(3)(A).

Rule 11(a)(3)(A) allows both an attorney representing a party and a self-represented party to sign a pleading electronically. The methods to sign pleadings electronically are patterned after language in the Updated Order and Rule 13 of the Massachusetts Rules of Electronic Filing.

Rule 11(a)(3)(B).

Rule 11(a)(3)(B) allows an attorney in a legal aid program who assists a self-represented party to affix the signature of the self-represented party to a pleading. The self-represented party must review and approve the document and provide “express written or oral authorization” to the attorney to sign the document. The attorney is required to retain any written authorization, and if the authorization was provided orally, must make a record so indicating and retain the record.

The term “legal aid program” is intended to encompass Court Service Centers.

Rule 11(a)(3)(C).

Rule 11(a)(3)(C) allows a party to electronically sign a verified pleading, an affidavit, or a document required by the Massachusetts Rules of Civil Procedure to be signed under oath or under the penalties of perjury, unless otherwise provided by law or ordered by the court. Examples of rules that require parties to sign documents under oath or the penalties of perjury include Rule 23.1 (complaint in a shareholder derivative action; Rule 33(a)(3) (answers to interrogatories); and Rule 36(a)(written statement denying a matter set forth in a request for admission). See Rule 43(d), providing that where an oath is required, “a solemn affirmation under the penalties of perjury may be accepted in lieu thereof.”

With an express written authorization of a party, the party’s attorney may electronically sign such documents.

Unlike the Updated Order, Rule 11(a)(3)(C) does not allow electronic signatures for affidavits from non-parties.

An electronic signature may consist of a scan of a handwritten signature, an image intended to substitute for a signature, or a “/s/ name of signatory” block. Rule 11(a)(3)(C)(i), cross-referencing Rule 11(a)(3)(A).

A party who affixes the party’s own electronic signature must hand-sign the original document or a copy of the document “as early as practicable.” A self-represented party must retain the hand-signed document or a copy of the document until the case is concluded. A party’s attorney must obtain the hand-signed document or a copy of the document, until the case is concluded. Rule 11(a)(3)(C)(ii). The reason why the hand-signed document is to be obtained and maintained is to facilitate cross-examination of an affiant with regard to the contents of the document and the affiant’s signed attestation.

Where an attorney affixes a party’s electronic signature to a document, the attorney must indicate that it was signed with the party’s approval (“signed w/ approval”), must sign the attorney’s name, and set forth the attorney’s name and Board of Bar Overseers number. The attorney must obtain the party’s written authorization to sign electronically and must obtain “as early as practicable,” the document containing the party’s signature (or a copy) and must retain it until the case is concluded. The rule specifies that the attorney who signs a document electronically “shall not be deemed to have sworn under oath to the contents of the document.” Rule 11(a)(3)(C)(iii).

The hand-signed document or copy must be retained by the attorney or self-represented party and must be produced if requested. Rule 11(a)(3)(C)(iv).

Rule 11(a)(3)(D).

Rule 11(a)(3)(D) allows an attorney for a party to electronically sign an affidavit using the same methods as are set forth in Rule 11(a)(3)(A) and setting forth the attorney’s name and Board of Bar Overseers number.

Rule 11(c) and (d).

Changes have been made to eliminate gender references. No substantive changes were intended.

Supreme Judicial Court Rule 1:08

Attention is called to provisions of Supreme Judicial Court Rule 1:08, as amended effective October 1, 2022, entitled Case and Filer Information on Papers Filed in All Courts. The prior language of SJC Rule 1:08 dealt with the form, style, and size of papers filed in Massachusetts courts, and has been replaced with a rule, applicable in all cases and in all courts, that deals with many of the same requirements as are set forth in Rule 11(a)(1).

Provisions in SJC Rule 1:08 that are not contained in Rule 11(a)(1) require that pleadings and papers contain an attorney's Board of Bar Overseers Number and the name of the attorney's law firm. The SJC rule also provides that if so desired, a self-represented litigant or an attorney may elect to set forth the person's personal pronouns.