

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

RALPH D. GANTS
Chief Justice

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1. Court Submitting Rules for Approval:
Superior Court
 2. Date Rules Submitted for Approval:
May 2, 2016
 3. Date Approved & Promulgated by the Supreme Judicial Court:
October 26, 2016
 4. Rule or Rules, or Amendments Thereto, Approved and Promulgated:
Amendment to Rule 30B and new Rule 20, as attached hereto.
 5. Effective Date:
January 1, 2017
-

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)



COMMONWEALTH OF MASSACHUSETTS
THE SUPERIOR COURT
THREE PEMBERTON SQUARE
BOSTON, MA 02108

JUDITH FABRICANT
CHIEF JUSTICE

TELEPHONE
617-788-7301

May 2, 2016

Honorable Robert J. Cordy
Chair of the Rules Committee
Supreme Judicial Court
John Adams Courthouse, Suite 2200
One Pemberton Square
Boston, MA 02108

RE: Request for Changes to Several Superior Court Rules

Dear Justice Cordy:

I submit for approval by the Supreme Judicial Court the attached proposed amendment to Superior Court Rule 30B and the adoption of new Superior Court Rule 20. The proposed changes are necessary for the implementation of two of the three Superior Court civil litigation initiatives.

The proposed amendment to Superior Court Rule 30B would require that unless the parties agree or the court orders otherwise, each party shall set forth certain information in the final pre-trial conference memorandum relating to any expert that a party intends to call at trial.

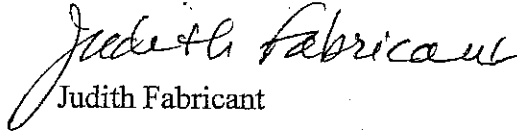
The new Superior Court Rule 20 would provide parties with the right to an individual case management and tracking order, at the option of the parties and with the approval of the Court. The parties would have the opportunity to agree to vary standard procedures in one or more ways, including the procedures that otherwise govern discovery, trial, and post-trial events. As provided by the proposed new rule, parties would seek an individual case management tracking order by filing a "Motion for Case-Specific Management."

The Superior Court civil litigation proposals, which included the proposed amendment to Superior Court Rule 30B and the new proposed Superior Court Rule 20, were published for comment in Massachusetts Lawyers Weekly and posted on the Superior Court's website on January 25, 2016. Although the deadline for comments was March 4, 2016, comments were accepted through March 31, 2016.

After reviewing the comments received from judges, bar organizations, and attorneys, we made additional changes that were presented to and approved by the justices of the Superior Court at the Court's semi-annual business meeting on April 30, 2016.

The Superior Court requests that the SJC approve the proposed changes **effective January 1, 2017**. Please call me if you have any questions or need additional information. Thank you for your consideration.

Very truly yours,


Judith Fabricant

encl.

cc: Chief Justice Paula M. Carey

Christine Burak, Esq., Secretary of the Rules Committee

Hon. Douglas H. Wilkins, Chair, Superior Court Rules Committee

PROPOSED AMENDMENT TO SUPERIOR COURT RULE 30B

Propose to change title, add new paragraph (a), and number current paragraph as (b); changes indicated in **bold**.

RULE 30B. EXPERT DISCLOSURES

(Applicable to Civil Actions)

(a) *Timing.* Unless the parties agree or the court in the interests of justice orders otherwise, each party shall set forth the following information in the pre-trial conference memorandum: the name, address, and qualifications of each expert a party intends to call, the subject matter on which the expert is expected to testify, the substance of all facts and opinions expected, and a summary of the grounds of each expert's opinion as detailed as would be expected in an answer to an expert interrogatory. The information as to any expert set forth in the pre-trial memorandum must be signed by that expert in accordance with Superior Court Rule 30B. A scanned or facsimile signature is sufficient. Any party who has previously made such disclosure in response to an expert interrogatory may satisfy this requirement by appending such response to the pre-trial memorandum. No party may reserve the right to make a later disclosure. A party who fails to comply substantially with the terms of this Rule shall not have the right to call an expert at trial, but the court in its discretion may permit that party to do so upon such additional terms, if any, that the court may require.

(b) *Certification.* In addition to the signature of the party, every disclosure called for by Mass. R. Civ. P. 26(b)(4)(A)(i) regarding any expert who is retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony and whose testimony is to be presented at trial shall be signed by the expert so disclosed. The signature by the expert is a certification that the disclosure accurately states the subject matter(s) on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion to which the expert is expected to testify at trial.

PROPOSED NEW SUPERIOR COURT RULE 20

Rule 20. Individual Case Management and Tracking

(Applicable to Civil Actions)

Any case may receive individual management or tracking so that the parties may secure a cost-effective means to resolve their dispute. To that end, the parties are encouraged to consider and propose options to achieve a less costly and more expeditious resolution of their dispute. This rule sets forth a non-exclusive mechanism to implement any such proposals, while reserving the parties' ability to exercise their full procedural and substantive rights if they so choose.

1. One or more parties may seek individual case management or tracking pursuant to this rule. If all parties agree, they shall have the right to individual case management to the extent provided in paragraph 2 below. In the absence of unanimity among the parties, any party may request that the judge exercise discretion to adopt individual case management or tracking in the interest of fair, timely, cost-effective and efficient resolution or litigation of the case.
2. All parties may agree to each of the following, unless the session judge specifically orders otherwise in writing for good cause:
 - a. Immediate or early court conference for scheduling or case management (in person or by phone, as requested if feasible).
 - b. Early, non-binding judicial assessment of the case. The judge who conducts any such assessment will consider whether disqualification as to subsequent matters in the case is appropriate.
 - c. Immediate scheduling of a prompt and firm trial date (preferably agreed-upon), which the court will make every effort to accommodate.
 - d. Scheduling of mediation, arbitration or other dispute resolution with a Superior Court approved alternative dispute resolution provider or a private alternative dispute resolution provider.
 - e. Changes to standard pretrial deadlines, such as changes shortening the tracking order dates, the waiving of certain pre-trial motions such as motions made under Mass. R. Civ. P. 12 or Mass. R. Civ. P. 56 and, in medical malpractices cases, the waiver of the full statutory tribunal either in its entirety or so as to permit a prompt tribunal with the judge alone.
 - f. Limits on discovery (by way of illustration: specific limitations on the subject matter of discovery, changes in the scope of discovery, procedures governing discovery disputes, limitations on eDiscovery, and the number or length of discovery events).

- g. Limits on oral arguments/court appearances not specifically ordered by the motion judge (by way of illustration: decision of categories of motions without argument; providing for telephonic argument). Note that, on specific matters or motions, the judge may still schedule arguments or appearances that s/he anticipates will be necessary or helpful.
 - h. Trial to a judge without a jury with or without additional conditions (by way of illustration: waiver of detailed written findings of fact and rulings of law; an agreement that expert testimony (in part, for example direct testimony, or in full) may be in writing; or agreement as to the number of witnesses, maximum trial time for each side's evidence and/or total length of trial).
 - i. Limitations on a trial by jury (such as by way of illustration: agreement to a jury consisting of 6-8 people, waiver of attorney voir dire, or agreement to accept a verdict from fewer than 5/6 of the jurors, an agreement that expert testimony (in part, for example direct testimony, or in full) may be in writing, and agreement as to the number of witnesses, maximum trial time for each side's evidence and/or total length of trial).
 - j. Waiver of, or limitations on, the rights to appeal and to file post-trial motions.
 - k. Any other proposals acceptable to the parties and the court.
- 3. One or more parties may, without consent of all parties, move for any order granting the relief set forth in paragraph 2 and may make additional proposals for consideration by the court. Nothing in this rule, however, authorizes the court, over a party's objection, to restrict or deny any right that is protected by rule, statute or constitution.
 - 4. Any party making a motion under this rule shall do so by serving and filing a Motion For Case-Specific Management ("Individual Case Management Form") pursuant to Superior Court Rule 9A. See Appendix of Forms to the Superior Court Rules, also available for download on the Superior Court's website.
 - 5. No proposal may extend any deadline beyond the date otherwise provided in Standing Order 1-88, unless the tracking order for that case is itself amended.
 - 6. Any matter stipulated pursuant to paragraph 2, or order entered pursuant to paragraph 3, may be revised or vacated on motion or by the court on its own motion, for good cause.
 - 7. Nothing in this rule limits or precludes the right of any party to request a conference pursuant to Mass. R. Civ. P. 16 with or without completion of an Individual Case Management Form. Nor does it limit any party's right to request relief under any other statute, court rule, order or other law.