

# MASSACHUSETTS RULES OF CIVIL PROCEDURE

## Rule 3. Commencement of Action

*Proposed revised version of Rule 3, showing existing language and changes:*

**\* New matter is underlined; matter to be omitted is lined through**

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, ~~or~~ (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. Actions brought pursuant to G.L. c. 185 for registration or confirmation shall be commenced by filing a surveyor's plan and complaint on a form furnished by the Land Court. Waiver of the entry fee on the ground of indigency may be sought in accordance with G.L. c. 261, § 27C.

#### **Rule 4. Process**

[NO CHANGE TO TEXT OF RULE 4; HOWEVER, A REPORTER'S NOTE HAS BEEN  
ADDED TO ADDRESS SERVICE OF PROCESS WHERE THE CASE WAS  
ELECTRONICALLY FILED.]

## **Rule 5. Service and Filing of Pleadings and Other Papers**

*Proposed revised version of Rule 5(a), showing existing language and changes:*

**\* New matter is underlined; matter to be omitted is lined through**

**(a) Service; When Required.** Except as otherwise provided in these Rules, or unless the court on motion with or without notice or of its own initiative otherwise orders, every order required by its terms to be served, every pleading subsequent to the original complaint, every paper relating to discovery required to be served upon a party, every written motion other than one which may be heard ex parte, and every written notice, notice of change of attorney, appearance, demand, brief or memorandum of law, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on any party in default for failure to appear except that any pleading asserting new or additional claims for relief against him shall be served upon him in the manner provided for service of summons in Rule 4 and except as otherwise provided in Rule 55(b)(2) with regard to notice of a hearing on the amount of damages. Any document filed through the court's electronic filing system must be served on all other parties and must include a certificate of service pursuant to Rule 7(a) of the Massachusetts Rules of Electronic Filing.

*Proposed revised version of Rule 5(b), showing existing language and changes:*

**\* New matter is underlined; matter to be omitted is lined through**

**(b) Same: How Made.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Service may also be made through the Electronic Filing Service Provider pursuant to Rule 7(b) of the Massachusetts Rules of Electronic Filing. The parties may agree in writing to make and receive service by e-mail. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

*Proposed revised version of Rule 5(f), showing existing language and changes:*

**\* New matter is underlined; matter to be omitted is lined through**

**(f) Effect of Failure to File.** Except as provided in Rule 15 of the Massachusetts Rules of Electronic filing, ~~if~~ any party fails within five days after service to file any paper required by this rule to be filed, the court on its own motion or the motion of any party may order the paper to be filed forthwith; if the order be not obeyed, it may order the paper to be regarded as stricken and its service to be of no effect.

## **Rule 6. Time**

*Proposed revised version of Rule 6, showing existing language and changes*

**\* New matter is underlined; matter to be omitted is lined through**

**(e) Additional time after electronic service.** Whenever parties have the right or are required to do some act or take some proceedings within a prescribed period after the service of a notice or other papers upon them and the notice or paper is served upon them electronically, three (3) days shall be added to the prescribed period.

## **Rule 10. Pleadings**

*Proposed addition of (f) to Rule 10:*

**\* New matter is underlined; matter to be omitted is lined through**

**(f) Electronically Filed Pleadings.** A document filed electronically shall comply with the provisions of the Massachusetts Rules of Electronic Filing.

## **Rule 11. Appearances and Pleadings**

*Proposed change to Rule 11(a), creating Rule 11(a)(1) and (2):*

**\* New matter is underlined; matter to be omitted is lined through**

### **(a) Signing.**

(1) In general. Every pleading of a party represented by an attorney shall be signed in his individual name by at least one attorney who is admitted to practice in this Commonwealth. The address of each attorney, telephone number, and e-mail address if any shall be stated. A party who is not represented by an attorney shall sign his pleadings and state his address, telephone number, and e-mail address if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney to a pleading constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is a good ground to support it; and that it is not interposed for delay. If a pleading is not signed, or is signed with intent to defeat the purpose of this Rule, it may be stricken and the action may proceed as though the pleading had not been filed. For a wilful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

(2) Electronic signatures. A pleading that is filed electronically may be signed electronically in accordance with the provisions of the Massachusetts Rules of Electronic Filing.

## **Rule 77. Courts and Clerks**

*Proposed addition of (f) to Rule 77:*

**\* New matter is underlined; matter to be omitted is lined through**

**(f) Massachusetts Rules of Electronic Filing.** The provisions of this rule shall be administered and interpreted in a manner consistent with the provisions of Rule 14 of the Massachusetts Rules of Electronic Filing regarding electronically signed orders, judgments, and notifications.



## **REPORTER'S NOTES**

### **MASSACHUSETTS RULES OF CIVIL PROCEDURE**

#### **Rule 3. Commencement of Action**

##### **DRAFT Reporter's Notes--2020**

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

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

## **Rule 4. Process**

### **DRAFT Reporter's Notes--2020**

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

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

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

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

## **Rule 5. Service and Filing of Pleadings and Other Papers**

### **DRAFT Reporter's Notes--2020**

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

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

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

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

## **Rule 6. Time**

### **DRAFT Reporter's Notes--2020**

In light of the adoption of the Massachusetts Rules of Electronic Filing (Mass. R. E. F.) (Supreme Judicial Court Rule 1:25, effective September 1, 2018), Rule 6(e) has been added to provide for an additional three days to respond or to take action after a document has been served electronically, similar to the additional three days applicable after service by mail (Rule 6(d)). This three-day period is set forth in Mass. R. E. F. 7(e).

## **Rule 10. Form of Pleadings**

### **DRAFT Reporter's Notes--2020**

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

## **Rule 11. Appearances and Pleadings**

### **DRAFT Reporter's Notes--2020**

Rule 11(a) has been subdivided into (1) and (2). Rule 11(a)(2) addresses electronic signatures where a pleading has been filed electronically.

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

## **Rule 77. Courts and Clerks**

### **DRAFT Reporter's Notes--2020**

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