

**Proposed Amendments to Massachusetts Rules of Domestic Relations Procedure
For Public Comment
April, 2025**

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I. SCOPE OF RULES – ONE FORM OF ACTION

Rule 1. Scope of Rules

These rules govern the procedure in the Probate and Family Court Department in all proceedings:

(1) for divorce,

(2) for post-divorce division of marital property.

(3) for separate support, ~~and~~
(4) for custody of minor children,
(5) for parenting time or other contact with minor children,
(6) for annulment or affirmation of marriage, ~~an action~~
(7) for spousal ~~and/or~~ support,
(8) for child support, ~~an action~~
(9) to determine ~~paternity~~ parentage and/or support for a nonmarital child ~~born out of wedlock,~~
(10) for grandparent visitation,
(11) for modification ~~thereof,~~ and
(12) for contempt ~~and abuse prevention~~

as enumerated in General Laws, Chapters 119, § 39D; 119A; 207; 208; 209, ~~209A; 209C;~~
215 and 209D-, including those brought under General Laws, Chapter 215, § 6, as discussed
in C.C. v. A.B., 406 Mass. 679 (1990).

They shall be construed to secure the just, speedy and inexpensive determination of every action they govern.

As used in these rules, “Probate Court” shall mean a division of the Probate and Family Court Department of the Trial Court, or a session of that court for holding court.

Rule 2. One Form of Action

There shall be one form of action to be known as “civil action”. ~~Identical to Mass. R. Civ. P. 2.”.~~

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

Rule 3. Commencement of Action

A civil action is commenced by ~~;~~:

(1) mailing to the ~~clerk~~ Register of Probate of the proper court by certified or registered mail a complaint and an entry fee (also called a “filing fee”) prescribed by law, or

(2) filing ~~such a~~ complaint and an entry fee with ~~such clerk. Actions brought~~ the Register, 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.

A party who cannot afford the entry fee or other costs due to financial hardship may request a waiver by submitting an affidavit of indigency form with the complaint. Waiver requests will be processed in accordance with G.L. c. 261, § 27C.

If the defendant or respondent does not file a timely answer or otherwise appear in the case, then the plaintiff or petitioner must file a completed Military Affidavit form under the

Servicemembers Civil Relief Act, 50 U.S.C. § 3931, regarding whether the defendant or respondent is on active duty or otherwise covered by the Servicemembers Civil Relief Act, as explained in the Military Affidavit form.

The form is available from the Registry of Probate or at <https://www.mass.gov/doc/military-affidavit/download>.

If ~~185~~ a plaintiff or petitioner believes that, because of a Chapter 209A restraining order or for registration or confirmation shall be commenced by filing a surveyor's plan other reasons, their address and complaint on a form furnished by the Land contact information should not be made public or available to the defendant or respondent, the plaintiff or petitioner may apply for an order of impoundment under Trial Court. ~~(Identical to Mass.R.Civ.P. Rule 3). VIII.~~

Rule 4. Process

~~(a)~~ Summons: Issuance

~~(a)~~ . Upon commencing the action the plaintiff or ~~his~~the plaintiff's attorney shall deliver a copy of the complaint and a summons for service to:

- (1) the sheriff, deputy sheriff, or special sheriff;
- (2) any other person duly authorized by law;
- (3) a person specifically appointed to serve them;

or as otherwise provided in subdivision (c) of this rule.

Upon request of the plaintiff, separate or additional summons shall issue against any defendant. The summons may be procured ~~in blank from the clerk, and shall be filled in by the plaintiff or the plaintiff's attorney in accordance with Rule 4(b). Identical to Mass.R.Civ.P. Rule 4(a) from the Register of Probate.~~

~~(b)~~ Same

Summons: Form. A

~~(b)~~ ~~The~~ summons ~~shall~~must:

- (1) bear the signature or facsimile signature of the ~~clerk;~~Register;
- (2) be under the seal of the court;
- (3) be in the name of the Commonwealth of Massachusetts; ~~bear teste of~~
- (4) be witnessed by, with a facsimile signature or printed name, the first justice of the court to which it shall be returnable who is not a party;
- (5) contain the name of the court ~~and;~~
- (6) contain the names of the parties;
- (7) be directed to the defendant;
- (8) state the name, address, telephone number, and email address of the ~~plaintiff's~~plaintiff's attorney if the plaintiff has an attorney, ~~if any, otherwise the plaintiff's.~~

(9) If the plaintiff does not have an attorney,

- (A) state the plaintiff's address, and
- (B) state the plaintiff's telephone number if the plaintiff has a telephone number, and
- (C) state the plaintiff's email address if the plaintiff has an email address, and

(10) state the time within which these rules require the defendant to appear and defend; and
~~shall~~

(11) notify himthe defendant that in case of histe defendant's failure to do so judgment
~~by default~~ may be rendered against himthe defendant for the relief demanded in the
complaint. ~~Identical to Mass.R.Civ.P. Rule 4(b).~~

(c) By ~~whom served~~ Whom Served.

In General: Except as otherwise permitted by paragraph (h) of this rule, service of all process
shall be made:

- (1) by a sheriff,
- (2) by hisa deputy, ~~or~~ sheriff,
- (3) by a special sheriff;

(4) by ~~any other~~ a constable from any political subdivision of the Commonwealth, as a
disinterested person, without the need for court approval,

(A) Constables, as disinterested persons, can serve process and subpoenas in any geographical
location,

(5) by a process server employed by a firm that includes constables, as a disinterested
person, without the need for court approval,

(A) a process server employed by a firm that includes constables, as a disinterested person, can
serve process and subpoenas in any geographical location.

(6) by any other disinterested person who, on motion, is approved by the court,

(7) by any other person duly authorized by law;

(8) by some person specially appointed by the court for that purpose; ~~or~~

(9) in the case of service of process outside the Commonwealth, by an individual permitted
to make service of process under the law of this Commonwealth or under the law of the place
in which the service is to be made, or who is designated by a court of this Commonwealth, ~~or~~

(10) in the case of service of process outside the United States, by any disinterested
person without the need for court approval.

Subpoenas: A subpoena may be served as provided in Rule 45.

Service by mail: Notwithstanding the provisions of this paragraph (c), wherever in these rules
service is permitted to be made by certified or registered mail, the mailing may be accomplished
by the party or histe party's attorney.

~~(d)~~

(d) Summons: Personal ~~service within~~ Service Within the Commonwealth.

In General: The summons and a copy of the complaint shall be served together. The plaintiff shall furnish the person making service with ~~such~~as many copies as are necessary.
~~Service shall be made as follows:~~

Service shall be made as follows:

(1)- The defendant, whether within or without the Commonwealth, may accept personal service by written endorsement of ~~his~~the defendant's duly notarized acceptance of service on the summons or other process. ~~In the event that service is not so accepted, service shall be made as set forth hereafter:~~

In the event that service is not accepted in that way, service shall be made:

(2)- Upon an individual by delivering a copy of the summons and of the complaint to ~~him~~the individual personally.

In complaints-:

(A) seeking establishment of ~~paternity~~parentage or
(B) for support of a ~~nonmarital~~ child ~~born out of wedlock, complaints, or~~
(C) for support of a spouse ~~or child~~ under Chapter 209, § 32F-, or
(D) for ~~actions~~support of a child under Chapter 209, § 32F, or
(E) for support of a child under Chapter 209D-, or
(F) for contempt ~~and complaints, or~~
(G) for modification-,

for those complaints only, upon an individual:

(i)- by delivering a copy of the summons and complaint to ~~him~~the defendant personally, or
(ii)- by leaving a copy of the summons and complaint at ~~his~~the defendant's last and usual place of abode and by mailing copies ~~thereof~~of the summons and complaint to the defendant.

Notice under ~~this subsection~~these subsections (i) and (ii) shall be proved by an affidavit containing a ~~particular~~specific statement ~~thereof~~of how service was made.

(3)- If the person authorized to serve process makes return that after diligent search ~~he~~the person cannot find the defendant, or if it appears that a defendant resides outside of the Commonwealth or is of parts unknown, the court may on ~~application~~motion of the plaintiff issue an order of notice in the manner and form prescribed by law.

(4)- If such personal service ~~shall~~is not ~~be made as aforesaid, such notice,~~

(A) Notice in the form ordered by the court shall be served ~~by publishing a copy of the said notice once in some newspaper designated by the Register or the court and:~~

(i) by mailing a copy of ~~such~~the notice by registered or certified mail, if practicable, to the defendant at ~~his~~the defendant's last known address; and, unless the defendant has received actual notice,

(ii) by sending a scanned "portable document format" (PDF) copy of the form ordered by the court to the defendant:

(a) by electronic mail (e-mail), as an attachment, to each known e-mail address of the defendant and, unless the defendant has received actual notice,

(b) by Multimedia Messaging Service (MMS) messaging (commonly known as texting or text messaging), as an attachment, to each known mobile phone number of the defendant, and, unless the defendant has received actual notice,

(c) by sending to the defendant by electronic communication, through social media platforms, a "Joint Photographic Experts Group" (JPEG) or PDF copy of the form ordered by the court using one or more social media platforms most likely to reach the defendant.

(iii) By any other means that may be ordered by the court, including but not limited to publishing a copy of the notice once in some newspaper designated by the Register or the court. If publication is ordered, it shall be consistent with Chapter 4, § 13 of the Massachusetts General Laws.

(B) The defendant shall ~~file his~~serve an answer or other responsive pleading within the time periods allowed under these rules computed as if, of the following dates, the last date of publication that notice was given were the date on which personal service was made:

~~(5) Service of~~ (i) the last publication ~~and date, if any,~~

(ii) the last e-mailing date, if any,

(iii) the last text messaging date, if any,

(iv) the last social media communication date, if any, or

(v) the date of service at a last and usual place of abode, or the date of mailing to the last known address of the defendant.

(5) Service by publication or mailing or e-mailing or text messaging or social media communication shall each be proved by affidavit containing a ~~particular~~specific statement ~~thereof~~of how service was made, accompanied by:

(A) a copy of the advertisement (or tear sheet) of the newspaper containing the publication, if any, and;

(B) if a newspaper in which publication appeared also has a digital edition on its website, a screen shot in JPEG format of the notice, or a printed copy of the screen shot, as it appeared in the newspaper's website or on a statewide website for the state in which the newspaper is published, and

(C) a copy of each e-mail message and its PDF attachment, or printed copies of them, if

any, and

(D) a screen shot copy in JPEG format, or a printed copy of the screen shot, of each text message and a PDF or JPEG copy of its attachment, or a printed copy of the attachment, if any, and

(E) a screen shot copy in JPEG format, or a printed copy of the screen shot, of each social media communication, if made, with a JPEG or PDF copy of the notice, or a printed copy of the notice, as it appeared on each social media platform used, if any, and

(F) if practicable, ~~by~~ the return receipt showing receipt of a copy sent by registered or certified mail.

(6) ~~The~~ The court shall require proof of actual notice when practicable.

(7) If ~~such~~ notice as required by this rule is not shown to have been received by the defendant, the complaint shall not be assigned for hearing until the expiration of three (3) months after the later of:

(A) the publication date, if any,

(B) the date of service at a last and usual place of abode, ~~or~~

(C) the date of a mailing to the last known address of the defendant ~~if such service has been ordered by the court.~~

(D) the last e-mailing date,

(E) the last text messaging date,

(F) the last social media communication date.

Nothing in this rule shall prevent hearing of a motion for temporary orders or issuance of temporary orders prior to the expiration of three (3) months, provided notice of the motion and hearing has been mailed to the ~~defendant's~~ defendant's last and usual place of abode in accordance with ~~Rules 5 and 6.~~ Rules 5 and 6.

(e) ~~Same~~ Summons. ~~Personal service outside~~ Service Outside the Commonwealth.

When any statute or law of the Commonwealth authorizes service of process outside the Commonwealth, the service shall be made by delivering a copy of the summons and of the complaint:

(1) in any appropriate manner prescribed in subdivision (d) of this Rule; or

(2) in the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction; ~~or (3) by any form of mail addressed to the person to be served and requiring a signed receipt; or (4) as directed by the appropriate foreign authority in response to a letter rogatory; or (5) as directed by order of the court. Identical to Mass.R.Civ.P.Rule 4(e).~~

(3) by any form of mail addressed to the person to be served and requiring a signed receipt; or

(4) as directed by the appropriate foreign authority in response to a letter rogatory; or

(5) as directed by order of the court.

(f) Return.

The person serving the process shall make proof of how the service thereof was made in writing to the court promptly and in any event within the time during which the person served must respond to the process. ~~The~~

When personal service is required, the person making return of service shall state in ~~his~~the return of service:

(1) that a copy of the summons and complaint was delivered by ~~him~~the person making return of service in hand to the defendant and ~~shall further state~~

(2) the date on which service was made and

(3) the place where ~~such~~ service was made.

If service is made by a person other than a sheriff, deputy sheriff, ~~or~~ special sheriff, ~~he~~constable, or a process server employed by a firm that includes constables, that person shall make the affidavit ~~thereof~~of how the service was made.

Proof of service outside the Commonwealth may be made:

(4) by affidavit of the individual who made the service or

(5) in the manner prescribed by the law of the Commonwealth, or

(6) in the manner prescribed by the law of the place in which the service is made for proof of service in an action in any of its courts of general jurisdiction.

When service is made by mail, proof of service shall include a receipt signed by the addressee or such other evidence of personal delivery to the addressee as may be satisfactory to the court.

~~Failure to make proof of service does not affect the validity of the service.~~

Failure to make proof of service does not affect the validity of the service.

(g) Amendment.

At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service ~~thereof~~of the process to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process is issued.

~~Identical to Mass.R.Civ.P. 4(g).~~

(h) ~~Certain actions~~Actions in Probate and Family Courts: Service.

~~Notwithstanding any other provision of these rules, in actions in the Probate Courts in the nature of petitions for instructions or for the allowance of accounts,~~ service may be made in accordance with G.L. c. 215, § 46, in such manner and form as the court may order. ~~Identical to Mass.R.Civ.P. 4(h).~~

(i) Deleted

~~[Deleted]~~

~~(i) [Not used].~~

(j) Summons: Time ~~limit~~Limit for ~~service~~Service.

If a service of the summons and complaint is not made upon a defendant within ninety (90) days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the ~~court's~~court's own initiative with notice to such party or upon motion. ~~Identical to Mass.R.Civ.P.~~

Rule 4(j)-1. Attachment

Rule 4.1. Attachment

~~(a)~~

(a) Availability of ~~attachment~~Attachment.

Subsequent to the commencement of any action under these rules, real estate, ~~goods and chattels~~specific items of tangible (physical) property and other property may, in the manner and to the extent provided by law, but subject to the requirements of this rule, be attached and held to satisfy the judgment for ~~damages~~amounts, including legal fees and costs, which the plaintiff may recover.

(b) ~~(b)~~ Writ of ~~attachment~~Attachment: Form.

The writ of attachment shall bear the signature or facsimile signature of the ~~clerk~~Register of Probate, be under the seal of the court, be in the name of the Commonwealth, contain the name of the court, the names and residences (if known) of the parties and the date of the complaint, ~~bear teste of~~be witnessed by, with a facsimile signature or printed name, the first justice of the court to which it is returnable who is not a party; state the name and address ~~of the~~plaintiffs and e-mail address and telephone number of the plaintiff's attorney (if any), be directed to the sheriffs of the several counties or their deputies, or any other person duly authorized by law, and command them to attach the real estate or personal property of the defendant to the value of an amount approved by the court, and to make due return of the writ with their doings ~~thereon~~on the writ. The writ of attachment shall also state the name of the justice who entered the order approving attachment of property and the date ~~thereof~~of the order approving attachment.

~~(e)~~ Same Writ of Attachment: Service

(c). The writ of attachment may be procured in blank from the ~~clerk~~register and shall be filled out by the plaintiff or ~~plaintiff's~~plaintiff's attorney as provided in subdivision (b) of this rule, either of whom shall deliver to the officer making the attachment the original writ of attachment upon which to make ~~his~~the officer's return and a copy ~~thereof~~of the writ of attachment.

In General:

(1) No property may be attached unless ~~such~~the attachment for a specified amount is approved by order of the court.

(2) Except as provided in subdivision (f) of this rule, the order of approval may be entered only after notice to the defendant and hearing and upon a finding by the court that there is a reasonable likelihood that the plaintiff will recover judgment, including interest and costs, in an amount equal to or greater than the amount of the attachment ~~over and above any liability insurance shown by the defendant to be available to satisfy the judgment.~~

(3) An action in which attachment of property is sought may be commenced only by filing the complaint with the court, together with a motion for approval of the attachment.

(4) The motion shall be supported by affidavit or affidavits meeting the requirements set forth in subdivision (h) of this rule.

(5) Except as provided in subdivision (f) of this rule, the motion and affidavit or affidavits with the notice of hearing ~~thereon~~on them shall be served upon the defendant in the manner provided by ~~Rule 4~~, at the same time the summons and complaint are served ~~upon him~~.

(A) Inclusion of a copy of the complaint in the notice of hearing shall not constitute personal service of the complaint upon the defendant.

(B) The notice shall inform the defendant that by appearing to be heard on the motion for approval of an attachment ~~he~~the defendant will not thereby submit ~~himself~~ to the jurisdiction of the court nor waive service of the complaint and summons upon ~~him~~the defendant in the manner provided by law.

(6) Except as provided in subdivision (e) of this rule, any attachment of property shall be made within ~~thirty~~ (30) days after the order approving the writ of attachment.

(7) When attachments of any kind of property are made subsequent to service of the summons and complaint upon the defendant, a copy of the writ of attachment with the ~~officer's~~officer's endorsement ~~thereon~~ of the date or dates of the attachments on the copy shall be promptly served upon the defendant in the manner provided by Rule 5.-

(d) Attachment on ~~counterclaim, cross-claim~~ Counterclaim, Cross-Claim or ~~third-party complaint~~

Third-Party Complaint. An attachment may be made by a party bringing a counterclaim, a cross-claim, or a third-party complaint in the same manner as upon an original claim.

(e) Subsequent ~~attachment~~

Attachment. Either before or after expiration of the applicable period prescribed in subdivision (c) of this rule for making attachments, the court may, subject to the provisions of subdivision (f) of this rule, order another or an additional attachment of real estate, ~~goods, and chattels~~ specific items of tangible (physical) property or other property.

(f) Ex ~~parte~~ Parte Hearings on ~~property attachments~~

Property Attachments. An order approving attachment of property for a specific amount may be entered ex parte upon findings by the court that:

(1) there is a reasonable likelihood that the plaintiff will recover judgment in an amount equal to or greater than the amount of the attachment ~~over, and above any liability insurance known or reasonably believed to be available, and~~

(2) that either:

(i) the person of the defendant is not subject to the jurisdiction of the court in the action, or
(ii) there is a clear danger that the defendant if notified in advance of attachment of the property will convey it, remove it from the state or will conceal it, or
(iii) there is immediate danger that the defendant will damage or destroy the property to be attached. ~~The motion for such ex parte order shall be accompanied by a certificate by the plaintiff or his attorney of the amount of any liability insurance which he knows or has reason to believe will be available to satisfy any judgment against the defendant in the action. The motion, in the filing of which the plaintiff's attorney shall be subject to the obligations of Rule 11, shall be supported by affidavit or affidavits meeting the requirements set forth in subdivision (h) of this rule.~~

(3) The motion for approval of the attachment shall be supported by an affidavit or affidavits meeting the requirements set forth in subdivision (h) of this rule.

(4) If the motion is filed by an attorney, it shall be subject to the obligations of Rule 11.

(g) ~~Dissolution or modification of ex parte attachments~~

Modification of Ex Parte Attachments. On two ~~days~~ (2) days' notice to the plaintiff or on such shorter notice as the court may prescribe, a defendant whose real or personal property has been attached pursuant to an ex parte order entered under subdivision (f) of this rule may

(1) appear without thereby submitting ~~his~~ that defendant's person to the jurisdiction of the court, and

(2) move for the dissolution or modification of the attachment, and

(3) in that event the court shall proceed to hear and determine ~~such~~ the motion as expeditiously as the ends of justice require.

(4) At ~~such~~the hearing the plaintiff shall have the burden of justifying any finding in the ex parte order which the defendant has challenged by affidavit.

Nothing ~~herein~~in this rule shall be construed to abolish or limit any means for obtaining dissolution, modification or discharge of an attachment that is otherwise available by law.

(h) Requirements for ~~affidavits~~Affidavits. Affidavits required by this rule shall:
~~Affidavits required by this rule shall~~

(1) set forth specific facts sufficient to warrant the required findings and ~~shall~~
(2) be upon the ~~affiant's~~affiant's own knowledge, information or belief; and,
(3) so far as upon information and belief, ~~shall~~ state that ~~he~~the affiant believes this information to be true.

(i) Form of ~~hearing~~

Hearing. At any hearing held under this rule, either party may ~~adduce~~offer testimony and may call witnesses (including any opposing party).

The court, for cause shown on the evidence ~~so adduced~~produced, may make such interlocutory orders concerning disposition of the property sought to be attached as justice may require.

Rule 4.2. Trustee Process

~~(a) Availability of trustee process~~

(a) Trustee Process. Subsequent to the commencement of any personal action under these rules, except actions ~~only~~ for ~~specific~~ recovery of ~~goods and chattels, for malicious prosecution, for slander or libel, or for assault and battery~~specific items of tangible (physical) property, trustee process may be used, in the manner and to the extent provided by law, but subject to the requirements of this rule,

(1) to secure satisfaction of the judgment ~~for damages and costs~~ which the plaintiff may recover; ~~provided, however, that.~~

(2) ~~However,~~ no person shall be adjudged trustee for any amount due from ~~him~~that person to the defendant for wages or salary for personal labor or services of the defendant except on a claim that has first been reduced to judgment or otherwise authorized by law; and ~~in no event shall the attachment exceed the limitations prescribed by law.~~

(3) in no event shall the attachment exceed the limitations prescribed by law.

(b) Summons to ~~trustee~~Trustee: Form

. The summons to a trustee shall bear the signature or facsimile signature of the ~~clerk~~Register of Probate, be under the seal of the court, be in the name of the Commonwealth, contain the name of the court, the names and residences (if known) of the parties and the date of the filing of the complaint, ~~bear teste of~~be witnessed by, with a facsimile signature or printed name, the first justice of the court to which it is returnable who is neither a party nor a trustee; state the name and address of the ~~plaintiff~~splaintiff's attorney (if any), be directed to the trustee, shall notify ~~him~~the trustee that the goods, effects or credits of the defendant in the hands of the trustee have been attached to the value of the amount authorized by the court, shall state the time within which these rules require the trustee to answer, shall notify ~~him~~the trustee that in case of ~~his~~the trustee's failure to do so ~~he~~the trustee will be defaulted and adjudged trustee as alleged, and, if wages, a pension, or a bank account is sought to be attached, shall notify ~~him~~the trustee of such amount of wages, pension, or bank account as are by law exempt from attachment and shall direct ~~him~~the trustee to pay over to the defendant the exempted amount. The summons to the trustee shall also state the name of the justice who entered the order approving the trustee attachment and the date ~~thereof.~~ of the order approving the trustee attachment.

(c) ~~Same~~Summons to Trustee: Service

. The trustee summons may be procured in blank from the ~~clerk~~register and

(1) shall be filled out by the plaintiff or the ~~plaintiff~~splaintiff's attorney as provided in subdivision (b) of this rule, ~~either of whom.~~

(2) Either the plaintiff or the plaintiff's attorney shall deliver to the person who is to make service the original trustee summons ~~upon which to~~and a copy of the summons.

(3) The person who makes service shall make ~~his~~that person's return ~~and a copy thereof.~~ of service on the original trustee summons.

(4) No trustee summons may be served unless attachment on trustee process for a specified amount has been approved by order of the court.

(5) Except as provided in subdivision (g) of this rule, the order of approval may be entered only after:

(A) notice to the defendant and

(B) hearing and ~~upon~~

(C) a finding by the court that there is a reasonable likelihood that the plaintiff will recover judgment, including interest and costs, in an amount equal to or greater than the amount of the trustee process ~~over and above any liability insurance shown by the defendant to be available to satisfy the judgment.~~

:

(6) An action in which trustee process is sought may be commenced only by:

(A) filing the complaint with the court,

(B) together with a motion for approval of attachment on trustee process.

(7) The motion shall be supported by an affidavit or affidavits meeting the requirements set forth in Rule- 4.1(h).

(8) Except as provided in subdivision (g) of this rule, the motion and affidavit or affidavits with the notice of hearing ~~thereon of the motion~~ shall be served upon the defendant in the manner provided by- Rule 4, at the same time the summons and complaint are served ~~upon him~~; and

(9) the defendant shall also be served with a copy of the trustee summons in cases where attachment has been approved ex parte as provided in subdivision (g) of this rule.

(10) Inclusion of a copy of the complaint in the notice of hearing shall not constitute personal service of the complaint upon the defendant.

(11) The notice shall inform the defendant that by appearing to be heard on the motion for approval of an attachment on trustee process ~~he the defendant~~ will not thereby submit ~~himself~~ to the jurisdiction of the court nor waive service of the complaint and summons ~~upon him~~ in the manner provided by law.

(12) Except as provided in subdivision (f) of this rule, any trustee process shall be served within thirty (30) days after the date of the order approving the attachment.

Promptly after the service of the trustee summons upon the trustee or trustees, a copy of the trustee summons with the ~~officer's~~ officer's endorsement ~~thereon~~ of the date or dates of services on the copy shall be served upon the defendant in the manner provided by- Rule 5.

(d) Answer by ~~trustee; subsequent proceedings~~

Trustee; Subsequent Proceedings. A trustee shall file, but need not serve, ~~his~~ an answer, under oath, or signed under the penalties of perjury, within twenty (20) days after the service of the trustee summons upon ~~him~~ that trustee, unless the court otherwise directs.

The answer shall disclose plainly, fully, and particularly what goods, effects or credits, if any, of the defendant were in the hands or possession of the trustee when the trustee summons was served upon ~~him~~. ~~The proceedings after filing of the trustee's answer shall be as provided by law. that trustee.~~

The proceedings after filing of the trustee's answer shall be as provided by law.

(e) Trustee ~~process~~Process on ~~counterclaim, cross-claim~~Counterclaim, Cross-Claim or ~~third-party complaint~~

Third-Party Complaint. Trustee process may be used by a party bringing a counterclaim, a cross-claim, or a third-party complaint in the same manner as upon an original claim. ~~Sueh~~The party may use trustee process, even though the trustee does not reside or maintain a usual place of business in the county where the action is pending.

(f) Subsequent ~~trustee process~~

Trustee Process. Either before or after expiration of the applicable period prescribed in subdivision (c) of this rule for serving trustee process, the court may, subject to the provisions of subdivision (g) of this rule, order another or an additional service of the trustee summons upon the original trustee.

(g) Ex ~~parte hearings~~Parte Hearings on ~~trustee process~~

Trustee Process. An order approving trustee process for a specific amount may be entered ex parte upon

(1) findings by the court that there is a reasonable likelihood that the plaintiff will recover judgment in an amount equal to or greater than the amount of the trustee process ~~over and above any liability insurance known or reasonably believed to be available~~, and that either:

- (i) the person of the defendant is not subject to the jurisdiction of the court in the action, or
- (ii) there is a clear danger that the defendant if notified in advance of the attachment on trustee process will withdraw the goods or credits from the hands and possession of the trustee and remove them from the state or will conceal them, or
- (iii) there is immediate danger that the defendant will dissipate the credits, or damage or destroy the goods to be attached on trustee process. ~~The motion for an ex parte order shall be accompanied by a certificate by the plaintiff or his attorney of the amount of any liability insurance which he knows or has reason to believe will be available to satisfy any judgment against the defendant in the action. The motion, in the filing of which the plaintiff's attorney shall be subject to the obligations of Rule 11, shall be supported by affidavit or affidavits meeting the requirements set forth in Rule 4.1(h).~~

~~(h) Dissolution or modification of ex parte trustee process~~

~~On two days'~~

(2) If an attorney files the motion for approval of attachment on trustee process, the attorney shall be subject to the obligations of Rule 11.

(3) The motion shall be supported by an affidavit or affidavits meeting the requirements set forth in Rule 4.1(h).

(h) **Dissolution or Modification of Ex Parte Trustee Process.** On two (2) days' notice to the plaintiff or on such shorter notice as the court may prescribe, a defendant whose goods or credits have been attached on trustee process pursuant to an ex parte order entered under subdivision (g) of this rule may ~~appear, without thereby submitting his person to the jurisdiction of the court, and move the dissolution or modification of the trustee process, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require. At such hearing the plaintiff shall have the burden of justifying any finding in the ex parte order which the defendant has challenged by affidavit. Nothing herein shall be construed to abolish or limit any means for obtaining dissolution, modification or discharge of an attachment that is otherwise available by law.~~

~~(1) appear, without thereby submitting to the jurisdiction of the court, and~~

~~(2) move for the dissolution or modification of the trustee process.~~

~~(A) In that event the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require.~~

~~(B) At the hearing the plaintiff shall have the burden of justifying any finding in the ex parte order which the defendant has challenged by affidavit.~~

~~Nothing in this rule shall be construed to abolish or limit any means for obtaining dissolution, modification or discharge of an attachment that is otherwise available by law.~~

(i) Form of ~~hearing~~

Hearing. At any hearing held under this rule, either party may ~~adduce~~offer testimony and may call witnesses (including any opposing party).

The court, for cause shown on the evidence ~~so adduced produced~~, may make such interlocutory orders concerning disposition of the goods or credits sought to be subject to trustee process as justice may require.-

Rule 4.3. Arrest: ~~Supplementary Process~~-Ne Exeat

(a) Arrest; Availability of ~~remedy~~

Remedy. Except in cases of civil contempt or as specifically authorized by law, no civil arrest shall be permitted in connection with any action under these rules, except as provided in section (c) of this rule.

~~(b) Deleted~~

~~[Deleted]~~

(b) Supplementary Process [Not Applicable].

(c) Ne Exeat

. An order of arrest may be entered upon motion with or without notice when ~~the~~:

(1) ~~The~~ plaintiff has obtained a judgment or order requiring the performance of an act, the neglect or refusal to perform which would be punishable by the court as a contempt, and ~~where~~

(2) ~~Where~~ the defendant is not a resident of the Commonwealth or is about to depart therefrom, by reason of which nonresidence or departure there is danger that ~~sue~~the judgment or order will be rendered ineffectual.

(3) The motion shall be accompanied by an affidavit showing that the plaintiff is entitled to the relief requested.

The court may ~~fix~~specify such terms as are just, and shall in any event afford the defendant an opportunity to obtain ~~his~~the defendant's release by the giving of an appropriate bond.

In this rule the words “plaintiff” and “defendant” mean respectively the party who has obtained the judgment or order and the person whose arrest is sought.

~~Identical to Mass.R.Civ.P. 4.3(e)~~

**Rule 5. Service and Filing of Pleadings and Other ~~Papers~~
Documents**

(a) Service: When ~~required~~Required.

(1) In General. Except as otherwise provided in these Rules, or unless the court on motion with or without notice or of its own initiative otherwise orders, each of the following documents must be served on every party:

(A) every order required by its terms to be served;

(B) every pleading subsequent to the original complaint;

(C) every ~~paper~~document relating to discovery required to be served upon a party;

(D) every written motion other than one which may be heard ex parte; and

(E) 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. Identical to Mass.R.Civ.P. 5(a)-
document shall be served upon each of the parties.

(b) ~~Same: How made~~

~~Whenever under these rules~~

(2) 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.

(3) If a Party Fails to Serve an Answer or an Appearance (Appear). No service is required ~~or permitted to be made upon a party on~~ any party who has failed to appear in the time required after service. However, a pleading asserting new or additional claims for relief against such a party must be served on that party in the manner provided for service of summons in Rule 4.

(b) Service: How Made

(1) Serving an Attorney. If a party is represented by an attorney ~~the~~, service ~~shall under this rule~~ must be made ~~upon~~ on the attorney unless ~~the court orders~~ service ~~upon~~ on the party ~~himself~~.

(2) Serving a Self-Represented Party. If the party is ~~ordered~~ self-represented, service must be made on the party.

(3) Service in General. A document is served under this rule ~~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 register of probate. Delivery of a copy within this rule means: handing:~~

(A) Handing it to the attorney or ~~to the party; or leaving who is the person to be served;~~

(B) Leaving it:

(i) at ~~his~~the office ~~with his clerk of the attorney or other of the party who is the person in charge thereof;~~to be served:

(a) with an employee or,

(b) if ~~there is no one in charge, leaving it~~employee is available, in a conspicuous place therein; or if ~~in~~ the office is closed or the person to be served has no office, leaving it at his; or

(ii) if service is being made on a party, at the party's dwelling ~~house~~or usual place of abode (residence) with ~~some person someone who resides there who:~~

(a) is eighteen (18) years of ~~suitable~~age or older, and ~~discretion then residing therein. Service by mail~~

(b) is not a child of any party in the case regardless of age.

(C) Mailing it to the person at the person's last known address – in which event service is complete upon mailing. ~~If~~

(D) Service may also be made by e-mail as provided in Rule 5(b)(4) or through the Electronic Filing Service Provider pursuant to Rule 7(b) of the Massachusetts Rules of Electronic Filing.

(4) Time of Service. When notice of a hearing is ~~given~~served other than by United States Postal Service mailing,

(A) the time when the service was made shall be stated in ~~hand-delivered~~the certificate of service except when service is made by e-mail.

(B) If the service is made after 4 p.m., an additional day shall be added for purposes of computation of time under ~~Rule 6(c). The time when the in hand service was made shall be reflected on the Certificate of Service.~~

Rule 6(c).

(5) Service by E-mail. Service may be made by e-mail, except as otherwise provided in these Rules, or unless the court otherwise orders or the parties otherwise stipulate.

(A) Primary Business E-mail Address, Attorney of Record.

An attorney of record must,

(i) in accordance with Rule 11(a)(1), state a primary business e-mail address on the initial pleading and any other document required to be served under Rule 5(a).

(ii) After that, service in the proceeding may be made using the e-mail address stated in the pleading or document.

(iii) If, for any reason, an attorney of record changes a primary e-mail address, cannot be served at a primary e-mail address previously provided, or has not previously provided a primary e-mail address, the attorney of record shall promptly communicate that to all other attorneys of record and self-represented parties and provide an active primary e-mail address.

(B) Secondary Business E-mail Addresses, Attorney of Record.

(i) An attorney of record may designate up to two secondary business e-mail addresses by communicating the secondary e-mail addresses to all other attorneys of record and self-represented parties and requesting that service be made to the secondary e-mail addresses.

(ii) After that, e-mail service must be directed to all designated e-mail addresses in the proceeding

(C) Self-Represented Parties.

(i) Pleadings and other documents may not be served by e-mail upon a self-represented party, unless that self-represented party consents in writing, which may be by e-mail.

(ii) If the self-represented party consents in writing to service by e-mail, the self-represented party shall be fully subject to Rule 5(b)(5)(A)-(F).

(iii) A self-represented party who has consented to service by e-mail may withdraw such consent in writing, which may be by e-mail, or by leave of court.

(iv) Service by e-mail on an incarcerated self-represented party is not authorized under any circumstances.

(D) Effective Time of E-mail Service.

(i) Service by e-mail is complete upon pressing “send” or its equivalent, unless

(a) the person making service receives notice that the e-mail was not successfully transmitted, or

(b) the person making service otherwise reasonably should be aware that the e-mail was not successfully transmitted.

(ii) If the person making service learns that the e-mail was not successfully transmitted, the person must promptly resend the document to the intended recipients by e-mail or by another means authorized by Rule 5(b).

(iii) Any document served by e-mail by 11:59 P.M. on a business day shall be considered served on that date.

(iv) Any document served by e-mail on a Saturday, Sunday, or legal holiday, as defined in Rule 6(a)(5), shall be considered served the next business day.

(E) Format of E-mail for Service.

(i) All documents served by e-mail shall be sent by an e-mail message containing a subject line beginning with the words “Service of Court Document” followed by the case name.

(ii) Documents served by e-mail may be transmitted:

(a) via attachment or

(b) by providing a link within the body of the e-mail that will allow the party to download the documents.

(F) Defective Service.

Any party who claims that the party did not receive documents that were purportedly served by e-mail may move for relief from any ruling, entry of default, or other adverse action that arose from the allegedly defective service.

(c) ~~Same~~Service: Multiple Defendants.

(1) In General. Whenever an action has more than three (3) defendants

The, the court may, on motion ~~with or without notice or of on~~ its own initiative, ~~may, order that service of the~~;

(A) defendants' pleadings of the defendants and replies thereto to those pleadings need not be ~~made as between the served on other defendants and that;~~
(B) any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein in the cross-claim, counterclaim, or matter shall be deemed to be denied or avoided by all other parties; and ~~that~~
(C) the filing of any such pleading and service thereof of the pleading upon the plaintiff constitutes due notice of it to the parties.

(2) Notifying Parties: A copy of every such order shall be served upon the parties in such manner and form as the court directs. ~~Identical to Mass.R.Civ.P. 5(c)~~

(d) Filing generally Generally, and nonfiling Nonfiling of discovery materials
Discovery Materials.

(1) Required filings; Certificate of Service.

(A) Documents after the Complaint. Except as otherwise provided in Rule 5(d)(2), all ~~papers~~ documents after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time ~~thereafter. Such after service.~~

(i) When the filing is by a ~~party's~~ party's attorney, it shall constitute a representation by ~~him the attorney,~~ subject to the obligations of Rule 11, that a copy of the ~~paper~~ document has been or will be served upon each of the other parties as required by Rule 5(a).

(ii) No further proof of service is required unless an adverse party raises a question of notice. In such event,

(a) prima facie proof of service shall be made out by a statement signed by the person making service, or

(b) by a written acknowledgment signed by the party or attorney served; and ~~such~~

(c) the statement or acknowledgment shall be filed within a reasonable time after notice has been questioned. ~~Failure to make proof of service does not affect the validity of service.~~

~~(2)~~

(iii) Failure to make proof of service does not affect the validity of service.

(2) Nonfiling of Discovery Materials. Unless the court, generally or in a specific case, on motion ex parte by any party or concerned citizen, or on its own motion shall otherwise order, the following shall not be presented or accepted for filing:

(A) notices of taking depositions,

(B) transcripts of depositions,

(C) interrogatories under Rule 33,

(D) answers and objections to interrogatories under Rule 33,
(E) requests under Rule 34, and
(F) responses to requests under Rule 34.

(3) The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to court if needed or ~~so ordered~~. ~~Notwithstanding anything in this Rule 5(d)(2), any party pressing or opposing any motion or other application for relief may file any document pertinent thereto. Identical to Mass.R.Civ.P. 5(d)~~
if delivery to court is ordered.

(4) Notwithstanding anything in Rule 5(d)(2), any party supporting or opposing any motion or other application for relief may file any document pertinent to the support or opposition.

(e) Filing with the ~~court~~ defined
Court Defined.

The

(1) **Nonelectronic filing** of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk. **Conventional Method.** A document not filed electronically is filed by delivering it:

(A) to the register of the court, ~~except that; or~~

(B) to a judge ~~may permit~~ if the papers to be filed with him, in which event he judge agrees to accept it for filing. If the judge does agree to accept it for filing,

(i) the judge shall note ~~thereon~~ the filing date on the document and

(ii) forthwith transmit ~~them~~ the document to the office of the clerk. Identical to Mass.R.Civ.P. 5(e) register.

(2) **Electronic filing.** A document is filed when filed with the court's electronic filing system in accordance with Rule 4 of the Massachusetts Rules of Electronic Filing.

(f) Effect of ~~failure to file~~

Failure to File. Except as provided in Rule 15 of the Massachusetts Rules of Electronic Filing, if ~~if~~ any party fails within five (5) days after service to file any paper document required by this rule to be filed, the court on its own motion or the motion of any party may order the paper document to be filed forthwith; if the order be not obeyed, it may order the paper document to be regarded as stricken and its service to be of no effect. ~~Identical to Mass.R.Civ.P. 5(f)~~

(g) Information ~~required~~

Required. On any pleading or other paper document required or permitted by these rules to be filed with the court, there shall appear the name of the court and the county, the title of the action, the docket number, the designation of the nature of the pleading or paper document, and

the name and address of the person or attorney filing it. In any case where an endorsement for costs is required, the name of any attorney of this Commonwealth appearing on the complaint filed with the court shall constitute such an endorsement in absence of any words used in connection therewith showing a different purpose. ~~Identical to Mass.R.Civ.P. 5(g)~~

(h) Protection of Personal Identifying Information. Publicly accessible documents filed with the court shall conform to Supreme Judicial Court Rule 1:24, Protection of Personal Identifying Information in Publicly Accessible Court Documents.

Rule 6. Time

(a) Computation

Computing Time. The following rules apply in

~~In~~ computing any time period ~~of time prescribed or allowed by~~ specified in these rules, by order of the court, ~~or~~ by any applicable statute, standing order or other rule;

~~(1) exclude the day of the act, event, or default after which the designated period of time begins to run shall not be included. The~~ (1) exclude the day of the act, event, or default after which the designated period of time begins to run shall not be included. The that triggers the period;

(2) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(3) include the last day of the period so computed shall be included, unless it, but if the last day is a Saturday, a Sunday, or a legal holiday, in which event the period runs continues to run until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

(4) When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(5) As used in this rule and in Rule 77(b), "legal holiday" includes those days specified in Mass. G.L. c. 4, § 7- and any other day appointed as a holiday by the President or the Congress of the United States or designated by the laws of the Commonwealth. ~~Identical to Mass.R.Civ.P. 6(a)~~

(b) Enlargement of Time.

In General. ~~When by these rules or by a notice given thereunder or by order or rule of court an act is required may or allowed to must be done at or within a specified time, the court may, for good cause shown may at any time in its discretion, extend the time:~~

~~(1) with or without motion or notice order the period enlarged,~~

~~(A) if the court acts before the original time or its extension expires; or~~

~~(B) if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or original time or its extension expires;~~

~~(2) upon motion made after the expiration of the specified period permit the act to be done where time has expired if the failure party failed to act was the result because of excusable neglect; or~~

(3) The court may permit the act to be done by stipulation of the parties; ~~but it.~~

Exceptions. A court may not extend or shorten the time for taking any action under Rules ~~50(b), 52(b),~~ 59(b), (d), and (e) and 60(b), except to the extent and under the conditions stated in them. ~~Identical to Mass.R.Civ.P. 6(b)~~

(c) For ~~motions—affidavits—proposed orders~~
Motions-Affidavits-Proposed Orders.

A

(1) In General a written motion, other than one which may be heard ex parte without advance notice, and notice of the hearing ~~thereof of the motion~~ shall be served not later than seven (7) days before the time specified for the hearing; ~~unless a different period. If notice is fixed given by these~~ postal service or by ~~order of e-mail, three (3) days shall be added to the court. Such an~~ order seven (7) days.

(2) Exceptions are:

(A) when the motion may be ~~made on heard~~ ex parte ~~application (no~~ advance notice required);

(B) when these rules set a different time;

(C) when a court order sets a different time on an ex parte motion when an emergency justifies the same.
~~An application~~

(3) A request for ex parte relief from the seven (7) day notice requirement shall be

(A) made by motion and

(B) supported by an affidavit setting forth the nature of the emergency.

(4) On allowance of the motion, the court shall make a written finding that the emergency exists and setting forth the nature of the emergency.

(5) Supporting Affidavit. Whenever a motion is supported by a memorandum or affidavit, the memorandum or affidavit shall be served with the motion; ~~and except.~~

(6) Opposing Affidavit or Memorandum. ~~Except~~ as provided in Rule 59(c), any opposing memoranda or affidavits must be served not later than ~~one (14:00 p.m. two (2) business day days~~ before the hearing, unless the court permits them to be served at some other time.

(7) Proposed Order. Every motion shall be accompanied by a proposed order, which

(A) shall be served with the motion. ~~The proposed order and~~

(B) shall set forth in detailed itemized paragraphs the relief sought from the court.

(C) The proposed order should not be docketed or included in the permanent file if the order is not adopted by the court and may be destroyed after the hearing on the motion. ~~The service and content of all motions, affidavits, and supporting papers shall be subject to the sanctions~~

~~of Rule 11 of these rules.~~

(8) The service and the content of all motions, affidavits, and supporting papers shall be subject to the sanctions of Rule 11 of these rules.

(d) Additional ~~time after service by mail~~

Time After Mail or Electronic Service. Whenever a party has the right or is required to do some act ~~or take some proceedings~~ within a prescribed period after the service of a notice or other ~~papers~~document upon ~~him~~the party, and the notice or ~~paper~~document is served upon ~~him~~the party by mail, by e-mail, ~~pursuant to Rule 5(b)(1), or otherwise electronically, including through the Electronic Filing Service Provider pursuant to Rule 7(b) of the Massachusetts Rules of Electronic Filing, three (3) days shall be added to the prescribed period.~~
~~Identical to the Mass.R.Civ.P. 6(d)~~

III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed: Form of Motions

(a) Pleadings

. Only these pleadings are allowed:

~~There shall be~~

(1) a complaint~~and,~~

(2) an answer, (except as provided by law)~~an answer, and,~~

(3) a trustee's~~trustee's~~ answer under oath if trustee process is used;

(4) a reply to a counterclaim ~~denominated as such;~~a reply to a counterclaim;

(5) an answer to a cross-claim, if the answer contains a cross-claim;

(6) a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; ~~and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer. In the Land Court, answers in actions for registration, confirmation, or tax foreclosure shall conform to G.L. c. 185, § 41, and G.L. c. 60, § 68, where applicable.~~

(7) a third-party answer, if a third-party complaint is served.

(8) If the court orders one,

(A) a reply to an answer, or

(B) a third-party answer.

(b) Motions and ~~other papers~~Other Papers.

(1) ~~An application to the court~~ In General. A request for ~~an~~ a court order ~~shall~~ must be made by motion~~which,~~. The motion must:

(A) be made in writing, unless made during a hearing or trial, ~~shall be made in writing, shall~~

(B) state with particularity the grounds ~~therefor for the order requested~~, and ~~shall set forth~~
(C) state the relief or order sought.

(2) **Form.** The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other ~~papers~~documents provided for by these rules.

(c) **Demurrers, Pleas, Etc., Abolished.** ~~Demurrers,~~ pleas, ~~etc., abolished~~

~~Demurrers, pleas,~~ and exceptions for insufficiency of a pleading shall not be used.-

Rule 8. General Rules of Pleading

(a) **Claims for ~~relief~~**

Relief. A pleading which ~~sets forth~~states a claim for relief, ~~whether an original claim, counterclaim, cross-claim, or third-party claim shall~~ must contain:-

(1) a short and plain statement of the claim showing that the pleader is entitled to relief, and
(2) a demand for judgment for the relief ~~to sought~~ which ~~he deems himself entitled.~~ Relief may include relief in the alternative or of several different types ~~may be demanded.~~

~~Identical~~

(3) These requirements apply to ~~Mass.R.Civ.P. 8(~~

(A) an original claim,

(B) a)

counterclaim

(C) a cross-claim, or

(D) a third-party claim

(b) **~~Defenses: Form of denials~~**

Admissions and Denials

~~A party shall~~

(1) **In General.** In responding to a pleading a party must:

(A) state in short and plain terms his defenses to ~~sue~~each claim asserted, and ~~shall~~

(B) admit or deny each allegation asserted by the ~~averments upon which the adverse opposing~~ party ~~relies.~~

(C) If ~~he~~the party is without knowledge or information sufficient to form a belief as to the truth of an ~~avermnt, he~~allegation, the party shall so state and this has the effect of a denial ~~of the~~ allegation.

(2) Denials~~shall~~. A denial must fairly meet the substance of the ~~averments~~allegation denied.

(A) When a pleader intends in good faith to deny only a part or a qualification of an ~~averment~~, ~~he~~allegation, the pleader:

- (i) shall specify so much of ~~it~~the allegation as is true ~~and material~~, and
- (ii) shall deny only the remainder ~~of the allegation~~.

(B) Unless the pleader intends in good faith to ~~controvert~~deny all the ~~averments~~allegations of the preceding pleading, ~~he~~

(i) the pleader may make his denials as specific denials of designated ~~averments~~allegations or paragraphs, or ~~he~~

(ii) the pleader may generally deny all the ~~averments~~allegations except such designated ~~averments~~allegations or paragraphs as ~~he~~the pleader expressly admits; but,

(C) when ~~he~~the pleader does ~~so~~ intend to ~~controvert~~deny all ~~its averments~~, ~~he~~the allegations, the pleader may do so by a general denial subject to the obligations set forth in Rule 11.

(3) Signatures. The signature to an instrument ~~set forth~~ in any pleading shall be taken as admitted as genuine unless a party specifically denies its genuineness. ~~An allegation in any pleading that a~~
~~place~~the signature ~~is a public way shall be taken as admitted unless a party specifically denies~~
~~such allegation. Identical to Mass.R.Civ.P. 8(b)~~
genuine.

(c)-Affirmative defenses

(c) Defenses. In pleading to a preceding pleading, a party ~~shall set forth~~must affirmatively state any avoidance or affirmative defenses, including:

- (1) accord and satisfaction,
- (2) arbitration and award,
- (3) assumption of risk, ~~contributory negligence~~,
- (4) discharge in bankruptcy,
- (5) duress,
- (6) estoppel,
- (7) failure of consideration,
- (8) fraud,
- (9) illegality, ~~injury by fellow servant~~,
- (10) laches, ~~license~~,
- (11) payment,
- (12) release,

- (13) res judicata,
- (14) statute of frauds, ~~statute of limitations,~~
- (15) waiver, and
- (16) any other matter constituting an avoidance or affirmative defense.

When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

~~Identical to Mass.R.Civ.P. 8(e)~~

(d) Effect of Failure to Deny ~~[Deleted]~~
1.
~~[Deleted]~~

(e) Pleading to be ~~concise~~ Concise and direct; ~~consistency~~ Direct; Consistency

(1) ~~Each~~ averment of a pleading shall be simple, concise, and direct.

No technical forms of pleading or motions are required.

(2) ~~A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either~~

- (A) in one count or defense or
- (B) in separate counts or defenses.

(3) When two or more statements are made in the alternative and one of them, if made independently, would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. ~~A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds. All statements shall be made subject to the obligations set forth in Rule 11. Identical to Mass.R.Civ.P. 8(e)~~

(4) A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or equitable grounds.

All statements shall be made subject to the obligations set forth in Rule 11.

(f) **Construction of pleadings**

Pleadings. All pleadings shall be so construed as to do substantial justice. ~~Identical to Mass.R.Civ.P. 8(f)~~

Rule 9. Pleading Special Matters

(a) Capacity

~~It is not necessary~~ or Authority ~~to aver~~ Sue; Legal Existence.

(1) In General. Except when required to show that the court has jurisdiction, a pleading does not need to allege:

(A) a party's capacity ~~of a party~~ to sue or be sued, ~~or the~~
(B) a party's authority ~~of a party~~ to sue or be sued in a representative capacity, or
(C) the legal existence of an organized association of persons that is made a party. ~~When a party desires to~~

(2) Raising those issues. To raise ~~an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall~~ of those issues, a party must do so by a specific negative averment denial, which ~~shall~~must include ~~such~~the supporting ~~particulars as~~ facts that are peculiarly within the ~~pleader's~~party's knowledge.

(b) Fraud, Mistake, Duress, Undue Influence, Condition of the Mind.

(1) In alleging

(A) fraud,
(B) mistake,
(C) duress, or
(D) undue influence, ~~condition of the mind~~

~~In all averments of fraud, mistake, duress or undue influence,~~
the circumstances constituting fraud, mistake, duress or undue influence ~~shall~~must be stated with particularity. ~~Malice,~~

(2) Allegations of

(A) malice,
(B) intent,
(C) knowledge, and
(D) other condition of mind of a person may be ~~averred~~alleged generally.

(c) Conditions ~~precedent~~ Precedent.

(1) In pleading the performance or occurrence of conditions precedent, it is sufficient to ~~aver~~allege generally that all conditions precedent have been performed or have occurred.

(2) A denial of performance or occurrence ~~shall~~must be made specifically and with particularity.

~~(d)~~

Official ~~document~~Document or ~~act~~

(d) ~~-Act.~~ In pleading an official document or official act it is sufficient to ~~aver~~allege that the document was issued or the act done in compliance with law.

(e) Judgment

. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to ~~aver~~allege the judgment or decision without setting forth matter showing jurisdiction to render it.-

(f) Time and ~~place~~

Place. For the purpose of testing the sufficiency of a pleading, ~~averm~~entsallegations of time and place are ~~material~~essential and shall be considered like all other averments of ~~material~~essential matter.

(g) Special ~~damage~~

Damage. When items of special damage are claimed, they shall be specifically stated.-

Rule 10. Form of Pleadings

(a) Caption; ~~names~~Names of ~~parties~~

Parties. Every pleading shall contain:

(1) a caption setting forth:

(A) the name of the court,

(B) the county,

(C) the title of the action,

(D) the docket number, and ~~a designation~~

(E) the type of pleading as set out in Rule 7(a)-.

(2) In the complaint the title of the action shall include the names of all the parties, but in other

pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties: (such as “et al.”).

(b) Paragraphs; ~~separate statements~~Separate Statements.

~~All averments~~(1) Each statement of claim or defense ~~shall~~must be made in a numbered ~~paragraphs; paragraph,~~

(2) the contents of each ~~of which~~numbered paragraph shall be limited as far as practicable to a statement of a single set of circumstances; and

(3) a paragraph may be referred to by number in all succeeding pleadings. ~~Each~~

(4) Whenever a separation would facilitate the clear presentation of the matters set forth,

(A) each claim founded upon a separate transaction or occurrence ~~and~~shall be stated in a separate count or defense, and

(B) each defense other than denials shall be stated in a separate count or defense ~~whenever a separation facilitates the clear presentation of the matters set forth.~~

(c) Adoption by ~~reference; exhibits~~Reference; Exhibits.

(1) Statements in a pleading may be adopted by reference:

(A) in a different part of the same pleading, or

(B) in another pleading, or

(C) in any motion.

(2) A copy of any written instrument which ~~is~~has been accepted for filing as an exhibit to a pleading is a part ~~thereof~~of the pleading for all purposes.

(d) Parties' ~~residence~~Residence or ~~place~~Place of ~~business~~

~~The~~**Business.** Except as otherwise provided by statute or by Trial Court Rule VIII: Uniform Rules on Impoundment Procedure, the complaint, and any subsequent pleading stating a claim against a person who was not originally a party to the action,

(1) shall state the respective residences or usual places of business:

(A) of the party stating a claim, and

(B) of each person against whom a claim is stated, if known to the pleader; ~~if,~~

(2) If the addresses are unknown, the complaint or pleading ~~shall so~~must state ~~that they are~~unknown.

(e) ~~Two-sided documents~~

Sided Documents. The text of any document may appear on both sides of the page.

(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; Signatures

(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

(A) who is admitted to practice in this Commonwealth-

(B) in the attorney's name.

(C) The

(i) address ~~of each attorney,~~

(ii) telephone number, and

(iii) business e-mail address ~~if any~~

of each attorney shall be stated. ~~A party~~

(D) Parties who ~~is~~are not represented by an attorney shall sign ~~his~~their pleadings and state ~~his~~their

(i) address,

(ii) telephone number, and

(iii) e-mail address if any.

(E) The personal pronouns of the attorney or self-represented party may be included.

(F) Except when otherwise specifically provided by rule or statute, pleadings need not be

(i) verified or

(ii) accompanied by an affidavit.

(G) The signature of ~~an~~any attorney to a pleading constitutes a certificate ~~by him~~

(i) that ~~he~~the attorney has read the pleading;

(ii) that to the best of ~~his~~the attorney's knowledge, information, and belief there is a good ground to support it; and

(iii) that it is not interposed for delay.

(H) If a pleading

- (i) is not signed, or
- (ii) is signed with intent to defeat the purpose of this Rule,
- (iii) it may be stricken and
- (iv) the action may proceed as though the pleading had not been filed.

(I) For a ~~wilful~~willful violation of this rule an attorney may be subjected to appropriate disciplinary action.

(J) Similar action may be taken if scandalous or indecent matter is inserted.

(2) Verification and Affidavits Generally. When

(A) a pleading is required to be verified, or

(B) an affidavit is

(i) required to be filed or

(ii) permitted to be filed,

(C) the pleading may be verified or

(D) the affidavit made

(i) by the party, or

(ii) by a person having knowledge of the facts for and on behalf of such party.

(3) Electronic Signatures.

(A) Pleadings Generally.

(i) An attorney representing a party may electronically sign a pleading by inserting

(a) a scan of the attorney's handwritten signature,

(b) an image intended to substitute for the signature, or

(c) a "/s/ name of signatory" block.

(ii) A self-represented party may electronically sign a pleading in the same manner.

(iii) Verified

(a) pleadings,

(b) affidavits, and

(c) other documents

required to be signed

(d) under oath or

(e) under the penalties of perjury

are governed by Rule 11(a)(3)(C) and Rule 11(a)(3)(D).

(B) Attorney Not Representing a Party. An attorney providing assistance to a self represented party through a legal aid program

(i) may affix such party's signature electronically to a pleading,

(ii) provided that such party

(a) has reviewed the pleading and

(b) has approved the pleading and

(c) has given express

(i) written or

(ii) oral

authorization for the attorney to sign such pleading on the party's behalf.

(iii) The attorney shall

(a) retain such express written authorization, or

(b) contemporaneously make and retain a record of such oral authorization.

(C) Verified Pleadings; Affidavits of Parties.

Unless otherwise provided by law or ordered by the court, a signature of a party verifying a pleading, making an affidavit, or signing a document required by these rules to be signed under oath or under the penalties of perjury may be affixed electronically to any of those pleadings, affidavits or documents by that party, or, if the party expressly so authorizes in writing, by the party's attorney, as follows:

(i) The signature shall be affixed in the manner set forth in Rule 11(a)(3)(A).

(ii) Any party who affixes the party's own electronic signature to such a document shall, as early as practicable, hand-sign the original or a copy of the document.

If the party is self-represented, the party shall retain the hand-signed document, or a copy of the hand-signed document, until the conclusion of the case.

If the party is represented, the party's attorney shall obtain the hand-signed document, or a copy of the hand-signed document, from the party and retain it until the conclusion of the case.

(iii) An attorney who affixes a party's electronic signature to such a document

(a) shall state thereon, "signed w/ approval";

(b) shall sign the attorney's name;

(c) shall state the attorney's name and Board of Bar Overseers number;

(d) shall retain the party's written authorization for such attorney to affix the party's signature;

(e) shall obtain, as early as practicable, the party's handwritten signature on the document; and

(f) shall retain the party's hand-signed document, or a copy of the hand-signed document, until

the conclusion of the case.

(iv) The hand-signed document or a copy of the hand-signed document, whether retained by the attorney or the self-represented party, shall be produced upon request of any other party or upon court order.

(D) Affidavits of Attorneys.

(i) An attorney representing a party may electronically sign an affidavit by inserting

(a) a scan of the handwritten signature,

(b) an image intended to substitute for the signature, or

(c) a “/s/ name of signatory” block, and

(ii) by stating the attorney’s name and Board of Bar Overseers number.

(b) Appearances

(1) The filing of any

(A) pleading,

(B) motion, or

(C) other ~~paper~~-document

shall constitute an appearance by the

(D) attorney or

(E) self-represented party

who signs it, unless the paper states otherwise.

(2) An appearance in a case may be made by filing a notice of appearance, containing the ~~name, address, and telephone number of the attorney or person filing the notice.~~

(A) name,

(B) address and

(C) telephone number of the

attorney or self-represented party filing the notice.

(D) The business e-mail address of each attorney filing a notice of appearance and

(E) the e-mail address, if any, of each self represented party filing a notice of appearance shall also be included.

(3) No appearance shall, of itself, constitute a general appearance.

(c) Withdrawals

. An attorney may, without leave of court, withdraw from a case by filing

(A) written notice of withdrawal, together with

(B) proof of service on ~~his~~the attorney's client and all other parties, provided that

(1) such notice is accompanied by the appearance of successor counsel;

(2) no motions are then pending before the court; and

(3) no trial date has been set.

Under all other circumstances, leave of court, on motion and notice, must be obtained.

(d) Change of appearance. In the event

~~In the event~~(1) an attorney who has ~~heretofore~~previously appeared, ceases to act, or

(2) a substitute attorney appears or

(3) an additional attorney appears, or

(4) a party ~~heretofore~~who was represented by an attorney appears without an attorney, or

(5) an attorney appears representing a ~~heretofore unrepresented~~ party who until then was self-represented, or

(6) a ~~heretofore stated~~previously filed address ~~or~~, telephone number or e-mail address is changed,

the party concerned or the attorney concerned shall notify the court and every other party ~~(or his~~the attorney, ~~if the~~ for every other party who is represented) in writing, and the ~~clerk~~Register of Probate shall enter such

(A) cessation,

(B) appearance, or

(C) change

on the docket forthwith.

Until such notification, the court, parties, and attorneys may rely on action by, and notice to,

(i) any attorney previously appearing ~~(or~~

(ii) any party ~~heretofore unrepresented)~~, until then self-represented,

and on notice, at an address previously entered.

~~(e) Verification generally~~

~~When a pleading is required to be verified, or when an affidavit is required or permitted to be filed, the pleading may be verified or the affidavit made by the party, or by a person having knowledge of the facts for and on behalf of such party.~~

Rule 12. Defenses and Objections—When and How Presented—By by Pleading or Motion

**(a) When
presented
Presented**

(1) After service upon ~~him~~ a party of any pleading requiring a responsive pleading, ~~that~~ a party shall serve such responsive pleading within twenty (20) days unless otherwise directed by order of the court.

(2) The service of a motion permitted under this rule alters this period of time as follows, unless a different time is fixed by order of the court: ~~(i) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (ii) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement. Identical to Mass.R.Civ.P. 12(a)~~

(i) if the court:

(a) denies the motion or

(b) postpones its disposition until the trial on the merits,

the responsive pleading shall be served within ten (10) days after notice of the court's action;

(ii) if the court grants a motion for a more definite statement,

the responsive pleading shall be served within ten (10) days after the service of the more definite statement.

**(b) How
presented
Presented.**

General Rule: Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, ~~except that the following defenses may at the option of the pleader be made by motion:~~

:

Exception: The following defenses may, at the option of the pleader, be made by motion:

(1) ~~Lack of jurisdiction over the subject matter;~~

(2) ~~Lack of jurisdiction over the person;~~

(3) ~~Improper venue;~~

- (4) ~~Insufficiency of process;~~
- (5) ~~Insufficiency of service of process;~~
- (6) ~~Failure to state a claim upon which relief can be granted;~~
- (7) ~~Failure to join a party under Rule 19;~~
- (8) ~~Misnomer of~~ (failure to properly name) a party;
- (9) ~~Pendency of a prior action in a court of the Commonwealth.~~

A motion making any of these defenses shall be made before pleading if a further pleading is permitted.

No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.

If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, ~~the~~ the adverse party may assert at the trial any defense in law or fact to that claim for relief.

A motion, answer, or reply presenting the defense numbered (6) shall include a short, concise statement of the grounds on which such defense is based.

Except in actions for:

- (A) divorce,
- (B) custody,
- (C) visitation, or
- (D) criminal contempt,

but including motions to dismiss brought by defendants in actions for grandparent visitation brought under G.L. c. 4119, § 39D,

if, on any motion asserting the defense numbered (6), to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court,

(E) the motion shall be treated as one for summary judgment and disposed of as provided in ~~Rule 56~~, and

(F) all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by ~~Rule 56.~~ Rule 56. ~~A motion, answer, or reply presenting the defense~~

~~numbered (6) shall include a short, concise statement of the grounds on which such defense is based. Identical to Mass.R.Civ.P. 12(b)~~

(c) Motion for Judgment on the Pleadings [Deleted]

].

[Deleted]

(d) Preliminary ~~hearings~~

Hearings. The defenses specifically enumerated (1)-(9) in subdivision (b) of this rule, whether made in a pleading or by motion shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for ~~more definite statement~~

More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, ~~he~~

(1) the party may move for a more definite statement before ~~interposing his~~ filing and serving a responsive pleading.

(2) The motion shall point out the defects complained of and the details desired.

If the motion is granted and the order of the court is not obeyed within ten (10) days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just. ~~Identical to Mass.R.Civ.P. 12(e)~~

(f) Motion to ~~strike~~

Strike.

(1) Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules,

(2) upon motion made by a party within twenty (20) days after the service of the pleading upon ~~him~~ that party or

(3) upon the court's own initiative at any time,

the court may after hearing order stricken from any pleading any insufficient defense, or any

redundant, immaterial, impertinent, or scandalous matter. ~~Identical to Mass.R.Civ.P. 12(f)~~

(g) Consolidation of ~~defenses~~ Defenses in ~~motion~~

Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to ~~him~~ that party.

If a party makes a motion under this rule but omits therefrom any defense or objection then available to ~~him~~ that party which this rule permits to be raised by motion, ~~he~~ that party shall not thereafter make a motion based on the defense or objection so omitted.

(h) Waiver or ~~preservation~~ Preservation of ~~certain defenses~~ Certain Defenses.

(1) A defense of

- (i) lack of jurisdiction over the person,
- (ii) improper venue,
- (iii) insufficiency of process,
- (iv) insufficiency of service of process,
- (v) misnomer of a party, or
- (vi) pendency of a prior action

is waived ~~;~~:

(A) if omitted from a motion in the circumstances described in subdivision (g), or

(B) if it is neither

- (i) made by motion under this rule nor
- (ii) included in a responsive pleading or an amendment thereof permitted by ~~Rule~~ 15(a) ~~to be made as a matter of course.~~

(2) ~~[Deleted]~~
~~].~~

(3) Whenever it appears by suggestion of a party or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Rule 13. Counterclaim and Cross-Complaint

(a) Compulsory ~~counterclaims~~ Counterclaims. A pleading shall state as a counterclaim any claim for relief, other than contempt, the court has power to give that could have been brought as an original action under these rules which, at the time of serving the pleading, the pleader has against any opposing party, if

~~A pleading shall state as a counterclaim any claim for relief the court has power to give which at the time of serving the pleading the pleader has against any opposing party, if (i) it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and~~

~~(ii) it does not either require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction or and~~

~~(iii) it does not constitute an action required by law to be brought in a county other than the county in which the court is sitting. But the~~

The pleader need not state the claim if

(1) at the time the action was commenced the claim was the subject of another pending action or

(2) the opposing party brought suit upon ~~his~~the party's claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and ~~the pleader is not stating any counterclaim under this Rule 13.~~

(3) the pleader is not stating any counterclaim under this Rule 13.

(b) Permissive ~~counterclaims~~

Counterclaims. A pleading may state as a counterclaim any claim that could have been brought as an original action under these rules against an opposing party. ~~Identical to Mass.R.Civ.P. 13(b)~~
, but no counterclaim may be filed for contempt.

(c) Counterclaim ~~exceeding opposing claim~~

Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party. ~~Identical to Mass.R.Civ.P. 13(e)~~

(d) Counterclaim ~~against~~Against the Commonwealth

. [Deleted]

~~These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the Commonwealth of Massachusetts or a political subdivision thereof, or any of their officers and agencies. Identical to Mass.R.Civ.P. 13(d)~~

(e) Counterclaim ~~maturing or acquired after pleading~~

Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after ~~serving his~~the pleader's pleading was served may, with the permission of the court, be presented as a counterclaim by supplemental pleading, but not a counterclaim for contempt.

~~Identical to Mass.R.Civ.P. 13(e)~~

(f) Omitted ~~counterclaim~~

Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, ~~he~~the pleader may by leave of court set up the counterclaim by amendment. ~~Identical to Mass.R.Civ.P. 13(f)~~
, but not a counterclaim for contempt.

(g) Cross-~~claim against co-party~~

Claim Against Co-Party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant. ~~Identical to Mass.R.Civ.P. 13(g)~~

(h) Joinder of ~~additional parties~~

Additional Parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of ~~Rules 19 and 20.~~ ~~Identical to Mass.R.Civ.P. 13(h)~~
Rule 19.

(i) Separate ~~trials; separate judgments~~

Trials; Separate Judgments. If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) ~~when the court has jurisdiction so to do~~, even if the claims of the opposing party have been dismissed or otherwise disposed of. ~~Identical to Mass.R.Civ.P. 13(i)~~

(j) Cross-~~complaint~~

Complaint. In a contested action for divorce if the defendant, upon payment of the proper entry fee and at any time prior to the conclusion of the hearing, shall cause to be entered ~~his or her~~a cross-complaint for divorce, the court shall allow the entry of said cross-complaint after giving

of such notice or service to the new defendant as the court, in its discretion, shall order.

Rule 14. Third-Party Practice ~~[Deleted]~~

~~[Deleted]~~

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and third-party complaint to be served upon a person who is or may be liable to the defending party for all or part of the plaintiff's claim against the defending party provided that the third-party complaint could have been brought as an original action under these rules.

(1) The third-party plaintiff does not need to obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than twenty (20) days after the third-party plaintiff, as the defendant, serves the defendant's original answer.

(2) Otherwise the defending party must obtain leave on motion upon notice to all parties to the action.

(3) The person served with the summons and third-party complaint, hereinafter called the third-party defendant,

(A) shall make the third-party defendant's defenses to the third-party plaintiff's claim as provided in Rule 12, and

(B) shall make any

(i) counterclaims against the third-party plaintiff and

(ii) cross-claims against other third-party defendants as provided in Rule 13.

(4) The third-party defendant may assert against the plaintiff

(A) any defenses which the third-party plaintiff has to the plaintiff's claim, and

(B) any claim that could have been brought as an original action under these rules against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(C) The plaintiff thereupon shall assert any defenses as provided in Rule 12 and any counterclaims as provided in Rule 13. The plaintiff may assert any claim that could have been brought as an original action under these rules against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule with any claim that could have been brought as an original action under these rules against any person who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which

under this rule would entitle a defendant to do so.

Rule 15. Amended and Supplemental Pleadings

(a) Amendments

. A party may amend ~~his~~the party's pleading once

(1) as a matter of course at any time before a responsive pleading is served and prior to entry of an order of dismissal or,

(2) if the pleading is one to which no responsive pleading is permitted and the action has not been ~~placed upon the scheduled for a pre-trial calendar, he~~conference or trial, the party may so amend it at any time within twenty (20) days after it is served.

Otherwise a party may amend ~~his~~the party's pleading only

(1) by leave of court or

(2) by written consent of the adverse party;

and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments to ~~conform~~Conform to the ~~evidence~~

Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be ~~subservd thereby~~promoted by the amendment and the objecting party fails to satisfy the court that the admission of such evidence would prejudice ~~him~~the objecting party in maintaining ~~his~~the objecting party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation ~~back~~Back of ~~amendments~~

Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment (including an amendment changing a party) relates back to the original pleading.-

(d) Supplemental pleadings

Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit ~~him~~that party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading it shall so order, specifying the time therefor.

Rule 16. ~~Pretrial~~Pre-Trial Procedure: Formulating Issues

In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for ~~a conference~~one or more conferences to consider:

- (1) The simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of:
 - (A) obtaining admissions of fact, ~~and of~~
 - (B) documents which will avoid unnecessary proof;
- (4) The limitation of the number of witnesses or of expert witnesses;
- (5) The timing and extent of discovery;
- (6) The preservation and discovery of electronically stored information;
- (7) Agreements or proceedings for:
 - (A) asserting claims of privilege, or
 - (B) for protection as trial preparation material of information that is to be produced;
- (8) The advisability of a preliminary reference of issues to a master;
- (9) The possibility of settlement; and
- ~~1. Agreement as to damages; and~~
- (10) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites:

- (11) the action taken at the conference,
- (12) the amendments allowed to the pleadings, and
- (13) the agreements made by the parties;
 - (A) as to any of the matters considered, and

(B) which ~~limits~~limit the issues for trial to those not disposed of by admissions or agreements of counsel;~~and such.~~

Such order, when entered, controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

IV. PARTIES

Rule 17. Parties Plaintiff and Defendant: Capacity

(a) Real ~~party~~Party in ~~interest~~Interest.

~~Except for any action brought under General Laws, chapter 152, section 15, every~~(1) Every action shall be prosecuted in the name of the real party in interest.~~An executor, administrator,~~

(2) The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) A personal representative,

(B) a guardian,

(C) a conservator,

(D) a bailee,

(E) a trustee of an express trust,

(F) a party with whom or in whose name a contract has been made for the benefit of another, or

(G) a party authorized by statute~~may sue in his own name without joining with him the party for whose benefit the action is brought; and when.~~

(3) When a statute so provides, an action for the use or benefit of another shall be brought in the name of the Commonwealth.~~An insurer who has paid all or part of a loss may sue in the name of the assured to whose rights it is subrogated.~~

(4) No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until

(A) a reasonable time has been allowed after objection for

(i) ratification of commencement of the action by the real party in interest, or

(ii) joinder of the real party in interest, or

(iii) substitution of, the real party in interest;~~and such.~~

(B) Such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.~~Identical to Mass.R.Civ.P. 17(a)~~

**(b) ~~Infants~~ Minors or ~~incompetent persons~~
Protected Persons or Incapacitated Persons.**

(1) Whenever ~~an infant~~ a minor, or ~~incompetent~~ protected person, or an incapacitated person as defined in G.L. c.190B has a representative, such as a guardian, a conservator, or ~~other~~ another like fiduciary,

(A) the representative may sue or defend on behalf of the ~~infant~~ minor or ~~incompetent~~ protected person, or ~~an~~ incapacitated person as defined in G.L. c.190B.

(2) If ~~an infant or incompetent person~~ a minor or a protected person, or an incapacitated person as defined in G.L. c.190B does not have a duly appointed representative, ~~he~~

(A) ~~the person~~ may sue by ~~his~~ the person's next friend, or by a guardian ad litem.

(B) The court may appoint a guardian ad litem for ~~an infant~~ a minor or ~~incompetent~~ protected person, or an incapacitated person as defined in G.L. c.190B not otherwise represented in an action, or

(C) ~~the court~~ may make such other order as it deems proper for the protection of the ~~infant or incompetent person~~ minor or ~~an~~ protected person, or incapacitated person as defined in G.L. c.190B.

Rule 18. Joinder of Claims and Remedies [Deleted]

~~[Deleted]~~

Rule 19. Joinder of Persons Needed for Just Adjudication

~~(a)~~ Persons to be joined Joined if feasible

(a) Feasible. A person who is subject to service of process shall be joined as a party in the action if

(1) in ~~his~~ the person's absence complete relief cannot be accorded among those already parties, or

(2) ~~he~~ the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in ~~his~~ the person's absence may

(i) as a practical matter impair or impede ~~his~~ the person's ability to protect that interest or

(ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of ~~his~~ the person's ~~claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant. Identical to Mass.R.Civ.P. 19(a)~~ the person's claimed interest.

~~(b)~~ (3) If the person has not been so joined, the court shall order that the person be made a party.

(4) If the person should join as a plaintiff but refuses to do so, the person may be made a defendant.

Determination by ~~court whenever joinder not feasible~~

(b) Court Whenever Joinder Not Feasible. If a person as described in subdivision

(a)(1)~~-(1)~~–(2) hereof cannot be made a party,

(1) the court shall determine whether in equity and good conscience the action should

(A) proceed among the parties before it, or

(B) should be dismissed, the absent person being thus regarded as indispensable.

(2) The factors to be considered by the court include:

(A) first, to what extent a judgment rendered in the person's absence might be prejudicial to ~~him~~the absent person or those already parties;

(B) second, the extent to which,

(i) by protective provisions in the judgment,

(ii) by the shaping of relief, or

(iii) ~~by~~ other measures,

the prejudice can be lessened or avoided;

(C) third, whether a judgment rendered in the person's absence will be adequate;

(D) fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. ~~Identical to Mass.R.Civ.P. 19(b)~~

(c) Pleading ~~reasons~~Reasons for ~~nonjoinder~~

Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)~~-(1)~~–(2) hereof who are not joined, and the reasons why they are not joined. ~~Identical to Mass.R.Civ.P. 19(e)~~

(d) Exception of Class Actions [Deleted]

Rule 20. Permissive Joinder of Parties ~~[Deleted]~~

~~[Deleted]~~

(a) Permissive Joinder.

(1) All persons may join in one action as plaintiffs if they assert any right to relief

(A) jointly,

(B) severally, or in the alternative,

(C) in respect of or arising out of the same

(i) transaction,

(ii) occurrence, or

(iii) series of transactions or occurrences, and

(D) if any question of law or fact common to all these persons will arise in the action.

(2) All persons may be joined in one action as defendants if there is asserted against them

(A) jointly,

(B) severally, or in the alternative,

(C) any right to relief in respect of or arising out of the same

(i) transaction,

(ii) occurrence, or

(iii) series of transactions or occurrences, and

(D) if any question of law or fact common to all defendants will arise in the action.

(3) A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded.

(4) Judgment may be given

(A) for one or more of the plaintiffs according to their respective rights to relief, and

(B) against one or more of the defendants according to their respective liabilities, and

(C) the court may

(i) issue one or more executions and

(ii) make such order relative to costs as may be necessary and proper.

(5) In any action in which persons not asserting any right to recover jointly join as plaintiffs, the entry fee shall be an amount equal to the aggregate of the entry fees which would have been required had separate actions been brought.

(b) Separate Trials. The court may:

(1) make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of another party against whom the first party asserts no claim and who asserts no claim against the first party,

and may

(2) order separate trials, or

(3) make other orders to prevent delay or prejudice.

Rule 21. Misjoinder and Non-Joinder of Parties ~~[Deleted]~~ _____

~~[Deleted]~~

(1) Misjoinder of parties is not ground for dismissal of an action.

(2) Parties may be dropped or added by order of the court

(A) on motion of any party or

(B) of its own initiative, after hearing, at any stage of the action and on such terms as are just.

(3) Any claim against a party may be severed and proceeded with separately.

Rule 22. Interpleader [Deleted]

~~[Deleted]~~

Rule 23. Class ~~Action~~ Actions [Deleted]

~~[Deleted]~~

Rule 23.1. Derivative Actions by Shareholders [Deleted]

~~[Deleted]~~

Rule 23.2. Actions Relating to Unincorporated Associations [Deleted]

~~[Deleted]~~

Rule 24. Intervention

~~(a)~~ Intervention of right

(a) Right. Upon timely ~~application~~motion anyone shall be permitted to intervene in an action:

- (1) when a statute of the Commonwealth ~~confers~~gives an unconditional right to intervene or
- (2) when the ~~applicant~~moving party claims an interest relating to the property or transaction which is the subject of the action and ~~he~~the moving party is so situated that the disposition of the action may as a practical matter impair or impede ~~his~~the moving party's ability to protect that interest, unless the ~~applicant's~~moving party's interest is adequately represented by existing parties.

~~(b)~~ Permissive intervention

(b) Intervention. Upon timely ~~application~~motion anyone may be permitted to intervene in an action:

- (1) when a statute of the Commonwealth confers a conditional right to intervene; or
- (2) when ~~an applicant's~~a moving party's claim or defense and the main action have a question of law or fact in common.
- (3) When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely ~~application~~motion may be permitted to intervene in the action.

In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. .

(c) Procedure

. A person desiring to intervene shall:

- (1) serve a motion to intervene upon the parties as provided in ~~in~~ Rule 5.
- (2) The motion shall
 - (A) state the grounds ~~therefor~~for the motion and ~~shall~~
 - (B) be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

(d) Intervention by the Attorney General

. When the constitutionality of an act of the legislature or the constitutionality or validity of an ordinance of any city or the by-law of any town is drawn in question in any action to which the Commonwealth or an officer, agency, or employee thereof is not a party, the party asserting the unconstitutionality of the act or the unconstitutionality or invalidity of the ordinance or by-law shall notify the attorney general within sufficient time to afford ~~him~~the attorney general an opportunity to intervene.

Rule 25. Substitution of Parties

(a) ~~Deleted~~

~~[Deleted]~~Death

~~(b) Incompetency~~(1) If a party dies and the claim is not extinguished by the death, the court may order substitution of the proper parties.

(A) The motion for substitution may be made

(i) by any party or

(ii) by the representative of the deceased party.

(B) The motion, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons.

(i) Unless the motion for substitution is made within one year after the date of approval of the bond of the representative of the deceased party, the action shall, upon notice and hearing, be dismissed,

(ii) unless the failure of the surviving party to move for substitution was the result of excusable neglect.

(C) If the court finds that the representative of the deceased party has failed within a reasonable period of time after the date of the approval of the representative's bond to notify in writing the surviving party of the decedent's death and to file a suggestion of death upon the record it shall find excusable neglect for purposes of this rule and Rule 6(b).

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants,

(A) the action does not abate.

(B) The death shall be suggested upon the record and the action shall proceed in favor of or

against the surviving parties.

(b) Incapacity

. If a party becomes ~~incompetent or~~ incapacitated as defined in G.L. c.190B, the court upon motion served, may allow the action to be continued by or against ~~his~~the party's representative.

(c) Deleted

Transfer of Interest [Deleted]

(d) Deleted

Public Officers; Death or Separation From Office. [Deleted]

V. DEPOSITIONS AND DISCOVERY

Rule 26. General Provisions Governing ~~Discovery~~Discovery

(a) Discovery methods

. Parties may obtain discovery by one or more of the following methods except as otherwise provided in Rule 30~~(a) and Rule 30A(a), (b)~~:

- (1) depositions upon oral examination or written questions;
- (2) written interrogatories;
- (3) production of documents or things ~~or~~;
- (4) permission to enter upon land or other property, for inspection and other purposes;
- (5) physical and mental examinations; and
- (6) requests for admission.

Unless the court orders otherwise, or unless otherwise provided in these rules, the frequency of use of these methods is not limited. ~~Identical to Mass.R.Civ.P. 26(a) (as amended January 1, 1981).~~

(b) Scope of discovery

. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) ~~In General~~general. Parties may obtain discovery regarding any matter,

(A) not privileged,

(B) which is relevant to the subject matter involved in the pending action, whether it relates

(i) to the claim or defense of the party seeking discovery or

(ii) to the claim or defense of any other party, including the

(a) existence,

(b) description,

(c) nature,

(d) custody,

(e) condition and

(f) location of any

(i) books,

(ii) documents, or

(iii) other tangible things and ~~the~~

(g) identity and location of persons having knowledge of any discoverable matter.

(C) Objections. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Insurance agreements. A party may obtain discovery of the existence and contents of any ~~insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.~~

insurance agreement under which any person carrying on an insurance business may be liable

(A) to satisfy part or all of a judgment which may be entered in the action or

(B) to indemnify or reimburse for payments made to satisfy the judgment.

Information concerning the insurance agreement is not, by reason of disclosure, admissible in evidence at trial.

For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial preparation: Materials. Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared

(A) in anticipation of litigation or for trial

(i) by or for another party or

(ii) by or for that other party's representative ~~-,~~ including ~~his~~ that other party's

(a) attorney,
(b) consultant,
(c) surety,
(d) indemnitor,
(e) insurer, or
(f) agent)

only upon a showing that the party seeking discovery

(B) has substantial need of the materials in the preparation of ~~his~~the party's case and ~~that he~~
(C) is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of

(D) the mental impressions,
(E) conclusions,
(F) opinions, or
(G) legal theories

of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party.

Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person.

If the request is refused, the person may move for a court order.

The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

For purposes of this paragraph, a statement previously made is

(H) a written statement signed or otherwise adopted or approved by the person making it, or
(I) a stenographic, mechanical, electrical, or other recording, or a transcription ~~thereof~~of such a recording, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or

developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) **Interrogatories.**

(i) A party may, through interrogatories, require any other party
(a) to identify each person whom the other party expects to call as an expert witness at trial,
(b) to state the subject matter on which the expert is expected to testify, and
(c) to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this rule, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in **Rule 35(b)** or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result,

(i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this rule; and

(ii) with respect to discovery

(a) obtained under subdivision (b)(4)(A)(ii) of this rule the court may require, and ~~with respect to discovery~~

(b) obtained under subdivision (b)(4)(B) of this rule the court shall require,

the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Claims of privilege or protection of trial preparation materials: ~~Privilege log.~~

(A) Information Withheld. When a party withholds information otherwise discoverable ~~under these rules by~~ by claiming that ~~the~~ the information is

(a) privileged or

(b) subject to protection as trial-preparation material ~~prepared in anticipation of litigation or for~~

~~trial,~~

the party ~~shall~~ must:

(i) expressly make the claim ~~expressly~~; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed -

and ~~do so in a manner that~~, without revealing information ~~that is itself~~ privileged or protected, shall prepare a will enable other parties to assess the claim.

The court, upon motion, may order the withholding party to provide such additional information as is necessary to assess the claim of ~~privilege log containing the~~.

(B) Information mistakenly produced; claim of privilege. If information produced in discovery is subject to a claim of privilege or of protection as ~~trial-preparation material~~, the party making the claim may notify any party that received the information of the claim and the basis for it.

After being notified, a party

(i) shall promptly return, sequester, or destroy the specified information and any copies it has;

(ii) shall not use or disclose the information until the claim is resolved;

(iii) shall take reasonable steps to retrieve the information if the party disclosed it before being notified; and

(iv) may promptly present the information to the court under Trial Court Rule VIII, Uniform Rules on Impoundment Procedure, for a determination of the claim.

The producing party shall preserve the information until the claim is resolved.

In resolving any such claim, the court should determine whether:

(i) the disclosure was inadvertent;

(ii) the holder of the privilege or protection took reasonable steps to prevent disclosure; and

(iii) the holder promptly took reasonable steps to rectify the error.

(C) Effect of a ruling. If the court, following information: ~~the respective author(s) and sender(s) if different; the recipient(s); the date and type of document, such procedure, or pursuant to an order under~~

Rule 26(f)(3), upholds the privilege or protection in a ~~written communication or thing not produced; and in general terms, the subject order, the disclosure shall~~

~~not be deemed a waiver in the matter of the withheld information. By written agreement of the party seeking the withheld information and the party holding the information or by court order, a~~

privilege log need not be prepared or may be limited to certain documents, written communications, or things, before the court or in any other proceeding.

(c) Protective orders

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county or judicial district, as the case may be, where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) that the discovery not be had;
- (2) that the discovery may be had only on specified terms and conditions, including a designation of the time ~~or~~ place, or manner; or the sharing of costs;
- (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- (5) that discovery be conducted with no one present except persons designated by the court;
- (6) that a deposition after being sealed be opened only by order of the court;
- (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;
- (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

Factors bearing on the decision whether discovery imposes an undue burden or expense may include the following:

- (1) whether it is possible to obtain the information from some other source that is more convenient or less burdensome or expensive;
- (2) whether the discovery sought is unreasonably cumulative or duplicative; and
- (3) whether the likely burden or expense of the proposed discovery outweighs the likely benefit

of its receipt, taking into account

(A) the parties' relative access to the information,

(B) the amount in controversy,

(C) the resources of the parties,

(D) the importance of the issues, and

(E) the importance of the requested discovery in resolving the issues.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the ~~motion.~~
motion.

(d) Sequence and timing of discovery

. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery. ~~Identical to Mass.R.Civ.P. 26(d).~~

(e) Supplementation of responses

. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement ~~his~~the response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement ~~his~~the party's response with respect to any question directly addressed to

(A) the identity and location of persons having knowledge of discoverable matters, and

(B) the identity of each person expected to be called as an expert witness at trial,

~~(C) the subject matter on which he each expert witness is expected to testify, and~~

~~(D) the substance of his~~the testimony of each expected expert witness.

(2) A party is under a duty seasonably to amend a prior response if ~~he~~the party obtains information

upon the basis of which

(A) ~~he~~the party knows that the response was incorrect when made, or

(B) ~~he~~the party knows that

(i) the response though correct when made is no longer true, and

(ii) the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed
(A) by order of the court,
(B) by agreement of the parties,
(C) or at any time prior to trial through new requests for supplementation of prior responses. ~~Identical to Mass.R.Civ.P. 26(e).~~

(4) Format of discovery motions

A motion to compel

(A) further responses to interrogatories,
(B) answers to a request for admissions,
(C) answers to questions propounded at a deposition, or
(D) production of documents or tangible things

shall be submitted with a separate document setting forth each

(E) separate interrogatory, item or category of items,
(F) request,
(G) question,
(I) document or
(J) tangible thing

to which further response, answer or production is requested.

Said separate document shall include the response given, and the factual and legal reasons that the court should compel the specific item.

Materials may not be incorporated by reference in the documents accompanying the motion.

(5) If pleadings or other documents in the court file are relevant to the motion, the party relying on such pleadings or other documents shall clearly identify and summarize each relevant document in a separate paragraph in any papers submitted to the court regarding the discovery motion.

(6) The motion must include a sworn statement by the moving party setting forth the specific steps taken in an attempt to obtain the desired discovery responses.

(7) The responding party shall submit to the court and to the moving party a written statement setting forth

(A) the reasons for non-compliance and/or
(B) a denial, in whole or in part, of the allegations of the motion to compel and its supporting documentation.
(C) Said written statement shall be served not later than two (2) business days before the

hearing.

(f) Electronically Stored Information.

(1) Definition. “Inaccessible electronically stored information” means electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost.

(2) Electronically Stored Information Conferences.

(A) Conference as of right.

(i) Upon the written request of any party made no later than ninety (90) days after the service of the first responsive pleading by any defendant, the parties shall confer regarding electronically stored information.

(ii) Such request shall be served on each party that has appeared, but it shall not be filed with the court.

(iii) The conference shall be held as soon as practicable but no later than thirty (30) days from the date of service of the request.

(B) Conference by agreement of the parties.

(i) At any time more than ninety (90) days after the service of the first responsive pleading, any party may serve on each party that has appeared a request that all parties confer regarding electronically stored information.

(ii) Such request shall not be filed with the court.

(iii) If within thirty (30) days after the request all parties do not agree to confer, any party may move that the court conduct a conference pursuant to Rule 16 regarding electronically stored information.

(C) Purpose of electronically stored information conference among the parties.

(i) The purpose of an electronically stored information conference is for the parties to develop a plan relating to the discovery of electronically stored information.

(ii) Within fourteen (14) days after such conference the parties shall file with the court the plan and a statement concerning any issues upon which the parties cannot agree.

At any electronically stored information conference the parties shall discuss:

(iii) any issues relating to preservation of discoverable information;

(iv) the form in which each type of the information will be produced;

- (v) what metadata, if any, shall be produced;
- (vi) the time within which the information will be produced;
- (vii) the method for asserting or preserving claims of privilege or of protection of trial preparation materials, including whether such claims may be asserted after production;
- (viii) the method for asserting or preserving confidential and proprietary status of information either of a party or a person not a party to the proceeding;
- (ix) whether allocation among the parties of the expense of production is appropriate, and,
- (x) any other issue related to the discovery of electronically stored information.

(3) Electronically Stored Information Orders. The court may enter an order governing the discovery of electronically stored information pursuant to any plan referred to in subparagraph (2)(C), or following a Rule 16 conference, or upon motion of a party or stipulation of the parties, or sua sponte, after notice to the parties.

Any such order may address:

- (A) whether discovery of the information is reasonably likely to be sought in the proceeding;
- (B) preservation of the information;
- (C) the form in which each type of the information is to be produced;
- (D) what metadata, if any, shall be produced;
- (E) the time within which the information is to be produced;
- (F) the permissible scope of discovery of the information;
- (G) the method for asserting or preserving claims of privilege or of protection of the information as trial-preparation material after production;
- (H) the method for asserting or preserving confidentiality and the proprietary status of information relating to a party or a person not a party to the proceeding;
- (I) allocation of the expense of production; and
- (J) any other issue relating to the discovery of the information.

(4) Limitations on Electronically Stored Information Discovery.

(A) A party may object to the discovery of inaccessible electronically stored information, and any such objection shall specify the reason that such discovery is inaccessible.

(B) On motion to compel or for a protective order relating to the discovery of electronically stored information, a party claiming inaccessibility bears the burden of showing inaccessibility.

(C) The court may order discovery of inaccessible electronically stored information if the party requesting discovery shows that the likely benefit of its receipt outweighs the likely burden of its production, taking into account

- (i) the amount in controversy,
- (ii) the resources of the parties,
- (iii) the importance of the issues, and

(iv) the importance of the requested discovery in resolving the issues.

(D) The court may set conditions for the discovery of inaccessible electronically stored information, including allocation of the expense of discovery.

(E) The court may limit the frequency or extent of electronically stored information discovery, even from an accessible source, in the interests of justice.

Factors bearing on this decision include the following:

(i) whether it is possible to obtain the information from some other source that is more convenient or less burdensome or expensive;

(ii) whether the discovery sought is unreasonably cumulative or duplicative;

(iii) whether the party seeking discovery has had ample opportunity by discovery in the proceeding to obtain the information sought; or

(iv) whether the likely burden or expense of the proposed discovery outweighs the likely benefit.

(g) Mandatory pre-motion conference

. Prior to seeking judicial resolution of a discovery or procedural dispute, the attorneys for the affected parties or non-party witness shall confer in good faith in person, by video conference, or by telephone in an effort to resolve the dispute.

(h) Certification of discovery motions.

(1) All discovery motions shall contain a certificate by the party filing same that efforts to resolve the discovery dispute without the necessity of court intervention have been attempted and failed.

(2) The certification shall be included in the sworn statement required of the moving party under Rule 26(e)(6).

(i) No-contact order

. Where there is a no-contact order in effect, the parties, but not counsel if the parties are all represented, shall be exempted from the sworn statement requirements of Rule 26(e)(6) and from the requirements of Rule 26(g). There shall be no requirement that ~~they~~ the parties confer in order to resolve the discovery dispute.

(j) Special master

. The court, on its own motion or at the request of either party, may appoint ~~a special~~ a special master to control

(1) the extent of discovery, including the scheduling and oversight of depositions as more fully set out in ~~Rule 30(o)(e)~~, and

(2) the time for completion of discovery and to resolve any discovery disputes which may arise during the course of the litigation.

(3) Prior to the appointment of said special master, the court may inquire whether the parties can agree upon a special master. The court may appoint

(A) the person agreed upon or

(B) such other suitable person as the court may select.

(4) The special master shall be appointed by a written order of reference. Said order

(A) shall set the terms and conditions under which the special master is to proceed and

(B) may specify or limit the special master's powers.

(5) The fees and costs of the special master, including a reasonable retainer, shall be borne equally by the parties unless the special master determines that a different allocation of the fees and costs is appropriate.

(6) Subject to the specifications and limitations stated in the order of reference, the special master has and shall exercise the power to

(A) regulate all matters before ~~him~~ the special master and ~~to~~

(B) do all acts and take all measures necessary or proper for the efficient performance of ~~his~~ the special master's duties under the order, including

(i) the authority to grant sanctions limited to

(a) reasonable counsel fees and/or

(b) special master fees

if a party takes an unreasonable position, in accordance with the standards established pursuant to ~~Rule 37.~~

(7) If a party disagrees with a decision of the special master, the matter may be brought before the court.

(A) Each party and the special master shall submit proposed orders to the court.

(B) A party who has acted arbitrarily or in bad faith in bringing the matter before the court

may be subject to sanctions as the court deems appropriate, including:

- (i) counsel fees and/or
- (ii) special master fees.

Rule 27. Depositions Before Action or Pending Appeal

(a) Before Action.

(1) Petition.—A person who desires to perpetuate ~~his~~the person's own testimony or that of another person regarding any matter that may be ~~eognizable~~commenced in any court where these rules apply may file

(A) a verified petition in the Superior Court in the county or District Court in the judicial district, as the case may be, of the residence of any expected adverse party.

(i) The petition shall be entitled in the name of the petitioner and shall show:

(a) that the petitioner expects to be a party to an action ~~eognizable~~to be commenced in a court where these rules apply but is presently unable to ~~bring~~commence it or cause it to be commenced,

(b) the subject matter of the expected action and ~~his~~the person's interest ~~therein, 3, in it,~~

(c) the facts which ~~he~~the person desires to establish by the proposed testimony and ~~his~~the person's reasons for desiring to perpetuate it,

(d) the names or a description of the persons ~~he expects will~~expected to be adverse parties and their addresses so far as known, and

(e) the names and addresses of the persons to be examined and

(f) the substance of the testimony ~~which he expects to elicit~~expected from each person to be examined, and

(ii) the petition shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and Service. The petitioner shall thereafter serve

(A) a notice upon each person named in the petition as an expected adverse party, together with

(B) a copy of the petition, stating that the petitioner will apply to the court, at a time and place named ~~therein~~in the notice, for the order described in the petition.

(C) At least twenty (20) days before the date of hearing the notice shall be served either within or without the Commonwealth in the manner provided in ~~Rule 4-~~ for service of

summons; but

(i) if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and

(ii) the court shall appoint, for persons not served in the manner provided in Rule 4, an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent.

(D) If any expected adverse party is a minor or incompetent, or an incapacitated person as defined in G. L. c. 190B the provisions of Rule 17(b) apply.

(3) Order and Examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order

(A) designating or describing the persons whose depositions may be taken and

(B) specifying the subject matter of the examination and

(C) whether the depositions shall be taken upon oral examination or written interrogatories.

The depositions may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 34 and 35.

For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein in the order to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) Use of Deposition. - If a deposition to perpetuate testimony

(A) is taken under these rules or

(B) if, although not ~~so~~ taken under these rules, it would be admissible in evidence in the courts of the Commonwealth,

it may be used in any action involving the same subject matter subsequently brought in such a court, in accordance with the provisions of Rule 32(a).

**(b) Pending ~~appeal~~
Appeal.**

(1) If an appeal has been taken from a judgment of a court of this Commonwealth or before the taking of an appeal,

(A) if the time ~~therefor~~ for filing an appeal has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in that court.

(B) In such case, the party who desires to perpetuate the testimony may make a motion in that court for leave to take the depositions, upon the same notice and service ~~thereof of the~~ motion as if the action was pending in that court. The motion shall show:

- (i) the names and addresses of persons to be examined ~~and,~~
- (ii) the substance of the testimony ~~which he expects~~ expected to ~~elicit~~ be elicited from each, and
- (iii) the reasons for perpetuating their testimony.

(C) If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice,

- (i) it may make an order allowing the depositions to be taken and
- (ii) may make orders of the character provided for by ~~Rules 34 and 35,~~ and ~~thereupon,~~
- (iii) ~~if that happens,~~ the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in pending actions.-

(c) Perpetuation by ~~action~~

Action. This rule does not limit the power of a court to entertain an action to perpetuate testimony.-

Rule 28. ~~Person~~ Persons Before Whom Depositions May ~~be~~ Be Taken

~~(a)~~ Within the United States

(a) . Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before

(1) an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or ~~before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony. The term officer as used in Rules 30, 31 and 32 includes a person appointed by the court or designated by the parties under Rule 29.~~

(2) before a person appointed by the court in which the action is pending.

(A) A person so appointed has power to administer oaths and take testimony.

(B) The term officer as used in Rules 30, 31 and 32 includes a person appointed by the court or designated by the parties under Rule 29.

(b) In ~~foreign countries~~

Foreign Countries. In a foreign country, depositions may be taken

(1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the laws of the United States, or

(2) before a person commissioned by the court, and

(A) a person so commissioned shall have the power by virtue of ~~his~~the commission to administer any necessary oath and take testimony, or

(3) pursuant to a letter rogatory.

(A) A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate.

(B) It is not ~~requisite to a requirement for~~ the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and

(C) both a commission and a letter rogatory may be issued in proper cases.

(D) A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title.

(E) A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]."

(4) Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that

(A) it is not a verbatim transcript or

(B) that the testimony was not taken under oath

(C) or for any similar departure from the requirements for depositions taken within the United States under these rules.-

~~(e)~~ **Disqualification for interest**

(c) Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

Rule 29. ~~Stipulation~~Stipulations Regarding Discovery Procedure

Unless the court orders otherwise, the parties may by written stipulation-:

(1) provide that depositions may be taken before

(A) any person,

(B) at any time or place,

(C) upon any notice, and

(D) in any manner

and when so taken may be used like other depositions; and

(2) modify by written stipulation the procedures provided by these rules for other methods of discovery. ~~Identical to Mass.R.Civ.P. 29~~

Rule 30. Depositions Upon Oral Examination

(a) When ~~depositions may be taken~~ Deposition May Be Taken.

~~After commencement of the action, any~~ **(1) Without Leave.**

~~(A) A party may take the testimony of, by oral questions, depose any person, including a party, by deposition upon oral examination. Leave without leave of court except as provided in Rule 30(a)(2).~~

~~(B) The attendance of the person to be examined may be compelled by subpoena under Rule 45.~~

(2) With Leave.

~~A party must obtain leave of court, granted and the court must grant leave to the extent consistent with or without notice, must be obtained only~~ Rule 26(b)(1), if: (i)

~~(A) the plaintiff party seeks to take at the deposition prior to the expiration of within thirty (30) days after of service of the summons and complaint upon any defendant or service made under Rule 4(c) (except that leave is not required (1) if), unless:~~

~~(i) a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(2) of this rule; (ii) (deleted); (iii) (deleted); (iv);~~

~~(ii) the party certifies in the notice, with supporting facts, that before the 30-day period following service has expired, the person to be examined is expected to~~

~~(a) leave the Commonwealth and~~

~~(b) be unavailable thereafter;~~

~~(B) there has been a hearing before a master; or (v) (deleted). The attendance of witnesses may be compelled by subpoena as provided in Rule 45.~~

~~(C) The deposition of a person to be examined is confined in prison; or~~

~~(D) The person to be examined is a minor child~~

~~in which case the deposition may be taken only by leave of court on such terms as the court prescribes may order.~~

~~(b) Notice of examination: General requirements; special notice; non-stenographic recording; production of documents and things; deposition of organization~~

(b) Notice of the Deposition; Other Formal Requirements.

(1) **Notice in General.**

(A) A party ~~desiring who wants~~ to ~~take the deposition of any~~ depose a person ~~upon~~ by oral examination ~~shall~~ questions must give ~~at least seven days' written~~ notice ~~in writing~~ to every other party ~~to the action at least seven (7) days before.~~

(B) The notice ~~shall~~ must state the

(i) time and place ~~for taking~~

of the deposition and, ~~if known~~, the

(ii) name and address of each person to be examined, ~~if known, and, if,~~

(C) If the name is ~~not known, unknown~~, the notice must provide a general description sufficient to identify ~~him~~ the person or the particular class or group to which ~~he~~ the person belongs.

(D) If a party shows that when it was served with notice under Rule 30(a)(2)(A)(ii) it was unable through the exercise of diligence to obtain counsel to represent it at the taking of the deposition, the deposition may not be used against that party.

(2) **Producing Documents.** If a subpoena duces tecum is to be served on the person to be examined, ~~the designation of~~

(A) the materials ~~to be produced~~ designated for production, as set ~~forth~~ out in the subpoena, must be listed in the notice or in an attachment.

(B) The notice to a party to be examined may be accompanied by a request under Rule 34 to produce documents and tangible things at the deposition.

(i) Notwithstanding Rule 30(b)(1), such a request for production at the deposition under Rule 34 shall be ~~attached to~~ made with thirty (30) days' notice to every party, although

(ii) the court may allow for a longer or shorter time.

(3) **Method of Recording.**

(A) *Method(s) Stated in the Notice.* The party who gives notice of the deposition must state in the notice the method(s) for recording the testimony.

(i) If the notice states that the deposition will be recorded by audiovisual means, the notice shall also indicate if the operator is an employee of the attorney who gives notice.

(B) *Permissible Methods.*

(i) A stenographic record shall always be prepared, unless the parties otherwise stipulate. Additionally,

(ii) the party giving notice may choose to record the deposition by audiovisual means.

(C) *Costs and Equipment.*

(i) The party giving notice bears the recording costs, except that

(ii) each party shall bear the cost for a copy
(a) of the stenographic record and
(b) of any audiovisual recording.

(iii) The party giving notice of an audiovisual deposition shall be responsible for assuring that the necessary equipment is present.

(iv) Any party may arrange to transcribe a deposition at the party's own expense.

(v) The assignment of costs, including that of
(a) taking,
(b) editing, and
(c) using an audiovisual deposition at trial,

shall be governed by Rule 54(e).

(D) Additional Methods.

(i) With prior notice to the person to be examined and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice.

(ii) That party bears the additional expense unless the court orders otherwise.

(4) **By Remote Means.** A remote deposition may be taken using a video-conferencing platform or included in the notice by telephone.

Identical to Mass.R.Civ.P. 30(b)(1)

~~(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the county where the action is pending and more than 100 miles from the place of trial, or is about to go out of the United States, or is bound on a voyage abroad, and will be unavailable for examination unless his deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification. If a party shows that when he was served with notice under this subdivision (b)(2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.~~

Identical to Mass.R.Civ.P. 30(b)(2)

~~(3) The court may for cause shown enlarge or shorten the time for taking the deposition.~~

Identical to Mass.R.Civ.P. 30(b)(3)

~~(4) By leave of court upon motion with notice and an opportunity to be heard in opposition, or by stipulation in writing of all parties, a party taking an oral deposition may have the testimony recorded by other than stenographic means. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be~~

accurate and trustworthy. A party may arrange to have a stenographic transcription made at his own expense. Any objections under subdivision (e), any changes made by the witness, his signature identifying the deposition as his own or the statement of the officer that is required if the witness does not sign, as provided in subdivision (e), and the certification of the officer required by subdivision (f) shall be set forth in a writing to accompany a deposition recorded by non-stenographic means. In any event, however, where testimony is to be recorded by audio-visual means, the provisions of Rule 30A shall apply. Identical to Mass.R.Civ.P. 30(b)(4) as amended January 1, 1981

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request and, notwithstanding the provisions of subdivision (b)(1) of this Rule, the party making the request shall give at least 30 days' notice in writing to every other party to the action. The court may on motion with or without notice allow a shorter or longer time. Identical to Mass.R.Civ.P. 30(b)(5)

(A) **Video-Conferencing Deposition.** Subject to the following provisions, by notice of the party seeking to take the deposition, a deposition may be taken remotely by video-conferencing platform (video-conferencing deposition) in a manner that allows for

(a) the person to be examined,

(b) all other persons entitled to attend, and

(c) all other necessary persons (e.g., the officer/court reporter) to participate without attending the deposition in person.

Upon motion made by a party or by the person from whom a deposition is sought

to the court where the action is pending or to the court in the county or judicial district where the person to be examined is located, and

for good cause shown, the court may issue an order as to the manner in which the deposition will be taken, including that the deposition be taken by videoconferencing, in-person, or in some combination of video-conferencing and in-person.

(i) In addition to any other requirements in the applicable rules, the notice of a video conferencing deposition shall specify,

(a) reasonably in advance of the deposition,

(b) the information needed to participate in the deposition, including but not limited to

(c) the identification of the video-conferencing platform.

(ii) An officer or other person before whom the video-conferencing deposition is to be taken is authorized to

(a) administer oaths and

(b) take testimony

without being in the presence of the person to be examined, so long as the officer or other person before whom the deposition is to be taken can both see and hear the person being examined for purposes of identifying the person being examined.

(iii) The video-conferencing platform used for the deposition must be able to show a real-time list of those persons attending the deposition, and

(a) the persons attending must make reasonable efforts to be identified on that list.

(b) All persons present in the same physical location as the person being examined during a video-conferencing deposition must separately log in to the videoconferencing deposition so that

(i) they are individually identified during the video-conferencing deposition and

(ii) the person being examined can be shown separately.

(c) The sound and video feeds for

(i) the person being examined,

(ii) participating counsel for the parties,

(iii) participating self-represented parties,

(iv) counsel for the person being examined, and

(v) the court reporter

must remain on while the video-conferencing deposition is on the record.

(d) Other people attending should mute their sound feed and, if not in the same physical location as the person being examined, should shut off their video feed when not speaking, after identifying themselves for the record.

(e) Only persons who would be entitled to attend an in-person deposition in the case may observe the video-conferencing deposition.

(f) If any person enters the room where the person being examined is located during the deposition,

(i) the person being examined or

(ii) counsel or

(iii) a self-represented party

in the room shall immediately notify the video-conferencing participants and

(g) the person who entered the room must either

(i) separately log in to the video-conferencing deposition

(ii) or be otherwise visible to all attendees on the video feed.

(iv) Where an audio-visual recording of a video-conferencing deposition is conducted pursuant to this rule, the operator/videographer may record remotely, following the procedures set forth in this rule.

(a) Unless all parties agree or the court orders otherwise, during the deposition, the operator/videographer will video record

(i) only the person being examined, except that, at the request of the questioning attorney or self-represented party,

(ii) a split screen may be used as necessary to record an exhibit while the person being examined is being questioned concerning the exhibit.

(b) The person being examined must be provided a video feed of the questioning attorney or self-represented party.

(c) No person other than the operator/videographer and court reporter may record the deposition by video or audio means.

(B) Telephone Deposition.

By leave of court upon motion or by stipulation in writing of all parties, a deposition may be taken by telephone.

(C) Technical Problems.

No

(i) objection,

(ii) instruction,

(iii) motion, or any

(iv) matter

regarding the conduct of the remote deposition is waived if the attorney or self-represented party seeking to make or raise it is prohibited by a technical problem from doing so in timely fashion, provided that it is made or raised promptly after the technical problem is resolved.

(D) Cooperation and Modification.

As set forth in Rule 29, parties and persons to be examined may stipulate to taking a deposition in a manner that modifies the procedures set forth in this rule.

(i) Any agreed upon stipulations must be

(a) stated on the record or

(b) set forth in writing.

(ii) Parties and persons to be examined must confer and cooperate to the fullest extent possible to attempt to resolve

(a) all issues related to remote depositions, including

(i) the video-conferencing platform that will be used and

(ii) the handling of exhibits during the remote deposition.

(iii) The parties and persons to be examined must cooperate with

(a) each other,
(b) the court reporter, and
(c) the operator/videographer, if any,
in planning for and conducting remote depositions.

(E) Location of Deposition.

For the purposes of this rule and Rules 28(a), 37(a)(1), 37(b)(1), and 45(d), a remote deposition shall be considered taken

(i) in the county and
(ii) at the place
where the person being examined is located during the deposition.

(F) Unavailability and Authority to Compel.

Nothing in this rule is intended to:

(i) address whether a remote person examined is deemed unavailable within the meaning of Rule 32(a)(3) for the purposes of using that person's deposition at trial; or
(ii) alter a court's authority to compel testimony of non-party persons to be examined.

(5) Officer's and Operator's Duties.

(A) Before the Deposition.

Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 28.

In the event the deposition is recorded by audiovisual means, the recording shall be performed by an operator acting

(a) in the presence and
(b) under the direction
of the officer.

The officer or operator must begin the deposition with an on-the-record statement that includes:

(i) the officer's and, if applicable, operator's name and business address;
(ii) the date, time, and place of the deposition;
(iii) the caption of the case;
(iv) the name of the person to be examined;
(v) the name of the party on whose behalf the deposition is being taken; and
(vi) any stipulations by the parties.

Counsel shall identify themselves by stating their names, their addresses, the names of the parties or persons for whom they appear at the deposition, and nothing more.

Self-represented parties shall identify themselves by stating their names, their addresses, that they are self-represented, and nothing more.

(B) During the Deposition.

After putting the person to be examined (and any interpreter) under oath or affirmation, the officer and, if applicable, operator, must record the testimony by the method or methods designated under Rule 30(b)(3)(A).

(C) Closing of Deposition.

At the end of a deposition, the officer and/or operator

(i) must state on the record that the deposition is complete and

(ii) must set out any stipulations made by the attorneys and/or self-represented parties

(a) about custody of the transcript or recording and of the exhibits, or

(b) about any other pertinent matters.

(6) ~~A party may in his~~ *Notice or Subpoena Directed to an Organization.*

In a notice ~~and in a~~ subpoena, a party may name as ~~the deponent~~ an entity to be examined

(A) a public or private corporation-~~or,~~

(B) a partnership-~~or,~~

(C) an association-~~or,~~

(D) a governmental agency-, ~~or~~

(E) another entity

and ~~must~~ describe with reasonable particularity the matters ~~on which~~for examination ~~is requested.~~

(F) The ~~named~~ organization ~~so named shall~~ must then designate one or more

(i) officers,

(ii) directors, or

(iii) managing agents,

or ~~designate~~ other persons who consent to testify on its behalf; ~~and may~~

(G) it shall set ~~forth, for out~~ the matters on which each person designated, ~~the matters on which~~ ~~he~~ will testify.

(H) A subpoena ~~shall~~ must advise a ~~non-party~~ nonparty organization of its duty to make ~~such a~~ this designation.

(I) The persons ~~so~~ designated ~~shall~~ must testify ~~as to matters about~~ information known or reasonably available to the organization.

This ~~subdivision (b)(paragraph~~ (6) does not preclude ~~taking~~ a deposition by any other procedure ~~authorized in~~ allowed by these rules.

Identical to Mass.R.Civ.P. 30(b)(6)

~~(c) Examination and cross-examination; Record of examination; oath; objections~~

~~Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Rule 43(b). The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or by voice writing or recorded by any other means ordered in accordance with subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and such party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.~~

~~All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition; but the examination shall proceed. Any objection to testimony during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. Testimony to which objection is made shall be taken subject to the objections. Counsel for a witness or a party may not instruct a deponent not to answer except where necessary to assert or preserve a privilege a disqualification pursuant to G.L. c. 233, § 20 or protection against disclosure, to enforce a limitation on evidence directed by the court or stipulated in writing by the parties, or to terminate the deposition and present a motion to the court pursuant to Rules 30(d) or 37(d).~~

~~Pursuant to Rule 26(j), a special master may be appointed to oversee the deposition practice and procedure. The court may order or the special master may decide to attend the deposition. A party may request the attendance of the special master at a deposition, if a party reasonably believes it is necessary. In addition to the powers enumerated in Rule 26(j) and subject to the specifications and limitations stated in the order of reference, the special master may decide the time, date and place for the deposition, the length of the deposition and who may be present at the deposition.~~

~~(d) Motion to terminate or limit examination~~

~~At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the county or judicial district, as the case may be, where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in~~

~~relation to the motion. Identical to Mass.R.Civ.P. 30(d)~~

~~(e) Submission to witness; changes; signing~~

~~When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.~~

~~Identical to Mass.R.Civ.P. 30(e)~~

~~(f) Certification and delivery by officer; exhibits; copies; notice of receipt~~

~~(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. Unless otherwise ordered by the court generally or in a specific case or stipulated by the parties, he shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly deliver or send it to the party taking the deposition. Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the material desires to retain them he may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if he affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.~~

~~(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.~~

~~(3) The party taking the deposition shall give prompt notice of its receipt to all other parties.~~

~~Identical to Mass.R.Civ.P. 30(f)(1)-(3)~~

~~(g) Failure to attend or to serve subpoena; expenses~~

~~(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may~~

~~order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.~~

~~(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees. Identical to Mass.R.Civ.P. 30(g)~~

Rule 30A-(7) Audiovisual Depositions Recordings.

~~(a) Authorization of audio-visual depositions~~

~~By leave of court upon motion with notice and an opportunity to be heard in opposition, or by stipulation of all parties, a party taking an oral deposition may have the testimony recorded by audio-visual means by complying with the provisions of this rule. Except as otherwise provided by this rule, the rules governing the practice and procedure in depositions and discovery shall apply. At the taking of any such deposition, unless the parties otherwise stipulate, or the court for good cause otherwise orders, there shall also be prepared a simultaneous stenographic record of the deposition.~~

~~(b) Notice~~

~~Except by leave of court, granted after notice and opportunity to be heard in opposition, a notice for the taking of an audio-visual deposition shall not be served sooner than six (6) months after the action has been commenced. Every notice for the taking of an audio-visual deposition and the subpoena for attendance at that deposition shall state that it is to be recorded by audio-visual means and the name and address of the person whose deposition is to be taken. If the operator is an employee of the attorney taking the deposition, the notice shall so indicate.~~

~~(c) Procedure~~

~~The party taking the audio-visual deposition shall be responsible for assuring that the necessary equipment for making an audio-visual recording of the deposition is present at the time the deposition is taken. The following procedure shall be observed in recording an audio-visual deposition:~~

~~(1) Opening of Deposition. The deposition shall begin with an oral or written statement on camera which includes:~~

- ~~(i) the operator's name and business address;~~
- ~~(ii) the name and address of the operator's employer;~~
- ~~(iii) the date, time and place of the deposition;~~
- ~~(iv) the caption of the case;~~

- ~~(v) the name of the witness deponent;~~
- ~~(vi) the name of the party on whose behalf the deposition is being taken; and~~
- ~~(vii) any stipulation by the parties.~~

~~The opening statement, if oral, shall be made by the officer before whom the deposition is to be taken, unless counsel agree that one of counsel will make the statement.~~

~~(2) Counsel. Counsel shall identify themselves on camera by stating their names, their addresses, and the names of the parties or persons for whom they appear at the deposition, and nothing more.~~

~~(3) Oath. The officer before whom the deposition is taken shall then identify himself and swear or affirm the witness on camera.~~

~~(4) The following provisions shall apply in the case that a deposition is recorded by audiovisual means:~~

(A) Multiple Units.

When the length of the deposition requires the use of more than one recording unit,

- (i) the end of each recording unit and
 - (ii) the beginning of each succeeding recording unit
- shall be announced on camera by the operator.

~~(5) Closing of Deposition. At the conclusion of the deposition, a statement shall be made on camera that the deposition is concluded. A statement may be made on camera setting forth any stipulation made by counsel concerning the custody of the audio-visual recording and exhibits and other pertinent matters.~~

(6) Index. (B) Index.

- (i) The deposition shall be
 - (a) timed by a digital clock on camera which shall show continually each hour, minute and second of each recording unit of the deposition, or
 - (b) otherwise suitably indexed by a time generator. ~~The date(s) on which the deposition is taken shall be shown.~~

~~(7) Objections. An objection shall be made as in the case of depositions taken solely by stenographic means.~~

~~(8)(ii) The date(s) on which the deposition is taken shall be shown.~~

(C) Interruption of Recording.

No party shall be entitled to cause the ~~operator~~officer to interrupt or halt the recording of the ~~audio-visual~~audiovisual deposition without the assent of all other parties present.

~~(9) Submission to Witness; Changes; Signing. Unless the parties have stipulated that a simultaneous stenographic record of the deposition not be prepared, the provisions of Rule 30(e) shall apply to the stenographic record of the deposition. Except upon order of the court and upon such terms as may be provided, the witness shall have no right to examine and view the audio-visual recording.~~

~~(10) Certification. The officer before whom the audio-visual deposition is taken shall attach to the original audio-visual recording a certificate stating that the witness was sworn or affirmed by him and that the audio-visual recording is a true record of the testimony given by the witness.~~

~~(d) Recording officer; use of camera; copies~~

~~The officer before whom an audio-visual deposition is taken shall be subject to the provisions enumerated in Rule 28(a) (c).~~(D) Use of Camera.

~~(i) During the taking of the audio-visual~~audiovisual deposition, the officer shall assure that the ~~audio-visual tape~~audiovisual recording records the ~~witness~~person being examined in a standard fashion at all times during the deposition,

~~(a) unless all counsel~~ and self-represented parties agree otherwise, or

~~(b) unless on motion before the court, the court directs otherwise.~~

~~(ii) In no event shall the officer use, or permit the use of, audio-visual tape camera~~audiovisual recording techniques to vary the view which is being recorded for presentation in the courtroom unless agreed upon or ordered by the court as recited above.

~~(iii) As an exception to the foregoing, the officer shall,~~

~~(a) at the request of the attorney~~ or self-represented party questioning the ~~witness,~~person being examined,

~~(b) cause a close-up view of a deposition exhibit or visual aid to be taken while the witness~~person being examined is being questioned concerning the exhibit. ~~Upon the request of any of the parties, the officer shall provide, at the cost of the party making the request, a copy of the deposition in the form of a videotape or other form of audio-visual recording, an audio recording, or a~~

(c) Examination and cross-examination; record of examination; objections; written transcription; questions

(e) Custody; filing; notice of filing

~~Unless the parties have otherwise stipulated, the officer shall take custody of each recording unit upon its completion and shall retain custody of all completed units throughout the deposition. When a deposition is to be completed on another day, the officer shall also take custody of any uncompleted recording unit during the interval. Upon completion of a deposition, unless the parties have otherwise stipulated, the original audio-visual recording and the typewritten transcript of the deposition shall be filed forthwith by the officer with the clerk of the trial court in accordance with subdivision (1) of Rule 30(f) and notice of its filing shall be given as provided in subdivision (3) of that rule.~~

~~(f) Inspection and release of audio-visual recordings~~

(1) Examination and Cross-Examination.

The examination and cross-examination of a person being examined proceed as they would at trial under Rule 43.

(2) Objections.

(A) An objection at the time of the examination, whether

(i) to evidence,

(ii) to a party's conduct,

(iii) to the officer's qualifications,

(iv) to the manner of taking the deposition, or

(v) to any other aspect of the deposition

must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection.

(B) An objection must be stated concisely in a nonargumentative and nonsuggestive manner.

(C) A person may instruct a person being examined not to answer only when necessary to preserve

(i) a privilege,

(ii) a disqualification pursuant to G.L. c. 233, § 20, or

(iii) protection against disclosure,

(iv) to enforce a limitation ordered by the court or stipulated in writing by the parties, or to

(v) terminate the deposition and present a motion under Rule 30(d)(2).

(3) Participating Through Written Questions.

(A) Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party giving notice of the deposition, who must deliver them to the officer.

(B) The officer must ask the person to be examined those questions and record the answers verbatim.

(d) Sanction; motion to terminate or limit

(1) Sanction.

(A) The court in which the action is pending or the court in the county or judicial district, as the case may be, where the deposition is being taken may impose an appropriate sanction including the

(i) reasonable expenses and attorney's fees incurred by any party or the

(ii) reasonable expenses and lost wages of any self-represented party

on a person, including the person to be examined, who

(iii) impedes,

(iv) unreasonably delays, or

(v) frustrates

the fair progress of the examination.

(2) Motion to Terminate or Limit.

(A) Grounds.

(i) At any time during a deposition, the person being examined or a party may move to terminate or limit it on the ground that it is being conducted or is proceeding in bad faith or in a manner that unreasonably

(a) annoys,

(b) embarrasses, or

(c) oppresses

the person being examined or party.

(ii) The motion may be filed in

(a) the court where the action is pending or

(b) the court in the county or judicial district, as the case may be, where the deposition is being taken.

(iii) If the objecting person being examined or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) Order.

(i) The court

(a) may order that the deposition be terminated or

(b) may limit its scope and manner

as provided in Rule 26(c).

(ii) If terminated, the deposition may be resumed only by order of the court where the action is pending.

(C) Award of Expenses.

Rule 37(a)(4) applies to the award of expenses incurred in relation to the motion.

(e) Review by the person who was examined; changes; signing

(1) When the testimony is fully transcribed, the deposition transcript and any audiovisual recording of the testimony shall be submitted to the person who was examined for examination, and

(i) the deposition transcript shall be read to or by the person who was examined,

(ii) unless such examination and reading are waived

(a) by the person who was examined and

(b) by the parties.

(2) Any changes in form or substance which the person who was examined desires to make shall be entered

(i) upon the deposition transcript by the officer

(ii) with a statement of the reasons given by the person who was examined for making them.

(3) The deposition transcript shall then be signed by the person who was examined, unless

(i) the parties by stipulation waive the signing or

(ii) the person who was examined

(a) is ill or

(b) cannot be found or

(c) refuses to sign.

(4) If the deposition transcript of any day of the deposition is not signed by the person who was examined within thirty (30) days of its submission to the person who was examined, the officer shall

(i) sign it and

(ii) state on the record the fact

(a) of the waiver or

(b) of the illness or

(c) of the absence

of the person who was examined

(d) or the fact of the refusal to sign

together with the reason, if any, given for not signing; and

(5) the deposition transcript may then be used as fully as though signed, unless on a motion to suppress under Rule 32(d)(4) the court rules that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and delivery; exhibits; copies of the transcript or recording; filing

(1) Certification and Delivery.

(A) The officer must certify in writing
(i) that the person who was examined was duly sworn and
(ii) that the transcript accurately records the person's testimony.

(B) As soon as the officer has completed the transcript,
(i) the officer must promptly deliver the certificate and transcript to the party taking the deposition.
(ii) The attorney or self-represented party must store it under conditions that will protect it against
(a) loss,
(b) destruction,
(c) tampering, or
(d) deterioration.

(2) Documents and Tangible Things.

(A) Originals and Copies.

Documents and tangible things produced for inspection during a deposition must, on a party's request, be

(a) marked for identification and
(b) attached to the deposition.

Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person may:

(i) offer copies to be marked,
(a) attached to the deposition,
(b) and then used as originals —

after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they are marked — in which event the originals may be used as if attached to the deposition.

(B) Order Regarding the Originals.

Any party may move for an order that the originals be attached to the deposition pending final disposition of the case.

(3) Copies of the Transcript or Recording.

(A) Unless otherwise
(i) stipulated or
(ii) ordered by the court,

the officer must retain

(iii) the stenographic notes of a deposition taken stenographically or

(iv) a copy of the recording of a deposition taken by another method.

(B) When paid reasonable charges, the officer must furnish a copy of the

(i) transcript or

(ii) recording

to any party or to the person who was examined.

(C) Except upon order of the court ~~and upon such terms as may be provided, the audio-visual,~~ audiovisual recordings on file with the ~~clerk~~Register of Probate of the court in which the action is pending shall not be available for inspection or viewing after their filing and prior to

(i) their use at the trial of the case or

(ii) their disposition in accordance with this rule. ~~The clerk may release the audio-visual recording to the officer taking the deposition, without an order of court, for the purpose of preparing a copy at the request of a party as provided in subdivisions (a) and (d) of this rule.~~

(g(4) Notice of Filing.

A party who files the deposition must promptly notify all other parties of the filing.

(g) Failure to attend a deposition or serve a subpoena; expenses

A party who, expecting a deposition to be taken, attends

(A) in person or

(B) by an attorney

may recover reasonable expenses for attending, including

(C) attorney's fees and,

(D) for a party, lost wages,

if the party giving notice of the deposition failed to:

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty person to be examined, who consequently did not attend.

(h) Rulings on objections; editing of recording

(1) If any party has any objections to the ~~audio-visual~~audiovisual deposition which would otherwise be made at trial, ~~pursuant to Rule 32(b),~~ such objections shall ~~if practicable,~~ be submitted to the trial judge ~~prior to commencement~~

(i) reasonably in advance of the trial or hearing for the purpose of obtaining rulings on such objections. An audio copy of the sound track or the transcript may be submitted in lieu of the audio-visual recording for this purpose. For the purpose of ruling on the objections, the trial judge may view the entire audio-visual recording, or view only those parts of the audio-visual

~~recording pertinent to the objections made, or he may listen to an audio-tape recording submitted in lieu of the audio-visual recording, or he may read the transcript.~~

(ii) as ordered by the court.

(2) The trial judge

(A) shall, if practicable, rule on the objections prior to the commencement of the trial or hearing and

(B) shall return the recording to the party who took the ~~audio-visual~~audiovisual deposition, with notice to all parties of ~~his~~

(i) the rulings and ~~of his~~

(ii) any instructions as to editing.

(3) The editing

(A) shall reflect the rulings of the trial judge and

(B) shall then remove all references to the objections.

(4) After ~~making a copy of the audio-visual recording, the officer shall cause said copy causing the audiovisual deposition~~ to be edited in accordance with the court's instructions. ~~He shall then cause,~~ both

(A) the original ~~audio-visual~~audiovisual recording and

(B) the edited version ~~thereof, of the audiovisual recording,~~

each clearly identified, ~~to~~shall be returned to the trial judge for use during the trial or hearing.

(5) The original ~~audio-visual~~audiovisual recording shall be preserved intact and unaltered.

(h) Transcribing of audio portion; marking for identification

(1) At a trial or hearing, that part of the audio portion of an ~~audio-visual~~audiovisual deposition

(A) which is offered in evidence

(B) and admitted, in evidence,

(C) or which is excluded on objection,

shall be transcribed in the same manner as the testimony of other witnesses.

(2) Both

(A) the original unedited ~~audio-visual~~audiovisual recording and

(B) the edited version

shall be marked for identification.

(i) Use of ~~audio-visual~~audiovisual deposition and responsibility for assuring necessary equipment at time of use

(1) An ~~audio-visual~~audiovisual deposition may be used

(A) for any purpose and

(B) under any circumstances

in which a stenographic deposition may be used.

(2) The party desiring to use the ~~audio-visual~~audiovisual deposition for any purpose shall be responsible for assuring that

(A) the necessary equipment for playing the ~~audio-visual~~audiovisual recording back is available when the ~~audio-visual~~audiovisual deposition is to be used.

(B) When an ~~audio-visual~~audiovisual deposition is used during

(i) a hearing,

(ii) a trial, or

(iii) any other court proceeding,

the party first using such ~~audio-visual~~audiovisual deposition in whole or in part shall assure the availability of

(iv) the same or

(v) comparable ~~videotape~~
audiovisual playback equipment

(vi) to any other party

(vii) for such other party's use

in further showing such ~~audio-visual~~audiovisual deposition during

(viii) the hearing,

(ix) the trial, or

(x) other court proceeding or at any

(xi) rehearing,

(xii) recess, or

(xiii) continuation ~~thereof~~.

~~of the hearing, trial, or other court proceeding.~~

(f) Discrepancy between ~~audio-visual deposition~~audiovisual recording and stenographic deposition transcript

Upon the claim of a party that a discrepancy exists between

(1) the ~~audio-visual deposition~~audiovisual recording and

(2) the stenographic ~~deposition, transcript,~~

the trial judge shall determine

(3) whether such discrepancy reasonably appears; and

(4) whether the relevant part of the ~~audio-visual deposition~~audiovisual recording is intelligible.

If the relevant part of the ~~audio-visual deposition~~ audiovisual recording is not intelligible, the stenographic ~~deposition transcript~~ controls. ~~If the relevant part of the audio-visual deposition is intelligible and the trial judge rules that a discrepancy reasonably appears, the jury, in a jury action, shall determine from the audio-visual deposition the deponent's testimony. The trial judge, in his discretion, may permit the jury to be aided in its determination by the stenographic deposition.~~

(k) Evidence by ~~audio-visual~~ audiovisual recording

(1) ~~Authorization of Audio-Visual~~ Previously Recorded AudioVisual Testimony or Other Evidence.

(A) Upon motion with

(i) notice and

(ii) an opportunity to be heard, or

(B) by stipulation of all parties approved by the court, or

(C) upon the ~~court's motion, court's initiative,~~

the court may ~~order, permit,~~

(D) if it finds it to be in the interest of justice and

(E) with due regard to the importance of presenting the testimony of witnesses orally in open court, that ~~all or part of the testimony, and such other evidence as may be appropriate, may be presented at trial by audio-visual means. The provisions of Rule 30A shall govern such audio-visual recordings.~~

(F) all or part of the testimony, and

(G) such other evidence as may be appropriate, may be presented at trial by audiovisual means.

(H) The provisions of Rule 30 shall govern such audiovisual recordings.

(2) ~~Introduction as Evidence.~~

(A) Notwithstanding Rule ~~30A(i)30j~~ or Rule 32(a)(3), but subject to rulings on objections pursuant to Rule ~~30A(k30(l)(3),).~~

(B) any party may introduce any such ~~audio-visual~~ audiovisual recording, that has been authorized under Rule ~~30A(k30(l)(1),~~ at trial if the court finds its introduction to be in the interest of justice.

~~(3) Objections. Before such audio-visual recording is admitted at trial, the trial judge shall rule upon any objection to any portion thereof and the recording shall be edited to reflect the rulings. The objections shall be presented to the trial judge and the editing to reflect the rulings shall be~~

~~accomplished, each in accordance with the provisions of Rule 30A(g).~~

~~(4) Part of the Record; Not an Exhibit.~~ **(3) Part of the Record; Not an Exhibit.**

Any portion of the ~~audio-visual~~audiovisual recording so introduced shall be

(A) part of the record, and

(B) subject to the provisions of Rule ~~30A(h)~~30i,

(C) but not an exhibit.

(m) Costs

The reasonable expense of

(1) recording,

(2) editing, and

(3) using

an audio-visual deposition may be ~~taxed~~assigned as costs, pursuant to the provisions of ~~Rule~~
54(e).

~~**(m) Audio-visual**~~**(n) Audiovisual** depositions of treating physicians and expert witnesses for
use at trial

(1) Authorization and Definitions.

Unless the court upon motion orders otherwise,

(A) any party intending to call a treating physician or expert witness at trial as that party's own
witness

(B) may take the oral deposition of any such treating physician or expert witness

(i) by ~~audio-visual~~audiovisual means

(ii) for the purpose of its being used as evidence

(a) at trial

(b) in ~~lieu~~place of oral testimony. ~~Such depositions shall be known as "audio-visual expert
witness depositions for trial."~~

(C) This rule ~~30A(m)~~30(n) does not apply to another party's treating physician or expert,
discovery from whom is subject to the provisions of ~~rule 26(b)(4)(A) or 26(b)(4)(B)~~. A "treating
physician" is a physician who has provided medical treatment to a party or other person involved
in the lawsuit, and who will be questioned about such treatment and matters related thereto. An
"expert witness" is a person qualified as an expert by knowledge, skill, experience, training, or
education to testify in the form of an opinion or otherwise.

Rule 26(b)(4).

(D) A “treating physician” is a physician

(i) who has provided medical treatment to a party or other person involved in the lawsuit, and

(ii) who will be questioned about such treatment and matters related to such treatment.

(E) An “expert witness” is a person qualified as an expert by

(i) knowledge,

(ii) skill,

(iii) experience,

(iv) training, or

(v) education

to testify in the form of an opinion or otherwise.

(2) Timing, Curriculum Vitae, (Resumé), and Report.

(A) Except by leave of court, a notice for the taking of an ~~audio-visual~~audiovisual expert witness deposition for trial shall not be served

(i) sooner than six (6) months after the action has been commenced, and

(ii) until thirty (30) days after a written report of that witness has been furnished to all parties.

(B) Such report

(i) shall contain a curriculum vitae (resumé) of that witness,

(ii) shall cover the subjects described in ~~rule, Rule~~ 26(b)(4)(A)(i),] and,

(iii) in the case of a treating physician, shall contain a description of the treatment and its costs.

(C) Any party may move for further discovery of that witness, to take place prior to the ~~audio-visual~~audiovisual expert witness deposition for trial, in accordance with ~~Rule~~ 26(b)(4)(A)(ii).

(3) Notice; Opposition. ~~In addition to the requirements of rule 30A(b), every notice~~

(A) Notice for the taking of an ~~audio-visual~~audiovisual ~~treating physician or~~ expert witness deposition for trial shall state that it is to be recorded by ~~audio-visual~~audiovisual means with the purpose of its being used as evidence at trial in ~~lieu~~place of oral testimony.

(B) Any motion in opposition to the taking of an ~~audio-visual~~audiovisual ~~treating physician or~~ expert witness deposition for trial must be filed

(i) within fourteen (14) days of receipt of the notice or

(ii) on or before the specified time for taking of the ~~audio-visual-expert-witness~~audiovisual deposition for trial, if such time is less than fourteen (14) days from receipt of the notice.

(C) The ~~audio-visual-expert-witness~~audiovisual deposition shall not occur until the court rules on the motion opposing the deposition.

(4) ~~Ruling on Objections; Editing of Recording.~~

(A) When an ~~audio-visual~~audiovisual treating physician or expert witness deposition for trial is taken, all ~~evidential~~ objections to what the person being examined is saying shall, to the extent practicable, be made during the course of the deposition.

(B) If any party

(i) has made objections during the course of the ~~audio-visual~~audiovisual treating physician or expert witness deposition for trial, or

(ii) has any objections to such deposition which would otherwise be made at trial, ~~pursuant to rule 32(b)~~,

such objections shall be filed with the ~~trial judge or a motion judge, if the trial judge has not yet been designated, no later than twenty-one (21) days before the commencement of the trial. Objections not so submitted shall be deemed waived, except to the extent that events at the trial, which could not have~~court

(iii) reasonably ~~been foreseen by the objecting party, necessitate an objection at trial. The nonobjecting party shall file a response to the submissions by the objecting party within fourteen (14) days of the receipt of the objecting party's submissions. Failure to respond to an objection shall constitute a waiver with respect thereto. The party making the objection shall be responsible for providing the judge with a stenographic record of the deposition, unless it is already on file at the court, and, if the judge requests, with the audio-visual recording or an audio copy of the sound track. For the purpose of ruling on the objections, the judge may utilize the entire stenographic record, audio-visual recording, or audio-tape recording, or those portions that are pertinent to the objections made. The judge shall rule on the objections prior to the commencement of trial or hearing and give notice to all parties of the rulings and instructions as to editing. The editing shall reflect the rulings of the judge and shall remove all references to the objections. The officer shall cause a copy of the audio-visual recording to be edited in accordance with the court's instructions. The officer shall then cause copies of the edited version thereof to be delivered to the parties who~~in advance of trial or

(iv) as ordered them, and to by the court, ~~if so instructed by the court. The stenographic record, and the original audio-visual recording and the edited version thereof, if any, shall be preserved intact and unaltered.~~

and

(v) pursuant to the procedure set out in Rule 30(h).

(5) Use at Trial.

Unless the court upon motion orders otherwise, ~~an audio-visual~~a previously recorded audiovisual treating physician or expert witness deposition for trial may be used by any party for any purpose and under any circumstances in which a stenographic deposition may be used and, in addition, may be used at trial in ~~lieu~~place of oral testimony whether or not such witness is available to testify.

~~(6) Applicability of Rule 30A(a)-(l). Except as altered by rule 30A(m), the provisions of rule 30A(a)-(l) shall apply to audio-visual expert witness depositions for trial.~~

(o) Special Master

(1) Pursuant to Rule 26(j), a special master may be appointed to oversee the deposition practice and procedure.

(2) Attendance at deposition.

(A) The court may order or

(B) the special master may decide to attend the deposition.

(C) A party may request the attendance of the special master at a deposition, if a party reasonably believes it is necessary.

(3) In addition to the powers enumerated in Rule 26(j) and subject to the specifications and limitations stated in the order of reference, the special master may decide the time, date and place for the deposition, the length of the deposition and who may be present at the deposition.

Rule 31. Depositions of Witnesses Upon Written Questions

(a) Serving Questions; Notice.

(1) After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if: (i) the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e) (except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(2) of this rule); (ii) (deleted); (iii) (deleted); (iv) there has been a hearing before a master; or (v) (deleted) written questions.

(A) The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45.

(B) The deposition

(i) of a person confined in prison or

(ii) of a minor-child

may be taken only by leave of court on such terms as the court prescribes.

~~**(b) Notice of examination: General requirements; special notice; non-stenographic recording; production of documents and things; deposition of organization**~~

(2) A

~~(1) A party desiring to take the deposition of any person upon oral examination~~ written questions shall give at least seven days' notice in writing to serve them upon every

other party to the action. The notice shall state the time and place for taking the deposition and with a notice stating

(A) the name and address of ~~each~~the person who is to be examined~~answer them~~, if known, and, if the name is not known,

(B) a general description sufficient to identify ~~him~~the person who is to answer them or the particular class or group to which ~~he~~that person belongs. ~~If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice., and~~
Identical to Mass.R.Civ.P. 30(b)(1)

(2) ~~Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the county where the action is pending and more than 100 miles from the place of trial, or is about to go out of the United States, or is bound on a voyage abroad, and will be unavailable for examination unless his deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification. If a party shows that when he was served with notice under this subdivision (b)(2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.~~

Identical to Mass.R.Civ.P. 30(b)(2)

(3) ~~The court may for cause shown enlarge or shorten the time for taking the deposition.~~
Identical to Mass.R.Civ.P. 30(b)(3)

(4) ~~By leave of court upon motion with notice and an opportunity to be heard in opposition, or by stipulation in writing of all parties, a party taking an oral deposition may have the testimony recorded by other than stenographic means. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at his own expense. Any objections under subdivision (c), any changes made by the witness, his signature identifying the deposition as his own or the statement of the officer that is required if the witness does not sign, as provided in subdivision (e), and the certification of the officer required by subdivision (f) shall be set forth in a writing to accompany a deposition recorded by non-stenographic means. In any event, however, where testimony is to be recorded by audio-visual means, the provisions of Rule 30A shall apply. Identical to Mass.R.Civ.P. 30(b)(4) as amended January 1, 1981~~

(5) ~~The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request and, notwithstanding the provisions of subdivision (b)(1) of this Rule, the party making the request shall give at least 30 days' notice in writing to every other party to the action. The court may on motion with or without notice allow~~

~~a shorter or longer time. Identical to Mass.R.Civ.P. 30(b)(5)~~

~~(6) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.~~

~~Identical to Mass.R.Civ.P. 30(b)(6)~~

~~(c) Examination and cross-examination; Record of examination; oath; objections~~

~~Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Rule 43(b). The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or by voice writing or recorded by any other means ordered in accordance with subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and such party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.~~

~~All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition; but the examination shall proceed. Any objection to testimony during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. Testimony to which objection is made shall be taken subject to the objections. Counsel for a witness or a party may not instruct a deponent not to answer except where necessary to assert or preserve a privilege or a disqualification pursuant to G.L. c. 233, § 20 or protection against disclosure, to enforce a limitation on evidence directed by the court or stipulated in writing by the parties, or to terminate the deposition and present a motion to the court pursuant to Rules 30(d) or 37(d).~~

~~Pursuant to Rule 26(j), a special master may be appointed to oversee the deposition practice and procedure. The court may order or the special master may decide to attend the deposition. A party may request the attendance of the special master at a deposition, if a party reasonably believes it is necessary. In addition to the powers enumerated in Rule 26(j) and subject to the specifications and limitations stated in the order of reference, the special master may decide the time, date and place for the deposition, the length of the deposition and who may be present at the deposition.~~

~~(d) Motion to terminate or limit examination~~

~~At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the county or judicial district, as the case may be, where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. Identical to Mass.R.Civ.P. 30(d)~~

~~(e) Submission to witness; changes; signing~~

~~When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part. Identical to Mass.R.Civ.P. 30(e)~~

~~(f) Certification and delivery by officer; exhibits; copies; notice of receipt~~

~~(C)~~

~~(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. Unless otherwise ordered by the court generally or in a specific case or stipulated by the parties, he shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly deliver or send it to the party taking the deposition. Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the material desires to retain them he may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if he affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.~~

~~(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.~~

~~(3) The party taking the deposition shall give prompt notice of its receipt to all other parties. Identical to Mass.R.Civ.P. 30(f)(1)-(3)~~

~~(g) Failure to attend or to serve subpoena; expenses~~

~~(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.~~

~~(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees. Identical to Mass.R.Civ.P. 30(g)~~

Rule 30A. Audiovisual Depositions

~~(a) Authorization of audio-visual depositions~~

~~By leave of court upon motion with notice and an opportunity to be heard in opposition, or by stipulation of all parties, a party taking an oral deposition may have the testimony recorded by audio-visual means by complying with the provisions of this rule. Except as otherwise provided by this rule, the rules governing the practice and procedure in depositions and discovery shall apply. At the taking of any such deposition, unless the parties otherwise stipulate, or the court for good cause otherwise orders, there shall also be prepared a simultaneous stenographic record of the deposition.~~

~~(b) Notice~~

~~Except by leave of court, granted after notice and opportunity to be heard in opposition, a notice for the taking of an audio-visual deposition shall not be served sooner than six (6) months after the action has been commenced. Every notice for the taking of an audio-visual deposition and the subpoena for attendance at that deposition shall state that it is to be recorded by audio-visual means and the name and address of the person whose deposition is to be taken. If the operator is an employee of the attorney taking the deposition, the notice shall so indicate.~~

~~(c) Procedure~~

~~The party taking the audio-visual deposition shall be responsible for assuring that the necessary equipment for making an audio-visual recording of the deposition is present at the time the deposition is taken. The following procedure shall be observed in recording an audio-visual~~

deposition:

~~(1) Opening of Deposition. The deposition shall begin with an oral or written statement on camera which includes:~~

- ~~(i) the operator's name and business address;~~
- ~~(ii) the name and address of the operator's employer;~~
- ~~(iii) the date, time and place of the deposition;~~
- ~~(iv) the caption of the case;~~
- ~~(v) the name of the witness deponent;~~
- ~~(vi) the name of the party on whose behalf the deposition is being taken; and~~
- ~~(vii) any stipulation by the parties.~~

~~The opening statement, if oral, shall be made by the officer before whom the deposition is to be taken, unless counsel agree that one of counsel will make the statement.~~

~~(2) Counsel. Counsel shall identify themselves on camera by stating their names, their addresses, and the names of the parties or persons for whom they appear at the deposition, and nothing more.~~

~~(3) Oath. The officer before whom the deposition is taken shall then identify himself and swear or affirm the witness on camera.~~

~~(4) Multiple Units. When the length of the deposition requires the use of more than one recording unit, the end of each recording unit and the beginning of each succeeding recording unit shall be announced on camera by the operator.~~

~~(5) Closing of Deposition. At the conclusion of the deposition, a statement shall be made on camera that the deposition is concluded. A statement may be made on camera setting forth any stipulation made by counsel concerning the custody of the audio-visual recording and exhibits and other pertinent matters.~~

~~(6) Index. The deposition shall be timed by a digital clock on camera which shall show continually each hour, minute and second of each recording unit of the deposition or otherwise suitably indexed by a time generator. The date(s) on which the deposition is taken shall be shown.~~

~~(7) Objections. An objection shall be made as in the case of depositions taken solely by stenographic means.~~

~~(8) Interruption of Recording. No party shall be entitled to cause the operator to interrupt or halt the recording of the audio-visual deposition without the assent of all other parties present.~~

~~(9) Submission to Witness; Changes; Signing. Unless the parties have stipulated that a simultaneous stenographic record of the deposition not be prepared, the provisions of Rule~~

~~30(c) shall apply to the stenographic record of the deposition. Except upon order of the court and upon such terms as may be provided, the witness shall have no right to examine and view the audio-visual recording.~~

~~(10) Certification. The officer before whom the audio-visual deposition is taken shall attach to the original audio-visual recording a certificate stating that the witness was sworn or affirmed by him and that the audio-visual recording is a true record of the testimony given by the witness.~~

~~(d) Recording officer; use of camera; copies~~

~~The officer before whom an audio-visual deposition is taken shall be subject to the provisions enumerated in Rule 28(a)-(c). During the taking of the audio-visual deposition, the officer shall assure that the audio-visual tape records the witness in a standard fashion at all times during the deposition, unless all counsel agree otherwise, or unless on motion before the court, the court directs otherwise. In no event shall the officer use, or permit the use of, audio-visual tape camera techniques to vary the view which is being recorded for presentation in the courtroom unless agreed upon or ordered by the court as recited above. As an exception to the foregoing, the officer shall, at the request of the attorney questioning the witness, cause a close-up view of a deposition exhibit or visual aid to be taken while the witness is being questioned concerning the exhibit. Upon the request of any of the parties, the officer shall provide, at the cost of the party making the request, a copy of the deposition in the form of a videotape or other form of audio-visual recording, an audio recording, or a written transcription.~~

~~(e) Custody; filing; notice of filing~~

~~Unless the parties have otherwise stipulated, the officer shall take custody of each recording unit upon its completion and shall retain custody of all completed units throughout the deposition. When a deposition is to be completed on another day, the officer shall also take custody of any uncompleted recording unit during the interval. Upon completion of a deposition, unless the parties have otherwise stipulated, the original audio-visual recording and the typewritten transcript of the deposition shall be filed forthwith by the officer with the clerk of the trial court in accordance with subdivision (1) of Rule 30(f) and notice of its filing shall be given as provided in subdivision (3) of that rule.~~

~~(f) Inspection and release of audio-visual recordings~~

~~Except upon order of the court and upon such terms as may be provided, the audio-visual recordings on file with the clerk of the court in which the action is pending shall not be available for inspection or viewing after their filing and prior to their use at the trial of the case or their disposition in accordance with this rule. The clerk may release the audio-visual recording to the officer taking the deposition, without an order of court, for the purpose of preparing a copy at the request of a party as provided in subdivisions (a) and (d) of this rule.~~

~~(g) Rulings on objections; editing of recording~~

~~If any party has any objections to the audio-visual deposition which would otherwise be made at trial, pursuant to Rule 32(b), such objections shall if practicable, be submitted to the trial judge prior to commencement of the trial or hearing for the purpose of obtaining rulings on such objections. An audio copy of the sound track or the transcript may be submitted in lieu of the audio-visual recording for this purpose. For the purpose of ruling on the objections, the trial judge may view the entire audio-visual recording, or view only those parts of the audio-visual recording pertinent to the objections made, or he may listen to an audio-tape recording submitted in lieu of the audio-visual recording, or he may read the transcript. The trial judge shall, if practicable, rule on the objections prior to the commencement of the trial or hearing and shall return the recording to the party who took the audio-visual deposition, with notice to all parties of his rulings and of his instructions as to editing. The editing shall reflect the rulings of the trial judge and shall then remove all references to the objections. After making a copy of the audio-visual recording, the officer shall cause said copy to be edited in accordance with the court's instructions. He shall then cause both the original audio-visual recording and the edited version thereof, each clearly identified, to be returned to the trial judge for use during the trial or hearing. The original audio-visual recording shall be preserved intact and unaltered.~~

~~(h) Transcribing of audio portion; marking for identification~~

~~At a trial or hearing, that part of the audio portion of an audio-visual deposition which is offered in evidence and admitted, or which is excluded on objection, shall be transcribed in the same manner as the testimony of other witnesses. Both the original unedited audio-visual recording and the edited version shall be marked for identification.~~

~~(i) Use of audio-visual deposition and responsibility for assuring necessary equipment at time of use~~

~~An audio-visual deposition may be used for any purpose and under any circumstances in which a stenographic deposition may be used. The party desiring to use the audio-visual deposition for any purpose shall be responsible for assuring that the necessary equipment for playing the audio-visual recording back is available when the audio-visual deposition is to be used. When an audio-visual deposition is used during a hearing, a trial, or any other court proceeding, the party first using such audio-visual deposition in whole or in part shall assure the availability of the same or comparable videotape playback equipment to any other party for such other party's use in further showing such audio-visual deposition during the hearing, the trial, or other court proceeding or at any rehearing, recess, or continuation thereof.~~

~~(j) Discrepancy between audio-visual deposition and stenographic deposition~~

~~Upon the claim of a party that a discrepancy exists between the audio-visual deposition and the stenographic deposition, the trial judge shall determine: (i) whether such discrepancy reasonably appears; and (ii) whether the relevant part of the audio-visual deposition is intelligible. If the relevant part of the audio-visual deposition is not intelligible, the stenographic deposition controls. If the relevant part of the audio-visual deposition is intelligible and the trial judge rules that a discrepancy reasonably appears, the jury, in a jury action, shall determine from the audio-visual deposition the deponent's testimony. The trial judge, in his discretion, may permit the jury~~

~~to be aided in its determination by the stenographic deposition.~~

~~(k) Evidence by audio-visual recording~~

~~(1) Authorization of Audio-Visual Testimony or Other Evidence. Upon motion with notice and an opportunity to be heard, or by stipulation of all parties approved by the court, or upon the court's motion, the court may order, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, that all or part of the testimony, and such other evidence as may be appropriate, may be presented at trial by audio-visual means. The provisions of Rule 30A shall govern such audio-visual recordings.~~

~~(2) Introduction as Evidence. Notwithstanding Rule 30A(i) or Rule 32(a)(3), but subject to rulings on objections pursuant to Rule 30A(k)(3), any party may introduce any such audio-visual recording, that has been authorized under Rule 30A(k)(1), at trial if the court finds its introduction to be in the interest of justice.~~

~~(3) Objections. Before such audio-visual recording is admitted at trial, the trial judge shall rule upon any objection to any portion thereof and the recording shall be edited to reflect the rulings. The objections shall be presented to the trial judge and the editing to reflect the rulings shall be accomplished, each in accordance with the provisions of Rule 30A(g).~~

~~(4) Part of the Record; Not an Exhibit. Any portion of the audio-visual recording so introduced shall be part of the record, and subject to the provisions of Rule 30A(h), but not an exhibit.~~

~~(l) Costs~~

~~The reasonable expense of recording, editing, and using an audio-visual deposition may be taxed as costs, pursuant to the provisions of Rule 54(e).~~

~~(m) Audio-visual depositions of treating physicians and expert witnesses for use at trial~~

~~(1) Authorization and Definitions. Unless the court upon motion orders otherwise, any party intending to call a treating physician or expert witness at trial as that party's own witness may take the oral deposition of any such treating physician or expert witness by audio-visual means for the purpose of its being used as evidence at trial in lieu of oral testimony. Such depositions shall be known as "audio-visual expert witness depositions for trial." This rule 30A(m) does not apply to another party's treating physician or expert, discovery from whom is subject to the provisions of rule 26(b)(4)(A) or 26(b)(4)(B). A "treating physician" is a physician who has provided medical treatment to a party or other person involved in the lawsuit, and who will be questioned about such treatment and matters related thereto. An "expert witness" is a person qualified as an expert by knowledge, skill, experience, training, or education to testify in the form of an opinion or otherwise.~~

~~(2) Timing, Curriculum Vitae, and Report. Except by leave of court, a notice for the taking of an audio-visual expert witness deposition for trial shall not be served (i) sooner than six (6) months after the action has been commenced, and (ii) until thirty (30) days after a written report of that~~

witness has been furnished to all parties. Such report shall contain a curriculum vitae of that witness, shall cover the subjects described in rule 26(b)(4)(A)(i), and, in the case of a treating physician, a description of the treatment and its costs. Any party may move for further discovery of that witness, to take place prior to the audio-visual expert witness deposition for trial, in accordance with Rule 26(b)(4)(A)(ii).

~~(3) Notice; Opposition. In addition to the requirements of rule 30A(b), every notice for the taking of an audio-visual expert witness deposition for trial shall state that it is to be recorded by audio-visual means with the purpose of its being used as evidence at trial in lieu of oral testimony. Any motion in opposition to the taking of an audio-visual expert witness deposition for trial must be filed within fourteen (14) days of receipt of the notice or on or before the specified time for taking of the audio-visual expert witness deposition for trial, if such time is less than fourteen (14) days from receipt of the notice. The audio-visual expert witness deposition shall not occur until the court rules on the motion opposing the deposition.~~

~~(4) Ruling on Objections; Editing of Recording. When an audio-visual expert witness deposition for trial is taken, all evidential objections shall, to the extent practicable, be made during the course of the deposition. If any party has made objections during the course of the audio-visual expert witness deposition for trial, or has any objections to such deposition which would otherwise be made at trial, pursuant to rule 32(b), such objections shall be filed with the trial judge or a motion judge, if the trial judge has not yet been designated, no later than twenty-one (21) days before the commencement of the trial. Objections not so submitted shall be deemed waived, except to the extent that events at the trial, which could not have reasonably been foreseen by the objecting party, necessitate an objection at trial. The nonobjecting party shall file a response to the submissions by the objecting party within fourteen (14) days of the receipt of the objecting party's submissions. Failure to respond to an objection shall constitute a waiver with respect thereto. The party making the objection shall be responsible for providing the judge with a stenographic record of the deposition, unless it is already on file at the court, and, if the judge requests, with the audio-visual recording or an audio copy of the sound track. For the purpose of ruling on the objections, the judge may utilize the entire stenographic record, audio-visual recording, or audio-tape recording, or those portions that are pertinent to the objections made. The judge shall rule on the objections prior to the commencement of trial or hearing and give notice to all parties of the rulings and instructions as to editing. The editing shall reflect the rulings of the judge and shall remove all references to the objections. The officer shall cause a copy of the audio-visual recording to be edited in accordance with the court's instructions. The officer shall then cause copies of the edited version thereof to be delivered to the parties who ordered them, and to the court, if so instructed by the court. The stenographic record, and the original audio-visual recording and the edited version thereof, if any, shall be preserved intact and unaltered.~~

~~(5) Use at Trial. Unless the court upon motion orders otherwise, an audio-visual expert witness deposition for trial may be used by any party for any purpose and under any circumstances in which a stenographic deposition may be used and, in addition, may be used at trial in lieu of oral testimony whether or not such witness is available to testify.~~

~~(6) Applicability of Rule 30A(a)-(1). Except as altered by rule 30A(m), the provisions of rule 30A(a)-(1) shall apply to audio-visual expert witness depositions for trial.~~

~~Rule 31. Depositions of Witnesses Upon Written Questions~~

~~(a) Serving questions; notice~~

~~After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.~~

~~A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken.~~

~~(3) A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).~~

~~(4) Within thirty (30) days after the notice and written questions are served, a party may serve cross questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6). upon all other parties.~~

~~(5) Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within ten (10) days after being served with cross questions, a party may serve redirect questions upon all other parties.~~

~~(6) Within ten (10) days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.~~

~~questions upon all other parties.~~

~~The court may for cause shown enlarge or shorten the time.~~

(b) Officer to Take Responses and Prepare Record.

~~(1) A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice.~~

~~(2) take responses and The officer designated in the notice shall proceed promptly, in the manner provided by Rule~~

30(c), (e), and (f),

(A) to take the testimony of the witness in response to the questions and

(B) to prepare ~~record~~

, certify, and deliver or send the deposition to the party taking the deposition,

A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and deliver or send the deposition to the party taking the deposition, attaching thereto the copy of the notice and questions received by him.

attaching to the deposition the copy of the notice and questions received by the officer.

(c) Notice of ~~receipt~~

Receipt. When the deposition is received, the party taking it shall promptly give notice ~~thereof~~ of receipt of the deposition to all other parties.

Rule 32. Use of Depositions in Court Proceedings

(a) Use of ~~depositions~~

Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who

(A) was present or represented at the taking of the deposition or ~~who~~

(B) had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of ~~any one~~ anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under ~~Rule 30(b)(6)~~ or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) that the witness is dead; or

(B) that the witness is out of the Commonwealth, unless it appears that the absence of the witness was procured by the party offering the deposition; or ~~(C) that the witness is unable to attend or~~

~~testify because of age, sickness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.~~

(C) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or

(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon motion with notice, the court finds that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party,

(A) an adverse party may require ~~him~~the party to introduce any other part which ought in fairness to be considered with the part introduced, and

(B) any party may introduce any other parts.

(5) Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and

(A) when an action has been brought in any court of the United States or of any state and

(B) another action involving the same subject matter is afterward brought between

(i) the same parties or

(ii) their representatives or successors in interest,

all depositions lawfully taken and duly filed in the former action may be used in the latter action as if originally taken ~~therefor.~~
for the latter action.

(b) Objections to ~~admissibility~~

Admissibility. Subject to the provisions of ~~Rules 28(b)-~~ and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of ~~taking~~Taking or ~~using~~depositions Using Depositions.

(1) A party does not make a person ~~his~~that party's own witness for any purpose by taking ~~his~~the

person's deposition.

(2) The introduction in evidence of the deposition or any part ~~thereof~~ of the deposition for any purpose

other than that of contradicting or impeaching the deponent

(A) makes the deponent the witness of the party introducing the deposition, but

(B) this shall not apply to the use by an adverse party of a deposition under subdivision

(a)(2) of this rule.

(3) At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by ~~him~~ that party or by any other party.-

(d) Effect of ~~errors~~ Errors and ~~irregularities~~ Irregularities in ~~depositions~~ Depositions.

(1) ~~As to Notice~~. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) ~~As to Disqualification of Officer~~. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made

(A) before the taking of the deposition begins or

(B) as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) ~~As to Taking of Deposition~~.

(A) Objections to

(i) the competency of a witness or ~~to~~

(ii) the competency, relevancy, or materiality of testimony

are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been ~~obviated~~ made unnecessary or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination

(i) in the manner of taking the deposition,

(ii) in the form of the questions or answers,

(iii) in the oath or affirmation, or

(iv) in the conduct of parties, and

(v) errors of any kind which might be ~~obviated~~made unnecessary, removed, or cured if promptly presented,

are waived unless ~~seasonable~~a prompt objection ~~thereto~~to each is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under ~~Rule 31~~ are waived unless
(i) served in writing upon the party ~~propounding~~submitting them
(ii) within the time allowed for serving the succeeding cross or other questions and
(iii) within five (5) days after service of the last questions authorized.

(4) As to Completion and Return of Deposition.

(A) Errors and irregularities in the manner in which

(i) the testimony is transcribed or

(ii) the deposition is

(a) prepared,

(b) signed,

(c) certified,

(d) sealed,

(e) indorsed,

(f) transmitted,

(g) filed,

(h) or otherwise dealt with by the officer under ~~Rules 30 and 31~~

are waived unless

(iii) a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect

(a) is identified, or

(b) with due diligence might have been ~~ascertained~~ identified.

Rule 33. Interrogatories to Parties

(a) Availability: Procedures for ~~use~~
Use.

(1) Any party may serve upon any other party written interrogatories to be answered

(A) by the party served or,

(B) if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent,

who shall furnish such information as is available to the party.

(2) Interrogatories may without leave of court, be served
(A) upon the plaintiff after commencement of the action and
(B) upon any other party with or after service of the summons and complaint upon that party.

(3) No party shall serve on any other party as of right more than one set of interrogatories,
Unless~~unless~~

(A) the total number of all interrogatories in all sets combined does not exceed thirty, ~~(30),~~
including interrogatories, subsidiary or incidental to, or dependent upon, other interrogatories,
and ~~however the same may be grouped or combined. The court, on a showing of good cause, or~~
~~upon agreement of the parties, may allow service of additional interrogatories.~~

(B) ~~however the same may be grouped or combined.~~

(4) ~~The court, on a showing of good cause, or upon agreement of the parties, may allow service~~
~~of additional interrogatories.~~

(5) Each interrogatory shall be answered separately and fully in writing under the penalties of perjury, unless it is objected to, in which event the reasons for objection shall be stated ~~in~~
~~lieu~~instead of an answer;

(6) each answer or objection shall be preceded by the interrogatory to which it responds.

(7) Signing.

(A) The answers are to be signed by the person making them, and

(B) the objections are to be signed by the attorney or unrepresented party making them.

(8) The party upon whom the interrogatories have been served shall serve the answers and objections, if any,

(A) within thirty ~~(30)~~ days after the service of the interrogatories, except that

(B) a defendant may serve answers or objections within forty-five ~~(45)~~ days after service of the summons and complaint upon the defendant.

(C) The court may allow a shorter or longer time.

(9) The party submitting the interrogatories may

(A) move for an order under ~~Rule 37(a)~~ with respect to any objection or other failure to answer an interrogatory.

(B) In addition, for failure to serve

(i) timely answers or objections to interrogatories~~(~~

(ii) or further answers, as the case may be~~),~~

the interrogating party may serve a final request for answers, specifying the failure.

(10) Sanctions.

(A) All sanctions available to a party under ~~Rule 37~~ and

(B) any other sanction that the court may deem appropriate shall be available to compel compliance with this rule and

(C) such sanctions shall be ordered by the court except for good cause shown.

**(b) Scope: Use at ~~trial~~
Trial.**

(1) Interrogatories may relate to any matters which can be inquired into under ~~Rule 26(b)~~, and

(2) the answers may be used to the extent permitted by the rules of evidence.

(3) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves

(A) an opinion or contention that relates to fact or

(B) the application of law to fact, but

(C) the court may order that such an interrogatory need not be answered

(i) until after designated discovery has been completed, or

(ii) until a pretrial conference, or other later time. ~~Identical to Mass.R.Civ.P. 33(b)~~

**(c) Option to ~~produce business records~~
Produce Business Records.**

(1) Where the answer to an interrogatory may be ~~derived or ascertained from~~ found and learned

(A) in the business records of the party upon whom the interrogatory has been served or

(B) from an examination, audit or inspection of such business records, including a compilation, abstract or summary ~~thereof~~ of such business records, and

the burden of ~~deriving or ascertaining~~ finding and learning the answer is substantially the same for the party serving the interrogatory as for the party served,

(C) it is a sufficient answer to such interrogatory

(i) to specify the records from which the answer may be ~~derived or ascertained~~ found and learned and

- (ii) to afford to the party serving the interrogatory reasonable opportunity
- (a) to examine, audit or inspect such records and
- (b) to make copies, compilations, abstracts or summaries. ~~A specification~~

(iii) ~~The records~~ shall be specified in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ~~ascertained. Identical to Mass.R.Civ.P. 33(e)~~

found and learned.

Rule 34. ~~Production of: Producing Documents and, Electronically Stored Information, and Tangible Things and Entry Upon, or Entering Onto Land, for Inspection and Other Purposes~~

(a) Scope

~~Any~~In General. A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party ~~making the request, or someone acting on his behalf; its representative~~ to inspect ~~and~~, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents ~~(or electronically stored information,~~ including

- (i) writings,
- (ii) drawings,
- (iii) graphs,
- (iv) charts,
- (v) photographs, ~~phono-records,~~
- (vi) sound recordings,
- (vii) images and
- (viii) other data or data compilations,

stored in any medium from which information can be obtained, ~~translated either directly or,~~ if necessary, after translation by the ~~respondent through detection devices responding party~~ into a reasonably usable form); ~~or to inspect and copy, test, or sample~~

(B) any designated tangible things ~~which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or; or~~

(2) to permit entry upon onto designated land or other property ~~in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling possessed or controlled by the~~ responding party, so that the requesting party may

- (A) inspect,
- (B) measure,
- (C) survey,
- (D) photograph,
- (E) test, or
- (F) sample

the property or any designated object or operation ~~thereon, within the scope of Rule 26(b).~~
on it.

(b) Procedure

:

(1) Contents of the Request. The request may, without leave of court, be served

(A) upon the plaintiff after commencement of the action and
(B) upon any other party with or after service of the summons and complaint upon that party.

(C) The request shall set forth the items to be inspected

(i) either by individual item

(ii) or by category,

(iii) and describe each item and category with reasonable ~~particularity.~~
detail.

(D) The request

(i) shall specify a reasonable time, place, and manner of making the inspection and performing the related acts, and

(ii) it may specify the form in which electronically stored information is to be produced.

(2) -Responses and Objections.

(A) In General.

(i) The party upon whom the request is served shall serve a written response within ~~thirty (30)~~ days after the service of the request, except that

(ii) a defendant may serve a response within ~~forty-five (45)~~ days after service of the summons and complaint upon that defendant.

(iii) The court may allow a shorter or longer time.

(iv) The response shall state, with respect to each item or category,

(a) that inspection and related activities will be permitted as requested, unless the request is objected to,

(b) in which event the reasons for objection shall be stated.

(v) If objection is made to part of an item or category, the part shall be specified.

(vi) The party submitting the request may move for an order under Rule 37(a) with respect to

(a) any objection to or other failure to respond to the request or any part thereof, or

(b) any failure to permit inspection as requested. ~~A party who produces~~

(B) Responding to a request for production of electronically stored information.

(i) The response may state an objection to a requested form for producing electronically stored information.

(ii) If the responding party objects to a requested form - or if no form was specified in the request - the party shall state the form or forms it intends to use.

(C) Producing the documents for inspection or electronically stored information. Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party shall produce ~~them~~ documents as they are kept in the usual course of business or shall organize and label them to correspond ~~with~~to the categories in the request.
;

(ii) The producing party may produce copies of the documents, including by electronic means, provided that, if requested, the producing party affords all parties a fair opportunity to verify the copies by comparison with the originals.

(iii) If a request does not specify a form for producing electronically stored information, a party shall produce it

(a) in a form or forms in which it is ordinarily maintained or

(b) in a reasonably usable form or forms; and

(iv) A party need not produce the same electronically stored information in more than one form.

(c) Persons ~~not parties~~ Not Parties.

(1) This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

(2) As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

Rule 35: Physical and ~~Mental Examination~~ Mental Examination of ~~Persons~~ Persons

(a) Order for examination.

(1) When the mental or physical condition (including the blood group)

(A) of a party, or

(B) of a person in the custody or under the legal control of a party,

is in controversy, the court in which the action is pending may order the party

(C) to submit to a physical or mental examination by a ~~physician~~ suitably licensed or certified examiner or

(D) to produce for examination ~~the~~ person in ~~his~~ the party's custody or legal control.

(2) The order may be made only

(A) on motion for good cause shown and

(B) upon notice

(i) to the person to be examined and

(ii) to all parties and

(C) shall specify the

(i) time,

(ii) place,

(iii) manner,

(iv) conditions, and

(v) scope

of the examination and

(vi) the person or persons by whom it is to be made.

(b) Report of ~~examining physician~~ examiner.

(1) If requested by

(A) the party against whom an order is made under Rule 35(a) or

(B) the person examined,

the party causing the examination to be made shall deliver to ~~him~~ the requesting party a copy of a detailed written report ~~of the examining physician setting out his~~ and findings of the examiner, including

- (i) results of all tests made,
- (ii) diagnoses and conclusions, together with
- (iii) like reports of all earlier examinations of the same condition.

(C) After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made

(i) a like report of any examination, previously or thereafter made, of the same condition, unless,

(a) in the case of a report of examination of a person not a party, the party ~~shows that he is~~ unable to obtain ~~it~~ the report and so establishes.

(D) The court on motion may make an order against a party

(i) requiring delivery of a report on such terms as are just, and ~~if a physician~~

(ii) ~~The court may exclude from trial the testimony of an examiner who~~ fails or refuses to make a report ~~the court may exclude his testimony if offered at the trial.~~

:

(2) Privileges.

(A) By requesting and obtaining a report of the examination so ordered or

(B) by taking the deposition of the examiner,

(i) the party examined waives any privilege ~~he may have available~~ in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine ~~him~~ the party in respect of the same mental or physical condition; but ~~he~~

(ii) ~~the party~~ does not otherwise waive ~~his any~~ right to object at the trial to the introduction into evidence of the report or any part ~~thereof.~~
of the report.

(3)

(3) Examinations made by agreement.

(A) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise.

(B) This subdivision does not preclude

(i) discovery of ~~an examiner's~~ report ~~of an examining physician or~~

(ii) the taking of a deposition of ~~the physician an examiner~~ in accordance with the provisions of any other rule.

Rule 36. Requests for Admissions

(a) Request for Admission

(a) Request for admission

:

(1) A party may serve upon any other party a written request for admission, for purposes of the pending action, only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to

(A) statements or

(B) opinions of fact or of the application of law to fact,

(C) including the genuineness of any documents described in the request.

(2) Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

(3) The request may, without leave of court, be served

(A) upon the plaintiff after commencement of the action and

(B) upon any other party with or after service of the summons and complaint upon that ~~party.~~

party.

(C) Each matter of which an admission is requested shall be separately set forth.

(D) The matter is admitted unless,

(i) within ~~thirty~~ (30) days after service of the request, or

(ii) within such shorter or longer time as the court may allow,

the party to whom the request is directed serves upon the party requesting the admission either

(iii) a written statement signed by the party under the penalties of perjury specifically

(a) denying the matter or

(b) setting forth in detail why the answering party cannot truthfully admit or deny the matter; or

(iv) a written objection addressed to the matter, signed by the party or ~~his~~ the party's attorney, but,

(v) unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of forty-five (45) days after service of the summons and complaint upon ~~him~~ the defendant.

(E) If objection is made, the reasons therefor shall be stated.

(i) A denial shall fairly meet the substance of the requested admission, and

(ii) when good faith requires that a party qualify ~~his~~the party's answer or deny only a part of the matter of which an admission is requested, ~~he~~the party shall

(a) specify so much of it as is true and

(b) qualify or deny the remainder.

(F) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless ~~he~~

(i) the answering party states that ~~he~~the answering party has made reasonable inquiry and that

(ii) the information known or readily obtainable by ~~him~~the answering party is insufficient to enable ~~him~~the answering party to admit or deny.

(4) A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; ~~he~~

(A) the party may, subject to the provisions of Rule 37(c),

(i) deny the matter or

(ii) set forth reasons why ~~he~~the party cannot admit or deny it.

(5) Each admission, denial, objection, or statement shall be preceded by the request to which it responds.

(6) The party who has requested the admissions may move to determine the sufficiency of the answers or objections.

(A) Unless the court determines that an objection is justified, it shall order that an answer be served.

(B) If the court determines that an answer does not comply with the requirements of this rule, it may order either

(i) that the matter is admitted or

(ii) that an amended answer be served.

(7) The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial.

(8) The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.-

(b) Effect of ~~admission~~

Admission. Any matter admitted under this rule is conclusively established unless

the court on motion permits withdrawal or amendment of the admission.

(1) Subject to the provisions of Rule 16 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when

(A) the presentation of the merits of the action will be subverted thereby and

(B) the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice ~~him~~that party in maintaining ~~his~~the party's action or defense on the merits.

(2) Any admission made by a party under this rule is for the purpose of the pending action only

~~and~~

And

(A) is not an admission by ~~him~~that party for any other purpose

(B) nor may it be used against ~~him~~that party in any other proceeding.

Rule 37. Failure to Make Discovery: Sanctions

(a) Motion for ~~order compelling discovery~~

Order Compelling Discovery. Upon reasonable notice to other parties and all persons affected thereby, a party may apply for an order compelling discovery as follows:

(1) Appropriate Court. ~~An application~~A motion for an order to a party may be made

(A) to the court in which the action is pending, or on matters relating to a deposition,

(B) to the court in the county where the deposition is being taken. ~~An application~~

(C) A motion for an order to a deponent who is not a party shall be made to the court in the county where the deposition is being taken.

(2) Motion. If

(A) a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or

(B) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or

(C) a party fails to answer an interrogatory submitted under Rule 33, or

(D) if a party, in response to a request for inspection submitted under ~~Rule~~ 34, fails to respond that inspection will be permitted as requested

(E) or fails to permit inspection as requested,

the discovering party may move for

- (i) an order compelling an answer or a designation or
- (ii) an order compelling inspection in accordance with the request.

(F) When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before ~~he applies~~applying for an order.

(G) If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) Evasive or Incomplete Answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. If the motion is granted, the court may, after opportunity for hearing, require

- (A) the party or deponent whose conduct necessitated the motion or
- (B) the party or attorney advising such conduct or both of them

to pay to the moving party the reasonable expenses incurred in obtaining the order, including ~~attorney's~~sattorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is denied, the court may, after an opportunity for a hearing, require

- (i) the moving party or
- (ii) the attorney advising the motion or
- (iii) both of them

to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including ~~attorney's~~sattorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(D) If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply with Order.

(1) Sanctions by Court in County Where Deposition Is Taken. If a deponent

~~wilfully~~willfully fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by Court in Which Action Is Pending.

If

(i) a party or an officer, director, or managing agent of a party or

(ii) a person designated under ~~Rule 30(b)(6)~~ or ~~31(a)~~ to testify on behalf of a party or a person interrogated under Rule 33 ~~wilfully~~

willfully fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or ~~Rule 35~~,

the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) ~~An order that~~

(i) the matters regarding which the order was made or

(ii) any other designated facts

shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) ~~An order~~

(i) refusing to allow the disobedient party to support or oppose designated claims or defenses, or

(ii) prohibiting ~~him~~ the disobedient party from introducing designated matters in evidence;

(C) ~~An order~~

(i) striking out pleadings or parts thereof, or

(ii) staying further proceedings until the order is obeyed, or

(iii) dismissing the action or proceeding or any part thereof;

(D) ~~In lieu~~ Instead of any of the ~~foregoing~~ orders described above or in addition ~~theretoto them~~, an order

(i) treating as a contempt of court the ~~wilful~~willful failure to obey any orders

(ii) except an order to submit to a physical or mental examination;

(E) ~~Where~~ a party has ~~wilfully~~willfully failed to comply with an order under Rule 35(a) requiring ~~him~~ that party to produce another for examination,

(i) such orders as are listed in paragraphs (A), (B) and (C) of this subdivision,
(ii) unless the party failing to comply shows ~~that he is unable~~ an inability to produce such person for examination.

~~In lieu(F)~~ Instead of any of the ~~foregoing~~ orders described above, or in addition ~~theretoto~~ them, the court may require

(i) the party failing to obey the order or
(ii) the attorney advising ~~him~~ that party or
(iii) both

to pay the reasonable expenses, including ~~attorney's~~ sanctions and attorney's fees, caused by the failure.

(c) Expenses on ~~failure~~ Failure to admit

Admit. If a party fails to admit the genuineness of any documents or the truth of any matters as requested under ~~Rule~~ 36,

and if the party requesting the admissions ~~thereafter~~ later proves the genuineness of the document or the truth of the matter, ~~he~~

the requesting party may apply to the court for an order requiring the other party to pay ~~him~~ to the requesting party the reasonable expenses incurred in making that proof, including reasonable ~~attorney's~~ attorney's fees.

The court shall make the order unless it finds that

- (1) the request was held objectionable pursuant to ~~Rule~~ 36(a), or
- (2) the admission sought was of no substantial importance, or
- (3) the party failing to admit had reasonable grounds to believe that ~~he~~ such party might prevail on the matter, or
- (4) there was other good reason for the failure to admit. ~~Identical to Mass.R.Civ.P. 37(c).~~

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request of Inspection.

If a party or an officer, director, or a managing agent of a party or a person designated under ~~Rule 30(b)(6)-or-31(a)-~~ to testify on behalf of a party ~~willfully~~ willfully fails

- (1) to appear before the officer who is to take ~~his~~ the deposition, after being served with a proper notice, or

(2) to serve answers or objections to interrogatories submitted under ~~Rule~~ 33, after proper service of the interrogatories, or

(3) to serve a written response to a request for inspection submitted under ~~Rule~~ 34, after proper service of the request,

the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), (C) and (D) of subdivision (b)(2) of this rule.

In lieu of any order or in addition thereto, the court may require the party failing to act or the attorney advising ~~him~~that party or both to pay the reasonable expenses, including ~~attorney's~~attorney's fees, caused by the failure.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by ~~Rule~~ 26(c).

-

(e) Expenses ~~against~~Against Commonwealth

. Except to the extent permitted by statute, expenses and fees may not be awarded against the Commonwealth under this rule.

VI. TRIALS

Rule 38. Jury Trial of Right [Deleted]

~~[Deleted]~~

Rule 39. Trial by Jury or by the Court ~~[Deleted]~~

~~(a)~~

~~[Deleted]~~

~~(b)~~

~~[Deleted]~~

~~(c) Framing Jury Issues~~

~~In all actions not triable of right by a jury, the court, except where otherwise provided by law, may upon motion frame issues of fact to be tried by a jury. Identical to Mass.R.Civ.P. 39(c)~~

Rule 40. Assignment of Cases for Trial: Continuances

(a) Assignment of Cases for Trial.

(1) Cases may be assigned to the appropriate calendar or list for trial or other disposition by order of the court including general rules and orders adopted for the purpose of assignment. Precedence shall be given to actions entitled thereto by statute.

(2) Precedence shall be given to actions entitled thereto by statute.

(b) Continuances

Continuances shall be granted only for good cause, in accordance with general rules and orders which the court may from time to time adopt.

(c) Affidavit or Certificate in Support of Motion.

(1) The court need not entertain any motion for a continuance based on the absence of a material witness unless ~~such~~the motion ~~be~~is supported by an affidavit which shall state:

(A) the name of the witness and,

(B) if known, ~~his~~the address, ~~of the witness,~~

(C) the facts to which ~~he~~the witness is expected to testify and

(D) the basis for such expectation,

(E) the efforts which have been made to procure ~~his~~the attendance or deposition ~~of the witness,~~ and

(F) the expectation which the party has of procuring ~~his~~the testimony or deposition ~~of the witness~~ at a future time.

(2) Such motion may, in the discretion of the court, be denied if the adverse party will admit that the absent witness would, if present, testify as stated in the affidavit. ~~The same rule shall apply, with the necessary changes in points of detail, when the motion is grounded on the want of any material document, thing, or other evidence.~~

(3) The same rule shall apply, with the necessary changes in points of detail, when the motion is based on the absence of any material document, thing, or other evidence.

Rule 41. Dismissal of Actions _____

(a) Voluntary Dismissal: Effect Thereof.

(1) By Plaintiff; ~~by~~By Stipulation. Subject to the provisions of these rules and of any statute of this Commonwealth, an action may be dismissed by the plaintiff without order of court

(i) by filing a notice of dismissal at any time before service by the adverse party of an answer or

(ii) that after a judgment of divorce nisi has been entered, upon the filing of a stipulation of dismissal signed by all the parties who have appeared in the action, ~~the same~~.

(iii) The stipulation shall be presented forthwith to a judge of the Court who shall ~~thereupon~~then enter an order of dismissal.

(iv) Unless otherwise stated in the notice of dismissal or stipulation,

(a) the dismissal is without prejudice, except that

(b) a notice of dismissal operates as an adjudication upon the merits of so much of a judgment of divorce nisi as would terminate the marriage when filed by a plaintiff who has once dismissed in any court of the United States or of this or any other state an action based on or including the same claim.

(2) By Order of Court.

(A) Except as provided in paragraph (1) of this subdivision (a), an action shall not be dismissed ~~at~~on the plaintiff's ~~instance~~ save motion

(i) except upon order of the court and

(ii) upon such terms and conditions as the court deems proper.

(B) If a counterclaim has been pleaded by a defendant prior to the service upon ~~him~~that defendant of the plaintiff's motion to dismiss,

(i) the action shall not be dismissed against the defendant's objection

(ii) unless the counterclaim can remain pending for independent adjudication by the court.

(C) Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice. ~~Identical to Mass.R.Civ.P. 41(a)(2)~~

(b) Involuntary Dismissal: Effect of Involuntary Dismissal.

(1) On Court's Own Motion. The court may on notice as ~~hereinafter~~described in this rule provided at any time, in its discretion, dismiss for lack of prosecution any action which has

(A) remained upon the docket for three years preceding ~~said~~the notice without activity shown

other than

- (i) placing upon the trial list,
- (ii) marking for trial,
- (iii) being set down for trial,
- (iv) the filing or withdrawal of an appearance, or
- (v) the filing of any paper pertaining to discovery.

(B) The notice shall state that the action will be dismissed on a day certain, (not less than one year from the date of the notice) unless before that day the case has been ~~tried, heard on the merits, otherwise disposed of, or unless the court on motion with or without notice shall otherwise order. The notice shall be mailed to the plaintiff's attorney of record, or, if there be none, to the plaintiff if his address be known. Otherwise such notice shall be published as directed by the court. Dismissal under this paragraph shall be without prejudice.~~

- (i) tried,
- (ii) heard on the merits,
- (iii) otherwise disposed of, or
- (iv) unless the court on motion, with or without notice, shall otherwise order.

(C) The notice shall be mailed

- (i) to the plaintiff's attorney of record, or,
- (ii) if there be none, to the plaintiff if the plaintiff's address is known.

(D) Otherwise, such notice shall be published as directed by the court.

(E) Dismissal under this paragraph shall be without prejudice.

(2) On Motion of the Defendant.-

(A) On motion of the defendant, with notice, the court may, in its discretion, dismiss any action for failure of the plaintiff to prosecute or to comply with these rules or any order of court.

(B) After the plaintiff, ~~in an action tried by the court without a jury,~~ has completed the presentation of ~~his~~the plaintiff's evidence,

- (i) the defendant,
- (a) without waiving ~~his~~the defendant's right to offer evidence in the event the motion is not granted,
- (b) may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. ~~The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff the court shall make findings as provided in Rule 52(a).~~

- (ii) The court may then
 - (a) determine the facts and
 - (b) render judgment against the plaintiff or
 - (c) decline to render any judgment until the close of all the evidence.

(C) If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a).

(3) Effect.-

- (A) Unless the dismissal is pursuant to paragraph (1) of this subdivision (b), or
- (B) unless the court in its order for dismissal otherwise specifies,

- (C) a dismissal
 - (i) under this subdivision (b) and
 - (ii) any dismissal not provided for in this rule, other than a dismissal
 - (a) for lack of jurisdiction,
 - (b) for improper venue, or
 - (c) for failure to join a party under Rule 19,

operates as an adjudication upon the merits. ~~Identical to Mass.R.Civ.P. 41(b)~~

(c) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim.

(1) The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim.

(2) A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before ~~a responsive pleading or a motion for summary judgment is served, whichever first occurs, or, if there is none, before the introduction of evidence at the trial or hearing.~~ Identical to Mass.R.Civ.P. 41(c)

- (i) a responsive pleading or
- (ii) a motion for summary judgment

is served, whichever first occurs, or, if there is none,

(iii) before the introduction of evidence at the trial or hearing.

(d) Costs of ~~previously-dismissed action~~

Previously-Dismissed Action. If a plaintiff who has once dismissed an action in any court commences an action

(1) based upon or

(2) including

the same claim against the same defendant, the court

(3) may make such order for the payment of costs of the action previously dismissed as it may deem proper and ~~may stay the proceedings in the action until the plaintiff has complied with the order.~~

~~Identical to Mass.R.Civ.P. 41(d)~~

(4) may stay the proceedings in the action until the plaintiff has complied with the order.

Rule 42. ~~Consolidations~~Consolidation: Separate Trials

(a) ~~Courts other than District Court:~~ Consolidation

When actions involving a common question of law or fact are pending before the court, in the same county or different counties, ~~it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.~~ Identical to Mass.R.Civ.P. 42(a)

(1) it may order a joint hearing or trial of any or all the matters in issue in the actions;

(2) it may order all the actions consolidated; and

(3) it may make such orders concerning the proceedings as may tend to avoid unnecessary costs or delay.

(b) ~~Courts other than District Court:~~ Separate trials

Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial ~~in the county where the action is pending or in a different county of any claim, cross claim, counterclaim, or third party claim, or of any separate issue or of any number of claims, cross claims, counterclaims, third party claims, or issues, always preserving inviolate the right of trial by jury as declared by the constitution of this Commonwealth or as set forth in a statute.~~

~~Identical to Mass.R.Civ.P. 42(b)~~

- (1) in the county where the action is pending or
- (2) in a different county of any
 - (A) claim,
 - (B) cross-claim,
 - (C) counterclaim, or
 - (D) third-party claim,
 - (E) or of any separate issue
 - (F) or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

Rule 43. Evidence

(a) Form and Admissibility.

~~-(1) In all trials the testimony of witnesses shall be taken orally in open court, or such other place as the judge may, in his the judge's discretion determine, unless otherwise provided by these rules. All evidence shall be admitted which is admissible under the statutes of this Commonwealth or under the rules of evidence applied in this Commonwealth. The competency of a witness to testify shall be determined in like manner.~~

- (2) All evidence shall be admitted which is admissible
 - (A) under the statutes of this Commonwealth or
 - (B) under the rules of evidence applied in this Commonwealth.

(3) The competency of a witness to testify shall be determined in the same way.

(b) Scope and Examination and Cross-Examination.

A party may:

- (1) interrogate any unwilling or hostile witness by leading questions. -A party may
- (2) call an adverse party and interrogate him the adverse party by leading questions and
- (3) contradict and impeach him the adverse party in all respects as if he the witness had been called by the adverse party, except by evidence of bad character, and
- (4) the witness thus called
 - (A) may be contradicted and impeached by or on behalf of the adverse party also, and
 - (B) may be cross-examined by the adverse party only upon the subject matter of his the witness's examination in chief.
- (5) Any other witness may be cross-examined without regard to the scope of his the witness's testimony on direct, subject only to the trial judge's sound discretion.

(c) Record of Excluded Evidence.

If an objection to a question propounded to a witness is sustained by the court,

(1) the examining attorney may make a specific offer of what ~~he~~the attorney expects to prove by the answer of the witness,

(2) except that the court, ~~when there is a stenographer appointed or when a stenographer has been appointed,~~ upon request shall take and report evidence in full, unless it clearly appears that

(A) the evidence is not admissible on any ground or that

(B) the witness is privileged.

(d) Affirmation in ~~lieu~~Lieu of ~~oath~~

Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation under the penalties of perjury may be accepted ~~in lieu thereof. Identical to Mass.R.Civ.P. 43(d) instead of an oath.~~

(e) Evidence on ~~motions~~

Motions. When a motion is based on facts not appearing of record,

(1) the court may hear the matter on affidavits presented by the respective parties, but

(2) the court may direct that the matter be heard wholly or partly on oral testimony or depositions. ~~Identical to Mass.R.Civ.P. 43(e)~~

(f) Interpreters

:

(1) The court may appoint an interpreter of its own selection and may fix ~~his~~the interpreter's reasonable compensation.

(2) The compensation

(A) shall be paid out of funds provided

(i) by law or

(ii) by one or more of the parties as the court may direct, and

(B) may be taxed ultimately as costs, in the discretion of the court. ~~Identical to Mass.R.Civ.P. 43(f)~~

(g) Examination of ~~witnesses~~

Witnesses. Unless otherwise permitted by the court, the examination and cross-examination of any witness shall be conducted ~~by one attorney only for each party. The attorney shall stand while so examining or cross-examining unless the court otherwise permits.~~
~~Identical to Mass.R.Civ.P. 43(g)~~

~~(1) by one attorney only for each party or~~

~~(2) by the party if not represented.~~

~~(3) The attorney or the party shall stand while so examining or cross-examining unless the court otherwise permits.~~

Rule 44. Proof of Official Records

(a) Authentication

:

(1) Domestic. An official record kept within the Commonwealth, or an entry ~~therein,~~ in the official record, when admissible for any purpose, may be evidenced

(A) by an official publication ~~thereof~~ of the record or

(B) by a copy attested by the officer having legal custody of the record, or by ~~his~~ the officer's deputy.

If the record is kept in any other state, ~~within the United States, or any state, or~~ district, or commonwealth, or any territory or insular possession of the United States, or within the Panama Canal Zone, the Trust Territory subject to the administrative or judicial jurisdiction of the Pacific Islands, or the Ryukyu Islands, United States,

(C) any such copy shall be accompanied by a certificate that such custodial officer has the custody. This certificate

(i) may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or

(ii) may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of ~~his~~ the public officer's office.

(2) Foreign. A foreign official record, or an entry ~~therein~~ in a foreign official record, when admissible for any purpose, may be evidenced by

(A) an official publication ~~thereof~~ of the record or entry; or

(B) a copy ~~thereof~~ of the record or entry, attested by a person authorized to make the attestation,

and accompanied by a final certification as to the genuineness of the signature and official position

(i) of the attesting person, or

(ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation.

(C) A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States.

(D) If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown,

(i) admit an attested copy without final certification, or

(ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification.

**(b) Lack of ~~record~~
Record.**

(1) A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement,

(A) authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record,

(B) or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, ~~is admissible as evidence that the records contain no such record or entry.~~

is admissible as evidence that the records contain no such record or entry.

(c) Other ~~proof~~

Proof. This rule does not prevent the proof, by any other method authorized by law, of the existence of, or the lack of, an official record, or of entry, or lack of entry ~~therein~~ in the record.

Rule 44.1. Determination of Foreign Law

A party who intends to raise an issue concerning the law

(1) of the United States or

(2) of any state, territory or dependency of the United States or

(3) of a foreign country

shall give notice in the party's pleadings or other reasonable written notice.

(4) The court, in determining such law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 43.

(5) The court's determination shall be treated as a ruling on a question of law.

Rule 45. Subpoena_____

(a) For ~~Attendance~~attendance of witnesses; form; issuance

(1) Every subpoena

(A) shall be issued by the ~~clerk~~register of ~~court~~probate, by a notary public, or by a justice of the peace,

(B) shall state the name of the court and the title of the action, and

(C) shall command each person to whom it is directed to do the following at a specified time and place:

(i) to attend and give testimony ~~at a time and place therein specified. The clerk;~~

(ii) to produce

(a) designated documents,

(b) electronically stored information, or

(c) tangible things

in that person's possession, custody, or control; or to permit inspection of premises.

(2) The ~~register~~register, notary public, or justice of the peace shall issue a subpoena, ~~or a subpoena for the production of documentary evidence,~~ signed but otherwise in blank, to a party requesting it, ~~who.~~

(3) The ~~party~~party shall fill it in before service.

~~(b) For production of documentary evidence~~

~~A subpoena may also~~

(b) Combining or separating a command ~~the~~to produce or to permit inspection; specifying the form for electronically stored information

(1) A command

(A) to produce documents,

(B) to produce electronically stored information, or

(C) to produce tangible things or

(D) to permit the inspection of premises

may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena.

(2) A subpoena may specify the form or forms in which electronically stored information is to be produced.

(3) A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the subject to the subpoena.

(4) The court, upon motion

(A) made promptly and in any event

(B) at or before the time specified in the subpoena for compliance ~~therewith~~with the subpoena, may

(i) quash or modify the subpoena if it is unreasonable and oppressive or

(ii) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the ~~books, papers,~~ documents, electronically stored information, or tangible things.

(5) A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person to permit

(A) inspection,

(B) copying,

(C) testing, or

(D) sampling

of the materials.

(6) A person commanded to produce documents, electronically stored information, or tangible things, or to permit inspection of premises,

(A) need not appear in person at the place of production or inspection

(B) unless also commanded to appear for a deposition, hearing, or trial.

(c) Service

(1) A subpoena may be served by any person

(A) who is not a party-and,

(B) who is not less than 18 years of age-, and

(C) who is not a child of any party in the case regardless of age.

(2) Service of a subpoena upon a person named ~~therein~~ in the subpoena shall be made

(A) by delivering a copy ~~thereof~~ of the subpoena to such person, or

(B) by exhibiting it and reading it to ~~him~~ such person, or

(C) by leaving a copy at ~~his~~ such person's place of abode; and,

if the person's attendance is required,

(D) by tendering to ~~him~~ such person the fees for one ~~day's~~ day's attendance and the mileage allowed by law.

(3) When the subpoena is issued on behalf of

(A) the United States or

(B) the Commonwealth of Massachusetts or

(C) a political subdivision ~~thereof, or of the United States or of the Commonwealth of~~ Massachusetts, or

(D) an officer, or agency of either,

fees and mileage need not be tendered.

(d) ~~Subpoena~~ Subpoenas for taking deposition and for command to produce; place of examination

(1) ~~No~~ subpoena for the taking of a deposition shall be issued prior to the service of a notice to take the deposition.

(A) If a subpoena commands only the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then

(i) before it is served on the person to whom it is directed, a copy of the subpoena shall be served on each party.

(ii) the party serving a subpoena requiring production or inspection before trial shall also serve on each party

(a) a copy of any objection to the commanded production or inspection and

(b) a notice of any production made or, alternatively,

(c) provide a copy of the production to each party.

(B) The subpoena ~~may command~~commanding the person to whom it is directed to produce ~~and permit inspection and copying of designated books, papers, documents,~~ electronically stored information, or tangible things, which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by these rules, ~~but in that event the subpoena will be~~is subject to the provisions of Rule 26(c) and subdivision (b) of this rule.

(C) A ~~deposition~~ subpoena upon a party which commands the production of documents, electronically stored information, or things

(i) must give the party ~~deponent~~ at least thirty (30) days for compliance after service thereof.

~~Such subpoena~~

(ii) shall not require compliance of a defendant within forty-five (45) days after service of the summons and complaint on that defendant.

(iii) The court may allow a shorter or longer time.

The

(D) A person commanded to ~~whom the subpoena is directed produce documents or tangible things or to permit inspection~~ may

(i) within ~~fourteen (14)~~ fourteen (14) days after the service thereof or

(ii) on or before the time specified in the subpoena for compliance if such time is less than ~~fourteen (14)~~ fourteen (14) days after service,

serve upon the party or attorney designated in the subpoena written objection

(a) to ~~inspection or inspecting, copying of, testing, or sampling~~ any ~~or all of the designated materials;~~

(b) to inspecting the premises; or

(c) to producing electronically stored information in the form or forms requested.

(E) If objection is made, the party serving the subpoena shall not be entitled to inspect ~~and, copy, test, or sample~~ the materials or inspect the premises except pursuant to an order of the court from which the subpoena was issued.

(i) The party serving the subpoena may, if objection ~~has been~~is made, move at any time upon notice to the ~~deponent~~commanded person for an order ~~at any time before or during the taking of the deposition.~~

compelling production or inspection.

(ii) Such an order to compel production or inspection shall protect a person who is neither a party nor a party's officer from undue burden or expense resulting from compliance.

(2) ~~Unless the court orders otherwise,~~ other than for a hearing or trial, a resident of this Commonwealth shall not be required to

(A) attend an examination or

(B) produce documents, electronically stored information, or tangible things at a place more than fifty (50) airline miles distant from either ~~his~~the resident's

(i) residence,

(ii) place of employment, or

(iii) place of business,

whichever is nearest to the place to which ~~he~~the resident is subpoenaed. ~~A non-resident~~

(3) Other than for a hearing or trial, a nonresident of the Commonwealth when served with a subpoena within the Commonwealth may be required to

(A) attend or

(B) produce documents, electronically stored information, or tangible things

(i) only in that county wherein he in which the nonresident is served, or

(ii) only within fifty (50) airline miles of the place of service, or

(iii) at such other convenient place as is fixed by an order of court.

(e) Subpoena for a hearing or trial

(1) At the request of any party subpoenas for

(A) attendance or

(B) to produce documents, electronically stored information, or tangible things

at a hearing or trial shall be issued by any of the persons directed in subdivision (a) of this rule.

~~A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the Commonwealth.~~

(2) A subpoena requiring

(A) the attendance of a witness or

(B) production of documents, electronically stored information, or tangible things

at a hearing or trial may be served at any place within the Commonwealth.

(f) Duties in responding to a subpoena

(1) Producing Documents or Electronically Stored Information.

These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena that requires production of documents

(i) shall produce them as they are kept in the ordinary course of business or
(ii) shall organize and label them to correspond to the categories in the demand.

(iii) Other than for
(a) a deposition,
(b) hearing, or
(c) trial,

unless the production of original documents is requested,

(d) the producing party may produce copies of the documents, including by electronic means,
provided that, if requested,

(e) the producing party affords all parties a fair opportunity to verify the copies by comparison
with the originals.

(B) Form for producing electronically stored information not specified. If a subpoena does not
specify a form for producing electronically stored information, the person responding shall
produce it

(i) in a form or forms in which it is ordinarily maintained or
(ii) in a reasonably usable form or forms.

(C) Electronically stored information produced in only one form. The person responding
need not produce the same electronically stored information in more than one form.

(D) Inaccessible electronically stored information.

(i) The person responding may object to the discovery of inaccessible electronically stored
information, and
(ii) any such objection shall specify the reason that such discovery is inaccessible.
(iii) On motion to compel or for a protective order, the person claiming inaccessibility bears
the burden of showing inaccessibility.
(iv) If that showing is made, the court may nonetheless order discovery from such sources if
the requesting party shows good cause, considering the limitations of Rule 26(f)(4)(C) and (D).
(v) The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information withheld. A person withholding subpoenaed information under a claim
that it is

(i) privileged or
(ii) subject to protection as trial-preparation material

(iii) shall clearly state the claim and

(iv) shall provide information that will enable the parties to assess the claim.

A privilege log need not be prepared, except by agreement or order of the court.

(B) Information mistakenly produced. If information produced in response to a subpoena is subject to a claim

(i) of privilege or

(ii) of protection as trial-preparation material,

the person making the claim may notify any party that received the information of the claim and the basis for it.

(iii) The provisions of Rule 26(b)(5)(B) and (C) are applicable.

(3) Further Protection.

Any person subject to a subpoena under this rule may move the court:

(A) for a protective order under rule 26(c) or

(B) to be deemed entitled to any protection set forth in any discovery or procedural order previously entered in the case.

(g) Contempt

Failure by any person without adequate excuse to obey a subpoena served upon ~~him~~the person may be deemed a contempt of the court in which the action is pending.

Rule 46. Exceptions Unnecessary Making Objections

~~Formal exceptions to rulings or orders of the court in cases in which a stenographer is present or a recording is made are unnecessary; but for all purposes for which~~(1) When an exception has heretofore been necessary it is sufficient that a party, at the time the objection is made during a trial or other hearing to a ruling or order of the court is made or sought, makes, the objecting party shall make known to the court:

(A) the action which ~~he~~the party desires the court to take, or ~~his~~

(B) the party's objection to the action of the court, and ~~his~~

(C) the party's grounds ~~therefor; and, if~~for objection.

(2) Neither the word "exception" nor any other special word or words need to be used to comply with this Rule.

(3) If a party has no opportunity to object to a ruling or order at the time it is made, the

absence of an objection does not ~~thereafter~~ prejudice ~~him~~that party.

Rule 47. Jurors [Deleted]

~~[Deleted]~~

Rule 48. Juries of Less Than Twelve—Majority Verdict [Deleted]

~~[Deleted]~~

Rule 49. Special Verdicts and Interrogatories [Deleted]

~~[Deleted]~~

Rule 50. Motion for a Directed Verdict and for Judgment Notwithstanding the Verdict

~~[Deleted]~~

[Deleted]

Rule 51. Time for Argument

~~(a) Time for argument~~

~~(1) Counsel for each party and~~

~~(2) each unrepresented party~~

shall be allowed ~~thirty minutes~~a reasonable time for argument; ~~but before the argument commences, as the court, on motion or sua sponte, may reasonably reduce or extend the time.~~determine.

~~(3) When two or more attorneys are to be heard~~make an argument on behalf of the same party, they

may divide their time as they ~~elect. Identical to Mass.R.Civ.P. 51(a)~~choose.

~~(b)~~

~~[Deleted]~~

Rule 52. Findings by the Court

(a) Effect

~~In actions tried upon the facts without a jury, except.~~ Except as provided ~~herein~~in this rule for judgments entered pursuant to ~~G.L. c. 208, see.~~§ 34,

(1) the court shall upon written motion made prior to final argument, providing
(A) either party or the court has requested appointment of a stenographer pursuant to ~~Rule~~ 202Supplemental Rules of the Probate and Family Court Rule 18, or
(B) the trial was recorded electronically,

(i) find the facts specially and
(ii) state separately its conclusions of law ~~thereon~~, and
(iii) judgment shall be entered pursuant to ~~Rule~~ 58.

(2) Where the court enters judgment pursuant to ~~G.L. ch.~~ G.L. c. 208, ~~see, §~~ 34 it shall:

(A) issue findings of fact and conclusions of law ~~thereon~~ within sixty (60) days of the filing of
a
notice of appeal. ~~Requests~~

(3) A request for findings ~~are~~ is not necessary for purposes of review.

(4) Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be
given to the opportunity of the trial court to judge of the credibility of the witnesses.

(5) The findings of a master, to the extent that the court adopts them, shall be considered as the
findings of the court.

(6) If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact
and conclusions of law appear ~~therein~~ in the opinion or memorandum.

(7) Findings of fact and conclusions of law are unnecessary on decisions of motions except as
provided in ~~Rule~~ 41(b)(2).

(b) Amendment

:

(1) Upon motion of a party made not later than ten (10) days after entry of its findings the court
~~may~~
May

(A) amend its findings or
(B) make additional findings and
(C) may amend the judgment accordingly.

(2) The motion may be made with a motion for a new trial pursuant to ~~Rule~~ 59. ~~When findings
of fact are made in actions tried by the court without a jury, the~~

(3) The question of the sufficiency of the evidence to support the findings may thereafter be
raised whether or not the party raising the question ~~has made in the trial court an objection to~~

~~such findings or has made a motion to amend them or a motion for judgment.~~

~~(A) has made in the trial court an objection to such findings or~~

~~(B) has made a motion to amend them or~~

~~(C) has made a motion for judgment.~~

(c) Transcript of ~~proceedings upon request for special findings~~

Proceedings Upon Request for Special Findings.

~~Upon~~

~~(1) Whenever a stenographer was appointed for the trial,~~

~~(A) upon~~ a written motion under paragraph (a) of this rule, the party making such request for special findings shall

~~(i) order from the stenographer and~~

~~(ii) file with the court~~

~~the original of a transcript of such parts of the proceedings not already on file as the court may determine material to any facts essential to a determination of the case.~~

~~(B) At the time of ordering, a party shall make satisfactory arrangements with the stenographer for payment of the cost of the transcript.~~

~~(2) Whenever a stenographer was not appointed for the trial but the trial was recorded,~~

~~(A) upon a written motion under paragraph (a) of this rule, the party making such request for special findings shall~~

~~(i) make all necessary arrangements to obtain and~~

~~(ii) file with the court~~

the original of a transcript of such parts of the proceedings not already on file as the court may determine material to any facts essential to a determination of the case. ~~At the time of ordering, a party shall make satisfactory arrangements with the stenographer for payment of the cost of the transcript.~~

~~(B) At the party's request, the Register of Probate shall~~

~~(i) inform the party of the proper procedure and~~

~~(ii) provide any forms needed for ordering a transcript.~~

~~(C) At the time of ordering, a party shall make satisfactory arrangements for payment of the cost of the transcript.~~

Rule 53. Masters

(a) Definition

1. The following words, as used in this rule, shall mean:

(i) "master" shall mean any person, however designated, who is appointed by the court to hear evidence in connection with any action and report facts.

(ii) "stenographer" shall mean a stenographer appointed by the master before commencement of the hearing.

~~(ii) "stenographer" shall mean a stenographer appointed by the master before commencement of the hearing. Identical to Mass.R.Civ.P 53(a)~~

(b) Appointment

2:

(1) **Member of Bar.** The court in which an action is pending may appoint a master therein subject, however, to a standing order, if any, of the Administrative Justice designating classes of cases not to be tried to a master, ~~and provided further that in the District Court, no master may be appointed without the assent of all parties.~~ No master shall be appointed who is not a member in good standing of the bar of one of the United States or of the District of Columbia.

(2) **Selection by Agreement.** ~~2~~ Prior to ~~the~~ appointment of a master,

(A) the court may shall inquire whether the parties can agree upon a master.

(B) The court may shall appoint the person agreed upon unless the court is of the opinion that the proposed master is unqualified, or such for other suitable good reason should not be appointed.

(3) Selection Without Agreement. If the parties cannot agree upon a master,

(A) the court whenever practicable shall select a master from such official standing list of masters, if any, as may have been approved by the probate and family court department.

(B) The court may select from such list a non-resident of the county in which the action is pending or a person whose office is not in said county.

(3) Deleted.

(C) If the court finds that special circumstances make it advisable to select and appoint a master whose name is not on an official standing list, in making such appointment it shall forthwith file with the register a statement containing its specific reasons for selecting and appointing a master not on such list.

(4) **Objection to Master Selected.** If an objection is made by any party to the appointment of a master selected by the court, whether from the official standing list, if any, or otherwise,

(A) the objecting party shall file with the court within five (5) days of notice of such appointment a written objection to such appointment, and ~~notice of such filing shall be forwarded forthwith by the clerk of court to the referring justice. The grounds for such objection shall not be included within such written objection but shall be furnished to the referring justice upon his request and in the form that the referring justice shall order.~~

(B) notice of such filing shall be forwarded forthwith by the register of probate to the referring justice.

(C) The grounds for such objection

(i) shall not be included within such written objection but

(ii) shall be furnished to the referring justice

(a) upon the request of the justice and

(b) in the form that the referring justice shall order.

(5) **Inability to Serve.**

(1) Upon receipt of an order of reference as herein provided, a person appointed a master shall notify the referring justice immediately if ~~he is~~ unable or unwilling to serve as master in the case.

(2) No person shall accept appointment as master in any case in which ~~he~~ the person cannot be impartial.

(A) If there are circumstances known to the master, which may give the appearance of partiality, including the existence of any pending matter between the master and any party to the litigation or any party's counsel, the master must make full written disclosure to the referring justice and all parties immediately after receipt of the order of reference.

(c) **Compensation**

:

(1) The compensation allowed to a master may be charged in whole or in part

(A) upon the parties, or

(B) out of any fund or subject matter of the action which is in the custody or control of the court,
or,

(C) when authorized by law, upon the Commonwealth, as the court may direct.

(2) The rate of compensation to be paid

(A) by the parties or

(B) out of any fund or subject matter of the action

shall be fixed by the court;

(3) the rate of compensation to be paid by the Commonwealth shall be fixed from time to time by rule of each department.

(A) Where compensation is to be paid by the Commonwealth, no additional compensation shall be accepted from the parties, unless

(i) approved by the court and

(ii) stated in the order of reference. ~~When a party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party. Identical to Mass.R.Civ.P 53(c)~~

(4) When a party ordered to pay the compensation allowed by the court does not pay it

(A) after notice and

(B) within the time prescribed by the court,

the master is entitled to a writ of execution against the delinquent party.

(d) Order of reference

. A master shall be appointed by a written order of reference.

Said order:

(i) shall either fix definite times for the hearings or fix the time

(a) when or before which hearings shall be begun and ~~the time~~

(b) within which they shall be ended;

(ii) shall fix the time for the filing of the master's report;

(iii) may specify or limit the master's powers ~~and~~

And may direct ~~him~~ the master

(a) to report only upon particular issues or

(b) to do or perform particular acts. ~~Identical to Mass.R.Civ.P 53(d)~~

(e) Powers

. Subject to the specifications and limitations stated in the order of reference,

(1) the master has and shall exercise the power

(A) to regulate all proceedings in every hearing before ~~him~~the master and
(B) to do all acts and take all measures necessary or proper for the efficient performance of ~~his~~the master's duties under the order. ~~He~~

(2) The master may require the production before ~~him~~the master of evidence upon all matters ~~embraced~~included in the reference, including the production of all

(A) books,

(B) papers,

(C) vouchers,

(D) documents, ~~and~~

(E) writings and

(F) electronically stored information

applicable ~~thereto~~. ~~He~~to matters included in the reference.

(3) The master may rule upon the admissibility of evidence unless otherwise directed by the order of reference, ~~and~~ ~~he~~

(4) the master shall have the authority to put witnesses on oath and may ~~himself~~ examine them and

(5) the master may call the parties to the action and examine them upon oath. ~~Identical to Mass.R.Civ.P 53(e)~~

(f) Proceedings

:

(1) **Hearings.** When a reference is made,

(A) ~~the clerk~~register of probate shall forthwith furnish the master with a copy of the order of reference.

(B) Upon receipt thereof the master shall forthwith notify the parties or their attorneys of the time, date and place of the first hearing.

(C) The order of reference may require that the hearings proceed from day to day, Saturdays, Sundays and holidays excepted, until completed.

(D) If the court does not order the master to proceed from day to day, nevertheless ~~he~~the master shall proceed as nearly as possible on consecutive days, and shall grant no adjournment for a longer period than ~~three~~ (3) seven (7) days except by order of the court.

(E) Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make ~~his report~~. ~~The court may change or extend the~~

time for hearings.
the master's report.

(F) The court may change or extend the time for hearings.

(G) Hearings shall be held at a court house, unless

(i) the parties and the master agree otherwise or,

(ii) upon application by the master, the court expressly orders that hearings be held elsewhere.

(2) Evidence.-

(A) Rules 43(a), (b), (d) and (g)- will govern hearings before masters.

(B) If an objection to a question propounded to a witness

(i) is sustained by the master, and

(ii) there is a stenographer present, or

(iii) the hearing is being recorded by means approved by the master before commencement of the hearing,

upon request the master shall take the proffered evidence as an offer of proof unless the master finds that the proffered evidence is privileged.

(3) Interpreters.

(A) The master may appoint an interpreter whose compensation shall be fixed by the court.

(B) The compensation shall be paid

(i) out of funds provided by law or

(ii) by one or more of the parties as the court may direct,

(iii) and may be taxed ultimately as costs in the discretion of the court.

(4) Stenographers. No master shall, without prior approval of the court, appoint a stenographer to be paid by the Commonwealth.

(5) Statement of Accounts. When matters of accounting are in issue before the master, ~~he~~the master

(A) may prescribe the form in which the accounts shall be submitted and

(B) in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness.

(C) Upon objection of a party to any of the items thus submitted or upon showing that the form of statement is insufficient, the master may require

- (i) a different form of statement to be furnished, or
- (ii) the accounts or specific items ~~thereof~~in the accounts to be proved
- (a) by oral examination of the accounting parties or
- (b) upon written interrogatories or
- (c) in such other manner as ~~he~~the master directs.

(6) Failure to Appear.-

- (A) If all parties fail to appear at a hearing without showing good cause,
- (i) the master shall report forthwith to the ~~clerk~~register of the court in which the action is pending, and
 - (ii) the ~~clerk~~register shall bring such report forthwith to the attention
 - (a) of the referring justice, if practicable, otherwise
 - (b) to any justice of the court.
- (B) If a party fails to appear at the time and place appointed, the master may
- (i) proceed ~~ex parte~~without that party's presence or,
 - (ii) in ~~his~~the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment, or
 - (iii) apply to the court, with notice to the parties, for the imposition of sanctions.

(7) Witnesses.

(A) The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in ~~Rule 45. If without adequate excuse a witness fails to appear or give evidence, he may be punished by the court as for a contempt.~~
Rule 45.

~~(B) If, without adequate excuse, a witness fails to appear or give evidence, the witness may be punished by the court as for a contempt.~~

(g) Master's report

:

(1) **Contents.-** The master shall

(A) prepare a report upon the matters submitted to ~~him~~the master by the order of reference, and,

(B) if required by the order of reference to make findings of fact and conclusions of law, ~~he~~the master shall set them forth in the report.

(C) The ~~master's~~master's report

(i) will contain the master's general ~~findings~~finding upon each ~~issue~~issue that is within the order

of reference and

(ii) will include and clearly identify the subsidiary findings upon which each general ~~findings~~finding is based.

(D) No general findings will be presumed by the court to be supported by subsidiary findings which are not stated in the report as the basis ~~therefor~~for the general findings.

(E) Any party, at the conclusion of the evidence may file with the master requests for findings of fact and conclusions of law.

(2) Filing. At least ~~ten (10)~~twenty (20) days before filing ~~his~~the master's report,

(A) the master shall submit a draft thereof to counsel for all represented parties ~~and to each unrepresented party~~.

(i) Counsel for any party and any unrepresented party may submit to the master suggested amendments in writing, copies of which must be contemporaneously submitted to counsel for all of the represented parties ~~and to any unrepresented party~~.

(ii) The master may, in ~~his~~the master's discretion, allow a hearing on any suggested amendments.

(iii) If any suggested amendment is adopted by the master, ~~he~~the master shall furnish counsel for all represented parties ~~and each unrepresented party~~, with copies of said amendment contemporaneously with the filing of ~~his~~the master's report~~;~~.

(B) Within ~~thirty (30)~~sixty (60) days after the close of the evidence, unless the court, on motion or otherwise, for good cause shown, shall alter the time, the master shall file ~~his~~the master's report and the original exhibits with the ~~clerk~~register of the court. ~~The clerk shall forthwith mail to all parties notice of the filing.~~

(C) The register shall forthwith mail to all unrepresented parties and to all counsel notice of the filing.

**(h) Master's report~~in non-jury cases~~
, Subsidiary Findings.**

(1) Status of Report.~~In an action to be tried without a jury, the~~

(A) The court shall accept the master's subsidiary findings of fact unless they are

(i) clearly erroneous,

(ii) mutually inconsistent,

(iii) unwarranted by the evidence before the master as a matter of law or ~~are~~

(iv) otherwise tainted by error of law.

(B) Any party who contends that the master's subsidiary findings are

- (i) clearly erroneous,
- (ii) mutually inconsistent,
- (iii) unwarranted by the evidence before the master or ~~are~~
- (iv) otherwise tainted by error of law

must make such contentions by objection as ~~hereinafter~~ provided below.

(C) The court may draw its own inferences from the master's subsidiary findings.

(D) The court may make findings in accordance with ~~Rule 52,~~ Rule 52, which are

- (i) in addition to the master's findings and
- (ii) not inconsistent ~~therewith,~~ with the master's findings,
- (iii) based either on
 - (a) evidence presented to the court or
 - (b) evidence before the master which was recorded by means approved by the master before commencement of the hearing.

(2) Objections to Report. ~~Within ten (10) days after service of notice of the filing of the report or such other time as the court may allow, any party may serve written objections thereto upon every other party making any of the contentions referred to in paragraph (1) of this section, clearly stating the grounds for each objection and the relief sought. At any time after the filing of objections or the expiration of the time therefor, any party may move the court, with notice to all to other parties, to act upon the report and upon any objections thereto, provided however, the court may so act upon its own motion after notice to all parties.~~

(A) any party may serve written objections to the report upon every other party

(i) making any of the contentions referred to in paragraph (1) of this section,

(ii) clearly stating

(a) the grounds for each objection and

(b) the relief sought.

(B) At any time after

(i) the filing of objections or

(ii) the expiration of the time for the filing of objections,

(C) any party may move the court, with notice to all other parties, to act

(i) upon the report and

(ii) upon any objections thereto,

provided, however, the court may so act upon its own motion after notice to all parties.

(3) Limitations on Review.

(A) The court will not review a question of law dependent upon evidence before the master unless

(i) the evidence was recorded

(a) either by a stenographer

(b) or by means approved by the master before commencement of the hearing

(ii) and a transcript of so much of the proceedings before the master as is necessary to dispose of the objections adequately is served, together with the objections, upon every other party.

(B) Any party may designate additional portions of the transcript for submission to the court by the service of notice within ten (10) days after service of the objections.

(C) The objecting party shall serve such additional portions upon every other party; but

(D) if the objecting party shall refuse to do so,

(i) the party designating such additional portions shall

(a) either serve them upon every other party

(b) or shall move the court to require the objecting party to do so.

(E) At the time of ordering a transcript ~~from the stenographer~~, a party shall make satisfactory arrangements ~~with the reporter~~ for payment of the cost of any transcript ordered.

(F) The parties are encouraged to agree as to the portions of the transcript that will accompany the objections.

(4) **Action on Report.** The court may

(A) adopt the report,

(B) strike it in whole or in part,

(C) modify it,

(D) recommit it to the master with instructions or

(E) take any other action that justice requires.

(F) Any motion to adopt a report shall be deemed to include a motion to enter judgment and shall be accompanied by a proposed form of judgment.

(i) [Not used]

VII. JUDGMENT

Rule 54. ~~Judgments~~Judgment: Costs

(a) Definition; ~~form~~

Form. The terms “judgment” and “final judgment” include a decree and mean the act of the trial court finally adjudicating the rights of the parties affected by the judgment, including:
, but not limited to:

- (1) ~~judgments entered under Rule 50(b) and Rule 52(a) and (b);~~
- (2) ~~judgments entered under Rule 58 upon a general verdict of a jury, or~~ upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, ~~or upon a special verdict under Rule 49(a) or a general verdict accompanied by answers to interrogatories under Rule 49(b).~~
- (3) A judgment shall not contain a recital of pleadings, the report of a master or the record of prior proceedings. ~~Identical to Mass.R.Civ.P. 54(a)~~

(b) Judgment ~~upon multiple claims~~ Upon Multiple Claims or ~~involving multiple parties~~ Involving Multiple Parties.

When more than one claim for relief is presented in an action, whether as

- (1) a claim,
- (2) a counterclaim,
- (3) a cross-claim, or
- (4) a third-party claim,

or when multiple parties are involved, the court may

- (5) direct the entry of a final judgment as to one or more, but fewer than all, of the claims or parties only
- (A) upon an express determination that there is no just reason for delay and
- (B) upon an express direction for the entry of judgment.

In the absence of such determination and direction, any order or other form of decision, ~~however designated~~ whatever it is called, which adjudicates

- (6) fewer than all the claims or the rights and liabilities of
- (7) fewer than all the parties

shall not terminate the action as to any of the claims or parties, and

- (8) the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties. ~~Identical to Mass.R.Civ.P. 54(b)~~

(c)

Demand for judgment. [Deleted]

(d)

Costs. [Deleted]

(e) Costs on depositions

. The ~~taxation~~charging of costs to one or more parties in the taking of depositions, including audio-visual depositions,

(1) shall be subject to the discretion of the court, but

(2) in no event shall costs be allowed unless the court finds that the taking of the deposition was reasonably necessary, whether or not the deposition was actually used at the ~~trial~~. ~~Taxable costs may include the cost of service of subpoena upon the deponent, the reasonable fees of the officer before whom the deposition is taken, the fees and mileage allowances of the witnesses, the stenographer's reasonable fee for attendance, and the cost of the transcript of the testimony or such part thereof as the court may fix. When an audio-visual deposition is taken, taxable costs may include a reasonable fee for the use of the audio-visual equipment and for the services of the operator both in recording the deposition and editing it. Identical to Mass.R.Civ.P. 54(e) as amended January 1, 1981~~trial.

Costs that may be charged may include

(3) the cost of service of subpoena upon the deponent,

(4) the reasonable fees of the officer before whom the deposition is taken,

(5) the fees and mileage allowances of the witnesses,

(6) the stenographer's reasonable fee for attendance, and

(7) the cost of the transcript of the testimony or such part of the testimony as the court may determine.

When an audio-visual deposition is taken, costs that may be charged may include a reasonable fee

(8) for the use of the audio-visual equipment and

(9) for the services of the operator both in recording the deposition and editing it.

Rule 55. Default [Deleted]

[Deleted]

Rule 56. Summary Judgment

(a) Motions for ~~summary judgment~~Summary Judgment.

(1) A party may move for summary judgment subsequent to the commencement of any proceeding under these rules except in actions for:

(A) divorce ~~or in actions for~~

(B) custody ~~or~~

(C) visitation or ~~for~~

(D) criminal contempt.

(2) However, a defendant may move for summary judgment in actions for grandparent visitation brought under G.L. c. 119, § 39D.

(3) Each motion for summary judgment shall be accompanied by an “Affidavit of Undisputed Facts” which shall:

(A) enumerate discretely each of the specific material facts relied upon in support of the motion, and

(B) cite the particular portions of any

(i) pleading,

(ii) affidavit,

(iii) deposition,

(iv) answer to interrogatories,

(v) admission, or

(vi) other document relied upon to establish that fact.

(4) The motion shall be served at least ten (10) days before the time fixed for the hearing.

(5) The moving party shall be responsible for filing with the Court all evidentiary documents cited in the moving papers.

(6) The motion for summary judgment shall be denied if the moving party fails to file and serve the affidavit required by this ~~paragraph.~~

Rule 56(a)(3)(A) and (B).

(b) Opposition

Any party opposing a motion for summary judgment shall file and serve no later than three (3) days before the time fixed for the hearing, unless the court otherwise orders, an affidavit using the same paragraph numbers as in the “Affidavit of Undisputed Facts.”

(1) The opposing affidavit must:

(A) admit those facts which are undisputed, and

(B) deny those which are disputed, ~~including.~~

(2) The affidavit must include with each denial a citation to the particular portions of any

(A) pleading,

(B) affidavit,

(C) deposition,

(D) answers to interrogatories,

(E) admission, or

(F) other document relied upon in support of the denial.

(3) The opposing party may also file a concise “Affidavit of Disputed Facts,” and the source ~~thereof~~ in the record of each fact stated in the affidavit, of all additional material facts as to which there is a genuine issue precluding summary judgment.

(4) The opposing party shall be responsible for the filing with the court of all evidentiary documents cited in the opposing papers.

(5) If a need for discovery is asserted as a basis for denial of the motion, the party opposing the motion ~~shall provide a specification of~~ must specify the particular facts on which discovery is ~~to be had~~ needed or the issues on which discovery is necessary.

(c) Stipulated ~~facts~~ Facts.

(1) All interested parties may jointly file a stipulation setting forth a statement of stipulated facts to which all interested parties agree.

(2) As to any stipulated facts, the parties so stipulating may state that their stipulations are entered into only for the purposes of the motion for summary judgment and are not intended to be otherwise binding.

~~(13)~~ In any pending motion for summary judgment, the assigned judge may order the parties to meet, confer and submit, on or before a date set ~~by~~ the assigned judge, a joint statement of undisputed facts.

(d) [deleted].

~~[Deleted]~~

(e) Form of ~~affidavits; further testimony; defense required~~ Affidavits; Further Testimony; Defense Required.

(1) Supporting and opposing affidavits shall:

(A) be made on personal knowledge, ~~shall~~

(B) set forth such facts as would be admissible in evidence, and ~~shall~~

(C) show affirmatively that the affiant is competent to testify to the matters stated therein.

(2) Sworn or certified copies of all papers or parts ~~thereof~~ papers referred to in any affidavits shall be attached ~~thereto~~ to the affidavit or served ~~therewith~~ with the affidavit.

(3) The court may permit affidavits to be supplemented or opposed by:

(A) depositions,

(B) answers to interrogatories, or

(C) further affidavits.

(4) When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. ~~If he does not so respond, summary judgment, if appropriate, shall be entered against him.~~

(5) If an adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When ~~affidavits are unavailable~~

Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that ~~he~~ the party cannot for reasons stated present by affidavit facts essential to justify ~~his~~ the party's opposition, the court may:

(1) refuse the application for judgment, ~~or may~~

(2) order a continuance to permit:

(A) affidavits to be obtained, ~~or~~

(B) depositions to be taken, ~~or~~

(C) discovery to be had, ~~or~~

(3) the court may make such other order as is just.

(g) Affidavits ~~made~~ Made in ~~bad faith~~

Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay,

(1) the court shall forthwith order the party employing them to pay to the other party the amount of the ~~reasonable~~ responsible expenses which the filing of the ~~affidavit~~ affidavits caused ~~him~~ the other party to incur, including reasonable attorney's fees, and ~~any offending party or attorney may be adjudged guilty of contempt.~~

(2) any offending party or attorney may be adjudged guilty of contempt.

(h) Judgment

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and responses to requests for admission under Rule 36, together with the affidavits, if any, show ~~that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.~~ Summary judgment, when appropriate, may be rendered against the moving party.:

(1) that there is no genuine issue as to any material fact, and

(2) that the moving party is entitled to a judgment as a matter of law.

(3) Except in actions for grandparent visitation brought under G.L. c. 119, § 39D, summary judgment, when appropriate, may be rendered against the moving party.

Rule 57. Declaratory Judgment

The procedure for obtaining a declaratory judgment pursuant to ~~General Laws~~ G. L. c. 231A- shall

(1) be in accordance with the Massachusetts Rules of Civil Procedure,

(2) except for actions to establish or confirm parentage which shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The

(3) In actions to establish or confirm parentage, the existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. ~~The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.~~

Rule 58. Entry of Judgment

(a) After ~~trial~~ Trial or ~~hearing~~ Hearing or by ~~agreement~~ Agreement.

Subject to the provisions of ~~Rule~~ 54(b):

(1) Upon a decision by the court that

(A) a party shall recover only a sum certain or costs or that

(B) all relief shall be denied, or

(C) upon a written agreement for judgment

(i) for a sum certain or

(ii) denying relief,

(D) the court shall ~~forthwith~~, without delay, prepare, sign and enter judgment;

(2) upon a decision by the court granting other relief, the court shall promptly approve the form of the judgment.

(A) Every judgment shall be set forth on a separate document.

(B) A judgment is effective only when ~~so~~

(i) set forth on a separate document and

(ii) when entered as provided in ~~Rule~~ 79(a).

(3) Entry of the judgment shall not be delayed for the ~~taxing~~charging of costs.

(4) Attorneys and unrepresented parties shall submit forms of judgment upon direction of the court.

(b) Upon ~~order~~Order of ~~Supreme Judicial~~an Appellate Court

~~The clerk~~ Register of Probate shall enter any judgment specifically directed by the Supreme Judicial Court. ~~Identical to Mass.R.Civ.P. 58(b) or by the Appeals Court.~~

(c) Nisi judgment

Judgment. At any time before the expiration of ninety (90) days from the entry of a judgment of divorce nisi,

(1) the defendant, or

(2) any other person interested,

may file in the Registry of Probate a statement of objections to the judgment becoming absolute; ~~which.~~

(3) The objections

(A) shall set forth specifically the facts on which it is founded and

(B) shall be verified by affidavit.

(4) Notice of the filing of ~~said~~the objections shall be given

(A) to the plaintiff or defendant or ~~his~~

(B) to the party's attorney,

not later than the day of filing ~~said~~the objections.

(5) The portion of the judgment to which any objection is filed, but only that portion, shall not become absolute until ~~such~~the objections have been disposed of by the court.

(6) If ~~said petition~~the statement of objections filed to stay the judgment absolute is subsequently dismissed by the court, the judgment shall become absolute as of ninety (90) days from the date of the judgment nisi.

Rule 59. New Trials: Amendment of Judgments

(a) Grounds

. A new trial may be granted

(1) to all or any of the parties and

(2) on all or part of the issues

(3) for any of the reasons for which rehearings ~~have heretofore been, before adoption of the Massachusetts Rules of Civil Procedure, were~~ granted in suits in equity in the courts of the Commonwealth.

(4) On a motion for a new trial, the court may

(A) open the judgment if one has been entered,

(B) take additional testimony,

(C) amend findings of fact and conclusions of law or

(D) make new findings and conclusions, and

(E) direct the entry of a new judgment.

(b) Time for ~~motion~~

Motion. A motion for a new trial shall be served not later than ten (10) days after the entry of judgment. ~~Identical to Mass.R.Civ.P. 59(b)~~

(c) Time for ~~serving affidavits~~Serving Affidavits.

(1) When a motion for new trial is based upon affidavits they shall be served with the motion.

(2) The opposing party has ten (10) days after such service within which to serve opposing affidavits, ~~which.~~

(3) ~~That~~ period may be extended for an additional period not exceeding twenty (20) days either

(A) by the court for good cause shown or

(B) by the parties by written stipulation.

(4) The court may permit reply affidavits. ~~Identical to Mass.R.Civ.P. 59(e)~~

(d) On ~~initiative~~Initiative of ~~court~~Court.

(1) Not later than ten (10) days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. ~~After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor. Identical to Mass.R.Civ.P. 59(d)~~

(2) After giving the parties

(A) notice and

(B) an opportunity to be heard on the matter,

the court may grant a motion for a new trial, timely served, for a reason not stated in the motion.

(3) In either case, the court shall specify in the order the grounds for the order.

(e) **Motion to ~~alter~~Alter or ~~amend~~Amend a judgment**

Judgment. A motion to alter or amend the judgment shall be served not later than ten (10) days after entry of the judgment. ~~Identical to Mass.R.Civ.P. 59(e)~~

Rule 60. Relief From Judgment or Order

(a) **Clerical ~~mistakes~~Mistakes.**

Clerical mistakes in

(1) judgments,

(2) orders or

(3) other parts of the record and

(4) errors ~~therein~~ in those judgments, orders or other parts of the record arising from oversight or omission may be corrected by the court at any time

(5) of its own initiative or

(6) on the motion of any party and after such notice, if any, as the court orders.

(7) During the pendency of an appeal,

(A) such mistakes may be ~~so~~ corrected as provided above before the appeal is docketed in the appellate court, ~~and thereafter.~~

(B) After the appeal is docketed, but while the appeal is pending, such mistakes may be ~~so~~ corrected as provided above with leave of the appellate court.

(b) **Mistake; ~~inadvertence; excusable neglect; newly discovered evidence; fraud~~Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.**

On motion and upon such terms as are just, the court may relieve a party, or ~~his~~ the party's legal representative, from

(A) a final judgment,

(B) an order, or

(C) a proceeding

for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;
(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3)

(A) fraud (whether ~~heretofore denominated intrinsic or extrinsic~~), it used to be called 'intrinsic' or 'extrinsic'),

(B) misrepresentation, or

(C) other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been

(A) satisfied,

(B) released, or

(C) discharged,

or a prior judgment upon which it is based has been

(D) reversed or

(E) otherwise vacated,

(F) or it is no longer equitable that the judgment should have prospective application; or

(6) any other reason justifying relief from the operation of the judgment.

(7) The motion shall be made within a reasonable time, ~~and for~~.

(8) For reasons (1), (2), and (3) the motion shall be made not more than one year after the

(A) judgment,

(B) order or

(C) proceeding

was entered or taken.

(9) A motion under this subdivision (b) does not

(A) affect the finality of a judgment or

(B) suspend its operation.

(10) This rule does not limit the power of a court to

(A) entertain an independent action

(i) to relieve a party from

(a) a judgment,

(b) an order, or

(c) a proceeding, or
(ii) to set aside a judgment for fraud upon the court.

(11) Writs of review, of error, of audita querela, and petitions to vacate judgment are abolished;
~~and the.~~

(12) The procedure for obtaining any relief from a judgment shall be
(A) by motion as prescribed in these rules or
(B) by an independent action.

Rule 61. Harmless Error

(1) No error in either the admission or the exclusion of evidence and

(2) no error or defect
(A) in any ruling or order or
(B) in anything done or omitted
(i) by the court or
(ii) by any of the parties

is ground for

(C) granting a new trial or ~~for~~
(D) setting aside a verdict or ~~for~~
(C) vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice.

(3) The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties. ~~Identical to Mass.R.Civ.P. 61~~

Rule 62. Stay of Proceedings to Enforce a Judgment

(a) Automatic ~~stay; exceptions—injunctions~~ Stay; Exceptions-Injunctions and ~~receiverships~~

Receiverships. Except as stated ~~herein,~~ in these rules.

(1) no execution shall issue upon a judgment
(2) nor shall proceedings be taken for its enforcement

until the time for appeal from the judgment has expired. ~~In the District Court, in the case of a default judgment, no execution shall issue until 10 days after entry of such judgment.~~

(3) Unless otherwise ordered by the court, an interlocutory or final judgment
(A) in an action for an injunction or
(B) in a receivership action

shall not be stayed

- (C) during the period after its entry and
- (D) until an appeal is taken or
- (E) during the pendency of an appeal.

(4) The provisions of subdivision (c) of this rule govern the

- (A) suspending,
- (B) modifying,
- (C) restoring, or
- (D) granting

of an injunction during the pendency of an appeal. ~~Identical to Mass.R.Civ.P. 62(a).~~

(b) Stay on ~~motion~~ Motion to ~~vacate judgment~~

Vacate Judgment.

- (1) In its discretion and
- (2) on such conditions for the security of the adverse party as are proper,
- (3) the court may stay
- (A) the execution of or
- (B) any proceedings to enforce

a judgment pending the disposition of

- (C) a motion for relief from a judgment or
- (D) an order made pursuant to ~~Rule 60. Identical to Mass.R.Civ.P. 62(b)~~

(c) Injunction ~~pending appeal.~~ Pending Appeal.

(1) When an appeal is taken from an interlocutory or final judgment

- (A) granting,
- (B) dissolving, or
- (C) denying

an injunction,

- 2) the court in its discretion may
- (A) suspend,
- (B) modify,

- (C) restore, or
- (D) grant

an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party. ~~Identical to Mass.R.Civ.P. 62(e)~~

(d) Stay Upon Appeal. [Deleted]
[Deleted]

(e) **Power of ~~appellate court not limited~~**

Appellate Court Not Limited. The provisions in this rule do not limit any power of ~~the an~~ appellate court or of a single justice ~~thereof of the appellate court~~ to stay proceedings during the pendency of an appeal or to

- (1) suspend,
- (2) modify,
- (3) restore, or
- (4) grant an injunction

during the pendency of an appeal

(5) or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered. ~~Identical to Mass.R.Civ.P. 62(e)~~

(f) **Stay of ~~judgment~~Judgment as to ~~multiple claims~~Multiple Claims or ~~multiple parties~~**

Multiple Parties. When a court has ordered a final judgment under the conditions stated in ~~Rule~~ 54(b), the court may

- (1) stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may
- (2) prescribe such conditions as are necessary to secure the benefit ~~thereof of the judgment~~ to the party in whose favor the judgment is entered. ~~Identical to Mass.R.Civ.P. 62(f)~~

(g) **Stay of ~~nisi period~~Nisi Period in ~~divorce cases~~Divorce Cases.**

(1) The filing of an appeal shall stay the running of the nisi period as provided by ~~Rule~~ 58(e) Rule 58(c)

only if the claim of appeal is from that portion of the judgment nisi which dissolved the marriage.

(2) If the appeal is subsequently dismissed by the appellate court, the judgment shall become absolute as of ninety (90) days from the date of the judgment nisi.

(3) Unless the court otherwise orders, the filing of an appeal shall not stay the operation:

(i) ~~of any other aspect of a divorce judgment; or~~

(ii) ~~of any other order or judgment of the court relative to~~

(a) custody,

(b) visitation,

(c) alimony,

(d) support, or

(e) maintenance.

Rule 63. ~~Disability~~Unavailability of a Judge

(1) If by reason of

(A) death,

(B) sickness,

(C) resignation,

(D) removal,

(E) ~~recusal~~, or

(F) other ~~disability~~, unavailability.

a judge before whom ~~an action~~a trial has ~~been tried~~commenced is unable to perform the duties to be performed by the court ~~under these rules after findings of fact and conclusions of law are filed~~, then

(2) any other judge regularly

(A) sitting in or

(B) assigned to

the court in which the ~~action~~trial was ~~tried~~commenced may complete the trial, on assignment by

(C) the Chief ~~Judge~~, Justice of the Probate and Family Court or in case of disability of such

(D) the Chief Judge, by the senior Justice's designee.

(3) The replacement judge of the Administrative Committee present and qualified to act, perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his ~~discretion~~ discretion to grant a new trial if the judge determines that he or she is unable to perform the required duties.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEDURES

Rule 64. Report of ~~a~~ Case

~~(a) Courts other than District Court~~

(1) The court, after ~~verdict or after~~ a finding of facts under Rule 52, may report the case for determination by the appeals court.

(2) If the trial court is of opinion that

(A) an interlocutory finding or order made by it

(B) so affects the merits of the controversy that the matter ought to be determined by the appeals court before any further proceedings in the trial court,

it may

(C) report such matter, and ~~may~~

(D) stay all further proceedings except such as are necessary to preserve the rights of the parties.

(3) The court,

(A) upon request of the parties,

(B) in any case where the parties agree in writing as to all the material facts,

may report the case to the appeals court for determination without making any decision ~~thereon.~~

~~In an action commenced before a single justice of the supreme judicial court, the court may report the case in the circumstances above described to either the appeals court or the full supreme judicial court; provided further that a single justice of the supreme judicial court may at any time reserve any question of law for consideration by the full court, and shall report so much of the case as is necessary for understanding the question reserved.~~on

~~(b) District Court~~

~~Report of a case or a ruling by the court to the Appellate Division shall be governed by District/Municipal Courts Rules for Appellate Division Appeal 5.~~the issue.

Rule 65. ~~Injunctions~~Restraining Orders

(a) Temporary ~~restraining order; notice; hearing; duration~~Restraining Order; Notice; Hearing; Duration.

(1) Notice. A temporary restraining order may be granted without written or oral notice to the adverse party or ~~h~~to the adverse party's attorney only if

(A) it clearly appears from specific facts shown

(i) by affidavit or

(ii) by the verified complaint

that immediate and irreparable

(iii) injury,

- (iv) loss or
- (v) damage

will result to the applicant before the adverse party or ~~his~~the adverse party's attorney can be heard in opposition.

(2) On

(A) two ~~days'~~(2) days' notice to the party who obtained the temporary restraining order without notice or ~~on~~

(B) such shorter notice to that party as the court may ~~prescribe,~~ order,

the adverse party may appear and move ~~its~~for the

- (i) dissolution or
- (ii) modification ~~and~~

of the temporary restraining order and

(C) in that event, the court shall proceed to ~~hear and determine such motion as~~ expeditiously as the ends of justice require.

(b) ~~Deleted~~[Not Used].

~~[Deleted]~~

(c) **Security**

. Unless the court, for good cause shown, shall otherwise order,

(1) no restraining order except an order restraining any restriction on the personal liberty of a person, shall issue except

(A) upon the giving of security by the applicant,

(i) in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully ~~enjoined or restrained.~~
~~The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule~~restrained.

(B) The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

(d) **Form and** ~~scope of injunction or restraining order~~

Scope of Restraining Order. Unless the court, for good cause shown, otherwise orders, ~~an injunction or a~~ restraining order

(1) shall be specific in terms;

(2) shall describe
(A) in reasonable detail, and
(B) not by reference to the complaint or other document,

the act or acts sought to be restrained; and

(3) is binding only

(A) upon the parties to the action,

(B) upon their officers, agents, servants, employees, and attorneys, and

(C) upon those persons

(i) in active concert or participation with them

(ii) who receive actual notice of the order by personal service or otherwise. ~~Identical to Mass.R.Civ.P. 65(d).~~

Rule 65.1: Security: Proceedings ~~Against Sureties~~ Against Security Provider

(1) Whenever these rules require or permit

(A) the giving of security by a party, and

(B) security is given ~~in the form of a bond or stipulation or other undertaking~~ with one or more sureties, or other security providers,

each ~~surety~~ provider

(C) submits ~~himself~~ to the jurisdiction of the court and

(D) irrevocably appoints the ~~clerk~~ Register of Probate of the court as ~~his~~ agent upon whom any papers affecting ~~his~~ the liability on the ~~bond or undertaking~~ security may be served. ~~His~~

(2) The security provider's liability may be enforced on motion without the necessity of an independent action.

(A) The motion and such notice of the motion as the court prescribes may be served on the ~~clerk~~ register of the court, ~~who,~~

(B) The register shall ~~forthwith mail~~ then send copies to ~~the sureties if there addresses are each~~ security provider whose address is known.

Rule 66. Receivers ~~{Deleted}~~

(a) An action brought under these rules in which a receiver has been appointed shall not be dismissed except by order of the court.

(b) Receiver's Inventory. Every receiver, within thirty (30) days after the receiver's appointment, shall file

(1) a detailed inventory of the property of which the receiver has

(A) possession or

(B) the right to possession,

With

(C) the estimated values of the property,

(D) list of the encumbrances on the property; and

(E) a list of the creditors

(i) of the receivership and

(ii) of the party whose property is in the hands of the receiver,

so far as known to the receiver.

(c) Receiver's Accounts. Every receiver shall file, not later than the fifteenth day of February of each year,

(1) a detailed account under oath of the receivership to and including the last day of the preceding year,

(A) substantially in the form required for an account by a conservator in the Probate and Family Court,

(B) together with a report of the condition of the receivership.

(2) The receiver shall also file such further accounts and reports as the court may order.

(d) Employment of an Attorney by the Receiver.

(1) When an attorney at law has been appointed a receiver, no attorney shall be employed by the receiver or receivers except

(A) upon order of court, which shall be made only

(B) upon the motion of a receiver,

(i) stating the name of the attorney whom the receiver desires to employ and

(ii) showing the necessity of such employment.

(e) [Deleted]

Discharge of Receiver. No order discharging a receiver from further responsibility will be entered until the receiver has settled the receiver's final account.

(f) The court, in its discretion, may relieve any receiver from any requirement imposed by sections (b)-(e) of this rule.

Rule 67. Deposit in Court

(1) In an action in which any part of the relief sought is

(A) a judgment for a sum of money or

(B) the disposition of a sum of money or

(C) the disposition of any other thing capable of delivery,

a party,

(D) upon notice to every other party, and

(E) by leave of court,

may deposit with the court all or any part of such sum or thing.

(2) Money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of any applicable statute or rule. ~~Identical to Mass.R.Civ.P. 67~~

Rule 68. Offer of Judgment [Deleted]

~~[Deleted]~~

Rule 69. Execution

(1) Process to enforce a judgment for the payment of money shall be

(A) a writ of execution,

(B) unless the court ~~directs~~orders otherwise.

(2) The procedure on execution, in proceedings on and in aid of execution shall be in accordance with applicable statutes. ~~In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules. Identical to Mass.R.Civ.P. 69~~

(3) In aid of the judgment or execution,

(A) the judgment creditor or

(B) the judgment creditor's successor in interest,

when that interest appears of record,

(C) may obtain discovery from

(i) any person,

(ii) including the judgment debtor,
in the manner provided in these rules.

Rule 70. Judgment for Specific Acts: Vesting Title

(1) If a judgment directs a party

- (A) to execute a conveyance of land or
- (B) to deliver deeds or other documents or
- (C) to perform any other specific act

and the party fails to comply within the time specified,

(2) the court may direct the act to be done

(A) at the cost of the disobedient party by some other person appointed by the court~~and the~~.

(3) The act when so done has like effect as if done by the party.

(4) On application of the party entitled to performance,

(A) the ~~clerk~~Register of Probate shall issue a writ of attachment against the property of the disobedient party to compel obedience to the judgment.

(5) The court may also in proper cases adjudge the party in contempt.

(6) If real or personal property is within the Commonwealth of Massachusetts, the court ~~in lieu~~instead of directing a conveyance ~~thereof~~of the property may enter a judgment

- (A) divesting the title of any party and
- (B) vesting it in others.

(7)~~and such~~ Such judgment has the effect of a conveyance executed in due form of law.

(8) When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution upon application to the ~~clerk. Identical to Mass.R.Civ.P. 70~~register.

Rule 71. Process in Behalf of and Against Persons Not Parties~~[Deleted]~~

~~[Deleted]~~

(1) When an order is made in favor of a person who is not a party to the action,

(A) that person may enforce obedience to the order by the same process as if the person were a party.

(2) When obedience to an order may be lawfully enforced against a person who is not a party,

(A) that person is liable to the same process for enforcing obedience to the order as if the person were a party.

Rules 72 to 76 [Reserved]

IX. COURTS AND CLERKS

Rule 77. Courts and Registers

(a) Courts ~~always open~~

Always Open. Unless otherwise provided by law, the ~~courts~~Probate and Family Court shall be deemed always open for the purpose of filing any pleading or other proper ~~paper~~document, of issuing and returning process, and of making ~~and directing all interlocutory motions, orders, and rules.~~ Identical to Mass.R.Civ.P. 77(a) motion or entering an order.

(b) Register's office

Registry of Probate. The ~~register's office~~Registry of Probate for each ~~county~~division, with a ~~register~~Register or ~~assistant register~~Assistant Register in attendance, shall be open during business hours on all days except

- (1) Saturdays,
- (2) Sundays and
- (3) legal holidays.

(c) Filing ~~date~~Date of all papers received All Documents Received by ~~clerk~~the Register.

(1) The ~~clerk~~Register shall date-stamp all ~~papers~~documents whatsoever received by ~~him~~the Register, whether

- (A) by hand or
- (B) by mail.

(2) Any ~~paper~~document so received which is permitted to be filed under these rules, whether stamped or not, shall be deemed to have been filed as of the date of receipt.

(3) If at any subsequent time, any party disputes the fact of such filing, the court shall determine the question, taking whatever evidence it deems appropriate. ~~Proof of mailing shall constitute prima facie proof of receipt. Identical to Mass.R.Civ.P. 77(e).~~

(4) Proof of mailing shall constitute prima facie proof of receipt.

(d) Notice of ~~orders~~Orders or judgments

~~Unless~~**Judgments. Even if** an order or judgment is entered in open court in the presence of the parties or their counsel, the ~~register~~Register shall, immediately upon the entry in the docket of an order or judgment, serve a notice of the order or judgment, including a copy of the ~~terms of any order of custody, support or alimony~~or judgment.

(1) By Mail.

(A) Notice and the copy shall be sent by mail in the manner provided for in Rule 5 upon

(i) each counsel and

(ii) each self-represented party and

(B) the Register shall make a note in the docket of the mailing.

(C) Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but

(D) any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of ~~papers, documents.~~

(2) By Electronic Means.

(A) Notice and the copy may be sent by electronic means in the manner selected by the Register, which may include:

(i) e-mail to an e-mail address provided by an attorney or self-represented party pursuant to a court rule or order;

(ii) e-mail to an attorney's e-mail address on file with the Massachusetts Board of Bar Overseers if the attorney provided no e-mail address in the case pursuant to a court rule or order; or

(iii) electronic transmission to an address and in a form provided by the attorney or self represented party and specifically accepted by the Register for such purpose.

(B) Transmission of such electronic notice is sufficient notice for all purposes for which notice of the entry of an order or judgment is required by these rules, without need for mailing; provided that

(C) the Register shall notify by mail, pursuant to subsection (d)(1),

(i) any self-represented party who does not provide an e-mail address voluntarily to the Register for purposes of notice and

(ii) any attorney who

(a) has not provided such an e-mail address and

(b) is not required to maintain an e-mail address with the Board of Bar Overseers.

(D) The Register shall make a note in the docket of electronic notice.

(E) Where a self-represented party wishes to withdraw voluntary agreement to electronic service under this rule, the party

(i) shall notify the court in writing of the withdrawal of voluntary agreement to receive electronic notices and

(ii) shall confirm the mailing address to which subsequent notices may be mailed.

(F) Lack of notice of the entry by the ~~register~~Register does not

(i) affect the time to appeal or

(ii) relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4 of the Massachusetts Rules of Appellate Procedure. [Check cite]

(e) Transmittal of papers

~~At the direction of the Chief Judge, the registers of the several counties shall transmit the papers in any action from one county to another when a matter has been duly set down for hearing in a county other than that in which the action is pending. Pleadings, motions and papers to be filed in such case shall be filed in the office of the register for the county in which the case is pending. The register for the county in which the case is heard shall certify the proceedings had in his county to the Chief Judge of the Probate Courts and, at the direction of any judge of the court, shall return to the register for the county in which the case is pending all the papers, to be kept there on file.~~

(e) Assignment of Cases to a Different Court Division or Department.

(1) Assignment to a Different Division of the Probate and Family Court.

A case may be:

(A) *transferred* from one division of the Probate and Family Court to another division of the Probate and Family Court Department

(i) if venue is improper.

(ii) The request and transfer shall occur as set out in Probate and Family Court Standing Order 2-2021, as that Standing Order may be amended from time to time.

(B) *assigned for hearing only* to another division of the Probate and Family Court Department

(i) for any of the reasons set out in Probate and Family Court Standing Order 2-2021, as that Standing Order may be amended from time to time.

(ii) The request and assignment for hearing shall occur as set out in Probate and Family Court Standing Order 2-2021, as that Standing Order may be amended from time to time.

(2) Assignment to a Different Department of the Trial Court

A request for a case to be transferred for hearing from the Probate and Family Court Department to a different department of the Trial Court of Massachusetts shall occur as set out in G. L. c. 211B, § 9, and Trial Court Rule XII.

(f) Electronic Signatures of Judges and Registers. In all cases, whenever a judge or Register is required to sign an order, judgment, or notification, the judge or Register may electronically sign. The electronic signature of a judge or Register can take the form of either a scan of the individual's handwritten signature, an electronically inserted image intended to substitute for a signature, or a "/s/ name of signatory" block. Such electronic signature shall have the same force and effect as if the judge or clerk had affixed his or her original signature to a paper copy of the document so signed. 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.

Rule 78. Motion Day

(1) The court shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and ~~disposed of~~decided; but

(2) a judge at any time or place and on such notice, if any, as ~~he~~the judge considers reasonable may make orders for the advancement, conduct, and hearing of such motions.

(3) To expedite its business, the court may provide by order for the submission and ~~determination~~decision of motions

(A) without oral hearing

(B) upon brief written statements of

(i) reasons in support and

(ii) reasons in opposition.

(C) The court may require the filing of briefs, in such form and within such time as it may ~~direct.~~
Identical to Mass.R.Civ.P. 78order.

Rule 79. ~~Books and~~ Records Kept by the ~~Clerk and Entries Therein~~Register of Probate

(a) ~~Civil docket~~Docket.

(1) The ~~clerk~~Register of Probate shall keep the ~~civil~~ docket and shall enter ~~therein~~in the docket each ~~civil~~ action to which these rules are made applicable.

(A) Actions shall be assigned consecutive ~~filed~~docket numbers.

(B) The ~~file number~~label for the folder containing the records of each action shall ~~be noted on the folio of~~include the docket ~~whereon the first entry~~number of the action ~~is made.~~

(C) All ~~papers~~

(i) documents permitted to be filed under these rules which are filed with the ~~clerk, all~~register,

(ii) process issued and

(iii) returns made ~~thereon, all~~on process issued,

(iv) appearances,

(v) orders, ~~verdicts,~~ and

(vi) judgments

shall be entered chronologically in the ~~civil~~ docket ~~on~~in the ~~folio~~folder assigned to the action and shall be marked with its ~~filed~~docket number.

(D) These entries shall be brief but shall show

(i) the nature of each ~~paper~~document filed or writ issued and

(ii) the substance

(a) of each order or judgment of the court and

(b) of the returns showing execution of process.

(E) The entry of an order or judgment shall show the date the entry is made. ~~When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action. Identical to Mass.R.Civ.P. 79(a)~~

(b) Indices; ~~calendars~~

Calendars. Suitable indices of the ~~civil~~ docket shall be kept by the ~~clerk~~register according to law under the direction of the court. ~~Identical to Mass.R.Civ.P. 79(b)~~

(c) Other ~~books~~Books and ~~records~~Records of the ~~clerk~~

Register. The ~~clerk~~register shall also keep such other books and records as may be required by law or by direction of the court. ~~Identical to Mass.R.Civ.P. 79(e)~~

(d) Records and entries shall be kept by the register in accordance with Trial Court Rule XIV: Uniform Rules on Public Access to Court Records

Rule 80. Stenographic Report or Transcript

(a) ~~Courts other than District Court:~~ Evidence in ~~subsequent trial~~Subsequent Trial.

(1) Whenever the testimony of a witness at a trial or hearing which

(A) was officially stenographically reported or

(B) was recorded by the court

is admissible in evidence at a later trial, it may be proved by the transcript ~~thereof~~of the testimony duly certified by the person who

(C) stenographically reported the testimony. ~~Identical to Mass.R.Civ.P. 80(a)~~ or

(D) transcribed the recording.

(b) ~~Courts other than District Court:~~ Part of ~~record~~Record on ~~appeal~~Appeal.

(1) A transcript, duly certified by the person

(A) officially stenographically reporting the testimony; or

(B) transcribing the recording.

shall be considered part of the record on appeal.

~~(2) The trial court does not need notto appoint saidthat person a commissioner to report the evidence. Identical to Mass.R.Civ.P. 80(b)~~

X. GENERAL PROVISIONS

Rule 81. Applicability of Rules

(a) Applicability in **general**

General. These rules apply to all ~~civil~~ proceedings in ~~courts whose proceedings they govern~~ except:

~~(1) proceedings pertaining to the writ~~Probate and Family Court that are listed in Rule 1 of habeas corpus;

~~(2) deleted;~~

~~(3) proceedings pertaining to the disciplining of an attorney;~~

~~(4) to (8) deleted.~~

~~In respects not governed by statute, the practice in the enumerated proceedings shall follow the course of the common law, as near to these rules as may be, except that depositions shall not be taken, nor interrogatories served, save by order of the court on motion, with notice, for good cause shown.~~

:

(b) Writs **abolished**

Abolished. The following writs are abolished:

~~(1) audita querela;~~

~~(2) certiorari;~~

~~(3) entry;~~

~~(4) error;~~

~~(5) mandamus;~~

~~(6) prohibition;~~

~~(7) quo warranto;~~

~~(8) review;~~ and

~~(9) scire facias. In any action seeking relief formerly obtainable under any such writ, procedure shall follow these rules. Identical to Mass.R.Civ.P. 81(b)~~

(c) **Deleted**[Not Used]

~~[Deleted]~~

(d) Terminology in ~~statutes~~

Statutes. In applying these rules to any proceedings to which they apply,

(1) the terminology of any statute which also applies shall, if inconsistent with these rules, be taken to mean the analogous ~~device or procedure proper under these rules. Identical to Mass.R.Civ.P. 81(d)~~

(A) device or

(B) procedure

proper under these rules.

(e) Procedure ~~not specifically prescribed~~

Not Specifically Prescribed. When no procedure ~~is~~ specifically ~~prescribed~~required, the court shall proceed in any lawful manner not inconsistent with

(1) the Constitution of this Commonwealth,

(2) these rules, or

(3) any applicable statute. ~~Identical to Mass.R.Civ.P. 81(e)~~

(f) ~~Deleted~~[Not Used]

~~[Deleted]~~

(g) ~~Deleted~~[Not Used]

~~[Deleted]~~

(h) The following definitions apply for purposes of these rules ~~apply to terms as appearing in Mass.R.Civ.P.:~~

(1) ~~Clerk~~ includes Register of Probate.

~~(2) Justice includes Judge of Probate Court.~~

(2)

~~(3) Chief Justice includes the Chief Judge of Probate Court.~~

~~(4) Superior Court includes Probate Court.~~

~~(5) The word "complaint" includes "petition" and "libel."~~

~~(6) The words "jury" and "verdict" and Rules applicable to jury cases apply only to courts having jurisdiction of jury trials.~~

~~(7) Third-party actions shall not be applicable to Domestic Relations matters.~~

~~(8) References in Mass.R.Civ.P. to actions including remanded cases and/or defenses and the capacity of parties not recognized in Domestic Relations practice as set out in Rule 1 shall be inapplicable to Domestic Relations cases.~~

~~(9) In Domestic Relations matters in the Probate Court forms, where prescribed, will be required in lieu of pleadings.~~

Rule 82. Jurisdiction and Venue Unaffected

These rules shall not be construed or interpreted to extend or limit

(1) the jurisdiction of the ~~courts or~~ Probate and Family Court or

(2) the venue of actions ~~therein. Identical to Mass.R.Civ.P. Rule 82~~ in the Probate and Family Court.

Rule 83. Supplemental Rules

~~Any court whose procedure is regulated in whole or in part by these rules~~

(1) The Probate and Family Court may from time to time make and amend supplemental rules, or continue in force existing rules, governing its procedure ~~not inconsistent with these rules. In instances not provided for by rule, each said court may regulate its practice in a manner not inconsistent with these rules and the said supplemental rules. Identical to Mass.R.Civ.P. 83.~~

(2) In instances not provided for by rule, the court may regulate its practice in a manner not inconsistent with these rules and its supplemental rules.

Rule 84. Forms [Not Used]

~~Rule 84 has been reserved pro tem. NOTE: Separate forms to be drafted which in Domestic Relations practice in Probate Court shall be mandatory.~~

Rule 85. Title

These rules may be known and cited as the Massachusetts Rules of Domestic Relations Procedure (Mass.R.Dom.Rel.P.).