

SUMMARY PROCESS RULES - AMENDMENTS MARK-UP

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

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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 ~~will~~ **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 will 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**. ~~The form of **Summary Process Summons and Complaint**, as promulgated by the Chief Administrative Justice of the Trial Court, shall be the only form of summons and complaint used in summary process actions. Whether purchased in paper or electronic form, the This form of~~ 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. ~~This form shall be available in blank at each of the courts at which summary process actions may be commenced.~~ **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. ~~no later than the seventh day nor earlier than the thirtieth day before the entry day, provided, however, that~~ **S**service shall not be made prior to the

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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. ; and provided further that return Return of service, including a statement of mailing where the latter was required, 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. shall be made in the appropriate space provided on the Summary Process Summons and Complaint. 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 date; scheduling of trial date

~~Entry dates for summary process actions shall be each Monday and cases shall be placed on the list for hearing on the second Thursday following the entry date without any further notice to the parties. Subject to the prior approval of the Administrative Justice of his or her Department, the First Justice of any Division may designate Friday, Monday, Tuesday, and Wednesday as summary process trial days either as alternatives to Thursday or in addition to Thursday. The cases shall be placed on the list for hearing on the second Friday, the second Monday, the third Tuesday, or the third Wednesday after the Monday entry day without any further notice to the parties when such day is designated as a summary process trial day. Summary process actions originally commenced in the Superior Court Department shall be added to the next non-jury list for assignment for trial.~~

~~(d)~~ 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: ~~the following documents:~~

- (1) The ~~original of the~~ properly completed form of Summary Process Summons and Complaint ~~and Summons~~, whether paper or electronic, in accordance with

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subsection (a) of this rule, a copy of which has been served on ~~the~~ each defendant;
~~with return of service recorded thereon;~~

- (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;
- (23) a copy of any applicable notice(s) of termination of the defendant's tenancy of the premises upon which the plaintiff(s) relies where such notice is required by law and any proof of delivery of such notice upon which the plaintiff(s) plans to rely at trial;
- (4) in actions based upon nonpayment of rent, the completed Affidavit of Compliance with G.L. c. 186, § 31.
- (35) 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;
- (46) 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
- (57) 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, ~~and~~ with sufficient particularity and completeness to enable a defendant to understand the reasons for the requested eviction and the facts underlying those reasons.

(ed) Method and ~~time~~Time for ~~filing~~Entry

~~Filing~~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, ~~or~~ 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.~~ ~~Papers and documents required in accordance with the preceding~~

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~~paragraph shall be filed together no later than the close of business on the scheduled Monday entry day. Late filing of the summons and complaint shall not be permitted without the written assent of the defendant or the defendant's attorney~~

(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 ~~or designee~~ 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

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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" ~~with the trial date set forth below the caption.~~ 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 first Monday after the Monday entry day.~~ The answer shall be filed by mailing first-class, ~~or~~ 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). ~~; except that service~~ ~~Service~~ by mail is complete upon receipt. Filing by mail also is complete upon receipt. Forms of answer, as promulgated by the Chief ~~Administrative~~ Justice of the Trial Court, shall be made available in each clerk-magistrate's office ~~and online.~~

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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 ~~commencement of the trial~~ **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 ~~a copy of this~~ **the papers from the original court**, the clerk of the Housing Court ~~division shall schedule~~ **insure that** the case **pursuant to the two-tier process as outlined in Rule 2(e) of these rules, notwithstanding the process in the transferring court is scheduled forthwith and shall notify the parties in any practical way thereof. A demand for jury trial, if any, pursuant to Rule 8 of these rules, shall be made with the request for transfer.**

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 ~~on motion for cause shown in the originating court's discretion~~ **at any time during the proceedings, unless trial has started or judgment has entered.**

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SUMMARY PROCESS RULE 6

All pretrial motions shall be made in writing containing the docket number of the case. **Motions shall:** (1) **shall** state with particularity the **groundsbasis for the motion**; (2) **shall** include a brief written statement of reasons in support;**;** and (3) **shall** set forth the relief or order sought. **All pretrial motions may be ,and, except as otherwise provided in this rule, shall 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. if any, no later than the first Monday after the Monday entry day. A pretrial motion** **All motions** shall be filed **with the court** by mailing first-class**or**, by delivering a copy of **it the motion** to the clerk, **or by e-Filing in accordance with SJC Rule 1:25. All motions A pretrial motion** shall be served on the opposing party by mailing first-class,**or** by delivering a copy of **it the motion** to **that party the opposing party** or that party's attorney, **or electronically under Mass. R. Civ. P. 5(b). Filing or service** by mail is complete upon receipt. **E-Filing is completed 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.

~~Unless the court otherwise orders, the hearing on pretrial motions shall be without further notice at the time and on the date the case is originally scheduled for trial. If, however, a motion to dismiss is filed and served on or before the entry date and if the defendant so requests after notice to the plaintiff, the motion shall be heard on the Thursday (or Friday or Monday or second Tuesday or second Wednesday) following the entry date. If the motion is denied, continued, or taken under advisement at the hearing, the defendant's answer shall continue to be due as provided in **Rule 3** and the schedule for trial shall not be affected, unless the court otherwise orders.~~

~~All other motions, including motions to allow late filing of pretrial motions, shall be made in such manner, at such time, and with such notice as the court may permit or direct~~

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SUMMARY PROCESS RULE 7

(a) General

Either party may obtain discovery by serving on the opposing party a **discovery** demand ~~therefor~~ 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.** ~~the first Monday after the Monday entry day.~~ A discovery demand, in the form provided in this section, shall be served on the opposing party by mailing first-class **mail**, ~~or by~~ delivering a copy ~~of it~~ to that party or that party's attorney, **or electronically under Mass. R. Civ. P. 5(b).** ~~A discovery demand shall be filed with the court by mailing first-class or by delivering a copy of it to the clerk. Filing or service by mail is complete upon receipt.~~

Discovery may be demanded in any of the following forms:

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

~~Neither~~ **Written** interrogatories ~~nor~~ **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) Postponement of trial date~~

~~Upon proper service and filing of a demand for discovery as required in section (a) above, hearing of the action shall be automatically postponed and rescheduled for the date two weeks from the original trial date. With the service of the discovery demand, the party demanding discovery shall notify the opposing party of the automatic two week postponement, the newly scheduled trial date, and the requirement in Rule 7(c) as to filing and service of responses no later than ten days after receipt of the request.~~

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(eb) Response to ~~demand~~—Demand for ~~discovery~~Discovery; ~~relief~~—Relief or objectionObjection

The party of whom discovery is demanded shall respond by ~~filing and~~ 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 ~~requests~~~~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.

(dc) Enforcement of discovery demand

~~The fact of a~~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 ~~aggrieved thereby~~ 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 ~~heard on the rescheduled trial date~~ the court may make such orders in regard to the failure as are just, **including but not limited to: and among others the following:**

- (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;

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- (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) ~~Further postponement~~ **Postponement** of trial date

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

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SUMMARY PROCESS RULE 8

The provisions of ~~Mass. R. Civ. P. 38~~ shall apply insofar as jury trial is available in the court where the action is pending, provided that:

- ~~(1) in cases commenced in a court where jury trial is available, a demand for jury trial shall be filed with the court no later than the date on which the defendant's answer is due;~~
- ~~(2) in cases transferred from a court in which jury trial is not available to one in which jury trial is available, such demand shall be filed with the transfer form pursuant to Rule 4 of these rules; and~~

~~(3) in cases appealed to the Superior Court Department, such demand shall be filed within ten days of entry in the Superior Court~~

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.

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SUMMARY PROCESS RULE 10

(a) Entry of default

~~If a defendant fails to~~ 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. ~~answer and also fails to appear for trial, said defendant shall be defaulted at the call of the trial list on the day set for hearing, provided that the plaintiff appears at the call of the list. If a defendant has filed an answer but fails to appear for trial, said defendant shall also be defaulted provided that the plaintiff appears. If the plaintiff also fails to appear, the case shall be dismissed seven days after the trial date unless either party requests a new trial date within the seven day period. If the defendant appears but has failed to file a timely answer, no default shall enter and the court shall postpone the trial date one week from the original trial date, unless the plaintiff consents in writing to an immediate trial. If the defendant appears but has failed to file a timely answer and the plaintiff fails to appear, the court shall postpone the trial date one week from the original trial date and notice shall be sent to the plaintiff. If the plaintiff fails to appear after being notified of the new trial date, the case shall be dismissed.~~

(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. ~~Dismissal shall be entered when a plaintiff fails to appear for trial, provided that the defendant has filed a timely answer and appears for trial. If the defendant files a timely answer but neither party appears for trial, the case shall be dismissed seven days after the trial date unless either party requests a new trial date within the seven day period.~~

(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.

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(d) Entry of judgment

All judgments shall be entered ~~at 10:00 a.m. on~~ **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 **occupation** ~~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** ~~on account of such amount claimed;~~; 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 ~~summons~~**Summary Process Summons and Complaint** was not properly completed **or served** or ~~the returned of service thereon not completed and filed, , that the complaint was not properly completed or served,~~ or that the other documents required to be filed with the court pursuant to [Rule 2\(dc\)](#) 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.

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SUMMARY PROCESS RULE 11

~~(a) District and Boston Municipal Court Departments~~

~~In the District Court and Boston Municipal Court Departments, **Rules 60** and **62(b)** and **(d)** of the Massachusetts Rules of Civil Procedure, which deal with relief from judgment and stay of execution, respectively, shall apply to summary process actions; provided that relief under **Rule 60(b)** shall be available only in cases where the judgment has been entered on default or dismissal. In cases that have been heard on the merits, relief under **Rule 60(b)** shall not be available.~~

~~(b) Superior and Housing Court Departments~~

~~In the Superior Court and Housing Court Departments, **Rules 60** and **62** of the Massachusetts Rules of Civil Procedure shall apply to summary process actions~~

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

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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 for setting of bond within the time prescribed by G.L. c. 239, § 5,~~ request to set or waive an appeal bond, the clerk shall forthwith schedule a hearing ~~before the court~~ on whether an appeal bond shall be required and as to the form and amount of such appeal bond. The hearing shall be held ~~within three business days of said~~ 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.