

SUMMARY PROCESS RULES - AMENDMENTS

Rule 1: Scope and applicability of rules - AMENDED

Rule 2: Form of Summons and Complaint; Entry of action; Scheduling of trial date; Service of Process - AMENDED

Rule 3: Answer - AMENDED

Rule 4: Transfer of action - AMENDED

Rule 5: Counterclaims

Rule 6: Motions - AMENDED

Rule 7: Discovery - AMENDED

Rule 8: Jury Trial - AMENDED

Rule 9: Equitable relief

Rule 10: Entry of default; Entry of dismissal; Entry of judgment after trial, default or dismissal; Notice - AMENDED

Rule 11: Relief from judgment - AMENDED

Rule 12: Appeals - AMENDED

Rule 13: Execution

SUMMARY PROCESS Rule 1

These rules govern procedure in all summary process actions commenced in the Housing Court, District Court, and Boston Municipal Court Departments of the Trial Court of the Commonwealth. Procedures in such actions that are not prescribed by these rules shall be governed by the Massachusetts Rules of Civil Procedure insofar as the latter are not inconsistent with these rules, with applicable statutory law or with the jurisdiction of the particular court in which they would be applied.

These rules and, where applicable, the Massachusetts Rules of Civil Procedure, shall be construed and applied to secure the just, speedy, and inexpensive determination of every summary process action.

Any procedural steps taken in a summary process action before the effective date of these rules which conform to then-effective rules shall be regarded as valid during the pendency of that action. All procedure after the effective date of these rules with respect to a pending summary process action shall be governed by these rules.

SUMMARY PROCESS RULE 2

(a) Form of Summons and Complaint

The Chief Justice of the Trial Court shall promulgate the form of the Summary Process Summons and Complaint for use in all summary process cases filed in the Housing Court, District Court, and Boston Municipal Court. Whether purchased in paper or electronic form, the Summary Process Summons and Complaint shall be considered a writ in the form of an original summons as required by **G.L. c. 239, § 2**. Each court at which summary process actions may be commenced shall make available for purchase a blank Summary Process Summons and Complaint. The form may also be made available for purchase online.

(b) Service of Process

Service of a copy of a properly completed Summary Process Summons and Complaint shall be made on the defendant. Service shall not be made prior to the expiration of the tenancy by notice of termination or otherwise except as permitted by statute. Service shall be made in accordance with **Rule 4(d)** of the Massachusetts Rules of Civil Procedure, provided that if service is not made in hand, the person making such service shall mail, first-class, to the defendant, at the address indicated on the Summary Process Summons and Complaint, a copy of the Summary Process Summons and Complaint and leave a copy of the Summary Process Summons and Complaint at the recipient's last and usual place of abode. Return of service shall be made to the plaintiff only and include a statement of mailing, as necessary. The return of service may be completed in the appropriate space provided on the Summary Process Summons and Complaint, or on a separate document attached to the Summary Process Summons and Complaint including all required information. The date of service pursuant to this paragraph shall be deemed the date of commencement of the action subject to proper entry in accordance with the provisions of Rule 2(d).

Service shall be made by those authorized to make service by **Rule 4(c)** of the Massachusetts Rules of Civil Procedure, provided that such service shall be made as required by this section.

(c) Entry of action

Summary process actions shall be entered by filing the following documents with the clerk of the court in which the action is to be heard:

- **(1)** The properly completed form of Summary Process Summons and Complaint, whether paper or electronic, in accordance with subsection (a) of this rule, a copy of which has been served on each defendant;

- **(2)** return of service of the Summary Process Summons and Complaint, whether completed on the original form or attached to the Summary Process Summons and Complaint;
- **(3)** a copy of any applicable notice(s) of termination of the defendant's tenancy of the premises upon which the plaintiff relies where such notice is required by law and any proof of delivery of such notice upon which the plaintiff plans to rely at trial;
- **(4)** in actions based upon nonpayment of rent, the completed Affidavit of Compliance with G.L. c. 186, § 31.
- **(5)** in jurisdictions wherein rent control is in effect a copy of a certificate of eviction granted by the appropriate rent control agency, or an affidavit of exemption;
- **(6)** in jurisdictions wherein local laws governing condominium conversion evictions are in effect, a copy of any applicable affidavit of compliance with such local laws; and
- **(7)** any entry fee prescribed by law unless waived.

On the appropriate portion of the Summary Process Summons and Complaint the reason(s) for eviction shall be indicated by the plaintiff(s) in concise, untechnical form, with sufficient particularity and completeness to enable a defendant to understand the reasons for the requested eviction and the facts underlying those reasons.

(d) Method and Time for Entry

Entry of the Summary Process Summons and Complaint, whether purchased by paper or electronically, and necessary accompanying documents, if any, shall be by delivery in hand, by first-class mail, or by electronic filing (“e-Filing”) in accordance with SJC Rule 1:25 to the clerk of the court in which the action is to be heard. Filing by mail is complete upon receipt by the clerk. E-Filing is complete upon acceptance by the clerk. The date on which the documents required in accordance with the above section are filed with the clerk of court shall be deemed to be the entry day of the action. Such filing shall not be sooner than seven (7) days, nor later than ninety (90) days after the date the Summary Process Summons and Complaint was served on the defendant, unless the plaintiff can show good cause why entry was not made within that period or the defendant or defendant’s attorney assents to the filing.

(e) Scheduling of Court Events; Service of Scheduling Notice; Effect of Transfer.

Summary Process cases entered after the effective date of these rules shall be scheduled, and shall proceed, pursuant to a two-tier process. The clerk may schedule summary process trials on any business day.

- (1) The clerk shall schedule the case for a first-tier court event to be held no sooner than thirty (30) days and no later than sixty (60) days after the entry date.

The clerk shall send the plaintiff or plaintiff's attorney no later than seven (7) business days after the case is entered a notice informing the parties of the date of the first-tier court event, along with the time, location and method of appearance (i.e., in person or videoconference); instructions to the plaintiff for service of the notice of first-tier court event, together with any informational document required by the Trial Court.

The notice of first-tier court event shall notify the parties that the court event is mandatory for all parties or their attorneys to appear. The purpose of the first-tier court event is for the parties to (1) determine the status of the case; (2) explore the availability of housing assistance or other resources; (3) determine whether a continuance is appropriate subject to approval by the court; (4) attempt alternative dispute resolution of the case; and (5) consider further options that may aid in the disposition of the case.

The plaintiff or plaintiff's attorney shall serve on each defendant a copy of the notice of first-tier court event and any required informational document. Service shall be made by constable or sheriff no later than fourteen days (14) before the initial first-tier court event and in the same manner as is required for service of a Summary Process Summons and Complaint. The plaintiff or plaintiff's attorney shall file with the clerk such constable's or sheriff's return of service on the form provided no later than the date of the initial first-tier court event. The cost of such service is considered a normal cost associated with the entry of judgment.

- (2) (i) Cases not subject to Rule 8. If the case does not resolve or is not continued at the tier one stage, the case shall be scheduled for a tier two court event, which shall be a Summary Process trial. Such trial shall be scheduled for a date two (2) weeks after the first-tier court event or a later date if agreed by the parties or if ordered by the Court. At the conclusion of the first-tier court event, the court will give each party or their attorney in hand a written notice of the date, time and location of the trial. No further trial date notice will be given to the parties. If in hand notice of the trial date cannot be made, the clerk shall send notice of the trial date to all parties or their attorneys.

(ii) Cases subject to Rule 8. If the case does not resolve or is not continued at the tier one stage, the case shall be scheduled for a case management conference to be

scheduled two weeks after the first-tier court event or a later date if agreed by the parties or if ordered by the Court.

- (3) If a case is transferred to the Housing Court pursuant to Uniform Summary Process Rule 4, the case shall proceed according to the schedule as outlined in Rule 2(e), starting with a new, initial first-tier court event.

SUMMARY PROCESS RULE 3

The defendant shall prepare a written answer containing at the top of the page the caption "Summary Process Answer". The answer shall deny every statement in the complaint which is in dispute. The defendant shall also state in the answer any affirmative defenses which may be asserted and may state any counterclaim permitted by **Rule 5** of these rules. The answer shall be filed with the clerk and be served on the plaintiff no later than three (3) business days before the initial first-tier court event. The answer shall be filed by mailing first-class, by delivering a copy of it to the clerk, or by e-Filing in accordance with SJC Rule 1:25. Service of the answer shall be made upon the plaintiff or plaintiff's attorney by first-class mail or delivery pursuant to the provisions of **Mass. R. Civ. P. 5(b)**. Service by mail is complete upon receipt. Filing by mail also is complete upon receipt. Forms of answer, as promulgated by the Chief Justice of the Trial Court, shall be made available in each clerk-magistrate's office and online.

SUMMARY PROCESS RULE 4

A party wishing to transfer a summary process action pending in another court department to a division of the Housing Court Department pursuant to law shall do so by filing in both departments a completed transfer form provided by the clerk of the court where the action was commenced. The form shall be filed in both courts no later than the day before the initial first-tier court event. The clerk of the court from which the case is transferred shall forward to the clerk of the appropriate Housing Court division all relevant papers within four (4) business days from the receipt of the transfer form. No entry fee shall be charged upon such transfer. Upon receipt of the papers from the original court, the clerk of the Housing Court shall schedule the case pursuant to the two-tier process as outlined in Rule 2(e) of these rules, notwithstanding the process in the transferring court.

Failure of a party to make a timely transfer as provided above shall not prohibit the court in which the action has been commenced from allowing such transfer in the originating court's discretion at any time during the proceedings, unless trial has started or judgment has entered.

SUMMARY PROCESS RULE 6

All pretrial motions shall be made in writing containing the docket number of the case. Motions shall: (1) state with particularity the basis for the motion; (2) include a brief written statement of reasons in support; and (3) set forth the relief or order sought. All pretrial motions may be filed with the clerk and served on the opposing party or that party's attorney, at any time after the case is filed or transferred, but no later than seven (7) days before the next scheduled event. All motions shall be filed by mailing first-class, by delivering a copy of the motion to the clerk, or by e-Filing in accordance with SJC Rule 1:25. All motions shall be served on the opposing party by mailing first-class, by delivering a copy of the motion to the opposing party or that party's attorney, or electronically under Mass. R. Civ. P. 5(b). Filing by mail is complete upon receipt. E-Filing is complete upon acceptance by the clerk.

Timely filed motions shall be scheduled for hearing for the next scheduled court event—other than the first-tier event—without further notice from the clerk. The clerk may schedule motions to be heard on a date other than the next court event, upon notice from the court.

Motions filed within seven (7) days of the next scheduled court event, including motions for a continuance, may be heard at that next court event, or on another date as determined by the clerk. However, the court may act on all emergency motions for a continuance without a hearing based on the supporting documentation provided by the moving party. Unless the parties receive confirmation from the court that a continuance has been granted, the court event shall occur as originally scheduled.

SUMMARY PROCESS RULE 7

(a) General

Either party may obtain discovery by serving on the opposing party a discovery demand and filing a copy of such demand with the court. Such service and filing shall be made no later than three (3) business days before the initial first-tier court event. A discovery demand, in the form provided in this section, shall be served on the opposing party by mailing first-class mail, delivering a copy to that party or that party's attorney, or electronically under Mass. R. Civ. P. 5(b).

Discovery may be demanded in any of the following forms:

- (1) Written interrogatories;
- (2) Request(s) for admissions; and
- (3) Request(s) for the production of documents.

Written interrogatories and requests for admissions shall not exceed thirty (30) in number including any interrogatories or requests subsidiary or incidental to other interrogatories or requests, however grouped or combined.

Requests for discovery or further discovery not made in compliance with the requirements of this rule shall not be allowed unless on motion and for good cause shown. A request for discovery in response to an answer or counterclaim shall be deemed to establish good cause.

All papers relating to discovery which are filed with the clerk shall contain the docket number of the case.

(b) Response to Demand for Discovery; Relief or Objection

The party of whom discovery is demanded shall respond by serving answers to the interrogatories and/or responses to the requests for admission, and/or by producing the documents no later than ten (10) days after receipt of the demand. The response shall be completed upon its receipt. Discovery responses shall not be filed with the court, except as referenced in subparagraph (c) of this rule or as otherwise ordered by the court.

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 of an answer. The answers are to be signed by the person making them, and the objections by the attorney or person making them. The scope and procedure for requests for production of documents and responses thereto shall be made as permitted and as required

by Mass.R.Civ.P. 34(a)(1) and (b); provided, however, that the time limits specified in this rule shall govern. The scope and effect of and the procedure for requests for admission and responses thereto shall be made as permitted and as required by Mass.R.Civ.P. 36; provided, however, that the time limitations specified in this rule shall govern.

A party or the party's attorney objecting to or seeking relief from a discovery request may do so by a motion for protective orders or other relief which shall be filed within five (5) days after receipt of such discovery request.

(c) Enforcement of discovery demand

A party's failure to respond to a demand for discovery as required by this rule and within the time specified by this rule shall be brought to the attention of the court by the aggrieved party or the party's attorney within five (5) days after such failure by a motion for an order compelling discovery as permitted by Mass.R.Civ.P. 37(a), or by an application for final judgment for relief or dismissal. Motions to compel further discovery shall include copies of the discovery request at issue and any response provided.

If a party willfully fails to respond to a discovery demand, on motion the court may make such orders in regard to the failure as are just, including but not limited to:

- (1) an order that matters regarding which discovery is sought shall be taken to be established for the purposes of the action in accordance with the claim of the moving party;
- (2) an order refusing to allow the party failing to respond to support or oppose designated claims or defenses or prohibiting the party from introducing designated matters in evidence; or
- (3) an order striking out pleadings or parts thereof or staying further proceedings until the discovery demand is satisfied or dismissing the action or any part thereof, or rendering a judgment by default against the party failing to respond.

(e) Postponement of trial date

Upon filing and service of a motion for a protective order against a demand for discovery, or upon filing and service of a motion to compel response to a demand for discovery or for final judgment for failure to respond, the trial date may be rescheduled, if needed, by the court following the hearing and ruling on such motion.

SUMMARY PROCESS RULE 8

A demand for jury trial shall be filed and served no later than the date on which the defendant's answer is due. In cases that are transferred to the Housing Court Department from another department, and in which a demand for jury trial was not filed in the original court, a demand for jury trial shall be made no later than the date on which the defendant's answer is due in the Housing Court pursuant to Rule 2(e)(3) and Rule 4 of these rules.

SUMMARY PROCESS RULE 10

(a) Entry of default

If the plaintiff appears for the first-tier court event or trial, but the defendant fails to appear, the defendant shall be defaulted provided that the return of service of the notice of the date of the first-tier event has been filed with the Court. Default may also enter for failure to appear at any other court event if the Court notice includes a warning of such a sanction for failing to appear.

(b) Entry of dismissal

If a plaintiff fails to appear for the first-tier court event or for trial, but the defendant appears, the case shall be dismissed. If neither party appears for the first-tier court event or for trial, the case shall be dismissed. A case may be dismissed for failure to appear at any other court event if the court notice includes warning of such a sanction for failing to appear.

(c) Removal of dismissal or default

A default or a dismissal may be removed at the court's discretion, on its own initiative, by stipulation, or on motion of either party in writing, at any time prior to the entry of judgment on such default or dismissal.

(d) Entry of judgment

All judgments shall be entered by the end of the next business day following the court's decision after hearing or trial, or following the entry of default or dismissal, as the case may be, provided that (1) in the case of a default, said default is not removed prior thereto, (2) in the case of a finding pursuant to G.L. c. 239, § 8A that the tenant owes rent, judgment shall be entered in accordance with that statute, and (3) where a default is pending no judgment shall be entered unless the following prerequisites are met:

- (i) The plaintiff shall file an affidavit made by a competent person, on the affiant's own knowledge, setting forth facts showing that the defendant is not a person in military service as defined in Article I of the "Soldiers' and Sailors' Civil Relief Act" of 1940, as amended, except upon order of the court in accordance with the Act;
- (ii) Where the complaint sets forth a claim for rent and/or use and occupancy, the plaintiff shall file an affidavit stating the aggregate amount of payments, if any, which have been made subsequent to the date of the commencement of the action and the amount of rent and/or use and occupancy owed at the time the affidavit is signed; and

- (iii) The clerk shall review the documents filed with the court. No judgment by default shall enter against any defendant where it appears from such review that the Summary Process Summons and Complaint was not properly completed or served or the return of service thereon not completed and filed, or that the other documents required to be filed with the court pursuant to Rule 2(c) have not been filed, or that the notice of first-tier court event was not properly served or the return of service thereon not completed and filed.

(e) Notice

Notice of judgment shall be sent to all parties forthwith upon entry of judgment.

SUMMARY PROCESS RULE 11

Rules 60 and 62 of the Massachusetts Rules of Civil Procedure apply to summary process actions.

SUMMARY PROCESS RULE 12

Any judgment in a summary process action, except a default judgment, may be appealed by an aggrieved party in accordance with the provisions of law.

Upon receipt of notice of appeal and request to set or waive an appeal bond, the clerk shall schedule a hearing on whether an appeal bond shall be required and as to the form and amount of such appeal bond. The hearing shall be held promptly after filing of the notice of appeal and request to set or waive the bond. If the defendant fails to request to set or waive the appeal bond in the notice of appeal, the plaintiff may promptly file a motion to request a hearing on the issue of setting the bond.