

## **Superior Court Standing Order**

### **Sixth Amended Standing Order 1-88. Time Standards**

**[Sixth Amended Standing Order 1-88 applicable to all civil actions  
filed in the Superior Court.]**

**Applicable to all Counties**

#### **A. GENERAL CONSIDERATIONS**

Responding to and complying with the directive of the Supreme Judicial Court for "... an attack on excessive delay and excessive cost of court proceedings ..." and in an effort to "secure the just, speedy and inexpensive determination of every action," Mass.R.Civ.P. 1, the Justices of the Superior Court, through our Chief Justice, hereby adopt these time standards as a standing order of the Superior Court ("Standing Order"). The Court recognizes that the litigation process is memory dependent. To the extent that memory dims or becomes unreliable over prolonged periods of time, a just determination may be jeopardized. The concept of early and continuous judicial supervision and control is intended to enhance the quality of litigation and ensure that justice is fairly rendered.

This Standing Order recognizes that there are viable alternative methods of dispute resolution that may avoid delay and reduce the expense inherent in court proceedings, such as mediation, arbitration, summary jury trials, mini-trials, and reference to masters. Such alternate methods of dispute resolution are compatible with the case management objectives of these time standards. Nothing in this Standing Order shall act as a bar to any form of early intervention by the Court to identify cases suitable for alternative dispute resolution.

The Court recognizes and is sensitive to the impact that this Standing Order will have on local legal culture. We have meticulously avoided intrusion into this rich culture except to the extent necessary to preserve to the Court its responsibility to manage the pace of litigation without disturbing the harmony of the trial bar.

Accordingly, it is hereby ORDERED that:

- (1) All civil actions filed in the Superior Court shall be subject to the provisions of this Standing Order.
- (2) This Standing Order is applicable to all counties.
- (3) The Court will schedule trial dates for both jury and jury-waived cases on its own initiative.

## **B. TRACK DESIGNATIONS**

### **1. Tracks Based Upon the Nature of the Case**

(1) All civil actions shall be designated for purposes of this standing order as falling within one of three tracks based upon the nature of the case:

Fast Track (“F”)

Average Track (“A”)

Accelerated Track (“X”)

A listing of case types by track is set forth in Schedules F, A, and X below.

(2) The plaintiff shall indicate the nature of the action and the appropriate track designation on the civil action cover sheet.<sup>1</sup>

(3) For good cause shown, a party may move that a case be designated to a track other than the track selected by the plaintiff on the civil action cover sheet. The motion shall comply with Superior Court Rule 9A, and shall be referred to the attention of the Session Judge.

### **2. Individual Track**

(1) By order of the court, or stipulation of the parties, a civil action shall be assigned to its own individual track, which shall supersede the requirements of this standing order, provided that all deadlines in the individual track occur no later than the tracking order dates applicable to the case type, as established by the “Schedules of Case Types by Track,” below.

(2) Any party wishing assignment to an individual track must complete and submit the form “Motion for Case-Specific Management” appearing in the Appendix of Forms to the Superior Court Rules and available for download on the Superior Court’s website. See Superior Court Rule 20.

(3) The session judge assigned to the case will endorse the Motion in accordance with Superior Court Rules 9A and 20.

## **C. TRACKING ORDERS**

While the clerk shall provide notice to all parties and their counsel of the track designation and

corresponding tracking deadlines, the final responsibility for obtaining information from the clerk about the designation of the case and the corresponding tracking order shall rest with each party. Notification shall occur as follows:

- (1) The cover sheet will alert parties to the existence of this Standing Order and to the track designation.
- (2) Upon the filing of an action and in accordance with the track designated by the plaintiff, the clerk shall issue a tracking order that establishes the tracking deadlines for completion of the stages of litigation. Specific dates for the tracking deadlines shall be included in the tracking order.
- (3) After 90 days from the filing of the action, the clerk shall forward a copy of the tracking order to all counsel of record. Counsel who appear in the action after the expiration of 90 days shall be responsible to learn the tracking deadlines for completing the stages of the litigation.
- (4) All motions shall be filed within the time prescribed by the tracking order unless the proponent of the motion first moves for and obtains leave of court to file beyond the designated tracking deadline.<sup>2</sup>
- (5) All pleadings, appearances, and other papers filed by counsel of record shall be accompanied by counsel's Board of Bar Overseers (BBO) Number.<sup>3</sup> The BBO Number shall appear immediately after counsel's signature, address and telephone number.

#### **D. AMENDMENTS TO TRACKING ORDERS**

This Standing Order anticipates that there will be instances when the designation of a case to a particular track is inappropriate or the tracking deadlines cannot reasonably be met. The court recognizes that there are cases which by their very nature require special tracking deadlines, and the system is sufficiently flexible to accommodate these cases as follows:

- (1) Amendments to the tracking order of a case may be granted upon motion, filed in accordance with Superior Court Rule 9A, and for good cause shown.
- (2) All motions to amend a tracking deadline shall be referred to the attention of the Session Judge for decision. Motions (or oppositions thereto) shall be submitted on the papers, without oral argument.

## **E. RULE 16 CONFERENCES**

This Standing Order also recognizes that the parties may benefit from a conference under Mass. R. Civ. P. 16 to address various matters that may aid in resolving a case or reducing the time or expense of litigation. Any party may ask the Court for a Rule 16 conference, and such requests will be honored if reasonable. The Court may also schedule a Rule 16 conference on its own initiative. Telephonic conferences may be arranged with the permission of the Court.

## **F. RESCINDED**

## **G. TRACKING DEADLINES**

The following tracking deadlines shall be mandatory except as modified by order of the Session Judge or Regional Administrative Justice.<sup>4</sup> Documents filed outside the tracking deadlines without leave of court need not be acted upon by the Court, even if filed by agreement between the parties. The tracking deadlines for F and A Track cases will be calculated from the date of filing of the complaint.

### **(i) After Designation to Fast (“F”) Track:**

#### **(1) Three months (90 days)**

- Service shall be completed on all parties.
- All returns of service shall be filed.
- If service is not made upon a defendant within 90 days after filing of the complaint, the action shall be dismissed as to that defendant without prejudice unless the Court has found good cause to extend the time for service.<sup>5</sup>

#### **(2) Four months (120 days)**

- Rule 12, 15,<sup>6</sup> 19 and 20 motions shall be served.
- If no answer or motion to dismiss is filed by a defendant within 120 days of the filing of the complaint, the clerk shall issue a default as to that defendant and notify all parties of the default, unless the Court has found good cause to extend the time to file the answer or motion to dismiss.<sup>7</sup> Nothing in this Standing Order bars the earlier issuance of a default when legally appropriate. When appropriate, cases will be ordered for assessment of damages.

**(3) Five months (150 days)**

- Rule 12, 15, 19 and 20 motions shall be filed with the Court.

**(4) Six months (180 days)**

- Rule 12, 15, 19 and 20 motions shall be heard by the Court.

**(5) Ten months (300 days)**

- All discovery requests shall be served and non-expert depositions completed.<sup>8</sup> Requests for admissions are not included within this deadline but a party may not request of an adverse party the admission of more than thirty factual assertions after this deadline, except with leave of court.

**(6) Eleven months (330 days)**

- All motions for summary judgment shall be served. Nothing in this Standing Order bars summary judgment motions from being served earlier in the litigation.

**(7) Twelve months (360 days)**

- All motions for summary judgment shall be filed.

The remaining tracking deadlines assume that a motion for summary judgment has been filed. If no summary judgment motion is filed, earlier tracking deadlines may be set by the Court.

**(8) Sixteen months (480 days)**

- A pre-trial conference shall be conducted by the Court.<sup>9</sup> The joint pre-trial memorandum shall be filed with the Court no less than three business days prior to the pre-trial conference. A firm trial date shall be set by the pre-trial conference judge.
- The minimum requirements of the joint pre-trial order are attached to and made part of this Standing Order as Appendix B

**(9) Twenty-two months (660 days)**

- The case shall be resolved and judgment shall issue.

**(ii) After Designation to Average (“A”) Track:**

**(1) Three months (90 days)**

- Service shall be completed on all parties.
- All returns of service shall be filed.
- If service is not made upon a defendant within 90 days after filing of the complaint, the action shall be dismissed as to that defendant without prejudice, unless the Court has found good cause to extend the time for service.

**(2) Four months (120 days)**

- Rule 12, 19 and 20 motions shall be served.
- If no answer or motion to dismiss is filed by a defendant within 120 days of the filing of the complaint, the clerk shall issue a default as to that defendant and notify all parties of the default, unless the Court has found good cause to extend the time to file the answer or motion to dismiss. Nothing in this Standing Order bars the earlier issuance of a default when legally appropriate. When appropriate, cases will be ordered for assessment of damages.

**(3) Five months (150 days)**

- Rule 12, 19 and 20 motions shall be filed with the Court.

**(4) Six months (180 days)**

- Rule 12, 19 and 20 motions shall be heard by the Court.

**(5) Fourteen months (420 days)**

- Rule 15 motions shall be served.

**(6) Fifteen months (450 days)**

- Rule 15 motions shall be filed and resolved, with or without hearing.

**(7) Twenty-four months (720 days)**

- All discovery requests served and non-expert depositions completed. Requests for

admissions are not included within this deadline but a party may not request of an adverse party the admission of more than thirty factual assertions after this deadline, except with leave of court.

**(8) Twenty-five months (750 days)**

- All motions for summary judgment shall be served.

**(9) Twenty-six months (780 days)**

- All motions for summary judgment shall be filed.

The remaining Tracking Deadlines assume that a motion for summary judgment will be filed. If no summary judgment motion is filed, earlier tracking dates can be set by the Court.

**(10) Thirty months (900 days)**

- A pre-trial conference shall be conducted by the Court. The joint pre-trial memorandum shall be filed with the Court no less than three business days prior to the pre-trial conference. A firm trial date shall be set by the pre-trial conference judge.
- The minimum requirements of the joint pre-trial order are attached to and made part of this Standing Order as Appendix B

**(11) Thirty-six months (1,080 days)**

- The case shall be resolved and judgment shall issue.

**(iii) After Designation to Accelerated (“X”) Track:**

- All X Track cases seeking judicial review of administrative agency proceedings on the administrative record pursuant to the standards set forth in G.L. c. 30A, § 14, G.L. c. 249, § 4, or similar statutes are governed by Standing Order 1-96, and the tracking deadlines set forth in that Order. Those tracking deadlines are as follows:
  - No later than 90 days after service of the complaint, the administrative agency whose decision is at issue shall file a record of the proceeding.
  - No later than 20 days after service of the record, all motions to dismiss or for a more definite statement under Mass. R. Civ. P. 12(b) or (e), all motions for leave to present testimony of alleged irregularities in the procedure before the agency that are not shown in the record under G.L. c. 30A, § 14(5), and all motions for leave to present additional evidence under G.L. c. 30A, § 14(6) shall be served.

- No later than 30 days after service of the record or the Court's decision on any motion specified above, whichever is later, the plaintiff shall serve a motion for judgment on the pleadings under Mass. R. Civ. P. 12(c).
- No later than 30 days after service of the motion for judgment on the pleadings, the defendant shall serve an opposition.
- All X Track cases under G.L. c. 123A, § 12 (SDP initial commitment) shall be governed by the deadlines set forth in G.L. c. 123A or otherwise established by law.
- Unless an earlier date is required by law, all disputes in X Track cases shall be resolved and judgment shall issue no later than 12 months (360 days) after the filing of the complaint.

#### **H. CASES NOT REACHED FOR TRIAL**

Any case not reached for trial or otherwise disposed of within the prescribed tracking deadline shall be referred to the attention of the Regional Administrative Justice who shall coordinate with the Session Judge to ensure a speedy disposition within the session or to reassign the case to another session.

A record shall be maintained by the Regional Administrative Justice of all cases not tried or otherwise not disposed of as required under this Standing Order setting forth the reason for the trial delay and the action taken to resolve the matter.

#### **I. FINAL TRIAL CONFERENCE BEFORE JURY TRIAL**

1. Shortly before each jury trial, the court shall hold a final trial conference unless otherwise ordered by the session judge or Regional Administrative Justice. The clerk shall schedule the final trial conference to occur before the trial judge whenever possible and shall notify all parties of the time, date and location of the final trial conference.

2. In cases to be tried by jury, the clerk's notice shall inform the parties that:

a. The purpose of the final trial conference is to discuss the matters set forth in Superior Court Rule 6(2)(a) and other matters that may arise at trial, without limitation those matters set forth in subparagraph 2(b) below, as well as the estimated length of the trial; any scheduling constraints affecting witnesses or other trial participants; any need for an interpreter for a party or witness, including the specific language involved and the date and time when interpretation is required; the number of jurors to be seated; any agreement to allow deliberation by fewer jurors if seated jurors are dismissed post-empanelment; the content and method of employing any supplemental juror questionnaire; the number of peremptories; the order and timing of the parties' assertions of challenges for cause and peremptory challenges; and any other matter



affecting the efficiency and fairness of the trial.

**b.** At or before the final trial conference, the parties must submit the following unless otherwise ordered by the court:

i. a final joint witness list (if different from the final pretrial conference memo), showing each witness's city or town of residence except where doing so would endanger the witness's safety;

ii. a final joint statement of the case to read to the jury (if different from the final pretrial conference memo);

iii. a joint list of agreed exhibits (as required by Appendix B hereto);

iv. a list of contested exhibits (as required by Appendix B hereto);

v. a copy of any deposition transcript to be offered at trial, with objections highlighted for action by the court (as required by the last paragraph of Appendix B hereto);

vi. any proposed voir dire questions to be asked by the court;

vii. any motion requesting voir dire procedures, including proposed method and subject matter of any attorney or party voir dire and any proposed supplemental juror questionnaire;

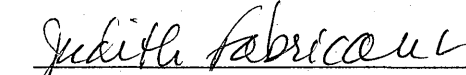
viii. any requested pre-charge to be given by the judge before or during empanelment, or immediately after the jury is sworn;

ix. any motions in limine, specifically identifying motions in limine that affect empanelment or opening statements and stating whether each motion in limine is opposed, partially opposed, or unopposed;

x. any stipulation of fact to be read to the jury.

**c.** The parties must confer at least 48 hours before the final trial conference to discuss the matters set forth in subparagraphs 2(a) and 2(b) above.

\* Excluding claims against the Commonwealth or a municipality, which are type E03 cases under Schedule 'A' (Average Track).

  
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**Judith Fabricant**  
**Chief Justice of the Superior Court**

**Adopted:** January 6, 2020  
**Effective:** February 1, 2020

### **Endnotes**

- 1 As a result of an amended complaint, crossclaim, counterclaim, or third party action, a case may change from a simple motor vehicle tort (“F” track) to a product liability case (“A” track) and warrant a motion to change the designation to the longer track.
- 2 This provision places the responsibility of “timely filing” documents on the attorneys and relieves the clerks of the initial responsibility of determining if documents are filed in violation of time standards. The clerk’s office does not have the responsibility to return improperly filed papers.
- 3 This requirement will facilitate the generation of computer assisted notices and trial scheduling. During the past several years, the Trial Court has implemented a number of automated case management systems. The Superior Court civil case management system has been enhanced to support an attorney notice module which requires each attorney of record being assigned a unique code for purposes of computer sorting. The Board of Bar Overseers number provides that unique number and address.
- 4 Wherever the term Regional Administrative Justice is used in this Standing Order, it shall include his or her designee.
- 5 The dismissal will be entered automatically by the clerk under the authority of this Standing Order and notices given as required.
- 6 This provision does not affect the power of the Court to allow amendments to pleadings where “justice appears to require such amendment.” The party seeking to amend late must obtain leave from the Session Judge and make a good faith showing of inability to move in timely fashion.
- 7 The default will be entered automatically by the clerk under the authority of this Standing Order and notices given as required.
- 8 A party may not have responded to timely filed requests for discovery at this juncture and accordingly motions to compel production of that discovery continue to be appropriate. It is expected that all responses will be filed no later than the date that the joint pre-trial memorandum is filed. Non-expert depositions, however, must be held and completed on or

before this date. This Standing Order does not change the duty of a party to supplement under the provisions of Mass.R.Civ.P. 26(e).

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Some summary judgment motions are sufficiently complex to require additional judicial time to render a decision. The case should nonetheless continue on track and be brought to the attention of the pre-trial conference Justice for his or her consideration and action.

# CASE TYPES

## AC Actions Involving the State/Municipality \*

- AA1 Contract Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AB1 Tortious Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AC1 Real Property Action involving Commonwealth, Municipality, MBTA etc. (A)
- AD1 Equity Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AE1 Administrative Action involving Commonwealth, Municipality, MBTA, etc. (A)

## CN Contract/Business Cases

- A01 Services, Labor, and Materials (F)
- A02 Goods Sold and Delivered (F)
- A03 Commercial Paper (F)
- A04 Employment Contract (F)
- A05 Consumer Revolving Credit - M.R.C.P. s.1 (F)
- A06 Insurance Contract (F)
- A08 Sale or Lease of Real Estate (F)
- A12 Construction Dispute (A)
- A14 Interpleader (F)
- BA1 Governance, Conduct, Internal Affairs of Entities (A)
- BA3 Liability of Shareholders, Directors, Officers, Partners, etc. (A)
- BB1 Shareholder Derivative (A)
- BB2 Securities Transactions (A)
- BC1 Mergers, Consolidations, Sales of Assets, Issuance of Debt, Equity, etc. (A)
- BD1 Intellectual Property (A)
- BD2 Proprietary Information or Trade Secrets (A)
- BG1 Financial Institutions/Funds (A)
- BH1 Violation of Antitrust or Trade Regulation Laws (A)
- A99 Other Contract/Business Action - Specify (F)

\* Choose this case type if ANY party is the Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type listed under Administrative Civil Actions (AA).

† Choose this case type if ANY party is an incarcerated party, UNLESS your case is a case type listed under Administrative Civil Actions (AA) or is a Prisoner Habeas Corpus case (E97).

## ER Equitable Remedies

- D01 Specific Performance of a Contract (A)
- D02 Reach and Apply (F)
- D03 Injunction (F)
- D04 Reform/ Cancel Instrument (F)
- D05 Equitable Replevin (F)
- D06 Contribution or Indemnification (F)
- D07 Imposition of a Trust (A)
- D08 Minority Shareholder's Suit (A)
- D09 Interference in Contractual Relationship (F)
- D10 Accounting (A)
- D11 Enforcement of Restrictive Covenant (F)
- D12 Dissolution of a Partnership (F)
- D13 Declaratory Judgment, G.L. c.231A (A)
- D14 Dissolution of a Corporation (F)
- D99 Other Equity Action (F)

## PA Civil Actions Involving Incarcerated Party †

- PA1 Contract Action involving an Incarcerated Party (A)
- PB1 Tortious Action involving an Incarcerated Party (A)
- PC1 Real Property Action involving an Incarcerated Party (F)
- PD1 Equity Action involving an Incarcerated Party (F)
- PE1 Administrative Action involving an Incarcerated Party (F)

## TR Torts

- B03 Motor Vehicle Negligence - Personal Injury/Property Damage (F)
- B04 Other Negligence - Personal Injury/Property Damage (F)
- B05 Products Liability (A)
- B06 Malpractice - Medical (A)
- B07 Malpractice - Other (A)
- B08 Wrongful Death - Non-medical (A)
- B15 Defamation (A)
- B19 Asbestos (A)
- B20 Personal Injury - Slip & Fall (F)
- B21 Environmental (F)
- B22 Employment Discrimination (F)
- BE1 Fraud, Business Torts, etc. (A)
- B99 Other Tortious Action (F)

## RP Summary Process (Real Property)

- S01 Summary Process - Residential (X)
- S02 Summary Process - Commercial/ Non-residential (F)

## RP Real Property

- C01 Land Taking (F)
- C02 Zoning Appeal, G.L. c. 40A (F)
- C03 Dispute Concerning Title (F)
- C04 Foreclosure of a Mortgage (X)
- C05 Condominium Lien & Charges (X)
- C99 Other Real Property Action (F)

## MC Miscellaneous Civil Actions

- E18 Foreign Discovery Proceeding (X)
- E97 Prisoner Habeas Corpus (X)
- E22 Lottery Assignment, G.L. c. 10 §28 (X)

## AB Abuse/Harassment Prevention

- E15 Abuse Prevention Petition, G.L. c. 209A (X)
- E21 Protection from Harassment, G.L. c. 258E(X)

## AA Administrative Civil Actions

- E02 Appeal from Administrative Agency, G.L. c. 30A (X)
- E03 Certiorari Action, G.L. c.249 §4 (X)
- E05 Confirmation of Arbitration Awards (X)
- E06 Mass Antitrust Act, G. L. c. 93 §9 (A)
- E07 Mass Antitrust Act, G. L. c. 93 §8 (X)
- E08 Appointment of a Receiver (X)
- E09 Construction Surety Bond, G.L. c. 149 §29, 29A (A)
- E10 Summary Process Appeal (X)
- E11 Worker's Compensation (X)
- E16 Auto Surcharge Appeal (X)
- E17 Civil Rights Act, G.L. c.12 §11H (A)
- E24 Appeal from District Court Commitment; G.L. c.123 §9(b) (X)
- E25 Pleural Registry (Asbestos cases) (X)
- E96 Forfeiture, G.L. c.94C §47 (F)
- E99 Other Administrative Action (X)
- Z01 Medical Malpractice - Tribunal only, G.L. c. 231 §60B (F)
- Z02 Appeal Bond Denial (X)

## SO Sex Offender Review

- E12 SDP Commitment, G.L. c. 123A §12 (X)
- E14 SDP Petition, G.L. c. 123A §9(b) (X)

## RC Restricted Civil Actions

- E19 Sex Offender Registry, G.L. c.6 §178M (X)
- E27 Minor Seeking Consent, G.L. c.112 §12S (X)

**APPENDIX A. RESCINDED.**

**APPENDIX B**

<b>NOTICE TO APPEAR FOR FINAL PRE-TRIAL CONFERENCE</b>	DOCKET NUMBER <div style="border: 1px solid black; height: 20px; width: 100%;"></div>	Trial Court of Massachusetts Superior Court Department
CASE NAME: <div style="border: 1px solid black; height: 25px; width: 100%;"></div>	<div style="border: 1px solid black; height: 25px; width: 100%;"></div>	
TO: <div style="border: 1px solid black; height: 80px; width: 100%;"></div>	COURT NAME & ADDRESS <div style="border: 1px solid black; height: 60px; width: 100%;"></div>	

A final pre-trial conference in the above referenced case will be held on:

Date:	
Time:	
Event:	
Session / Courtroom Location:	

All **trial counsel are required to attend** and submit their joint pre-trial memorandum to the Court.

To facilitate orderly and efficient progress towards trial, counsel for all parties **shall confer** for the purpose of preparing a joint pre-trial memorandum. The joint pre-trial memorandum shall be submitted jointly and shall be filed with the court no less than three business days prior to the pre-trial conference. Unless all counsel agree otherwise, counsel for the plaintiff shall be responsible for preparing and circulating the first draft. Each party's lead counsel at trial is expected to attend the final pre-trial conference.

**A. FOR JURY TRIAL**

The joint pre-trial memorandum shall include the following component parts:

- (1) Agreed facts in a form suitable for submission as an exhibit at trial;
- (2) A brief statement by each party of what that party expects the evidence to show;
- (3) Agreed suggested description of the case to be read to the jury during Impanelment;
- (4) Statement of all significant legal issues (including, particularly, any significant evidentiary issues), the position of the parties on these issues, and a statement of authorities. Provide a copy of all cases and other authorities relied upon other than reported Supreme Judicial Court and Appeals Court cases.
- (5) The name and address of each witness to be called by each party. Failure to list a witness in the pre-trial memorandum may lead to an order precluding the testimony of that witness unless the need for the witness cannot reasonably be anticipated prior to trial or other good cause is shown. No party may reserve the right to add a witness after the pre-trial conference without leave of the Court. In addition, the parties shall identify any witness or party who needs an interpreter, as well as the language the interpreter needs to speak.
- (6) (a) The names, addresses and qualifications of each expert witness the parties intend to call, together with subject matter on which the expert is expected to testify, the substance of all facts and opinions to which the expert is expected to testify and a detailed summary of the grounds of each expert's opinion. If an expert witness's identity and expected testimony has previously been disclosed in response to expert interrogatories, this item may be covered by appending to the pre-trial memorandum a copy of the expert interrogatory responses. Failure to comply with this paragraph forfeits the party's ability to present an expert as of right. See Superior Court Rule 30B(a).  
  
(b) Unless earlier resolved, whether any party moves to conduct any expert deposition under Mass. R. Civ. P. 26(b)(4). If so, unless the parties all agree to the expert deposition, a written motion to conduct the expert deposition and opposition shall be appended to the pre-trial memorandum so that the motion may be decided by the judge at the pre-trial conference.

**NOTICE TO APPEAR FOR FINAL  
PRE-TRIAL CONFERENCE**

DOCKET NUMBER

**Trial Court of Massachusetts  
Superior Court Department**



(c) Whether any party intends to serve any *Daubert-Lanigan* motion challenging the admissibility of expert testimony and, if so, when the party intends to serve and file such a motion and the anticipated basis for such a motion. Failure to inform the court in the pre-trial memorandum of a party's intent to file a *Daubert-Lanigan* motion may, in the discretion of the court, constitute a waiver of the motion. If the date proposed for the filing of a *Daubert-Lanigan* motion is deemed by the court to be too close to trial, the court may set an earlier deadline for the filing of the *Daubert-Lanigan* motion. At the pre-trial conference, the court will set a date for hearing on any *Daubert-Lanigan* motion.

**NOTE:** Inclusion of an expert witness' identity and expected testimony in the joint pre-trial memorandum does not waive any party's right to object to that expert's testimony on the ground that responses to expert discovery were untimely or inadequate.

- (7) Estimated length of trial (please specify whether your estimate is based on half days or full days).
- (8) An itemization of the special or liquidated damages alleged.
- (9) A certification that counsel for all parties have conferred and discussed the possibility of settlement, and the amenability of the case to mediation or other forms of alternate dispute resolution. If alternative dispute resolution has commenced or will commence, the parties shall inform the Court of its status. The parties shall not disclose the contents of settlement demands or offers in the pre-trial memorandum.
- (10) A statement whether the parties have consulted about provisions for case-specific management available under Superior Court Rule 20(h)-(l), and if so, which provisions are agreed or are still under consideration.

**B. FOR BENCH TRIAL UPON WAIVER OF DETAILED WRITTEN FINDINGS:**

If all parties have agreed to a bench trial with waiver of detailed findings (Superior Court Rule 20(h)), the joint pre-trial memorandum need not include items (1)-(3), and the parties will not be required to file proposed findings of fact. In the absence of such waiver, the joint pre-trial memorandum for a bench trial shall include all items listed in (A), above except item (3).

**C. FUTURE FILINGS (All cases):**

No later than five business days prior to the scheduled trial, counsel shall meet and review the exhibits proposed to be introduced by each party and all materials to be shown to the fact-finder. Based on that meeting and review of exhibits, counsel shall prepare a joint exhibit list identifying 1) stipulated exhibits (which shall be pre-marked and introduced at the commencement of trial) and 2) proposed exhibits of each party as to which there is no agreement on admissibility. The exhibit list is to be presented to the trial judge at the commencement of trial with a copy for the clerk or court reporter.

In the event deposition transcripts are to be offered at trial, and there are objections to any of the answers set forth in the transcript, the parties, not less than three days prior to the commencement of trial, are to supply to the court a transcript of the testimony with objections highlighted and, in the margin, a brief statement of the grounds of the objection and the response by the proponent of the testimony. Videotaped depositions are governed by Mass. R. Civ. P. 30A.

DATE ISSUED

ASSOCIATE JUSTICE

ASSISTANT CLERK

SESSION PHONE#