Proposed Amendments to Superior Court Rules 9A, 9B, and 9C, and Proposed New Superior Court Rule 9F

Rule 9A. Civil Motions

- **Rule 9A(b)(2)(iii) Notice of filing.**

  The moving party must give prompt notice of the filing of a Rule 9A Package by serving all parties with a copy of a notice of filing in a separate document that lists the title of each document included in the Rule 9A Package, and by filing the notice with the Rule 9A Package. No other list of documents need be included in the Rule 9A Package.

- **New Rule 9A(b)(2)(iv) Exhibits.**

  Exhibits, attached to a motion, memorandum or affidavit, or contained in a separate appendix, must be separated from one another by off-set tab dividers, or page markers if filed electronically, and the pages of the exhibits must be consecutively numbered. If more than one exhibit is included, a Table of Contents or Exhibit Index shall precede the exhibits.

- **9A(b)(5)(iii)(A) Response to Moving Party's Statement of Facts. (last paragraph) (summary judgment rule)**

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  Where the obligation to send the Moving Party's Statement of Facts in electronic form has been excused, the response thereto may be in a separate document. For purposes of summary judgment, each fact set forth in the moving party's statement of facts is deemed to have been admitted unless properly controverted in the manner ~~forth~~ provided in this Paragraph (b)(5)(iii)(A).

- **9A(b)(5)(v)(A) Contents, Format, Citation, and Service. (for Joint Appendix) (summary judgment rule)**

  (v) Joint Appendix

  (A) Contents, format, citation, and service

  All exhibits referred to in the memoranda supporting or opposing a motion or cross-motion for summary judgment, or in the Consolidated Statement of Facts, must be filed as a single joint appendix, which must include an index of the exhibits ("Joint Appendix"). The initial moving party, with the cooperation of each opposing party, is responsible for assembling the Joint Appendix and index. All pages of the Joint Appendix must be consecutively numbered by page, and each exhibit must be separated by an off-set tab divider, or page marker if filed electronically. ~~Unless all~~

~~the pages of the Joint Appendix are consecutively numbered by page, each exhibit must be separated by an off-set tab divider.~~ The exhibits served by the moving party with its Motion Papers must include ~~either~~ the consecutive numbering ~~or~~ and offset tabs. Where an opposing party relies upon any evidence included in the moving party's exhibits, the opposing party must cite to that evidence using the form of designation of the moving party. If the opposing party designates new exhibits in accordance with Paragraph (b)(5)(iii)(D), it must serve those new exhibits, together with an index of the new exhibits, on the moving party with the Opposition, and it must serve the index on the moving party in electronic form (unless electronic service is excused). Those new exhibits must begin with the next consecutive designation following the last designation by the initial moving party (~~whether~~ consecutive page numbering ~~or~~ and off-set tab dividers). The opposing party must serve the original and one copy of those new exhibits with its Opposition. If the summary judgment package is e-filed, the moving party is responsible for delivering a courtesy copy of the Joint Appendix to the Session Clerk, if the clerk or hearing judge requests.

- **Rule 9A(d)(1) Ex parte, emergency, and other motions.**

A party filing an ex parte motion, emergency motion, or motion for appointment of a special process server is excused from compliance with Paragraph (b) of this rule. Ex parte motions must be served within 3 days of a ruling on the motion. Emergency motions, other than ex parte motions, must be served on all parties forthwith upon filing; provided, however, that a party filing an emergency motion shall certify in the motion that it has made a good faith effort to contact and confer with all parties regarding the subject of the motion, and shall set forth in the motion whether any party assents to or opposes the emergency motion. The nature of the emergency must be clearly specified in the motion.

- **Rule 9A(d)(2) Motions Involving Incarcerated Parties.**

Administrative Directive No. 92-1, which governs civil actions filed by a plaintiff who is incarcerated, exempts that part of subdivision (b)(4)(i) of this Rule that requires the filing of the Rule 9A package. Such exemption also applies to motions in civil actions where a defendant is incarcerated and self-represented, but all parties, incarcerated or not, must serve copies upon all other parties in the case. Upon release, a previously incarcerated party shall promptly file and serve notice of change of address. All provisions of Rule 9A shall take effect (a) for the previously incarcerated party, the day of release; and (b) for the non-incarcerated party, the day of notification of the other party's release.

Rule 9B. Certificates of Service

The last page of every paper served in accordance with Mass. R. Civ. P. 5(a) shall contain a brief statement showing the date ~~on which and manner in which service of the paper was made on each other party~~ and manner of service of the paper; the names and addresses (mailing or email) of all counsel (or parties) served; and the party represented by each counsel served. The statement may be in the following form:

~~I hereby certify that a true copy of the above document was served upon (each party appearing pro se and) the attorney of record for each (other) party by mail (by hand) on (date). (Signature).~~

I hereby certify that on [date] a true copy of the above document was served by [hand/mail/email] upon:

Attorney name [or *pro se* party's name]
Address [mailing or email]
Attorney for _____ [or *pro se* party]

Rule 9C. Additional Requirements for Dispositive and Discovery Motions

- **Rule 9C(b) Dispositive motions.**

  When conferring about any motion under Mass. R. Civ. P. 12, counsel for each of the parties shall make a good faith effort to narrow areas of disagreement that may be resolved through amendment of the pleading, curative action in respect to defective service, or other means related to the subject of the motion to dismiss. When conferring about any motion under Mass. R. Civ. P. 56 or 41(b)(2) (second sentence), counsel for each of the parties shall discuss whether the moving party should refrain from making any motion qualifying for decision without a hearing under Superior Court Rule 9A(b)(5)(vi) and make a good faith effort to narrow areas of disagreement that may be resolved through amendment of the pleading, a stipulated dismissal of specified claims or parties, or otherwise.

- **Rule 9C(c) Discovery Disputes.**

  All motions arising out of a party's response to an interrogatory or a request for admission or arising out of a party's response to, or asserted failure to comply with, a request for production of documents shall be accompanied by a brief. With respect to each interrogatory or request at issue, the brief shall set forth separately and in the following order (1) the text of the interrogatory or request, (2) the opponent's response and (3) an argument. Alternatively, the text of the interrogatory or request and the opponent's response may be provided in an appendix to the brief, as long as the brief includes an

argument addressed to each interrogatory or request. No argument may be included in the appendix.

New Rule 9F. Requests to Amend Tracking Order

All motions seeking to amend the Tracking Order to permit additional discovery must identify the following: (1) the number of times the Tracking Order has previously been enlarged in the case; (2) a brief summary of the discovery that has been conducted to date; (3) the discovery remaining to be conducted; (4) a brief summary of the nature of the claims in the case; and (5) any other information deemed relevant by the movant(s).