

## MASSACHUSETTS RULES OF CIVIL PROCEDURE

### RULE 63. UNAVAILABILITY OF A JUDGE; RECEIPT OF VERDICT

#### DRAFT Reporter's Notes--2023

At the request of the Chief Justice of the Superior Court, the Supreme Judicial Court Rules Committee asked the Standing Advisory Committee on the Rules of Civil Procedure to consider recommending amendments to Rule 63. Rule 63 previously allowed the designation of another judge to deal with matters that arose in a civil action *after* a verdict or after the filing of findings of fact and conclusions of law in a case where the trial judge had become disabled.

The Chief Justice of the Superior Court had requested that Rule 63 be amended to make civil practice consistent with criminal practice. Rule 38 of the Massachusetts Rules of Criminal Procedure allows replacement of a judge *during* a jury trial where the trial judge is unable to proceed “by reason of death, sickness, or other disability.” The Standing Advisory Committee on the Rules of Civil Procedure agreed that Rule 63 should be broadened to deal with incapacity of a judge at any time in the litigation process. The change in Rule 63 is consistent with the directive in Rule 1 that the rules of procedure “be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”

The amendment divides Rule 63 into two parts, (a) and (b).

Rule 63(a) allows the Chief Justice of the court (or the Chief Justice’s designee) to assign another judge to complete a trial where the trial judge has become “unavailable” after a trial has begun. As had been previously provided by the former language of Rule 63, the replacement judge has discretion to grant a new trial if the judge determines that he or she is unable to perform the required duties.

Rule 63(b) deals with verdicts. It allows any judge of the court to receive a jury verdict. There is no requirement of incapacity or disability to do so. For example, where the trial judge is out of the courthouse when a verdict is returned, any other judge of that court may receive the verdict.

The title of Rule 63 has been changed to reflect the division of the rule into two parts. The rule was formerly titled “Disability of a Judge.”