

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

MARGARET MARSHALL

Chief Justice

1. Court Submitting Rules for Approval:

Superior Court

2. Date Rules Submitted for Approval:

November 19, 2008

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

January 22, 2009

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

Amendment to Superior Court Rule 9A (new Rule 9A attached)

Effective date: March 2, 2009

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)

SUPERIOR COURT RULE 9A. CIVIL MOTIONS

(Applicable to civil cases)

(a) Form of Motions and Oppositions Thereto.

(1) *Motions.* A moving party shall serve with the motion a separate memorandum stating the reasons, including supporting authorities, why the motion should be granted and may include a request for a hearing. Affidavits and other documents setting forth or offering evidence of facts on which the motion is based shall be served with the motion.

(2) *Oppositions to Motions.* A party opposing a motion may serve a memorandum in opposition. The memorandum in opposition may include a statement of reasons, with supporting authorities, why the motion should not be allowed and may include a request for a hearing. Affidavits and other documents setting forth or offering evidence of facts on which the opposition is based shall be served with the memorandum in opposition.

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

(4) *Facts Verified by Affidavit.* The court need not consider any motion or opposition thereto, grounded on facts, unless the facts are verified by affidavit, are apparent upon the record, or are agreed to in writing, signed by interested parties or their counsel.

(5) *Format and Length.* All motions, memoranda of law and other papers, except for exhibits, filed pursuant to this rule shall be filed on 8 1/2" by 11" paper and, except for exhibits, shall be typed in no less than 12-point type and double-spaced, provided that the title of the case, footnotes and quotations may be single spaced. The title of each document shall appear on the first page thereof. Unless leave of court has been obtained in advance, all memoranda of law and the oppositions thereto shall not exceed 20 pages, and any reply memoranda shall not exceed 10 pages. Any appendix permitted by Superior Court Rule 30A shall not be included in the page limit. To request leave of court, a party shall send a letter to the Justice presiding in the session where the motion will be filed stating the number of pages the party desires, and why the party's objective cannot be achieved within the applicable page limit. The letter shall be served on all other parties. Any leave of court obtained by a moving party shall apply to all opposing parties. The moving party shall serve notice of the grant of leave of court with the moving party's memorandum.

(6) *Email Addresses.* Each party or attorney filing motion or opposition papers shall include his or her email address on the papers, unless he or she does not have an email address.

(b) Procedure for Serving and Filing Motions.

(1) *General.* All motions and oppositions shall 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 is compliance with the "reasonable time" provisions of the first sentence of Mass. R. Civ. P. 5(d)(1).

(2) *Service and Filing of Motions and Oppositions.* The moving party shall serve a copy of the motion and the other documents specified by this rule on every other party. Every opposing party shall serve on the moving party an original and a copy, and on every other party a copy, of the

opposition and the other documents specified by this rule. The opposition to a motion shall be served within (A) 10 days after service of a motion other than a motion for summary judgment, (B) 21 days after service of a motion for summary judgment or (C) such additional time as is allowed by statute or order of the court. Upon receipt of the opposition and associated documents, if any, the moving party shall attach the original of the opposition and associated documents to the original motion and associated documents and within 10 days shall file with the clerk the combined documents ("the Rule 9A package"), unless within the same 10-day period the moving party notifies all counsel that the motion has been withdrawn. If leave to file a reply memorandum is allowed, the reply shall be served and filed within 10 days of the allowance, unless the court orders otherwise. If leave to file a reply has been allowed, or, if a motion to strike has been served in response to the opposition to a motion or a cross-motion, the period for filing the Rule 9A package is extended to the time granted for serving the reply or the opposition to the motion to strike. If the party opposing a summary judgment motion serves an additional statement of material facts under Paragraph (b)(5)(iv), the moving party shall have 21 days to file the Rule 9A package or to notify all counsel that the motion has been withdrawn. 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 shall file with the clerk the motion and other documents initially served on the other parties with an affidavit reciting compliance with this rule and receipt of no opposition in timely fashion, unless the moving party has notified all parties that the motion has been withdrawn. The moving party shall give prompt notice of the filing of the Rule 9A package to all other parties by serving thereon a copy of a certificate of notice of filing on a separate document. A separate document accompanying the filing shall list the title of each document in the Rule 9A package.

(3) *Cross-Motions.* A cross-motion, accompanied by the other documents specified in Paragraph (a)(1) of this rule, shall be served on the moving party with the opposition to the original motion. A party opposing a cross-motion may serve a memorandum in opposition within (A) 10 days after service of a cross-motion other than a cross-motion for summary judgment, (B) 21 days after service of a cross-motion for summary judgment or (C) such additional time as is allowed by statute or order of the court.

(4) *Motions to Strike.* (i) A motion to strike brought in response to a motion shall be served along with the opposition to the original motion. An opposition to the motion to strike shall be served within 10 days of service of the motion to strike. The motion to strike and the opposition thereto shall be filed with the Rule 9A package relating to the original motion in the manner specified in Paragraph (b)(2) of this rule.

(ii) A motion to strike brought in response to the opposition to the original motion shall be served within 10 days of service of the opposition. An opposition to the motion to strike shall be served within 10 days of service of the motion to strike. The motion to strike and the opposition thereto shall be filed with the Rule 9A package relating to the original motion in the manner specified in Paragraph (b)(2) of this rule. Compliance with the times for service contained herein shall extend the time for filing prescribed in Paragraph (b)(2) of this rule.

(iii) A motion to strike brought in response to a cross-motion shall be served along with the opposition to the cross-motion. An opposition to the motion to strike shall be served within 10 days of service of the motion to strike. The motion to strike and the opposition thereto shall be filed with the Rule 9A package relating to the original motion and the cross-motion in the manner specified in Paragraph (b)(2) of this rule. Compliance with the times for service contained herein shall extend the time for filing prescribed in Paragraph (b)(2) of this rule.

(5) *Summary Judgment Motions.* (i) A motion for summary judgment shall 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. Failure to include the foregoing statement shall constitute grounds for denial of the motion. In addition to the service specified in Paragraph (b)(2) of this rule, the statement of material facts shall be *contemporaneously* sent in

electronic form by email to all parties against whom summary judgment is sought in order to facilitate the requirements of the following paragraph. The statement of material facts in electronic form shall be sent as an attachment to an email and shall be in Rich Text Format (RTF) unless the parties agree to use another word processing format. The requirement to email the statement of material facts to the opposing party does not alter the date or method of service, which continues to be governed by Mass. R. Civ. P. 5(b). The requirement for transmission by email of the statement of material facts in electronic form shall be excused if (A) the moving or any opposing party is appearing *pro se*, (B) the attorney for the moving party certifies in an affidavit that he or she does not have access to email, or (C) 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.

(ii) An opposition to a motion for summary judgment shall include a response to the moving party's statement of facts as to which the moving party claims there is no genuine issue to be tried. To permit the court to have in hand a single document containing the parties' positions as to material facts in easily comprehensible form, in preparing this response the opposing party shall reprint the moving party's statement of material facts and shall set forth a response to each directly below the appropriate numbered paragraph. Where the obligation to send the statement of material facts in electronic form has been excused, the response to the statement of material facts may be in a separate document. For purposes of summary judgment, the moving party's statement of a material fact shall be deemed to have been admitted unless controverted as set forth in this paragraph.

(iii) Neither the statement of material facts as to which there is no genuine issue to be tried nor the response thereto shall be subject to the 20-page limitation in Paragraph (a) (5) of this rule.

(iv) An opposing party, with the response to the moving party's statement of facts, may assert an additional statement of material facts with respect to the claims on which the moving party seeks summary judgment, 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. Such an additional statement shall be a continuation of the opposing party's response described in Paragraph (b)(5)(ii), with an appropriate heading, and shall not be a separate document. In addition to the service specified in Paragraph (b)(2) of this rule, where the party opposing summary judgment includes such an additional statement in its response, the response, including the additional statement, also shall be sent in electronic form by email to the moving party, unless excused as provided in Paragraph (b)(5)(i). The moving party shall respond to the opposing party's additional statement of material facts within the time prescribed by Paragraph (b)(2)(B), resulting in a single document for the court's consideration, unless the obligation to send the additional statement of material facts in electronic form has been excused. For purposes of summary judgment, the opposing party's additional statement of a material fact shall be deemed to have been admitted unless controverted as set forth in this paragraph.

(v) Cross-motions for summary judgment and oppositions thereto shall comply with the requirements of Paragraph (b)(5), with the result that there shall be a single consolidated document containing the respective statements of material facts and responses thereto, unless excused as provided in Paragraph (b)(5)(i).

(vi) All exhibits referred to in a motion, a cross-motion, or opposition thereto shall be filed as a joint appendix, which shall include an index of the exhibits. The initial moving party, with the cooperation of each opposing party, shall be responsible for assembling the joint appendix and the index. Unless all the pages of the joint appendix are consecutively numbered, each exhibit shall be separated by an off-set tab divider. Where such dividers are used, the exhibits in the joint appendix shall be numbered consecutively. The moving party shall serve a copy of its exhibits to each opposing party with the motion. If a party opposing the initial motion designates additional exhibits, the additional exhibits shall begin with the next consecutive designation following the last designation by the initial moving party. Where an opposing party

relies upon any evidence contained in the exhibits supporting the motion for summary judgment, the opposing party in its memorandum shall cite to that evidence using the form of designation of the moving party. Where the opposing party relies upon evidence not contained in such exhibits, the opposing party shall treat such additional evidence as new exhibits. Such new exhibits, as well as an index of the new exhibits, shall be served with the opposition. The initial moving party shall certify that the joint appendix includes all exhibits served upon the initial moving party with the opposition to the summary judgment motion. If the initial moving party does not receive with the opposition an exhibit designated by the opposing party, then the moving party shall file with the clerk the joint appendix of exhibits without that designated exhibit, with the certification required by this rule. The burden will then rest with the opposing party to move to file any designated exhibit not timely submitted.

(vii) The initial moving party, upon filing a motion for summary judgment, shall serve upon the opposing parties, in paper and electronic form, unless electronic form is excused, the consolidated statement of material facts and responses filed with the clerk, unless the response is filed as a separate document in accordance with this rule. The moving party shall also serve upon the opposing parties the joint appendix of exhibits, including the index of the exhibits, filed with the clerk, unless the parties otherwise agree. If the joint appendix of exhibits, including the index, is in electronic form, an electronic copy shall also be sent, unless the parties otherwise agree.

(6) *Sanctions for Noncompliance.* The court need not consider any motion or opposition that fails to comply with the requirements of this rule.

(c) Hearings on Motions.

(1) *Marking.* No party shall mark any motion for hearing. In the event that 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 will notify the parties of that date and time.

(2) *Request for Hearing.* A request for a hearing shall set forth any statute or rule of court which, in the judgment of the submitting party, requires a hearing on the motion. 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) hereof. 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 a Hearing.* Requests for hearings on the following motions will ordinarily be allowed: Attachments (Rule 4.1), Trustee Process (Rule 4.2), Dismiss (Rule 12), Adopt Master's Report (Rule 53), Summary Judgment (Rule 56), Injunctions (Rule 65), Receivers (Rule 66), Lis Pendens (G.L. c. 184, sec. 15). Denial of a request for hearing on such motions will be accompanied by a written statement of reasons for the denial.

(d) Disposition of Motions.

Motions which are not set down for hearing in accordance with Paragraph (c) hereof will be decided on the papers filed in accordance with this rule.

(e) Exceptions. The provisions of this rule shall 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 Paragraphs (b)(1) and (b)(2) of this rule. Ex parte motions shall be served within 3 days of a ruling on the motion. Emergency motions shall be served on all parties forthwith upon filing.

(2) *Motions Involving Incarcerated Parties.* Administrative Directive No. 92-1, which governs civil actions filed by a plaintiff who is incarcerated, waives that part of subdivision (b)(2) of this rule that requires the filing of the Rule 9A package. Such waiver also shall apply to motions in

civil actions where a defendant is incarcerated and appearing *pro se*, but only where the incarcerated defendant is the moving party.