Superior Court

Massachusetts Superior Court Rules

and Standing Orders

Including amendments effective

March 1, 2018

Massachusetts Rules of the Superior Court, including Standing Orders

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Rules of Court Disclaimer

Massachusetts Rules of Superior Court

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- Annotated Laws of Massachusetts: Court Rules, LexisNexis, annual.
- Massachusetts General Laws Annotated, v.43A-43C, West Group, updated annually with pocket parts.
- Massachusetts Rules of Court, West Group, annual.
- The Rules, Lawyers Weekly Publications, loose-leaf.

Table of Contents

General Provisions

Rule 1. Effect of These Rules

(Applicable to all cases)

The provisions of these rules, so far as they are the same as those of existing rules, shall be construed as a continuation thereof, and not as new provisions.

Unless a contrary intent appears, the word plaintiff shall include petitioner or libellant, and in criminal cases the Commonwealth, and the word defendant shall include respondent, libellee or co-respondent, and the word attorney or the word counsel shall include a party appearing or acting for himself.

Rule 2. Appearances

(Applicable to all cases)

The name, address, and telephone number of the attorney for every party, or of the party if no attorney appears for him, shall be entered on the docket as they appear upon the paper or papers constituting the appearance, or some paper transmitted to the clerk therewith. Where no address or telephone number of the attorney or party, as the case may be, appears upon the docket, notice to such party may be given by posting the same publicly in the clerk's office or in a room, hall or passage adjacent thereto. The clerk upon request shall post the same.
Amended June 26, 1980, effective September 1, 1980.

Rule 3. Authority to Appear

(Applicable to all cases)
The right of an attorney to appear for any party shall not be questioned by the opposite party, unless the objection be taken in writing within ten days after the appearance of such attorney, but the court may permit the objection to be taken later. When the authority of any attorney to appear for any party is demanded, if such attorney declares that he has been duly authorized to appear, by an application made directly to him by such party, or by some person whom he believes to have been authorized to employ him, such declaration shall be evidence of such authority.

Rule 4. Postponement

(Applicable to all cases)
The court need not entertain any motion for postponement, grounded on the want of material testimony, unless supported by an affidavit, which shall state (1) the name, and, if known, the residence, of the witness whose testimony is wanted, (2) the particular testimony which he is expected to give, with the grounds of such expectation, and (3) the endeavors and means that have been used to procure his attendance or deposition; to the end that the court may judge whether due diligence has been used for that purpose. The party objecting to the postponement shall not be allowed to contradict the statement of what the absent witness is expected to testify, but may disprove any other fact stated in such affidavit. Such motion will not ordinarily be granted if the adverse party will admit that the absent witness would, if present, testify as stated in the affidavit, and will agree that the same shall be received and considered as evidence at the trial or hearing, as though the witness were present and so testified; and such agreement shall be in writing, upon the affidavit, and signed by such adverse party or his attorney. The same rule shall apply, mutatis mutandis, when the motion is grounded on the want of any material document, thing or other evidence. In all cases the granting or denial of a motion for postponement shall be discretionary, whether the foregoing provisions have been complied with or not.

The court will not ordinarily grant a motion for postponement grounded on the absence of a material witness whom it is in the power of the moving party to summon, unless such party has caused such witness to be regularly summoned and to be paid or tendered his travel and one day's attendance.

Rule 5. Jurors

(Applicable to all cases)

Persons summoned as jurors, who are excused because of any statutory exemption, shall be entitled to their fees for travel and attendance; but if excused for any other cause, or if service is postponed, it shall be on condition that no fee shall be allowed where no service is rendered, unless in any special case the court otherwise directs.
When practicable, excuses of jurors shall be presented under oath to the presiding justice in the session to which such jurors are summoned, or, where jurors are held in a central pool, to the justice in charge thereof.

If it is necessary to present such excuses before the return day of the venire, they shall be submitted to the justice assigned to sit in said session, if available, or, where jurors are held in a central pool, to the justice in charge thereof, or to the chief justice; and, if unavailable, by jurors in Suffolk to the justice presiding in the first session without jury; and by jurors in other counties to a justice holding court or resident in such county or an adjoining county. If any juror is excused in any place other than in open court, the justice excusing him shall forthwith notify the clerk of his action and the ground thereof. The word jurors in this rule shall include grand jurors.

Rule 6. Jury Selection

(Applicable to all cases)
1. Subject to applicable statutes, rules, and controlling authority, the trial judge in each case has discretion to determine a procedure for examining and selecting jurors designed to maintain juror privacy and dignity, identify explicit and implicit bias, and foster efficiency in the session and among sessions using the same jury pool. This rule provides a standard procedure for each civil and criminal case unless otherwise ordered by the trial judge, while permitting attorneys and self-represented parties a fair opportunity to participate in voir dire so as to identify bias.

2. Conference With the Trial Judge

a. In civil cases, unless otherwise ordered, the court shall schedule a final trial conference in accordance with Standing Order 1-88, as may be amended from time to time. In criminal cases, unless otherwise ordered, a final pretrial conference shall be scheduled in accordance with Standing Order 2-86. These conferences with the trial judge shortly before trial serve as the primary opportunity to discuss empanelment, including without limitation: the statement of the case to be read to the venire; the extent of any pre-charge on significant legal principles; the method and content of the judge's intended voir dire of jurors; the method and content of any attorney or party participation in voir dire; judicial approval or disapproval of proposed questions or subject matters; any time limits on attorney or party voir dire; 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; and the order and timing of the parties' assertions of challenges for cause and peremptory challenges.

b. If the court has not scheduled a final trial conference in a civil case or a final pre-trial conference in a criminal case, any party planning to submit a request, proposal, or motion regarding jury selection should request such a conference or submit a motion requesting voir dire procedures in time for a pretrial ruling by the trial judge. All parties shall avoid proposing

jury selection procedures (including attorney/party voir dire) for the first time on the day of trial.

3. Voir Dire by Attorneys and Parties

a. On or before the final trial conference in a civil case or final pre-trial conference in a criminal case, or 5 business days before trial if no such conference is scheduled, the parties shall submit in writing any requests for attorney/party voir dire; motions in limine concerning the method of jury selection; proposed subject matters or questions for inquiry by the parties or trial judge; any proposed supplemental questionnaire; any proposed preliminary legal instructions to the venire or juror panels; the location within the courtroom where jurors and parties will stand or sit during voir dire; and any other matter setting forth the party's position regarding empanelment.

b. The trial judge shall allow attorney or party voir dire if properly requested at or before the time set forth in paragraph 3(a), above. The trial judge may deem any subsequent request for attorney or party voir dire untimely, but may in the judge's discretion allow the request in the absence of prejudice to any other party or significant impact on trial efficiency or on other sessions using the same jury pool.

c. When attorney or party voir dire is allowed, the trial judge shall, at a minimum, allow the attorneys or parties to ask reasonable follow-up questions seeking elaboration or explanation concerning juror responses to the judge's questions, or concerning any written questionnaire. After considering the goals set forth in paragraph 1 above, the trial judge should generally approve a reasonable number of questions that (i) seek factual information about the prospective juror's background and experience pertinent to the issues expected to arise in the case; (ii) may reveal preconceptions or biases relating to the identity of the parties or the nature of the claims or issues expected to arise in the case; (iii) inquire into the prospective jurors' willingness and ability to accept and apply pertinent legal principles as instructed; and (iv) are meant to elicit information on subjects that controlling authority has identified as preferred subjects of inquiry, even if not absolutely required.

d. At the final trial conference in a civil case, or final pre-trial conference in a criminal case (or in a written submission in lieu of such conference), any attorney or party wishing to inquire into any of the following disfavored subjects must explain how the inquiry is relevant to the issues, may affect the juror's impartiality, or may assist the proper exercise of peremptory challenges:

i. The juror's political views, voting patterns or party preferences;

ii. The juror's religious beliefs or affiliation.

e. Counsel and Parties May Not Ask:

i. Questions framed in terms of how the juror would decide this case (prejudgment), including hypotheticals that are close/specific to the facts of this case (any hypotheticals that may trigger this rule must be presented to the judge before trial).

ii. Questions that seek to commit juror(s) to a result, including, without limitation, questions about what evidence would cause the juror(s) to find for the attorney's client or the party.

iii. Questions having no substantial purpose other than to argue an attorney's or party's case or indoctrinate any juror(s).

iv. Questions about the outcome in prior cases where the person has served as a juror, including the prior vote(s) of the juror or the verdict of the entire jury.

v. Questions in the presence of other jurors that specifically reference what is written on a particular juror's confidential juror questionnaire.

f. The trial judge may impose reasonable restrictions on the subject matter, time, or method of attorney or party voir dire and shall so inform the attorneys or parties before empanelment begins.

g. In approving or disapproving voir dire questions and procedures, the trial judge, on request, should consider whether questions or methods proposed by the attorneys or parties may assist in identifying explicit or implicit bias.

h. If employing panel voir dire, the trial judge shall determine the procedure and may elect to follow the method set forth in Addendum A or adopt variations thereof. The trial judge may also elect to use some of the methods set forth in Addendum A even if not employing panel voir dire. Nothing in Appendix A restricts the trial judge from selecting an alternative method of voir dire, including but not limited to:

i. Filling empty seats as they arise due to challenges for cause or the exercise of peremptories. The trial judge may do this by clearing additional prospective jurors or filling in from additional already cleared jurors;

ii. The "Walker method": Through panel voir dire or otherwise, the trial judge may clear as indifferent a number of prospective jurors that equals or exceeds the total number of jurors needed, plus alternates, plus the total number of peremptory challenges held by the parties. See Commonwealth v. Walker, 379 Mass. 297, 299 n.1 (1979). But see Commonwealth v. Johnson, 417 Mass. 498, 507–508 (1994).

4. Empanelment

a. The trial judge shall ask all voir dire questions specifically required by statute, court rule, or controlling authority, but retains discretion as to when and how to do so. The trial judge may allow individual voir dire, panel voir dire, or any combination.

b. Questioning shall occur through individual voir dire if (i) required by statute, rule, or controlling authority; (ii) inquiry concerns private or potentially embarrassing information; or (iii) questioning would specifically reference what is written on a particular juror's confidential juror questionnaire.

c. The trial judge should consider some individual voir dire in all cases to (i) determine whether any juror has an impediment concerning hearing, language or visual ability, mental health, or comprehension and to determine whether a reasonable accommodation would enable the juror to serve; (ii) address any private or embarrassing information not disclosed in public portions of the voir dire; or (iii) identify any other impediment to jury service that the trial judge and parties might not observe without personal contact with the juror.

d. Attorneys and parties shall limit their questioning of any juror(s) to such subject matters and methods as previously approved by the trial judge and shall avoid questions set forth in paragraph 3(e) above, even as follow-up, without court approval.

e. Questions about the Law

i. If the parties have obtained approval to ask voir dire questions about the law, the trial judge shall take appropriate measures to ensure that the jury is accurately and effectively instructed on the law. Such measures may include, but are not limited to: a brief pre-charge; requiring the questioner to use the words specifically approved by the judge; stating the law in a written supplemental questionnaire; or contemporaneous instructions by the trial judge at the time the question is asked.

ii. If a juror asks counsel a question to clarify an aspect of the law, counsel shall request that the trial judge answer the question; the trial judge may interrupt if counsel attempts to respond to a juror question by instructing on such a point of law.

f. Any party may object to a question posed by another party by stating “objection,” without elaboration or argument. The trial judge may rule on the objection in, or outside of, the juror’s presence. The trial judge may, on the judge’s own motion, strike or rephrase a party’s question and may interrupt or supplement a party’s questioning to provide the juror(s) with an explanation of the law or the jury trial process, or to ask any additional questions that the trial judge believes will assist the trial judge in determining the juror’s impartiality.

g. Counsel and the parties must ensure an accurate record of attorney or party voir dire. In an electronically recorded courtroom, counsel must stand near a microphone at all times. During panel voir dire in any courtroom, counsel must also call out the juror seat number (or juror number) of any individual juror who is questioned individually or who responds audibly. Failure to do so may constitute a waiver of any claim of error arising from any inaudible or unattributable portions of the record.

h. Challenges for Cause

i. The court will consider all its observations, including the juror's responses, to determine whether or not the juror will be fair, focus on the facts of the case and follow the law despite a particular viewpoint or experience.

ii. Whether at side bar or during panel inquiry, a juror’s “yes” or “no” answer to a question about a viewpoint or experience may not, by itself, support a challenge for cause. If intending to challenge a juror for cause as a result of attorney or party voir dire, the questioner ordinarily should lay an adequate foundation showing that, in light of the information or viewpoint expressed, the juror may not be fair and impartial and decide the case solely on the facts and law presented at trial. The court may inquire further or may decide without further questioning, if the judge believes that the existing record is sufficient to resolve the challenge for cause.

i. Peremptory Challenges

i. After the trial judge finds that each juror stands indifferent, the parties shall exercise their peremptory challenges. The trial judge may require exercise of peremptory challenges after completion of side bar inquiry of an individual juror, after filling the jury

box with jurors found to stand indifferent, or at some other time after the trial judge's finding of indifference.

ii. If the trial judge does not expressly rule on a juror's bias or impartiality, the trial judge's direction for the parties to exercise peremptory challenges constitutes an implicit finding that the juror stands indifferent. On request, made after the trial judge's direction but before exercise of a peremptory challenge, the trial judge shall make an explicit finding as to the juror's impartiality.

5. Supplemental Juror Questionnaires

Supplemental juror questionnaires are not protected by G.L. c. 234A, § 23 and cannot be kept confidential without complying with the impoundment procedures set forth in Trial Court Rule VIII. If using supplemental juror questionnaires, the judge shall consider methods to ensure the juror's personal privacy and to promote the candor of responses, including but not limited to asking jurors whether they wish to keep responses confidential, asking the grounds for any such request, and complying with applicable impoundment procedures.

ADDENDUM A

SAMPLE PANEL VOIR DIRE PROTOCOL

1. Pretrial

The trial judge may permit counsel or self-represented parties to question jurors as a group, in a so-called "panel voir dire" procedure. Any attorney or self-represented party who seeks to examine the prospective jurors in panel format shall serve and file a motion requesting leave to do so in accordance with Superior Court Rule 6(3)(a). The motion shall identify generally the topics the moving party proposes to ask the prospective jurors and shall state whether each topic is for individual voir dire or for a panel of jurors. The trial judge may, in the exercise of discretion, require attorneys and self-represented parties to submit the specific language of the proposed questions for pre-approval. The motion and any responsive filing shall also include any proposed language for brief preliminary instructions on principles of law to be given pursuant to paragraph 2(b) below.

2. Initial Stages of Empanelment

Before any questioning of a juror panel by attorneys or self-represented parties, or at such other time as the trial judge deems most appropriate, the trial judge shall:

(a) provide the venire with a brief description of the case, including the nature of the facts alleged and of the claims or charges, including the date and location of the pertinent alleged event(s), and the identity of persons or entities significantly involved;

(b) provide the venire with brief, preliminary instructions on significant legal principles pertinent to the case. Such instructions should include a brief recitation of: the burden and standard of proof; the elements of at least the primary civil claim or at least the most serious criminal charge; if appropriate to the case and requested by counsel or a self-represented party, the elements of any affirmative defense that will be presented to the jury; and, in criminal cases, the defendant's right not to testify or to present any evidence;

(c) explain the empanelment process, describe the nature and topics of the questions that will be posed during panel examination, and inform the jurors that any juror who finds either a particular question or the process of questioning by attorneys or self-represented parties intrusive on the juror's privacy may request that steps be taken to protect the privacy of any information disclosed;

(d) ask all questions required by statute or case law, and any additional questions the trial judge deems appropriate in light of the nature of the case and the issues expected to be raised;

(e) if not previously established, inform the parties of any reasonable time limit the trial judge has set for examination of each panel of prospective jurors by attorneys or self-represented parties, giving due regard to (i) the objective of identifying bias in fairness to all parties; (ii) the interests of the public and of the parties in reasonable expedition, in proportion to the nature and seriousness of the case and the extent of the anticipated evidence; and (iii) the needs of cases scheduled in other sessions drawing on the same jury pool for access to prospective jurors;

(f) ask the clerk to direct into the jury box any juror who appears impartial, based upon initial questioning of the venire and individual voir dire, if any. The trial judge has discretion to seat a juror on a voir dire panel without making a preliminary determination of impartiality.

3. Panel Examination

(a) As the jury box is filled, and prior to any panel questioning, the clerk shall read into the record which juror, identified by juror number, is seated in which numbered seat in the jury box. All attorneys and self-represented parties at the trial are responsible for correcting any misstatement as to juror numbers and seat numbers being read for the record.

(b) If the trial judge has not already done so, he or she shall remind the jurors that during such questioning, if any juror seeks, due to privacy concerns, to respond to a question outside the presence of other jurors, the juror may alert the judge to that request.

(c) Upon request, the trial judge may permit each party to make a brief introductory statement to the venire limited to explaining the process and purpose of the questioning of jurors by attorneys or self-represented parties. During the introductory statement and subsequent questioning, counsel shall not refer to his or her own personal circumstances, personal history, or family, even by way of example. Any examples of what may or may not make a juror biased shall be phrased hypothetically.

(d) The parties shall then proceed with the panel portion of questioning. Parties with the burden of proof shall conduct their questioning first. In cases with multiple parties on a side, the parties on each side shall agree as to an order in which to proceed. In the absence of agreement, the judge shall assign an order. The attorney or party may pose questions to the entire panel, or to individual members.

(e) The trial judge and the attorneys participating shall at all times during panel questioning take reasonable steps to ensure that the identity of each juror speaking is adequately maintained on the record, by reference to juror number or seat number. In particular:

i. In an electronically recorded courtroom, the attorney or party shall stand near a microphone; and

ii. When posing questions to, or receiving a response from, any specific juror(s), the attorney or party must identify each such juror(s) by juror seat number (or, less ideally, by juror number). They shall not refer to any juror by name.

(f) The trial judge may intervene at any time to ensure an accurate record (including recording of seat numbers of jurors who respond to questions), to clarify or instruct on a point of law, or to ensure that panel voir dire proceeds in an orderly, fair, and efficient manner.

(g) The trial judge may at any time bring an individual juror to sidebar for questioning out of the hearing of other jurors about any potential bias revealed by panel questioning. If a juror is brought to sidebar, the judge may direct all other parties to do their own questioning on the same subject matter at that time to avoid a need to return to sidebar for later questioning on that subject matter. If the juror's responses to such questioning at sidebar result in a challenge for cause, the judge may rule on the challenge at that time or at the conclusion of all panel questioning. If time limits on panel questioning have been set, the judge may decide whether to exclude all or part of the time spent at side bar from the questioning party's time.

(h) Any party may object to a question posed by another party by stating "objection," without elaboration or argument. The judge may rule on the objection in the presence of the juror or jurors, or may hear argument and rule on the objection outside the presence or hearing of the juror or jurors.

(i) Unless the judge specifically allows, there shall be no follow-up questioning of a panel by attorneys or self-represented parties once each has taken his or her turn.

4. Challenges for Cause and Peremptories

(a) After panel examination by all parties, the trial judge shall hear any further challenges for cause as to any panel members at sidebar.

(b) Unless the trial judge decides to postpone exercise of peremptories until after voir dire of additional panels, the parties shall then exercise at sidebar any peremptory challenges they have as to any jurors remaining on the panel. The party with the burden shall proceed first, using all peremptories the party seeks to use with that panel. All other parties shall then proceed, using all peremptories each seeks to use with that panel. In civil cases, the judge may alternate sides. The jurors remaining after challenge shall then be directed to a separate location, usually outside the courtroom.

(c) Upon any challenge for cause, the judge may ask additional questions, with or without further instructions on the law, and may allow opposing counsel further opportunity to question the juror.

5. Additional Panels of Jurors

The same procedures shall apply for all subsequent panels required to seat a full jury, except:

(a) the judge may seat a different number of jurors in a subsequent panel;

(b) the judge may allow a different amount of time for attorney or party voir dire of second and subsequent panels;

(c) if, after the final panel, more than the necessary number of jurors have been declared indifferent and remain unchallenged at the conclusion of those procedures, the jurors shall be seated for trial in the order in which they were originally seated for panel questioning (generally in order of juror number), and the remaining jurors shall be excused; and

(d) the judge has discretion to vary panel voir dire procedures after the first panel in any lawful manner the judge deems fair and efficient.

As amended March 21, 1989, effective April 1, 1989; July 26, 2017, effective September 1, 2017.

Rule 7. Openings: Use of Pleadings

(Applicable to all cases as indicated)

The opening statement shall be limited to fifteen minutes, unless the court for cause shown shall extend the time.

The court in its discretion may permit, or in a civil action require, a defendant to make an opening statement of his defense before any evidence is introduced.

The court may order that the pleadings be summarized in an opening statement but not be read to the jury. Pleadings shall not go to the jury except by authorization of the court.

Amended September 24, 2015, effective January 1, 2016.

Rule 8. Objections to Evidence

(Applicable to all cases)

In civil actions, pursuant to the provisions of Mass. R.Civ.P. 46, and in criminal actions, pursuant to Mass. R.Crim.P. 22, if a party objects to the admission or exclusion of evidence, he may, if he so desires, state the precise grounds of his objection; but he shall not argue or further discuss such grounds unless the court then calls upon him for such argument or discussion.

Amended June 26, 1980, effective September 1, 1980.

Rule 8A. Notes by Jurors

(Applicable to all cases)

In any case where the court, in its discretion, permits jurors to make written notes concerning testimony and other evidence, the trial judge shall precede the announcement of permission to make notes with appropriate guidelines. Upon the recording of the verdict or verdicts, the notes of the jurors shall be destroyed by direction of the trial judge. Jurors may also be granted permission by the trial judge to make notes during summation by counsel and during the judge's instructions to the jury on the laws.

Adopted effective May 6, 1978.

Rule 9. Motions and Interlocutory Matters

(Applicable to all cases)
All civil motions shall be governed, where applicable, by Superior Court Rules 9A through 9E.

Any criminal motion must be in writing and filed before being placed upon a list for hearing, unless otherwise ordered by the court, or otherwise provided for under Superior Court Rule 61.

In criminal cases the court need not hear any motion, or opposition thereto, grounded on facts, unless the facts are verified by affidavit. No motion to suppress evidence, other than evidence seized during a warrantless search, and no motion to dismiss may be filed unless accompanied by a memorandum of law, except when otherwise ordered by the court.
Amended May 6, 1978, effective June 5, 1978; June 26, 1980, effective September 1, 1980; amended effective March 1, 1985; amended July 18, 1989, effective October 2, 1989; amended October 6, 2004, effective November 1, 2004.

Rule 9A. Civil Motions

(Applicable to civil cases)
(a) Form of Motions and Oppositions Thereto.

(1) Motions. A moving party shall serve with the motion a separate memorandum stating the reasons, including supporting authorities, why the motion should be granted and may include a request for a hearing. Affidavits and other documents setting forth or offering evidence of facts on which the motion is based shall be served with the motion.

(2) Oppositions to Motions. A party opposing a motion may serve a memorandum in opposition. The memorandum in opposition may include a statement of reasons, with supporting authorities, why the motion should not be allowed and may include a request for a hearing. Affidavits and other documents setting forth or offering evidence of facts on which the opposition is based shall be served with the memorandum in opposition.

(3) Reply and Sur-Reply Memoranda. Where the opposition raises matters that were not and could not reasonably have been addressed in the moving party's initial memorandum, the moving party may file a reply memorandum not to exceed five typed double-spaced pages, which shall be limited to addressing such matters. No other reply or surreply shall be allowed without leave of court, which is strongly disfavored. To request leave of court, a party shall address a short request (not more than one double-spaced page and captioned as a pleading) directly to the Session Clerk, ATTN: Session Judge, setting forth the grounds to support the request, and shall serve the request on all other parties.

(4) Facts Verified by Affidavit. The court need not consider any motion or opposition thereto, grounded on facts, unless the facts are verified by affidavit, are apparent upon the record, or are agreed to in writing, signed by interested parties or their counsel.

(5) Format and Length. All motions, memoranda of law and other papers, except for exhibits, filed pursuant to this rule shall be filed on 8 1/2" by 11" paper and, except for exhibits, shall be typed in no less than 12-point type and double-spaced, provided that the title of the case, footnotes and quotations may be single spaced. The title of each document shall appear on the first page thereof. Unless leave of court has been obtained in advance,

all memoranda of law and the oppositions thereto shall not exceed 20 pages, and any reply memoranda shall not exceed 5 pages. Any appendix permitted by Superior Court Rule 9C(b) shall not be included in the page limit. To request leave of court, a party shall send a letter to the Justice presiding in the session where the motion will be filed stating the number of pages the party desires, and why the party's objective cannot be achieved within the applicable page limit. The letter shall be served on all other parties. Any leave of court obtained by a moving party shall apply to all opposing parties. The moving party shall serve notice of the grant of leave of court with the moving party's memorandum.

(6) Email Addresses. Each party or attorney filing motion or opposition papers shall include his or her email address on the papers, unless he or she does not have an email address.

(b) Procedure for Serving and Filing Motions.

(1) General. All motions and oppositions shall be served on all parties and filed with the clerk in accordance with the procedure set forth in this Paragraph (b). Compliance with this Paragraph is compliance with the "reasonable time" provisions of the first sentence of Mass. R. Civ. P. 5(d)(1) .

(2) Service and Filing of Motions and Oppositions. The moving party shall serve a copy of the motion and the other documents specified by this rule on every other party. Every opposing party shall serve on the moving party an original and a copy, and on every other party a copy, of the opposition and the other documents specified by this rule. The opposition to a motion shall be served within (A) 10 days after service of a motion other than a motion for summary judgment, (B) 21 days after service of a motion for summary judgment or (C) such additional time as is allowed by statute or order of the court. If the motion is served by mail, these time periods shall be increased by 3 days pursuant to Mass. R. Civ. P. 6(d) . Upon receipt of the opposition and associated documents, if any, the moving party shall attach the original of the opposition and associated documents, and any reply up to five pages, to the original motion and associated documents and within 10 days shall file with the clerk the combined documents ("the Rule 9A package"), unless within the same 10-day period the moving party notifies all counsel that the motion has been withdrawn. If leave to file a reply memorandum is allowed, the reply shall be served and filed within 10 days of the allowance, unless the court orders otherwise. If leave to file a reply has been allowed, or, if a motion to strike has been served in response to the opposition to a motion or a cross-motion, the period for filing the Rule 9A package is extended to the time granted for serving the reply or the opposition to the motion to strike. If the party opposing a summary judgment motion serves an additional statement of material facts under Paragraph (b)(5)(iv), the moving party shall have 21 days to file the Rule 9A package or to notify all counsel that the motion has been withdrawn. If the moving party does not receive an opposition within 3 business days after expiration of the time permitted for service of an opposition, then the moving party shall file with the clerk the motion and other documents initially served on the other parties with an affidavit reciting compliance with this rule and receipt of no opposition in timely fashion, unless the moving party has notified all parties that the motion has been withdrawn. The moving party shall give prompt notice of the filing of the Rule 9A package to all other parties by serving thereon a copy of a certificate of notice of filing on a separate document. A separate document accompanying the filing shall list the title of each document in the Rule 9A package.

(3) Cross-Motions. A cross-motion, accompanied by the other documents specified in Paragraph (a)(1) of this rule, shall be served on the moving party with the opposition to the

original motion. A party opposing a cross-motion may serve a memorandum in opposition within (A) 10 days after service of a cross-motion other than a cross-motion for summary judgment, (B) 21 days after service of a cross-motion for summary judgment or (C) such additional time as is allowed by statute or order of the court.

(4) Motions to Strike.

(i) A motion to strike brought in response to a motion shall be served along with the opposition to the original motion. An opposition to the motion to strike shall be served within 10 days of service of the motion to strike. The motion to strike and the opposition thereto shall be filed with the Rule 9A package relating to the original motion in the manner specified in Paragraph (b)(2) of this rule.

(ii) A motion to strike brought in response to the opposition to the original motion shall be served within 10 days of service of the opposition. An opposition to the motion to strike shall be served within 10 days of service of the motion to strike. The motion to strike and the opposition thereto shall be filed with the Rule 9A package relating to the original motion in the manner specified in Paragraph (b)(2) of this rule. Compliance with the times for service contained herein shall extend the time for filing prescribed in Paragraph (b)(2) of this rule.

(iii) A motion to strike brought in response to a cross-motion shall be served along with the opposition to the cross-motion. An opposition to the motion to strike shall be served within 10 days of service of the motion to strike. The motion to strike and the opposition thereto shall be filed with the Rule 9A package relating to the original motion and the cross-motion in the manner specified in Paragraph (b)(2) of this rule. Compliance with the times for service contained herein shall extend the time for filing prescribed in Paragraph (b)(2) of this rule.

(5) Summary Judgment Motions.

(i) A motion for summary judgment shall be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue to be tried, set forth in consecutively numbered paragraphs, with page or paragraph references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents. Failure to include the foregoing statement shall constitute grounds for denial of the motion. In addition to the service specified in Paragraph (b)(2) of this rule, the statement of material facts shall be contemporaneously sent in electronic form by email to all parties against whom summary judgment is sought in order to facilitate the requirements of the following paragraph. The statement of material facts in electronic form shall be sent as an attachment to an email and shall be in Rich Text Format (RTF) unless the parties agree to use another word processing format. The requirement to email the statement of material facts to the opposing party does not alter the date or method of service, which continues to be governed by Mass. R. Civ. P. 5(b) . The requirement for transmission by email of the statement of material facts in electronic form shall be excused if (A) the moving or any opposing party is appearing pro se, (B) the attorney for the moving party certifies in an affidavit that he or she does not have access to email, or (C) the attorney for the moving party certifies in an affidavit that an opposing party's attorney has no email address or has not disclosed his or her email address.

(ii) An opposition to a motion for summary judgment shall include a response to the moving party's statement of facts as to which the moving party claims there is no genuine issue to be tried. To permit the court to have in hand a single document containing the parties' positions as to material facts in easily comprehensible form, the opposing party shall reprint the moving party's statement of material facts and shall set forth a response to each directly below the appropriate numbered paragraph, including, if the response relies on opposing evidence, page or paragraph references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents. Where the obligation to send the statement of material facts in electronic form has been excused, the response to the statement of material facts may be in a separate document. Upon filing of a consolidated Rule 9A(b)(5) statement, the parties' original 9A(b)(5) statement and response should not be filed. For purposes of summary judgment, the moving party's statement of a material fact shall be deemed to have been admitted unless controverted as set forth in this paragraph.

(iii) Neither the statement of material facts as to which there is no genuine issue to be tried nor the response thereto shall be subject to the 20-page limitation in Paragraph (a)(5) of this rule.

(iv) An opposing party, with the response to the moving party's statement of facts, may assert an additional statement of material facts with respect to the claims on which the moving party seeks summary judgment, each to be supported with page or paragraph references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents. Such an additional statement shall be a continuation of the opposing party's response described in Paragraph (b)(5)(ii), with an appropriate heading, and shall not be a separate document. In addition to the service specified in Paragraph (b)(2) of this rule, where the party opposing summary judgment includes such an additional statement in its response, the response, including the additional statement, also shall be sent in electronic form by email to the moving party, unless excused as provided in Paragraph (b)(5)(i). The moving party shall respond to the opposing party's additional statement of material facts within the time prescribed by Paragraph (b)(2)(B) and in the manner required by Paragraph (b)(5)(ii), resulting in a single document for the court's consideration, unless the obligation to send the additional statement of material facts in electronic form has been excused. For purposes of summary judgment, the opposing party's additional statement of a material fact shall be deemed to have been admitted unless controverted as set forth in this paragraph.

(v) Cross-motions for summary judgment and oppositions thereto shall comply with the requirements of Paragraph (b)(5), with the result that there shall be a single consolidated document containing the respective statements of material facts and responses thereto, unless excused as provided in Paragraph (b)(5)(i).

(vi) All exhibits referred to in a motion, a cross-motion, or opposition thereto shall be filed as a joint appendix, which shall include an index of the exhibits. The initial moving party, with the cooperation of each opposing party, shall be responsible for assembling the joint appendix and the index. Unless all the pages of the joint appendix are consecutively numbered, each exhibit shall be separated by an off-set tab divider. Where such dividers are used, the exhibits in the joint appendix shall be numbered consecutively. The moving party shall serve a copy of its exhibits to each opposing party with the motion. If a party opposing the initial motion designates additional exhibits, the additional exhibits shall

begin with the next consecutive designation following the last designation by the initial moving party. Where an opposing party relies upon any evidence contained in the exhibits supporting the motion for summary judgment, the opposing party in its memorandum shall cite to that evidence using the form of designation of the moving party. Where the opposing party relies upon evidence not contained in such exhibits, the opposing party shall treat such additional evidence as new exhibits. Such new exhibits, as well as an index of the new exhibits, shall be served with the opposition. The initial moving party shall certify that the joint appendix includes all exhibits served upon the initial moving party with the opposition to the summary judgment motion. If the initial moving party does not receive with the opposition an exhibit designated by the opposing party, then the moving party shall file with the clerk the joint appendix of exhibits without that designated exhibit, with the certification required by this rule. The burden will then rest with the opposing party to move to file any designated exhibit not timely submitted.

(vii) The initial moving party, upon filing a motion for summary judgment, shall serve upon the opposing parties, in paper and electronic form, unless electronic form is excused, the consolidated statement of material facts and responses filed with the clerk, unless the response is filed as a separate document in accordance with this rule. The moving party shall also serve upon the opposing parties the joint appendix of exhibits, including the index of the exhibits, filed with the clerk, unless the parties otherwise agree. If the joint appendix of exhibits, including the index, is in electronic form, an electronic copy shall also be sent, unless the parties otherwise agree.

(6) Sanctions for Noncompliance. The court need not consider any motion or opposition that fails to comply with the requirements of this rule.

(c) Hearings on Motions.

(1) Marking. No party shall mark any motion for hearing. In the event that the court believes that a hearing is necessary or helpful to a disposition of the motion, the court will set the time and date for the hearing and will notify the parties of that date and time.

(2) Request for Hearing. A request for a hearing shall set forth any statute or rule of court which, in the judgment of the submitting party, requires a hearing on the motion. After reviewing the motion, the court will decide whether a hearing should be held and, if a hearing is to be held, will notify the parties in accordance with Paragraph (c)(1) hereof. Failure to request a hearing shall be deemed a waiver of any right to a hearing afforded by statute or court rule.

(3) Presumptive Right to a Hearing. Requests for hearings on the following motions will ordinarily be allowed: Attachments (Rule 4.1), Trustee Process (Rule 4.2), Dismiss (Rule 12), Adopt Master's Report (Rule 53), Summary Judgment (Rule 56), Injunctions (Rule 65), Receivers (Rule 66), Lis Pendens (G.L. c. 184, sec. 15). Denial of a request for hearing on such motions will be accompanied by a written statement of reasons for the denial.

(d) Disposition of Motions.

Motions which are not set down for hearing in accordance with Paragraph (c) hereof will be decided on the papers filed in accordance with this rule.

(e) Exceptions. The provisions of this rule shall not apply to the following motions:

(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 Paragraphs (b)(1) and (b)(2) of this rule. Ex parte motions shall be served within 3 days of a ruling on the motion. Emergency motions shall be served on all parties forthwith upon filing.

(2) Motions Involving Incarcerated Parties. Administrative Directive No. 92-1, which governs civil actions filed by a plaintiff who is incarcerated, waives that part of subdivision (b)(2) of this rule that requires the filing of the Rule 9A package. Such waiver also shall apply to motions in civil actions where a defendant is incarcerated and appearing pro se, but all parties, incarcerated or not, must serve copies upon all other parties in the case.

As added July 21, 1988, effective October 3, 1988; amended July 18, 1989, effective October 2, 1989; December 6, 1989, effective January 31, 1990; December 17, 1991, effective March 1, 1992; December 10, 1993, effective January 1, 1994; effective April 1, 1998; October 6, 2004, effective November 1, 2004; and January 22, 2009, effective March 2, 2009; October 24, 2012, effective January 1, 2013; September 24, 2013, effective January 1, 2014; February 20, 2014, effective April 1, 2014; September 24, 2015, effective January 1, 2016; July 26, 2017, effective September 1, 2017.

Rule 9B. Certificates of Service

(Applicable to civil cases)

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. 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).

Adopted July 18, 1989, effective October 2, 1989.

Rule 9C. Settlement of Discovery Disputes

(Applicable to all civil cases)

(a) Counsel for each of the parties shall confer in advance of serving any motion under Mass. R. Civ. P. 26 or 37 and make a good faith effort to narrow areas of disagreement to the fullest extent. Counsel for the party who intends to serve the motion shall be responsible for initiating the conference, which conference shall be by telephone or in person. All such motions shall contain a certificate stating that the conference required by this Rule was held, together with the date and time of the conference and the names of all participating parties, or that the conference was not held despite reasonable efforts by the moving party to initiate the conference, setting forth the efforts made to speak by telephone or in person with opposing counsel. Motions unaccompanied by such certificate will be denied without prejudice to renew when accompanied by the required certificate.

(b) All motions arising out of a party's response to an interrogatory or 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 contained in an appendix to the brief.

Adopted July 18, 1989, effective October 2, 1989. Amended October 6, 2004, effective November 1, 2004. Amended June 15, 2007, effective October 1, 2007; amended September 24, 2015, effective January 1, 2016.

Rule 9D. Motions for Reconsideration

(Applicable to Civil Cases)

Motions for reconsideration shall be served and processed consistent with Rule 9A. Such motions seeking reconsideration of motions made pursuant to Mass. R. Civ. P. 50(b) , 52(b) , 59(b) , 59(e) or 60(b) are considered made or served for purposes of those rules on the date of service pursuant to Rule 9A.

Additionally, the words "MOTION FOR RECONSIDERATION" shall appear clearly in the title of the motion. Upon filing, the clerk shall transmit the motion and supporting papers to the Justice who decided the original motion, but if that Justice has retired or is otherwise unavailable, the clerk shall transmit the motion to the Regional Administrative Justice for the region where the case is pending. If, upon reviewing the motion and supporting documents, the Justice who decided the original motion desires to hold a hearing on the motion for reconsideration, he or she may schedule a hearing thereon. Alternatively, he or she may refer the motion for reconsideration to the Regional Administrative Justice for the region where the case is pending.

As added December 6, 1989, effective January 31, 1990; amended October 6, 2004, effective November 1, 2004; amended July 26, 2017, effective September 1, 2017.

Rule 9E. Motions to Dismiss and Post-Trial Motions

(Applicable to all civil cases.)
Motions to dismiss pursuant to Mass. R. Civ. P. 12 are subject to Rule 9A. Because such motions often are the initial filing in response to a complaint, counterclaim or cross-claim, in order to avoid the entry of a default for failure to respond in a timely fashion, a party responding by a motion to dismiss must serve the motion on all parties pursuant to Superior Court Rule 9A(b)(2) and, in a timely manner, must also file with the court a simple "Notice of Motion to Dismiss" reciting the title of the motion and the date of its service on the parties.

Post-trial motions pursuant to Mass. R. Civ. P. 50, 52, 59 and 60 are subject to Rule 9A. A party serving any such motion must serve the motion on all parties pursuant to Superior Court Rule 9A(b)(2) and, in a timely manner, must also file with the court a simple "Notice of Motion" reciting the title of the motion and the date of its service on the parties.
Amended October 6, 2004, effective November 1, 2004.

Rule 10. Extra Charges by Officers

(Applicable to all cases)
When any officer claims extra compensation in serving a precept, the same shall not be allowed unless the officer return with his precept a bill of particulars of the expenses, with his affidavit that such expenses were actually incurred, and that the charges are reasonable.

Rule 11. Attorney not to Become Bail or Surety

(Applicable to all cases)
No attorney shall become bail or surety in any criminal proceeding in which he is employed, or in any civil action or proceeding whatever in this court except as an endorser for costs.

Rule 12. Attorneys as Witnesses

(Applicable to all cases)
No attorney shall be permitted to take part in the conduct of a trial in which he has been or intends to be a witness for his client, except by special leave of the court.

Rule 13. Hospital Records

(First paragraph applicable to civil actions only; remainder of rule applicable to all cases)
Any party, or his attorney, in any action for personal injuries, may file an application for an order for a copy of any hospital records of a party, together with a copy of the proposed order and an affidavit that he has notified the other party, or his attorney, of his intention to file said application seven days at least prior to said filing and that he has not received any objections in writing thereto. The order shall issue as of course upon the receipt of such application.

In the event of an objection, no order shall issue unless the parties comply with Superior Court Rule 9A.

When a hospital record, or any part thereof, is received in evidence, the record shall be returned to the hospital upon the conclusion of the trial unless the court otherwise orders.

If the court orders the retention of the hospital record, it shall remain in the custody of the clerk, who shall give a receipt therefor. The record shall be released to the hospital, upon the giving of a receipt to the clerk.

Amended September 24, 2015, effective January 1, 2016.

Rule 14. Exhibits Other Than Hospital Records

(Applicable to all cases)
Exhibits other than hospital records, which are placed in the custody of the clerk shall be retained by him for three years after the trial or hearing at which they were used, subject to an order of confiscation or destruction, unless sooner delivered to the parties or counsel to whom they respectively belong or by whom they were respectively presented or introduced. If in doubt

as to the party or counsel entitled to delivery, the clerk may require an agreement of parties or counsel or order of the court, before delivery. The clerk may destroy or discard such exhibits, but not earlier than thirty days after notice by the clerk to the party presenting or introducing such exhibits, requesting him to remove them, nor earlier than three years after such trial or hearing.

Rule 15. Eliminating Requirement for Verification by Affidavit

(Applicable to all cases)

No written statement in any proceeding in this court required to be verified by affidavit shall be required to be verified by oath or affirmation if it contains or is verified by a written declaration that it is made under the penalties of perjury.

Rule 16. Writ of Protection

(Applicable to all cases)

A writ of protection shall issue only upon the application of the person for whom the writ of protection is to be issued, or some person in his behalf, and upon order of the court, and then only in case it is made to appear to the court, by affidavit and any other evidence that the court may require, (1) that the application is made in good faith and for the purpose of enabling such person to attend this court as a party or witness in some specified case pending, (2) if such person is a party, that such case has not been brought collusively to enable him to obtain a writ of protection, and (3) if such person is a witness, that he has not been required to attend as a witness by his own request or procurement to enable him to obtain a writ of protection.

Rule 17. Recording Devices

(Applicable to all cases)

No person shall use or have in his possession or under his control in the chambers or lobby of a justice or justices of the court, or in any courtroom or other place provided for a hearing or proceeding of any kind on any action or matter pending before the court, or before any master, arbitrator, or any other person appointed by the court, any mechanical, electronic or other device, equipment, appliance or apparatus for recording, registering or otherwise reproducing sounds or voices, unless prior authorization for such use or possession is granted by the justice then having immediate supervision of such courtroom or other place. All recordings or transmissions must comply with Rule 1:19 of the Supreme Judicial Court (“Electronic Access to the Courts.”).

Amended September 24, 2015, effective January 1, 2016.

Special Provisions for Civil Actions

Rule 18. Impoundment and Personal Identifying Information

(Applicable in all counties)

A. Impoundment

1. Impoundment in the Superior Court shall be governed by Trial Court Rule VIII (Uniform Rules on Impoundment Procedure ("URIP")), as supplemented by paragraph 2(b), below.

2. a. Purpose.

Paragraph 2(b) of this Rule makes exceptions to the notice requirement of URIP Rule 13(b), which ordinarily requires that when a person files impounded material, he or she also must file a notice alerting the clerk to that material.

b. Exceptions to Notice Requirement of URIP Rule 13(b).

Because the following materials are impounded by law, and the clerks' offices impound them in the normal course, no Rule 13(b) notice is necessary when filing any of them:

1. an Affidavit of Indigency and Request for Waiver, Substitution or State Payment of Fees & Costs, on the form prescribed by the Chief Justice of the Supreme Judicial Court under G.L. c. 261, § 27B;

2. a Petition for Abortion Authorization under G.L. c. 112, § 12S, or any materials in such matter;

3. an action for judicial review of a decision of the Sex Offender Registry Board, under G.L. c. 6, § 178M, or any materials in such matter; or

4. any confidential document or other material prepared especially for a pre-indictment judicial hearing concerning a grand jury proceeding.

c. Duty of the Clerk. The clerk shall maintain the impounded material described above in accordance with the clerk's duties prescribed in URIP Rule 9.

B. Personal Identifying Information

3. Redaction and treatment of personal identifying information shall be governed by Supreme Judicial Court Rule 1:24, as supplemented by paragraph 4 below.

4. Pursuant to Section 5(c) of Supreme Judicial Court 1:24, personal identifying information contained in administrative records filed by agencies shall be treated as may be provided in Standing Order 1-96, as amended from time to time.

Added July 26, 2017, effective September 1, 2017

Rule 19. Hearing in One Location County or Region of Cases from Another

(Applicable to civil actions)

Unless otherwise ordered by the Chief Justice of the Superior Court, each Regional Administrative Justice ("RAJ) or delegee shall have the authority to designate particular case(s) or categories of cases for hearing or trial in any location within the county (or for hearing, decision or non-jury trial within any multi-county Region), upon compliance with the statutory notice and posting requirements of G.L. c.212, § 14A, and if necessary to do so, shall serve as

the Chief Justice's delegee for that limited purpose under G.L. c. 212, § 14A. With the advance approval of the Chief Justice of the Superior Court, a RAJ may also transfer a case or class of cases for hearing out of his or her region.

Amended September 24, 2015, effective January 1, 2016.

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.

8. For purposes of Superior Court Rule 20(2)(h), the phrase "waiver of detailed written findings of fact" means waiver of written judicial findings with the level of detail required by Mass. R. Civ. P. 52(a). It does not mean waiver of findings that provide the equivalent of a jury verdict within the meaning of Mass. R. Civ. P. 49. See also Mass. R. Crim. P. 27 (by analogy only).

Therefore, when the parties agree to waive, in whole or part, detailed findings by the judge in a bench trial, the following rules shall apply:

a. The judge shall, at a minimum, answer special questions on the elements of each claim, at a level of detail comparable to a special jury verdict form pursuant to Mass. R. Civ. P. 49(a), unless the parties explicitly choose, or the judge expressly orders, findings in the form provided by Mass. R. Civ. P. 49(b) (a general verdict accompanied by answer to interrogatories).

b. The parties waive all arguments in the trial court or on appeal that require or depend upon the existence of detailed written findings of fact. Any appellate review of the court's decision and of the judgment entered shall be according to the standard of review that would apply to a verdict by a jury in a case tried to a jury and to the judgment entered thereon. In addition, the parties may agree to waive their rights of appeal in whole or in part.

Added October 26, 2016, effective January 1, 2017; amended February 28, 2018, effective March 1, 2018.

Rule 21. Postponement. Costs

(Applicable to civil actions)

When a case is postponed on the motion of one party, against the objection of the other, the granting of the motion may be upon the condition precedent that the moving party shall pay to the adverse party all his costs and such expenses as the court may allow incurred at the same session or upon the same short list in procuring the attendance of witnesses, unless (a) the motion is granted because of unfair or improper conduct of the adverse party, or (b) the moving party shall have given notice of such motion and the grounds thereof in such season as might have prevented the attendance of the witnesses, or (e) the moving party did not discover the grounds of the motion in season to give such notice. The costs and expenses thus paid shall not be included in the bill of costs of the party receiving them.

This rule shall not prevent an adverse party, receiving notice of such motion, from procuring the attendance of his witnesses, if he shall think fit to oppose the motion, or from including the costs for such witnesses in his bill of costs if he shall prevail in the case, even though such motion be granted.

Rule 22. Money Paid into Court

(Applicable to civil actions)

Money paid into court shall be in the custody of the clerk, whose duty it shall be to receive it when paid under the authority of law or rule or order of the court. Any deposit of money in excess of five thousand dollars ($5,000) paid into court shall be deposited in an interest bearing bank account. He shall pay it as directed by the court, but money paid into court upon tender or otherwise for the present and unconditional use of a party, shall be paid, on request, without special order, with any interest which has accrued thereon, to such party, at whose risk it shall be from the time when it is paid into court. Mo*n*ey payable to a party may be paid to his attorney of record, if authorized by the court.

If money paid into court, through interpleader or otherwise, goes unclaimed for 30 days after the claim(s) of every party to the funds has been eliminated by default or court order, the clerk, shall schedule the matter for an assessment hearing, after which the session justice may enter a final judgment escheating the funds to the Commonwealth, provided that no such judgment shall provide for escheat sooner than three years after payment of the funds into court as provided in G.L. c. 200A, § 6.
Amended September 24, 2015, effective January 1, 2016.

Rule 23. [Interlocutory Hearings, General Provision]

Repealed effective January 1, 2015.

Rule 24. [Verdicts]

Repealed effective January 1, 2015.

Rule 25. [Application of Verdict to Counts]

Repealed effective January 1, 2015.

Rule 26. [Motions for Judgment Notwithstanding the Verdict and for New Trial. Hearing. Costs]

Repealed effective January 1, 2015.

Rule 27. [Pre-Trial]

Repealed effective January 1, 2015.

Rule 28. [Deleted]

Deleted July 21, 1988, effective October 8, 1988.

Rule 29. Cover Sheet; Statement as to Damages

(Applicable to civil actions)

1. Cover Sheets. No Clerk-Magistrate shall accept for filing any Complaint or other pleading which commences a civil action unless accompanied by a civil action cover sheet completed and signed by the attorney or pro se party filing such pleading. The civil action cover sheet shall be in a form approved by the Chief Administrative Justice in consultation with the Chief Justice of the Superior Court.

2. Duty of the Plaintiff.

Upon the cover sheet provided for in paragraph one above, the plaintiff or his counsel shall set forth, where appropriate, a statement specifying in full and itemized detail the facts upon which the plaintiff then relies as constituting money damages. A copy of such civil action cover sheet, including the statement as to damages, shall be served on the defendant together with the complaint. If a statement of money damages, where appropriate is not filed, the Clerk-Magistrate shall transfer the action as provided in Rule 29(5)(c).

3. Duty of the Defendant. Should the defendant believe the statement of damages filed by the plaintiff is in any respect inadequate, he or his counsel may file with the answer a statement specifying in reasonable detail the potential damages which may result should the plaintiff prevail. Such statement, if any, shall be served with the answer.

4. Limitation.

A statement of money damages filed pursuant to this rule shall not constitute a judicial admission nor may it be admitted in evidence.

5. Power of the Court.

Should it appear from the statement(s) of damages filed as provided above, or from any subsequent amendments thereto, that there is no reasonable likelihood that recovery by the plaintiff will meet the amount necessary to proceed in the Superior Court under G.L. c. 212, §§ 3 and 3A, then the court, after receiving written responses from the parties and after a hearing, if requested by any party, may dismiss the case, in which case the clerk shall proceed as provided in G.L. c. 212, § 3A.

Amended effective November 1, 1974; May 8, 1976; amended January 9, 1979; amended effective August 1, 1984; March 25, 1986; November 17, 1986; amended September 24, 2015, effective January 1, 2016.

Rule 30. Interrogatories

(Applicable to civil actions)

Except as otherwise provided by special or standing order, interrogatories may be served within one year after the entry of an action or within such further time as the court may allow.

Each answer to an interrogatory, or objection thereto, shall be preceded by the interrogatory to which it responds.

An application for dismissal or judgment for failure to serve timely answers to original interrogatories, as permitted by Mass.R.Civ.P. 33(a), shall contain a statement showing the date on which such interrogatories were served and that the provisions of the applicable rules of civil procedure and of this court have been complied with; and such an application relating to failure to serve further answers shall set out the date on which the further answers should have been served. The application shall be verified by affidavit or as provided in Mass.R.Civ.P. 33(a) or 43(d).
Amended July 21, 1988, effective October 3, 1988.

Rule 30A. Written Discovery

(Applicable to Civil Actions)
[The former Rule 30A has been renumbered as Rule 9C(b). This rule replaces Standing Order 1-09]

1. Uniform definitions in discovery requests.

(a) Incorporation by Reference and Limitations. The full text of the definitions set forth in paragraph (1)(c) is deemed incorporated by reference into all discovery requests, but shall not preclude (i) the definition of other terms specific to the particular litigation; (ii) the use of abbreviations; or (iii) a narrower definition of a term defined in paragraph (1)(c).

(b) Effect on Scope of Discovery. This rule is not intended to broaden or narrow the scope of discovery permitted by the Massachusetts Rules of Civil Procedure.

(c) Definitions. The following definitions apply to all discovery requests, unless otherwise ordered by the court:

(1) Communication. The term "communication" means the transmittal of information (in the form of facts, opinions, ideas, inquiries, or otherwise).

(2) Document. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Mass. R. Civ. P. 34 (a). An earlier draft is a separate document within the meaning of this term.

(3) Identify (With Respect to Persons). When referring to a natural person, to "identify" means to give, to the extent known, the person's (a) full name, (b) present or last known address, and (c) the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(4) Identify (With Respect to Entities). When referring to an entity, to "identify" means to give, to the extent known, (a) the entity's full name, including (when not apparent from the name) the nature of the entity, e.g. corporation, limited liability corporation, partnership, or professional corporation, (b) present or last known address of its headquarters or principal place of business, and (c) the state in which the entity is incorporated or otherwise created. Once an entity has been identified in accordance with this subparagraph, only the name of that entity need be listed in response to subsequent discovery requesting the identification of that entity.

(5) Identify (With Respect to Documents). When referring to documents, to "identify" means to give, to the extent known: (a) the type of document; (b) the general subject matter; (c) the date of the document; (d) the author or authors, according to the document; and (e) the persons to whom, according to the document, the document (or a copy) was to have been sent.

(6) Parties. The term "plaintiff" or "defendant," as well as a party's full or abbreviated name or a pronoun referring to a party, mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, and subsidiaries. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

(7) Person. The term "person" means any natural person or any business, legal, or governmental entity.

(8) Concerning. The term "concerning" means referring to, describing, offering evidence of, or constituting.

(9) State the Basis or State all Facts. When an interrogatory calls upon a party to "state the basis" of or "state all facts" concerning a particular claim, allegation, or defense (or uses comparable language), the party shall provide a substantial summary of the factual basis supporting the claim, allegation, or defense at the time the interrogatory is answered. The summary shall: (a) identify the essential acts or failures to act forming the substance of the claim, allegation, or defense, (b) identify the persons and entities that, through firsthand information or possession of documents, are the sources of the party's information regarding the claim, allegation, or defense, and (c) when one or more documents is the basis of the claim, allegation, or defense, such as a written contract in a contractual claim or defense, or a written misrepresentation in a misrepresentation claim, identify (or provide as part of the interrogatory answer a copy of) each such document. In stating the basis, a party may not withhold information from the interrogatory answer because it derives from attorney work product or was obtained in anticipation of litigation if the party intends to offer this information at trial.

2. Objections to Interrogatories.

General objections to interrogatories are prohibited. Each objection to an interrogatory shall be specific to that interrogatory and shall have a good faith basis. If a party refuses to answer an interrogatory, the party shall so state and identify each objection asserted to justify the refusal to answer. If a party, after having asserted an objection, answers the interrogatory, the answer shall state either: (a) notwithstanding the objection no information has been withheld from the

answer, or (b) information has been withheld from the answer because of the objection. Where information has been withheld from the answer, the objecting party shall describe the nature of the information withheld and identify each objection asserted to justify the withholding.

3. Objections to Requests for the Production of Documents and Things.

(a) Where a party serves a response to a request for production of documents and things under Mass. R. Civ. P. 34 before production is completed, the response may include general objections. However, where general objections are made, the responding party shall prepare and serve a supplemental response no later than 10 days after the completion of production.

(b) Once production is completed, general objections to requests for production of documents and things are prohibited. As to each request, the supplemental response shall state either: (i) notwithstanding prior general objections, all responsive documents or things in the possession, custody, or control of the responding party have been produced; (ii) after diligent search no responsive documents or things are in the possession, custody, or control of the responding party; or (iii) the specific objection made to the request. When specific objection is made, the response shall describe the nature of all responsive documents or things in the possession, custody, or control of the responding party that have not been produced because of the objection. Where a privilege log is required by Mass. R. Civ. P. 26(b)(5) or court order, the log shall be served with the supplemental response, unless the requesting party waives entitlement to the log or agrees to a later date for service.

(c) In the initial written response, the responding party shall articulate with clarity the scope of the search conducted or to be conducted. If the scope of the search changes (luring production, the responding party in the supplemental written response shall articulate with clarity the change in scope. If the scope of the search does not include all locations. including electronic storage locations, where responsive documents or things reasonably might be found, the responding party shall explain why these locations have been excluded from the scope of the search.

Added September 24, 2015, effective January 1, 2016.

Rule 30B. Expert Disclosures

(Applicable to Civil Actions, effective January 1, 2017))

(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.

As added October 24, 2012, effective January 1, 2013; amended October 26, 2016, effective January 1, 2017.

Rule 31. Consolidation of Superior Court Cases[1]

A motion to consolidate cases under Mass. R. Civ. P. 42(a) shall be served, in accordance with Superior Court Rule 9A, upon all parties in the cases proposed to be consolidated. The original motion, opposition(s), and other related documents shall be filed and the motion decided in the earliest filed case. Notice of such filing, together with a copy of the documents filed, shall be filed in the later filed case(s). A copy of the ruling on the motion to consolidate shall be filed in each of the cases proposed to be consolidated.

If the motion to consolidate is allowed, the cases will be consolidated in the session where the earliest filed case is pending unless (a) the judge in that session orders, in the interest of justice or with the consent of all parties, that the cases be consolidated in a session where a later filed case is pending, and (b) the judge in that other session agrees to accept the consolidated cases. The order for consolidation shall specify the session in which the cases will be consolidated ("the consolidating session").

Unless the judge of the consolidating session otherwise orders, the earliest filed case in the session in which the cases are consolidated shall be designated the "lead case" and the other case(s) shall be designated the "consolidated case(s)." In documents filed in the lead or consolidated cases, the case caption shall identify the lead case first. Below the lead case caption shall be written the words, "**CONSOLIDATED WITH**," in capital letters and in bold print. Below those words shall appear the case captions for the consolidated cases, in the order they were filed, with the earliest filed case listed first. Regardless of the length of the case caption, the title of the document, identifying what it is, shall appear on the first page.

An order of consolidation is also an order of transfer. Once the cases are consolidated, the consolidating session is responsible for the lead case and all consolidated cases. If the lead case or any consolidated case(s) had been filed in different counties, the case file(s) shall be

promptly transferred to the Clerk for the county in which the consolidating session is located. The Clerk shall then open a new case file in that county for each transferred consolidated case, shall assign a new docket number, and shall make all appropriate entries on the docket, including the entry reflecting the ultimate disposition of the case. The Clerk for the county in which any transferred case had been located shall reflect the transfer on the original docket and close the transferred case.

Unless the judge of the consolidating session otherwise orders, a party filing any document in either the lead case or any consolidated case shall file one set of original documents in the lead case, and a copy of each such document, clearly marked as a copy, in each consolidated case. The Clerk shall make appropriate entries on the docket of the lead case and each consolidated case.

Within thirty (30) days following entry of an order of consolidation, the judge of the consolidating session shall conduct a conference under Mass. R. Civ. P. 16 to establish a Tracking Order for the consolidated cases and to address other matters raised by the consolidation.

(1) This Rule applies only to the consolidation of Superior Court cases. The consolidation of a Superior Court case with a case from a different judicial department is governed by Trial Court Rule XII-Requests for Interdepartmental Judicial Assignments. However, please note that Trial Court Rule XII does not apply when the related actions that are the subject of the consolidation request are in the Superior Court, the District Court, and/or the Boston Municipal Court. The appropriate procedure in such cases is for the parties to file a motion pursuant to G.L. c. 223, s. 2B to transfer the case in the District Court or the Boston Municipal Court to the Superior Court and then to file a motion to consolidate under Mass. R. Civ. P. 42(a) . See Trial Court Rule XII, ¶ 8 .

Added September 24, 2015, effective January 1, 2016.

Rule 32. Certain Appearances Prohibited

(Applicable to civil actions)
The attorney for the plaintiff shall not appear or act for a trustee summoned in trustee process; or for a defendant in matters involving interpleader (Mass. R.Civ.P. 22) or in a proceeding to obtain a declaratory judgment or relief (Mass.R.Civ.P. 57).

Rule 33. Continuances of Trial

(Applicable to Civil Actions)

The following procedure shall apply to requests for continuances of trial.

1. No trial continuance shall be granted without the specific approval of the Justice in the session in which the case is pending or, in the event the session Justice is not available, of the Regional Administrative Justice (or designee thereof) in the County in which the case is pending.

2. Any request for a trial continuance shall be in the form of a written motion, with notice to all parties.

3. A motion for a trial continuance shall:

    a. identify the party or parties seeking the continuance, and state, if known, whether there is any opposition;

    b. state the grounds for the requested continuance; and

    c. state whether continuances have been sought previously by any party, and, if so, the number of times and the reasons therefore.

4. If the grounds for the requested trial continuance include any ground identified in Rule 4 of the Rules of the Superior Court, the motion shall comply with that rule.

Added September 24, 2015, effective January 1, 2016.

Rule 34. Engagements of Counsel

(Applicable to civil actions)
No party shall have a right to a postponement of a trial because of engagement of counsel or for the convenience of counsel or parties, but the court will grant a postponement if counsel is actually engaged before the Supreme Judicial Court or the Appeals Court and may grant a postponement because of engagement of counsel for not more than ten days or until said engagement is concluded.

No other postponement shall be granted to the same counsel except for good cause arising subsequent to the granting of the postponement.

Rule 35. [Certificates of Readiness and Trial Lists]

Repealed effective January 1, 2015.

Rule 36. [Preference on Trial Lists with Jury in Certain Counties Having More Than One Shire Town]

Repealed effective January 1, 2015.

Rules 37., 38., 39., 40., 41. and 42. [Deleted]

Deleted July 21, 1988, effective October 3, 1988.

Rule 43. [Hearing in One County of Cases from Another]

Repealed effective January 1, 2015.

Rule 44. [Hearing in Suffolk of Cases From Other Counties]

Repealed effective January 1, 2015.

Rule 45. [Hearing in Hampden of Cases from Berkshire, Franklin and Hampshire]

Repealed effective January 1, 2015.

Rule 46. [Repealed]

Repealed effective January 1, 1981.

Rule 47. Filing of Papers Upon Judgment

(Applicable to civil actions)

A bill of exchange, promissory note, check, trade acceptance, certificate of deposit or any negotiable instrument, shall be filed with the clerk before judgment thereon shall be entered or execution issued, unless the court otherwise orders.

Such instrument shall not be withdrawn from the files, except upon (1) order of the court, (2) the making of the clerk of a memorandum on such instrument, if practicable, and otherwise on a paper attached thereto, showing the name of the court, the county, the number of the case, the date of judgment, the party or parties against whom judgment was rendered, and the amount thereof, and (3) the filing of a copy of such instrument attested by the clerk.

Rule 48. [Judgments and Decrees after Default for Failure to Appear in Civil Actions]

Repealed effective January 1, 2015.

Special Provisions relating to Masters, Receivers and Arbitrators

Rule 49. Masters

(See Mass.R.Civ.P. 53)

1. Order of Reference.

A master shall be appointed by an order of reference which, after the usual heading, shall be in substantially the following form, unless the court otherwise orders, and shall specifically refer the master to Section 4 of this Rule regarding forfeiture of compensation for failure to file his/her report seasonably.

NON-JURY ACTION
Order of Reference to Master
Ordered that this action be referred to _____ as Master for the conduct of proceedings pursuant to Mass.R.Civ.P. 53 and Superior Court Rule 49.
The Master shall make findings of fact and conclusions of law, and set them forth in his/her report, including all subsidiary findings of fact upon each issue.
He/she need not make findings on damages if he/she determines that there was no liability.
Hearings shall begin on or before _____, 20__, and:

a. shall end on or before _____, 20__, or

b. shall proceed from day to day, Saturdays, Sundays, and holidays excepted, until completed.

The report shall be filed on or before _____, 20__.
The Master is referred to Section 4 of Superior Court Rule 49 regarding forfeiture of compensation for failure to file his/her report seasonably.
By the Court (_____, J.)
Clerk
ENTERED:

JURY ACTION ORDER OF REFERENCE TO MASTER

Ordered that this action be referred to _____ as Master for the conduct of proceedings pursuant to Mass.R.Civ.P. 53 and Superior Court Rule 49.
The Master shall make findings of fact, with subsidiary findings of fact on each issue, including the issue of damages whatever the determination of liability.
Hearings shall begin on or before _____, 20__, and:
a. shall end on or before _____, 20__, or
b. shall proceed from day to day, Saturdays, Sundays, and holidays excepted, until completed.
The report shall be filed on or before _____, 20__.
The Master is referred to Section 4 of Superior Court Rule 49 regarding forfeiture of compensation for failure to file his/her report seasonably.
By the Court (_____ J.)
Clerk
ENTERED:

2. Compensation.

(a) Compensation of masters, for services performed after July 1, 1985 shall be allowed at the rate of fifty dollars ($50.00) an hour of attendance in a hearing room at the direction of the court, and of actual hearing and preparation of report. In the determination of the court a master may be allowed compensation not exceeding two hours at the rate specified above when an action is disposed of without the necessity of; attendance at court; or an actual hearing, or preparation of a report. Every master's bill shall be itemized as to dates, hours, and services and shall state the name of the justice who ordered the reference.

(b) If a master's report is not filed within the time provided by Mass. R. Civ. P. 53(g)(2) or any enlargement thereof, unless the court shall otherwise order, the appointment of the master shall be vacated automatically and the master shall be held to have forfeited his/her compensation.

3. Engagement.

An engagement in actual hearing before a master shall have the same standing as an engagement in actual trial before the court, but no protective order for counsel or the master shall issue save by order of the Chief Justice of the Superior Court.

4. Filing of Master's Report; Enlargement of Time; Forfeiting Compensation.

(a) Pursuant to Mass. R. Civ. P. 53(g)(2), the court may enlarge the time for filing the master's report, but only if the master files a written statement of good and substantial reasons for such enlargement. The justice authorizing an enlargement shall forthwith file with the clerk a statement of his/her reasons for so doing.

(b) if a master's report is not filed within the time specified by Mass. R. Civ. P. 53(g)(2) or any enlargement thereof, the master's appointment shall, unless the court otherwise orders, lapse automatically, and the master shall be held to have forfeited his/her compensation.

5. Supervision of Master.

The clerk shall keep a docket upon which shall be entered every case referred to a master. The court may call such docket or any part thereof at any time.

In cases referred to a master in which a statement by the referring or another justice is required by this Rule or Mass. R. Civ. P. 53, the clerk shall enter upon such docket the following:

(a) the statement by the referring justice as to the special reasons why the case was referred to a master not upon the Standing List.

(b) the statement by the objecting party containing the grounds for objecting to the persons appointed as master; and

(c) the statement by the justice granting an enlargement of time for the filing of the report of a master containing the reasons why the enlargement has been granted.

In each case referred to a master in which a justice or objecting party has filed a statement of reasons or objections in accordance with the provisions of this Rule or Mass. R. Civ. P. 53, the clerk shall report in summary written form to the Chief Justice, quarterly, the name of the case,

the nature of the case, the name of the master appointed, and the statements of the referring or other justice or party which are of record.

The clerk shall place upon the list for hearing upon motions and other interlocutory matters, at the session for or including civil business without jury within the county to be held on or next after the first Monday of March and the first Monday of September in every year, every case in which the appointment of a master was made more than four months before such first Monday and his/her report has not been filed. The list shall state the name of such master, the date of his/her appointment, and the reason for placing the case upon said list. The clerk shall mail such list to the parties and such officer. Such cases shall be called at such session.

At any call of such docket or of such cases or at any other time, the court may make any order deemed proper to promote justice and prevent delay, including an order that the case proceed without regard to engagements of counsel, and an order removing such master.

6. Special Masters.

The Chief Justice of the Superior Court or a justice of the court with the approval of the Chief Justice may appoint a special master to deal with administrative or other special matters. His/her compensation shall be paid at the rate provided in section 2 of this Rule.

Amended effective May 8, 1976; amended May 6, 1978, effective July 1, 1978; June 26, 1980, effective September 1, 1980; amended effective January 1, 1983; July 1; 1985.

Rule 50. Exhibits (Master's Cases)

(Applicable to civil actions)

The clerk's office shall accept into the care and custody of the clerk, all exhibits which have been offered before a master during the course of a hearing and duly marked at said hearing by said master.

Said exhibits must be presented in the clerk's office by said master personally. Appropriate notations and cross references will be made in the exhibit record book, and upon the docket to this effect.

The master will be required to fill out an exhibit record card in the clerk's office when depositing exhibits. Rule 14 shall govern.

Rule 51. Receivers

(Applicable to civil actions)

Every receiver, within thirty days after his appointment, shall file a detailed inventory of the property of which he has possession or the right to possession, with the estimated values thereof, together with a list of the encumbrances thereon; and also a list of the creditors of the receivership and of the party whose property is in the hands of the receiver, so far as known to him.

Every receiver shall file, not later than the fifteenth day of February of each year, a detailed account under oath of his receivership to and including the last day of the preceding year,

substantially in the form required for an account by a conservator in the probate courts, together with a report of the condition of the receivership. He shall also file such further accounts and reports as the court may order.

When an attorney at law has been appointed a receiver, no attorney shall be employed by the receiver or receivers except upon order of court, which shall be made only upon the petition of a receiver, stating the name of the attorney whom he desires to employ and showing the necessity of such employment.

No order discharging a receiver from further responsibility will be entered until he has settled his final account.

Upon application for appointment of a receiver, the party seeking the receiver shall pay into Court the sum of $500.00, or such other amount as the Court may allow, for the use of the receiver when appointed to guarantee his or her expenses, disbursements and compensation. No process on the application for appointment of a receiver shall issue before payment of said sum. The Clerk shall pay said sum to the receiver when appointed and the receiver shall account for the disposition thereof in his or her required accountings. If the application for appointment of a receiver is denied, the Clerk shall repay to the plaintiff, or the plaintiff's attorney, the sum so deposited.
Amended effective September 3, 1991; amended June 24, 2009, effective July 1, 2009.

Rule 52. [Reference to Arbitration. Award; Objections and Recommittal]

Repealed effective January 1, 2015.

Special Provisions for Criminal Cases

Rule 53. Assignment of Counsel

(Applicable to criminal cases)
1. All Cases.

If any party appears in the court in a matter in which the laws of the Commonwealth or the rules of the Supreme Judicial Court establish a right to be represented by counsel, the judge shall follow the procedures established in Supreme Judicial Court Rule 3:10.
2. Murder Cases.

Upon the determination by a judge that a person accused of murder in the first or second degree is to be provided counsel by the Committee for Public Counsel Services pursuant to Supreme Judicial Court Rule 3:10 and G.L. c. 211D, s. 8, the clerk shall notify the chief counsel of the Committee for Public Counsel Services for purposes of the assignment of the case to either the Public Counsel Division or Private Counsel Division, subject to the approval of the justice making the determination of indigency.

Amended effective May 8, 1976; October 22, 1977; amended May 6, 1978, effective July 1, 1978; amended effective January 1, 1981; November 17, 1986.

Rule 54. Experts in Criminal Cases

(Applicable to criminal cases)

The court will not allow compensation for the services of an expert or expert witness for the defense in a criminal case unless an order of the court or a justice, naming such expert or expert witness and authorizing his employment, was made before he was employed. Such order shall not be made without notice to the district attorney in charge of the case, and an opportunity to be heard.

Rule 55. Experts in Criminal and Delinquent Children Cases

(Applicable to criminal cases and cases of delinquent children)

The court will not allow compensation as an expert witness to a salaried medical examiner or a salaried physician of a penal institution or place of detention unless it appears by the certificate of the district attorney that he has testified as an expert.

The court will allow no fee to a salaried physician of a penal institution or place of detention for making an examination into the mental condition of a person held in custody therein or for a report or medical certificate as to such condition.

Rule 56. Conditions of Probation

(Applicable to criminal cases)

The conditions of probation, unless otherwise prescribed, shall be as follows: That the defendant shall (1) comply with all orders of the court, including any order for the payment of money, (2) report promptly to the probation officer as required by him, (3) notify the probation officer immediately of any change of residence, (4) make reasonable efforts to obtain and keep employment, (5) make reasonable efforts to provide adequate support for all persons dependent upon him, and (6) refrain from violating any law, statute, ordinance, by-law or regulation, the violation whereof is punishable. Any other condition shall be presumed to be in addition to the foregoing.

Rule 57. Term of Probation

(Applicable to criminal cases)

The term of probation, unless otherwise prescribed, shall be until the regular sitting for or including criminal business within the county appointed to begin next after the expiration of the following periods after the day on which the defendant is placed on probation namely:-in cases under G.L. Chapter 273, five years and eleven months; and in other cases, eleven months. At the end of the term of probation, the probation officer shall make a written report to the court of the result of probation, which shall be filed in the case, and, if the court shall order, the probation officer shall bring the defendant before the court for an extension of probation or for other disposition.

Rule 58. Term of Orders for Payment

(Applicable to criminal cases)

Orders for payment under G.L. Chapter 273, unless otherwise prescribed, shall be in force for six years from the day when made.

Rule 59. Waiver of Indictment

(Applicable to criminal cases)

The form for an application to waive indictment under the provisions of G.L. Chapter 263, s. 4A shall be as follows:

COMMONWEALTH OF MASSACHUSETTS

_____ ss. _____ 20__

COMMONWEALTH

v.

_____

APPLICATION TO WAIVE INDICTMENT

To the Honorable the Justices of the Superior Court:

Respectfully represents said defendant that on _____, 20__, he was (committed) (bound over) (complained of) for trial in the Superior Court under the provisions of (G.L. c. 218 § 30) (G.L. c. 219 § 20) (St.1934 c. 358) by the (Court of _____) (Hon. _____, Trial Justice _____) (District Attorney for the _____ District) upon a complaint numbered _____ of 20___ charging him with a crime not punishable by death; that he desires to waive indictment upon said charge and now applies for leave to waive such indictment and for prompt arraignment on such complaint.

_____

I hereby consent to the foregoing application.

_____

District Attorney for the _____

District.

Approved

By the Court _____ Clerk.

Rule 60. Plea of Not Guilty

(Applicable to criminal cases)

A plea of not guilty, whether voluntarily made by the defendant or entered by order of the court, shall not be deemed to be a waiver of matters in bar or abatement or an admission of the validity of the indictment or complaint. A defendant at the time of the entry of such plea, or within ten days thereafter or within such further time as the court may order, may file such motions and

other pleadings relating to matters in bar or abatement or to the validity of the indictment or complaint as he may desire without at any time retracting the plea of not guilty.

Lack of jurisdiction or the failure of the indictment or complaint to charge an offense may be raised at any time during the pendency of the proceedings.

Rule 61. Motions for Return of Property and to Suppress Evidence

(Applicable to criminal cases)

Motions for the return of property and motions to suppress evidence shall be in writing, shall specifically set forth the facts upon which the motions are based, shall be verified by affidavit, and shall otherwise comply with the requirements of Mass.R.Crim.P. 13.

Such motions shall be filed within seven days after the date set for the filing of the pre-trial conference report pursuant to Mass.R.Crim.P. 11(a)(2), or at such other time as the court may allow.

Amended June 26, 1980, effective September 1, 1980.

Rule 61A. Motions for post-conviction relief

(Applicable to criminal cases)

(A) Contents of the Motion. Motions for post-conviction relief filed under Mass.R.Crim.P. 30 shall contain (1) an identification by county and docket number of the proceeding in which the moving party was convicted, (2) the date the judgment of conviction entered, (3) the sentence imposed following conviction and (4) a statement of the facts and grounds on which the motion is based. The motion shall also contain (5) a statement identifying all proceedings for direct review of the conviction and the orders or judgment entered and (6) a statement identifying all previous proceedings for collateral review of the conviction and the orders or judgments entered.

(B) Docket of Proceedings and Transmission of Papers. After docketing, the Clerk shall attach to all such motions a copy of the docket of the proceedings that resulted in the conviction and shall forward the motion, and accompanying papers, to the Justice who presided at the trial from which the conviction resulted and to the office of the District Attorney or to the Attorney General responsible for prosecuting the case. If the Justice who presided at the trial has retired, or is otherwise unavailable, the Clerk shall forward the motion and accompanying papers to the Regional Administrative Justice for the county in which the conviction occurred.

(C) Action on Motions. Motions that do not comply with the requirements of paragraph (A) hereof may be summarily denied, without prejudice to renewal when filed in accordance with those requirements. For all motions that do comply with the requirements of paragraph (A), the court may direct the Commonwealth to file and serve an opposition, or may act thereon in the manner it deems appropriate and as authorized by Mass. R. Crim. P. 30.

Adopted February 9, 2001, effective March 1, 2001.

Rule 62. Appearance

(Applicable to criminal cases)
An attorney who, before the return day, has entered an appearance in behalf of a defendant in a criminal case in the Superior Court, may withdraw his appearance within fourteen days after the return day, provided that the attorney who shall represent the defendant at trial files an appearance simultaneously with such withdrawal. An attorney shall not withdraw his appearance otherwise, except by express leave of court.
Amended June 26, 1980, effective September 1, 1980.

Rule 63. Court Reporter in Grand Jury Proceedings

(Applicable to criminal cases)
Stenographic notes of all testimony given before any grand jury shall be taken by a court reporter, who shall be appointed by a justice of the superior court and who shall be sworn. Unless otherwise ordered by the court, the court reporter shall furnish transcripts of said notes only as required by the district attorney or attorney general.

Rule 64. Appellate Division. Procedure and Forms

(Applicable to criminal cases)
Appeals to the appellate division, under G.L. Chapter 278, as amended, shall be signed by the person sentenced, on forms herein established to be furnished by the clerk.
Upon the imposition of a sentence which may be reviewed, the clerk shall forthwith advise the person sentenced of his right, within ten days to appeal to the appellate division for a review of the sentence or sentences imposed, notwithstanding that the execution of such sentence or sentences is stayed pending appeal or suspended with a term of probation, and shall make an entry on the docket that the person has been so advised.

The clerk shall forthwith notify the justice who imposed the sentence, of any appeal, and likewise shall notify the appellate division of any appeal.

If new process issues as a result of action by the appellate division, it shall recite the original sentence, sentences or disposition and set forth any amendment thereof.
The clerk of the appellate division shall send notice of the final action by the appellate division to the appellant, the superintendent of the correctional institution in which the appellant is confined, the clerk of the court in which judgment was rendered, the justice who imposed the sentence appealed from and the chief justice.

The appellate division shall hear appeals for the review of sentences only in those cases in which a claim of appeal has been filed within ten days after the date of the imposition of sentence.

The forms for appeal under the provisions of G.L. Chapter 278, Section 28B, shall be as follows:

COMMONWEALTH OF MASSACHUSETTS
_____ ss. Superior Court

No. _____

COMMONWEALTH
v.

_____

APPEAL FROM SENTENCE TO
MASSACHUSETTS CORRECTIONAL INSTITUTION, CEDAR JUNCTION
The defendant hereby appeals to the Appellate Division of the Superior Court for a review of a sentence to the Massachusetts Correctional Institution, Cedar Junction, imposed in the Superior Court sitting within and for the County of _____ by Justice _____ on the _____ day of _____, 20__.

_____
Signature of Defendant

_____, 20__

Note
This appeal must be filed within ten days of imposition of sentence.
In cases in which a sentence was imposed in accordance with a recommendation agreed to by or on behalf of the defendant, the Appellate Division will not normally hold a hearing but will consider the appeal solely on the basis of the record.
COMMONWEALTH OF MASSACHUSETTS

_____ ss. Superior Court
No. _____

COMMONWEALTH
v.

_____

APPEAL FROM SENTENCE OF MORE THAN

FIVE YEARS TO MASSACHUSETTS

CORRECTIONAL INSTITUTION, FRAMINGHAM

The defendant hereby appeals to the Appellate Division of the Superior Court for a review of a sentence to the Massachusetts Correctional Institution, Framingham, imposed in the Superior Court sitting within and for the County of _____ by Justice _____ on the _____ day of _____, 20__.

_____

Signature of Defendant

_____, 20__

Note
This appeal must be filed within ten days of imposition of sentence.
In cases in which a sentence was imposed in accordance with a recommendation agreed to by or on behalf of the defendant, the Appellate Division will not normally hold a hearing but will consider the appeal solely on the basis of the record.
Amended effective July 1, 1986.

Rule 65. Claim of Appeal

(Applicable to criminal cases)
After imposing judgment and sentence in a case which has gone to trial on a plea of not guilty, the judge or clerk shall forthwith advise the defendant of his right to appeal, and the clerk shall execute a statement in writing to that effect.

The clerk shall have no duty to advise the defendant of any right of appeal after sentence is imposed following a plea of guilty or nolo contendere.

Defendant's counsel shall be responsible for perfecting and prosecuting the appeal unless such counsel is relieved of that responsibility, after a hearing on counsel's motion to withdraw.

An appeal under General Laws Chapter 278, Section 28 shall be claimed within thirty days after the judgment from which the appeal is taken.
Amended October 22, 1977, effective January 1, 1978; May 30, 1990, effective July 1, 1990.

Rules 66. And 67. [Repealed]

Repealed effective September 1, 1980.

Rule 68. Arguments

(Applicable to criminal cases)
In trials of criminal cases the arguments of each party shall be limited to thirty minutes; but the court may reasonably reduce or extend the time.

Rule 69. Examination of Witnesses

(Applicable to criminal cases)
Unless otherwise permitted by the court, the examination and cross-examination of each witness shall be conducted by one counsel only for each party, and the counsel shall stand while so examining or cross-examining.

Rule 70. Requests for Instructions or Rulings

(Applicable to criminal cases)
Requests for instructions or rulings in trials or hearings with or without jury shall be made in writing before the closing arguments unless special leave is given to present requests later.

The question whether the court should order a verdict shall be raised by a motion, and not by a request for instructions.

Rule 71. Depositions -- Commissions

(Applicable to criminal cases so far as depositions may be taken by statute. See G.L. c. 277, secs. 76-77)
Editor's Note:
G.L. c. 277, s.s. 76-77 were repealed by St.1979, c. 344, s. 42, an emergency act, approved June 30, 1979, and by s. 51 made effective July 1, 1979. For derivation and subject matter of the repealed sections, see M.G.L.A. c. 277, s.s. 74-77.

Upon application by a defendant, the court will grant commissions to take the depositions of witnesses residing out of the Commonwealth. Such a defendant may, on application to the clerk, obtain a commission, directed to any commissioner appointed by the governor of the Commonwealth to take depositions in any other of the United States, or to any justice of the peace, notary public or other officer legally empowered to take depositions or affidavits in the state or country where the deposition is to be taken, or to such other person as the court may order. Unless otherwise ordered, such depositions shall be taken upon interrogatories filed by such defendant, and upon cross- interrogatories, if any, filed by the Commonwealth, which interrogatories and cross-interrogatories shall be annexed to the commission. Such defendant shall file his interrogatories in the clerk's office, give notice thereof to the Commonwealth, with a copy of the interrogatories, and file an affidavit of such notice in the clerk's office. The cross-interrogatories, if any, shall be filed within seven days after the giving of such notice, or within such further time as the court may order, and a copy shall be given to such defendant. When a deposition is taken and certified by any person as an officer or person to whom the commission was directed, if it shall be objected that such person was not the one to whom the commission was directed, the burden of proof shall be on the party so objecting. But if an objection be made to the authority of a person taking the deposition without such commission, the burden of proof of such authority shall be on the party producing the deposition.

Rule 72. Deposition – Manner of Taking

(Applicable to criminal cases so far as depositions may be taken by statute. See G.L. c. 277, secs. 76-77)
Editor's Note
G.L. c. 277, s.s. 76-77 were repealed by St.1979. c. 344, s. 42, an emergency act, approved June 30, 1919, and by s. 51 made effective July 1, 1979. For derivation and subject matter of the repealed sections, see M.G.L.A. c. 277, s.s. 74-77.

Where a deposition is taken on interrogatories, the commissioner shall take such deposition in a place separate and apart from all other persons, and shall permit no person to be present, during such examination except the deponent himself, and such disinterested person, if any, as he may think fit to appoint as a clerk or stenographer to assist him in reducing the deposition to writing. The commissioner shall permit no person to communicate by interrogatories or suggestions with the deponent while giving his deposition. The commissioner shall put the several interrogatories and cross-interrogatories to the deponent in their order, and shall take the answer of the deponent to each, fully and clearly, before proceeding to the next; and shall riot read to the deponent, nor permit the deponent to read, a succeeding interrogatory, until the answer to the preceding has been fully taken down. The clerk, on issuing a commission to take a deposition on interrogatories, shall insert the substance of this rule therein; or shall annex this rule, or the substance thereof, to the commission, by way of notice and instruction to the commissioner.

Depositions shall be opened and filed by the clerk when received.

Special Provisions for Certain Other Proceedings

Rule 73. Medical Malpractice Cases

Applicable to All Counties

(applicable to all cases subject to G. L. c. 231 , § 60B (medical malpractice))

1 . Offer of Proof; Failure to File.

a. Within 15 days after each defendant's answer has been filed in a case subject to G.L. c. 231, § 60B, the plaintiff(s) shall file the offer of proof with the clerk and provide a copy to the defendant(s). The parties may agree to a different deadline, in a written stipulation filed with the court. For purposes of cases referred for a tribunal from other trial court departments, or the federal courts, the date of docketing of the referral in the Superior Court shall be substituted for the date of filing of the answer.

b. Upon a plaintiff's failure to file a timely offer of proof, the court may find, upon motion of a party or its own initiative, that the plaintiff has failed to present sufficient evidence to raise a legitimate question of liability appropriate for judicial inquiry as to the defendant who filed the answer. A plaintiff's failure to file a timely offer of proof shall waive the plaintiff's right to a tribunal before entry of such a finding by the court.

c. By motion, or on its own initiative, the court may schedule a prompt conference, in addition to, or in lieu of the procedures set forth in parts 2-6, below.

2. Demand for Tribunal; Notice to Massachusetts Medical Society; Duties of Party Demanding a Tribunal.

a. Any party who demands a tribunal under § 60B ("Filing Party") shall file a document entitled "Demand for Tribunal" within 30 days of the filing of the answer, after reviewing the offer of proof, if any. The Demand for Tribunal shall specify each respect, if any, in which the Filing Party claims that the offer of proof fails to raise a legitimate question of liability appropriate for judicial inquiry.

b. Any defendant's failure to file a timely Demand for Tribunal shall waive that defendant's right to a tribunal.

c. If the defendant is a licensed physician or a medical institution or facility:

i. The Demand for Tribunal shall (A) specify the field of medicine in which the alleged injury occurred and (B) list each county where the defendant practices and each county where the defendant resides, or if the defendant is a medical institution or facility, shall list the county where the institution or facility is located. The Filing Party shall consult with all other parties, and if there is disagreement about the field of medicine or county, shall include all fields and counties identified by any party.

ii. The Filing Party shall, simultaneously with filing, serve the Demand for Tribunal on all parties of record or their counsel and the Massachusetts Medical Society ("Society"). Any Demand for Tribunal sent to the Society shall state prominently that:

1. A medical malpractice tribunal will occur if the Society timely submits a case-specific list consisting of the name(s) of physicians representing the field of medicine in which the alleged injury occurred and licensed to practice medicine and surgery in the commonwealth under the provisions of section two of chapter one hundred and twelve; and that the list shall consist only of physicians who practice medicine outside the county where the defendant practices or resides or if the defendant is a medical institution or facility outside the county where said institution or facility is located; and

2. The Court considers a submission timely if the Society provides the information to the clerk, with copies to all parties or their counsel, within 30 days of receiving the Demand for Tribunal.

d. If the defendant is not a licensed physician, the Filing Party shall obtain a case specific list from the pertinent licensing agency and provide it to the clerk within 90 clays after the answer is filed, with advance notice to other parties, who may participate if they choose.

e. For purposes of this rule, a "case-specific list" means: (1) if the defendant is a physician, a list of physicians who meet the criteria appearing in par. 2.ii.1 or (2) if the defendant is not a physician, a list consisting of the name(s) of representatives of the field of medicine in which the alleged injury occurred who are licensed to practice in that field under the laws of the Commonwealth; provided that the list shall consist only of such representatives who practice outside the county where the defendant practices or resides.

3. Tribunal.

The clerk shall schedule the tribunal as soon as practicable upon receipt from the Society (or the Filing Party under paragraph 2(d)) of the information required paragraph 2(c) or 2(d). The clerk shall send notice of the date and time of the tribunal hearing to all parties or their counsel, listing the panel members' names and contact information. The plaintiff shall send a copy of the offer of proof to each panel member at least 5 days before the tribunal hearing. Until the clerk receives a case-specific list of eligible and available physicians or medical providers, the clerk has no statutory responsibility to schedule a tribunal, but may, in the exercise of discretion, choose to devote available resources in a timely manner to identify an eligible physician or medical provider member of the tribunal.

4. Delay in Providing The Case-Specific List of Physicians or Medical Providers to the Clerk

If the clerk does not receive a case-specific list of providers within 90 clays after the answer is filed, the clerk shall schedule a hearing before a single judge to determine whether the offer of proof is properly substantiated, is sufficient to raise a legitimate question of liability appropriate for judicial inquiry or whether the plaintiff's case is merely an unfortunate medical result. Such determination shall be without prejudice to reconsideration by a full tribunal, consisting of medical member, attorney, and judge, as provided in part (2) of the next sentence hereof. If the clerk later receives a case-specific list of providers, then: (1) if the hearing has not already occurred, it shall occur before a full tribunal; (2) if the hearing has already occurred , and if any party files a motion for reconsideration by a full tribunal, the court shall allow such motion unless it determines that allowing the motion would unduly delay the trial.

5. Voluntary Waiver of Tribunal.

Any party may waive a right to a § 60B tribunal consisting of three members, without thereby waiving any other rights or arguments in the case. If the plaintiff waives the tribunal, the court shall require posting of a bond in the statutory amount, without prejudice to the right of either party to move to increase or reduce the amount of the bond. If the defendant waives the tribunal, the court may allow the plaintiff(s) to proceed without a bond and need not schedule any further § 60B Hearing with respect to that defendant. Upon waiver of the tribunal , the clerk shall send an informational copy of the complaint and offer of proof to the Board of Registration in Medicine with a clear disclaimer that no tribunal occurred under § 60B because the defendant waived the tribunal but reserved all rights to challenge the claims in the offer of proof at trial.

6. Stay.

a. No medical malpractice lawsuit is automatically stayed pending a tribunal decision, but a session judge may enter a stay, upon motion in compliance with Superior Court Rule 9A, if the Demand for Tribunal identifies a serious issue with the offer of proof and the plaintiff does not post a bond.

b. Notwithstanding subparagraph a, in the absence of a court order, no defendant is required, over objection, to take any action if the plaintiff does not timely post a bond (i) after failing to file a timely offer of proof or (ii) after a tribunal finding adverse to the plaintiff as to that defendant.

7. Trial Assignment Conference; Case-Specific Management.

a. Notwithstanding Standing Order 1 -88, the parties in all medical malpractice cases shall appear at a trial assignment conference, to be scheduled by the court not later than 18 months after filing of the complaint. The parties shall be prepared to commit to a trial date within the tracking order, as well as to dates for expert disclosures. At the trial assignment conference, the court and parties will also select a date for a final pretrial conference at which they will file a pretrial memorandum and discuss the case's potential for resolution. The parties must discuss the potential for resolution with their clients and any other entity or individual with settlement authority, before the pretrial conference.

b. Any party who seeks to advance the case for earlier determination pursuant to G.L. c. 231 , § 59C, may file a Motion For Case-Specific Management pursuant to Superior Court Rule 20 and Standing Order 1-88(B)(2), in compliance with Superior Court Rule 9A.

8. Judicial Discretion.

After considering the impact on prompt resolution of the case and all other equities, the judge may waive any of these requirements or extend any of these deadlines. In ruling on a motion for waiver, the judge may require the moving party to demonstrate good cause and may impose conditions to facilitate timely resolution of the case or to protect the rights of any party opposing the waiver.

9. Other Rights.

Nothing in this Rule shall be construed to limit the right of any party under generally applicable statutes, rules, orders, or other law to assert or oppose any dispositive or other motion, serve any discovery request, or request a conference under Rule 16 or otherwise at any time. For purposes of this rule, any plaintiff or defendant whose claim or liability is entirely vicarious or derivative has no separate right to a tribunal beyond that asserted by the principal(s), and shall, together with the principal(s), be considered as a single party.

Added November 7, 2017, effective January 1, 2018.

Rule 74. [Motor Vehicle Liability Policy Appeals]

Repealed effective January 1, 2015.

Rule 75. [Procedure in Election Petitions]

Repealed effective January 1, 2015.

Special Provisions for Divorce Cases

Rule 76. Divorce Proceedings

(Includes cases of divorce and proceedings for the annulment or affirmation of marriage)

The applicable statutes and the rules of the Probate Court shall apply to divorce proceedings and proceedings for the annulment or affirmation of marriage brought in this court.

Rule 77. Trial Lists of Divorce Cases in Suffolk

(Applicable to cases of divorce and proceedings for the annulment or affirmation of marriage in Suffolk)
The divorce list in Suffolk will be taken up in a divorce session at such times as the chief justice may designate, precedence being given to uncontested cases unless the court otherwise orders. Cases may be placed upon the list for the divorce session in Suffolk in the manner provided for the placing of cases on the list in counties other than Suffolk by Rule 37, and motions and other interlocutory matters in cases on the divorce docket in Suffolk may be placed upon the list for hearing thereon at the divorce session in Suffolk in the manner provided for the placing of such matters on the list in counties other than Suffolk by Rule 38.

Standing Orders (in reverse chronological order)

Standing Order 2-17: Limited Assistance Representation

Applicable to all counties

Limited Assistance Representation (LAR) permits an attorney to assist a self-represented litigant with part of a legal matter without undertaking the entire case. The attorney and client agree on discrete tasks that the attorney will handle and the remainder, which the litigant will handle. The attorney can provide these unbundled services for a fee or *pro bono*.

The following procedures govern LAR in the Superior Court Department in civil matters currently pending or filed after the effective date of this Standing Order. These procedures apply notwithstanding any provision to the contrary in any rule of court or standing order. To supplement these procedures, the judge in an individual case may enter orders as necessary to further the goals of this Standing Order and to promote access to, and the administration of, justice.

1. Attorney Qualification

To become qualified to provide LAR, a licensed Massachusetts attorney must read the Limited Assistance Training Manual, available on the Massachusetts Court System website, or attend an in-person training program approved under the Uniform Protocol for Limited Assistance Representation Training in the Massachusetts Trial Court.

2. Agreement on Scope of Assistance

A qualified attorney may limit the scope of his or her assistance to a client if the limitation is reasonable under the circumstances and the client gives informed consent. The attorney and client must agree in writing on the discrete events or issues that the attorney will handle.

3. Notice of Limited Appearance

An attorney who appears for a litigant in a limited capacity must serve on all parties, including the client, and file with the court clerk, a Notice of Limited Appearance, in the form accompanying this Standing Order. By filing the Notice, the attorney certifies that he or she is qualified to provide LAR, that the attorney and client have agreed on the scope of the attorney's assistance, and that the attorney is in compliance with this Standing Order. The Notice must state clearly the court events that the attorney will handle and, for any event for which the attorney will handle fewer than all issues, the Notice must identify the discrete issues that the attorney will cover. An appearance for a court event extends to all issues scheduled or reasonably anticipated to be considered at the event, unless the court permits otherwise. The attorney may file a new Notice during or after an event, with the agreement of the client.

An attorney may not enter a limited appearance for the sole purpose of making evidentiary objections or seeking continuances. The attorney and client may not argue the same legal issue during the period of the attorney's limited assistance without the court's permission. For any court event handled by counsel in a limited capacity, the litigant must also attend the event, unless the court permits otherwise.

A pleading, motion, or other document filed by an attorney making a limited appearance must comply with Rule 11(a), of the Massachusetts Rules of Civil Procedure, and must state, in boldface type on the signature page: "**Attorney of [party] for the limited purpose of [court event]**." An attorney who files a pleading, motion, or other document outside the scope of the limited appearance will be considered to have entered a general appearance, unless the attorney files a new Notice of Limited Appearance with the pleading, motion, or other document. Except as set forth in paragraph 4, the court may not require the attorney to represent the client at any court event beyond the scope of the agreement described in the Notice of Limited Appearance.

4. Notice of Withdrawal

Upon completion of the representation encompassed by the limited appearance, the attorney must promptly withdraw by serving on all parties, including the client, and filing with the court clerk, a Notice of Withdrawal of Limited Appearance, in the form accompanying this Standing Order. A Notice of Withdrawal must be filed for each Notice of Limited Appearance. The Notice of Withdrawal must include the client's name, address, telephone number, and e-mail address, unless otherwise provided by law.

The attorney has no right to enforce the limitations upon representation until the Notice of Withdrawal is filed, but may ask the court for discretionary enforcement, if equitable despite the delay in filing. To avoid delay or other impediment to case management or the administration of justice, the court may treat the attorney as appearing for the client until the attorney files a Notice of Withdrawal, even if the events or issues covered by the limited representation have concluded. The court may also order the attorney to file a Notice of Withdrawal. If any other party unavoidably incurs costs or is prejudiced by the attorney's failure to file a Notice of Withdrawal, the court may order a non-punitive remedy, including compensation for fees and costs unnecessarily incurred, upon motion.

A Notice of Withdrawal filed and served in compliance with this paragraph is effective upon filing. No motion to withdraw under Mass. R. Civ. P. 11(c) is required.

5. Service

Whenever service is required or permitted to be made on a party represented by an attorney making a limited appearance, for all matters within the scope of the limited appearance the service must be made on both the attorney and the party. Service on the party must be made at the address listed for the party on the Notice of Limited Appearance. If the party's address has been impounded, service must be made as required by the court or by rule. For matters outside the scope of the attorney's limited appearance, service on the attorney is not required.

6. Assistance in the Preparation of Documents ("Ghostwriting")

An attorney may assist a client in preparing a pleading, motion, or other document to be signed and filed in court by the client, a practice sometimes referred to as "ghostwriting." In such cases, the attorney must insert on the document the notation "prepared with assistance of counsel." The attorney is not required to sign the document, and the filing of it will not constitute an appearance by the attorney. The client remains responsible to the court and other parties for all statements in any pleading, motion, or other document prepared but not signed by an attorney.

Adopted April 6, 2017, effective June 1, 2017.

Standing Order 1-17: Waiver of Detailed Written Findings of Fact Under Superior Court Rule 20(2)(h)

1. For purposes of Superior Court Rule 20(2)(h), the phrase "waiver of detailed written findings of fact" means waiver of written judicial findings with the level of detail required by Mass. R. Civ. P. 52(a). It does not mean waiver of findings that provide the equivalent of a jury verdict within the meaning of Mass. R. Civ. P. 49. See also Mass. R. Crim. P. 27
2. Therefore, when the parties agree to waive detailed findings by the judge in a bench trial, the following rules shall apply:

a. The judge shall, at a minimum, answer special questions on the elements of each claim, at a level of detail comparable to a special jury verdict form pursuant to Mass. R. Civ. P. 49(a), unless the parties explicitly choose, or the judge expressly orders, findings in the form provided by Mass. R. Civ. P. 49(b) (a general verdict accompanied by answer to interrogatories).
b. The parties waive all arguments in the trial court or on appeal that require or depend upon the existence of detailed written findings of fact. Any appellate review of the court's decision and of the judgment entered shall be according to the standard of review that would apply to a verdict by a jury in a case tried to a jury and to the judgment entered thereon. In addition, the parties may agree to waive their rights of appeal in whole or in part.

Adopted December 2, 2016, effective January 1, 2017.

Standing Order 2-15: Exceptions to Notice Requirement of Trial Court Rule VIII, Uniform Rules on lmpoundment Procedure (URIP), as amended September 17, 2015

1. Applicable to all counties

2. **A. Purpose.**

This rule makes exceptions to the notice requirement of Rule 13(b) of the Uniform Rules on Impoundment Procedure (URIP), which ordinarily requires that when a person files impounded material, he or she also must file a notice alerting the clerk to that material.

3. **B. Exceptions to Notice Requirement of URIP Rule 13(b).**

Because the following materials are impounded by law, and the clerks' offices impound them in the normal course, no Rule 13(b) notice is necessary when filing any of them:

4. an Affidavit of Indigency and Request for Waiver, Substitution or State Payment of Fees & Costs, on the form prescribed by the Chief Justice of the Supreme Judicial Court under G.L. c. 261, § 27B ;

5. a Petition for Abortion Authorization under G.L. c. 112, § 12S , or any materials in such matter;

6. an action for judicial review of a decision of the Sex Offender Registry Board, under G.L. c. 6, § 178M , or any materials in such matter; or

7. any confidential document or other material prepared especially for a pre indictment judicial hearing concerning a grand jury proceeding.

8. **C. Duty of the Clerk.**

The clerk shall maintain the impounded material described above in accordance with the clerk's duties prescribed in URIP Rule 9.

Effective October 1, 2015.

Standing Order 1-15: Participation in Juror Voir Dire by Attorneys and Self-Represented Parties

Applicable to all counties

A. Purpose.

The purpose of this Standing Order is to provide an interim procedure for the implementation of St. 2014, c. 254, § 2 , pending completion of the work of the Supreme Judicial Court Committee on Juror Voir Dire. The Superior Court anticipates that this Standing Order may be superseded by, or may be modified in response to, such rules, protocols, or guidelines as the Supreme Judicial Court may hereafter adopt or approve, as well as in response to experience in

the implementation of this Standing Order, including experience with the pilot project referred to in paragraph C(9) hereof. This Standing Order is adopted pursuant to Trial Court Rule V; shall take effect on February 2, 2015, coincident with the effective date of St. 2014, c. 254, § 2 ; and shall remain in effect until such time as it may be superseded or modified.

B. Preamble.

In enacting St. 2014, c. 254, § 2 , the Legislature recognized and preserved the discretion of the trial judge to lead and supervise the process of juror voir dire, including oral examination of prospective jurors by attorneys and self -represented parties in the exercise of the right granted by the statute. The Superior Court recognizes that trial judges may properly exercise discretion to employ procedures for the examination of prospective jurors by attorneys and self-represented parties that may differ from those set forth herein, as well as to use written juror questionnaires where they deem appropriate in addition to the Confidential Juror Questionnaire required by G. L. c. 234A, § 22 (hereinafter, the "statutory Confidential Juror Questionnaire"). This Standing Order fully preserves the discretionary authority of the trial judge with respect to the examination and selection of jurors in each case, and provides a standard procedure that will apply in each civil and criminal case unless otherwise ordered by the trial judge, while permitting attorneys and self- represented parties a fair opportunity to participate in voir dire so as to identify inappropriate bias.

C. Procedure:

1. Any attorney or self-represented party who seeks to examine the prospective jurors shall serve and file a motion requesting leave to do so. In civil cases such motion shall follow the procedure provided by Superior Court Rule 9A, and shall be filed with the Court, along with any opposition or other response received, not later than the earlier of (a) the final trial conference if such a conference is scheduled in the case, or (b) fourteen days prior to the date scheduled for trial. In criminal cases the motion shall be served on all parties at least one week before filing, and the motion and any opposition or other response shall be filed with the Court not later than two business days prior to the scheduled date of the final pretrial conference, or, in the event that no final pretrial conference is scheduled, five business days before the scheduled trial date.

2. The motion shall identify generally the topics of the questions the moving party proposes to ask the prospective jurors. Topics identified shall be interpreted to include reasonable follow-up questions. Any opposition or response to any such motion may address the proposed topics. The trial judge may, in the exercise of discretion, and after notice to the parties, require attorneys and self-represented parties to submit the specific language of the proposed questions for pre-approval. The motion and any responsive filing shall also include any proposed language for brief preliminary instructions on principles of law to be given pursuant to paragraph 5(b) hereof.

3. The trial judge shall approve or disapprove the topics of questions proposed, or, if the trial judge requires pre-approval of the specific language of the proposed questions, shall approve or disapprove each proposed question. In doing so the judge shall give due regard to the goals of: (a) selecting jurors who can and will decide the case based on solely the evidence and the law, fairly and impartially to all parties, without in the process exposing jurors to any extraneous matter that would undermine their impartiality; (b) conducting the selection process with reasonable expedition, in proportion to the nature and seriousness of the case and the anticipated length of the trial, and with due regard for the needs of other sessions that draw on the same jury pool for access to potential jurors; and (c) respecting the dignity and privacy of each potential juror.

4. (a) Questions that should generally be approved are:

(1) those seeking factual information about the prospective juror's background and experience pertinent to the issues expected to arise in the case, along with reasonable follow-up questions regarding whether and how such background or experiences might influence the juror in the case, provided that questions that would elicit sensitive personal information about a juror, or that specifically reference information provided in a juror's statutory Confidential Juror Questionnaire, shall be permitted only outside the presence or hearing of other jurors, so as to preserve the confidentiality required by G. L. c.234A, s. 23 .

(2) those regarding preconceptions or biases relating to the identity of the parties or the nature of the claims or issues expected to arise in the case.

(3) those inquiring about the prospective jurors' willingness and ability to accept and apply pertinent legal principles as instructed, after consultation with the judge regarding the principles of law on which the judge will instruct the jury.

(b) Questions that should generally be disapproved are those:

(1) that duplicate the questions that appear on the statutory Confidential Juror Questionnaire, or any other written juror questionnaire used in the case, but questions seeking further detail regarding information provided on a juror's questionnaire, or completion of any uncompleted answers on the questionnaire, should generally be approved, subject to the limitation stated in paragraph (a)(1) hereof;

(2) regarding the prospective juror's political views, voting patterns, party preferences, religious beliefs or affiliation, reading or viewing habits, patterns of charitable giving, opinions on matters of public policy, hobbies or recreational activities, or similar matters, or regarding insurance, except insofar as such matters may be relevant to issues expected to arise, or may affect the juror's impartiality in the case;

(3) regarding the outcome of any trial in which the prospective juror has previously served as a juror, or deliberations in or the prospective juror's vote in such trial;

(4) purporting to instruct jurors on the law;

(5) that make arguments on any issue of fact or law; that tend to indoctrinate or persuade; that encourage the juror to identify with a party, victim, witness, attorney, or other person or entity, or to send a message; or that encourage the juror to prejudge any issue in the case, to make a commitment to support a particular result, or to do anything other than remain impartial and follow the Court's instructions.

(6) that require a juror to guess or speculate about facts or law.

(7) that would tend to embarrass or offend jurors or unduly invade jurors' privacy.

5. Prior to any questioning by attorneys or self-represented parties, the trial judge shall:

(a) provide the venire with a brief description of the case, including the nature of the facts alleged and of the claims or charges, including the date and location of the pertinent alleged event(s), and the identity of persons or entities significantly involved;

(b) provide the venire with brief, preliminary instructions on significant legal principles pertinent to the case. Such instructions should include a brief recitation of: the burden and standard of proof; the elements of at least the primary civil claim or at least the most serious criminal charge, and, if appropriate to the case and requested by counsel or a self-represented party, the elements of any affirmative defense that will be presented to the jury; and, in criminal cases, the defendant's right not to testify.

(c) explain to the venire the empanelment process, including, in cases where attorneys and/or self-represented parties will pose questions, the nature and topics of the questions that will be posed, and that any juror who finds either a particular question or the process of questioning by attorneys or self-represented parties intrusive on the juror's privacy may request to be permitted to decline to answer and/or that steps be taken to protect the privacy of any information disclosed. Upon request, the judge may permit each party to make a brief introductory statement to the venire limited to explaining the process and purpose of the questioning of jurors by attorneys or self-represented parties.

(d) ask all questions required by statute or case law, and any additional questions the judge deems appropriate in light of the nature of the case and the issues expected to be raised. The judge may ask questions of the venire as a group, but should conduct at least part of the questioning of each prospective juror individually outside the presence or hearing of other jurors.

(e) as to each prospective juror questioned individually, excuse the juror if the judge determines that service would pose a hardship, or if the judge has doubt as to the juror's impartiality; otherwise find the juror indifferent and able to serve.

6. After the judge has found an individual juror indifferent and able to serve, the judge shall permit questioning by attorneys or self-represented litigants if and to the extent that the judge has previously approved such questioning upon motion submitted in the manner provided herein. Such questioning shall begin with the party having the burden of proof.

(a) Except as provided in paragraphs C(6)(b) and C(9) hereof, the judge may require that such questioning be conducted of each prospective juror individually, outside the presence or hearing of other jurors. Parties may assert challenges for cause based on the juror's responses to questions posed by attorneys or self-represented parties, notwithstanding that the judge has previously found the juror indifferent based on the judge's questioning and information provided in the statutory Confidential Juror Questionnaire. If the juror is not excused for cause upon such challenge, the judge may require the exercise of any peremptory challenge at that time, beginning with the party who has the burden of proof and, in civil cases, the judge may alternate sides thereafter. Alternatively, the judge may seat the juror subject to the parties' later exercise of peremptory challenges.

(b) Upon request of one or both parties, the trial judge may permit counsel or self-represented parties to question jurors as a group, in a so-called "panel voir dire" procedure. Such questioning shall occur of those jurors whom the judge has already questioned individually and found indifferent and able to serve, after the judge has so found with respect to at least the number of jurors that will be seated for trial. If questioning occurs in this form, the judge shall not permit any questions that would elicit sensitive personal information about an individual juror, or that would specifically reference information provided in a juror's statutory Confidential Juror Questionnaire. Jurors to whom questions are addressed, or who respond to questions, shall be identified on the record by juror number only. After completion of questioning the parties may assert challenges for cause based on responses to questions posed by attorneys or self-represented parties, although the judge has previously found the challenged juror indifferent. The judge shall require that such challenges for cause, as well as peremptory challenges, be asserted outside the hearing of other jurors. Upon any challenge for cause, the judge may allow opposing counsel further opportunity to question the juror.

7. Whether questioning of jurors by attorneys or self-represented parties occurs individually or in a group, any party may object to a question posed by another party by stating "objection," without elaboration or argument. The judge may rule on the objection in the presence of the juror or jurors, or may hear argument and rule on the objection outside the presence or hearing of the juror or jurors.

8. The trial judge may set a reasonable time limit for questioning of prospective jurors by attorneys or self-represented parties, giving due regard to (1) the objective of identification of inappropriate bias in fairness to all parties; (2) the interests of the public and of the parties in reasonable expedition, in proportion to the nature and seriousness of the case and the length of the anticipated evidence, and (3) the needs of cases scheduled in other sessions drawing on the same jury pool for access to prospective jurors.

9. The Court will establish a pilot project, in which judges who volunteer to do so will conduct so-called "panel voir dire," according to a consistent procedure to be determined and described in a separate document. During the course of the pilot project, the Court will compile data regarding identified measures. Upon completion of the pilot project, the Court will issue a public report of such data.

Adopted December 5, 2014, effective February 2, 2015.

Standing Order 1-96: Processing and Hearing of Complaints for Judicial Review of Administrative Agency Proceedings

Applicable to Civil Actions in All Counties

In order to facilitate and clarify the orderly processing and hearing of Complaints for Judicial Review of Administrative Agency Proceedings, it is ORDERED, effective February 1, 2015 that:

1. Claims filed in the Superior Court 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, whether joined with a claim for declaratory relief under G.L. c. 231A , or any other claim, shall be heard in accordance with the following procedures.

2. The administrative agency whose proceedings are to be judicially reviewed shall, by way of answer, file the original or certified copy of the record of the proceeding under review (the record) within ninety (90) days after service upon it of the Complaint. Such record "shall consist of (a) the entire proceedings, or (b) such portions thereof as the agency and the parties may stipulate, or (c) a statement of the case agreed to by the agency and the parties." G.L. c. 30A, § 14(4) . Upon service of a Complaint, the agency shall notify all parties of procedures for acquiring a transcript of the hearing testimony. The agency shall also inform the parties of their obligation to provide a transcript, or portions thereof, to the court if alleging that an agency's decision is not supported by substantial evidence or is arbitrary or capricious, or is an abuse of discretion. A request for a copy of the transcript must be made by a party within thirty (30) days after service of the Complaint, and such transcript or portion thereof shall be made part of the record. The Agency’s certified record shall include any transcript that has been prepared but need not include a transcript of any untranscribed proceeding or portion thereof in the absence of a timely transcript request.

The court may assess the expense of preparing the record as part of the costs in the case. G. L. c. 30A, § 14(4) . Additionally, "the court may, regardless of the outcome of the case, assess any one unreasonably refusing to stipulate to limit the record, for the additional expenses of preparation caused by such refusal." G. L. c. 30A, § 14(4) . The court may require or permit subsequent corrections or additions to the record when deemed desirable. G. L. c. 30A, § 14(4). The time for filing the record may be enlarged, for good cause shown, upon allowance of an appropriate motion.

2A. Records of Administrative Proceedings, filed by the administrative agency, shall comply in full with Supreme Judicial Court Rule 1:24, if practicable given size and applicable filing deadlines. Otherwise, the agency should:

(a) Make reasonable efforts to segregate, redact and file publicly all portions of the record that can practicably be redacted within the filing deadline, including in all cases a redacted copy of the decision under review; and

(b) separately file all other portions in one or more volumes, each having a first page that bears the legend: "FILED UNDER PROVISIONAL MOTION TO IMPOUND," together with such a motion, which need not be served pursuant to Superior Court Rule 9A. Documents bearing that legend shall NOT be impounded without a hearing in compliance with Trial Court Rule VIII , but shall be segregated from the rest of the file in the same manner already employed by clerks' offices for third-party production of medical records, phone records and the like. The clerk shall note the existence of the segregated volume(s) on the docket sheet. The provisional motion to impound will be forwarded to the session judge for Rule VIII notice, hearing and findings ONLY if a non-party seeks to review the documents.

Notwithstanding the above, an agency need not redact from an administrative record any material that is in a public record.

3. The following motions raising preliminary matters must be served in accordance with Superior Court Rule 9A not later than twenty (20) days after service of the record by the administrative agency.

(a) Motions authorized by Mass. R. Civ. P. 12(b) or 12(e) .

(b) Motion for leave to present testimony of alleged irregularities in procedure before the agency, not shown in the record (G.L. c. 30A, § 14(5)).

(c) Motion for leave to present additional evidence (G.L. c. 30A, § 14(6)).

Any party failing to serve such a motion within the prescribed time limit, or within any court-ordered extension, shall be deemed to have waived any such motion (unless relating to jurisdiction) and the case shall proceed solely on the basis of the record. Any such motion shall be promptly resolved in accordance with Superior Court Rule 9A. If the motion specified in (c) is allowed, all further proceedings shall be stayed until the administrative agency has complied with the provisions of G.L. c. 30A, § 14(6) .

4. A claim for judicial review shall be resolved through a motion for judgment on the pleadings, Mass. R. Civ. P. 12(c) , in accordance with Superior Court Rule 9A except as otherwise provided by this Standing Order, unless the Court's decision on any motion specified in part 3 above has made such a resolution inappropriate. A plaintiff's Rule 12(c)motion and supporting memorandum shall be served within thirty (30) days of the service of the record or of the Court's decision on any motion specified in part 3 above, whichever is later. A defendant's response shall be deemed to include a cross-motion for judgment on the pleadings pursuant to

Mass. R. Civ. P. 12(c) (which should be noted in the caption of the response) and shall be served within thirty (30) days after service of the plaintiff's motion and memorandum. The plaintiff shall then promptly file the motion materials in accordance with Superior Court Rule 9A. The Court may grant an extension of time to file for good cause shown. Memoranda shall include specific page citations to matters in the record.

5. The Clerk or her/his designee will schedule a hearing date after receiving the motion materials. No pre-trial conference will be held, and no pre-trial memorandum filed, unless specifically ordered by the Court. No testimony or other evidence shall be presented at the hearing, and the review shall be confined to the record. A party may waive oral argument and submit on the brief by filing a written notice. Such waiver by a party shall not affect the right of any other party to appear and present oral argument.
Adopted effective April 8, 2002; amended December 5, 2014, effective February 1, 2015; amended December 2, 2016, effective January 1, 2017.

Standing Order 1-88: Time Standards (Fifth Amended)

Applicable to All Counties

A. General considerations

B. Track designations

C. Tracking orders

D. Amendments to the tracking orders

E. Rule 16 conferences

F. Pilot program for Case Management Conferences

G. Tracking deadlines

H. Cases not reached for trial

I. Final trial conference before jury trial

Endnotes

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. [1]

(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. [2]

(5) All pleadings, appearances, and other papers filed by counsel of record shall be accompanied by counsel's Board of Bar Overseers (BBO) Number. [3] The BBO Number shall appear immediately after counsel's signature, address and telephone number.

D. Amendments to the 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. Pilot program for Case Management Conferences

(a) Case Management Conference in Certain Cases.

A pilot program will be established for qualifying cases in which the clerk of court shall schedule a Case Management Conference as soon as practicable, but in any event within ninety (90) days after service of process. The following case types qualify for the pilot program: A08, Real Estate; A12, Construction; B05, Products Liability; and B22, Employment Discrimination. For any other types of cases in which all parties assent to the scheduling of a Case Management Conference, such a conference shall be scheduled. If fewer than all parties assent, one or more parties may serve a motion requesting such a conference.

In preparation for the Case Management Conference, the parties are required to confer, complete and file a Joint Case Management Statement and Proposed Order. The minimum requirements of the Joint Case Management Statement and Proposed Order are attached to and made part of this Standing Order as **Appendix A**. The Joint Case Management Statement is to be filed with the court on the date of the Case Management Conference. The plaintiff is required to circulate the first draft of the Joint Case Management Statement and Proposed Order no later than three (3) weeks before the Case Management Conference.

The date established for the Case Management Conference does not preclude the filing of a motion seeking an earlier Case Management Conference where appropriate. Discovery and all other aspects of the case may proceed among the parties, in accordance with applicable rules and the initial presumptive tracking order, pending the Case Management Conference.

(b) Obligation of Counsel to Confer.

Unless otherwise ordered by the judge, counsel for the parties must confer at least fourteen (14) days before the date for the Case Management Conference for the purpose of:

(1) preparing an agenda of matters to be discussed at the Case Management Conference; and

(2) completing the Joint Case Management Statement and Proposed Order.

(c) Settlement Proposals.

Unless otherwise ordered by the judge, the plaintiff shall present written settlement proposals to all defendants no later than three (3) weeks before the date for the Case Management Conference. Defense counsel shall have conferred with their clients on the subject of settlement before the Case Management Conference and present a written response to the plaintiff's settlement proposals no later than three (3) business days before the Case Management Conference. Neither the written settlement proposal nor the written response is to be filed in court.

(d) Conduct of Case Management Conferences.

Case management conferences shall be presided over by a judge who may:

(1) Explore the possibility of alternative dispute resolution including court-connected alternative dispute resolution where available.

(2) Inquire as to the utility of the parties conducting settlement negotiations, explore means of facilitating those negotiations, and offer whatever assistance may be appropriate in the circumstances. Assistance may include a reference of the case to another judge for settlement purposes. Whenever a settlement conference with a judge is held, a representative of each party who has settlement authority shall attend or be available by telephone.

(3) Identify or formulate (or order the attorneys to formulate) the principal issues in contention;

(4) prepare (or order the attorneys to prepare) a specific discovery schedule and discovery plan that, if the presiding judge deems appropriate, might:

(a) limit discovery to avoid unnecessary or unduly burdensome discovery;

(b) sequence discovery into two or more stages; and

(c) include time limits set for the completion of discovery;

(5) establish deadlines for filing motions and a time framework for their disposition;

(6) provide for the "phased resolution" or "bifurcation" of issues for hearing or trial; and

(7) explore any other matter that the judge determines is appropriate for the fair and efficient management of the litigation.

All self-represented litigants shall appear in person. All other parties shall be represented by lead counsel. The court reserves the right to require that the parties themselves or their claims representative appear at the Case Management Conference. All counsel attending are required to be fully familiar with the case and have complete authority regarding all aspects of the conduct of the litigation.

(e) Additional Case Management Conferences.

Nothing in this rule shall be construed to prevent the convening of additional Case Management Conferences or Rule 16 Conferences by the court as may be appropriate in the circumstances of the particular case.

G. Tracking deadlines

The following tracking deadlines shall be mandatory except as modified by order of the Session Judge or Regional Administrative Justice. [4] 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. [5]

(2) Four months (120 days)

- Rule 12, 15, [6] 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. [7] 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. [8] 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. [9] 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.

Endnotes

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

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).

9. 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.

Effective March 1, 2007; amended December 2, 2016, effective January 1, 2017; amended August 4, 2017, effective September 1, 2017.

Standing Order 2-87: Electronic Recordation of Proceedings

Applicable to All Counties

To insure the efficient and orderly administration of civil and criminal sessions in the Superior Court Department, it is ordered that when a Court Reporter is not available to attend a session or proceeding which would have been taken by a Court Reporter had one been available, and subject to the availability and functioning of appropriate recording devices, the Presiding Justice shall have authority, to be exercised in his or her discretion, to record the proceeding electronically.

1. The term "Court Reporter" as used herein includes official Court Reporters of the Superior Court Department, and per them Reporters hired in the usual course by the Superior Court Department.

2. No electronic recording device (hereinafter "recorder") shall be used unless approved by the Administrative Justice of the Superior Court Department. Recorders shall be operated and monitored by the session Clerk or other employee the Clerk/Magistrate so designates by and under the direction of the Clerk/Magistrate. In the absence of the session Clerk or other designee of the Clerk/Magistrate, the Presiding Justice, having determined the potential adverse effect on the administration of justice, may, with the approval of the Administrative Justice, designate another Court employee to operate and monitor the recorder.

3. The Clerk/Magistrate shall have the care, custody and control of recorders and the original recordings of all proceedings. At the beginning of every proceeding being recorded, the operator shall announce clearly the name of the case and its docket number. The cassette number and, where more than one matter or proceeding is recorded, the index number representing the beginning and end points of the proceeding, shall be noted on the case papers and in a separate log. Cassette copies shall be identified by case name, docket number, court, date of copy, name of Presiding Justice and name of person who operated the recorder.

4. Counsel shall assist in creating an audible record by properly using the microphones provided. Counsel shall speak with sufficient clarity and in sufficient proximity to the microphones to insure an audible record, and shall be responsible for requesting the Presiding

Justice, when necessary, to instruct other counsel, witnesses or others as to the proper use of the microphones in order to insure an audible record.

5. The Presiding Justice shall satisfy himself or herself that the recorder is properly functioning and that a verbatim record of the proceeding is being maintained. Should the Presiding Justice at any time during the proceeding not be satisfied that the recorder is functioning properly and that a verbatim record of the proceeding is being taken, the Justice shall take such action as may be appropriate.

6. Cassette copies of an original recording, or portions thereof, shall be made available by the Court upon request on a form prescribed by the Administrative Justice of the Superior Court Department to any person, whether or not a party, of any proceeding which was open to the public, unless the record of such proceeding has been sealed or impounded. In order that multiple cassette copies may be made simultaneously whenever possible, any person making a request regarding a proceeding that is presently pending on appeal shall certify that he or she has notified all other parties of the request. Rule 8(b)(3) of the Rules of Appellate Procedure shall govern the method and manner of certification of the record on appeal and shall govern to the extent any of its provisions may appear in conflict with those of this Standing Order. The failure of a party to request a copy seasonably shall not be grounds for the delay of subsequent proceedings.

7. A cassette copy of the original recording, or any portion thereof, of a proceeding which was not open to the public, or of a proceeding whose record has been sealed or impounded, shall be deemed to be impounded and shall be subject to the provisions of law governing such closed proceedings, as well as to any additional restrictions with regard to its use which may be prescribed by the Justice who presides over the proceeding.

8. The cost of cassette copies shall be as established by the Chief Administrative Justice of the Trial Court pursuant to G.L. c. 262, s. 4B . There shall be no cost for a cassette copy produced for the use of the Court, or as authorized and approved by the Court. G.L. c. 261, ss. 27A-27G shall be deemed applicable to a request by or on behalf of a party determined to be indigent and the cost of a cassette copy shall be deemed an "extra cost" as defined in s. 27A .

9. No cassette copy shall be used for a commercial purpose, for public or private entertainment or amusement, or for any other purpose, detrimental to the administration of justice. The recording by news media of a proceeding open to the public is governed by Canon 3(A)(7) of Rule 3:09 of the Rules of the Supreme Judicial Court.

10. Original recordings shall be preserved for six (6) years or for such further time as the Court may order, and then erased or destroyed.

This Standing Order supercedes Standing Order No. 2-87 dated December 11, 1987.

Adopted June 24, 1988, effective July 1, 1988.

Standing Order 2-86: Criminal Case Management

Applicable to All Counties to Cases Initiated by Indictment on or after September 8, 2009

I. Purposes

To improve procedures in criminal cases in the Superior Court.

To promote uniformity in practice throughout the Commonwealth.

To insure compliance with the provisions and aims of the Rules of Criminal Procedure and Rules of the Superior Court.

To recognize that a defendant's right to speedy trial, and the public, including victims and witnesses, interest in a timely, fair and just resolution of criminal cases, is best achieved by application of uniform and consistent time standards for the conduct of criminal cases in Superior Court.

To encourage the cooperation between the court, the prosecuting attorneys and the defense bar with a view towards a just and efficient disposition of criminal cases.

To provide guidelines for application in the great majority of cases, recognizing that a judge, in the exercise of discretion, may adjust or extend time periods in individual cases to insure a defendant's right to fair trial and the effective assistance of counsel, as well as, the protection of public safety.

To identify non-trial cases at the earliest stage so as to encourage their timely disposition with consequent savings of public and private resources.

II. Arraignments

Arraignment will ordinarily take place in the first session by the judge presiding in that session, except in such counties utilizing a magistrate session pursuant to G. L. c. 221, §§ 62B and 62C in which case arraignment shall occur before the magistrate, or in a room list session in such counties utilizing a room list system for the assignment of cases.

An arraignment in Superior Court shall be conducted according to Mass. R. Crim. P. 7. After entry of the defendant's plea to the charges, the judge or magistrate shall schedule dates for a mandatory pre-trial conference and a mandatory pre-trial hearing, the latter to occur within 90 days of arraignment for an "A" track case, 135 days of arraignment for a "B" track case, and 180 days of arraignment for a "C" track case.

At arraignment, the clerk shall issue a Notice of Presumptive Track Designation in the form of a Scheduling Order, setting forth dates at or before which certain events shall occur. The presumptive track designation shall be determined based solely on the lead indictment or

charge unless a judge, for good cause shown, determines that a different track designation shall apply. In addition, the judge or clerk shall set forth dates for the filing and hearing of discovery motions and shall set a date for the filing of the Certificate of Compliance under Mass. R. Crim. P. 14(a)(3) .

III. Case Track Designations

Cases shall be assigned a presumptive case track at arraignment that will establish a presumptive time period for disposition of the case. Cases shall be designated “A”, “B”, or “C” track cases based on the offense charged in the indictment, and on consideration of any extenuating or special circumstances raised by the parties. In the event more than one charge exists, the case track shall be the longest track determined by reference to the charges.

There shall be three criminal case tracks as follows:

“A”

Assaults and batteries (non-sexual)

Breaking and entering

Burglary

Civil rights offenses

Destruction of property

Firearms offenses

Larcenies

Mayhem

Narcotics offenses (other than Trafficking/Subsequent Offenses)

Operating under the influence

“B”

Arson

Embezzlement

Fraud

Home invasion

Larcenous scheme

Robberies

Sexual offenses other than rape

Motor Vehicle Homicide

Trafficking/Subsequent Offense Narcotics

“C”

Kidnapping

Manslaughter

Murder

Rape

Accessories to specific offenses, assaults with the specific intent to commit other offenses, attempts, cases carrying enhanced penalties, and conspiracies shall receive the same case track designations as provided for the underlying offenses.

The clerk shall enter the case track designation on the court’s electronic docket, and shall enter the scheduled dates for pre-trial and trial proceedings in a Scheduling Order.

IV. Automatic Discovery

Automatic discovery, as defined by Mass. R. Crim. P. 14(a), shall be provided, or notice thereof given, at arraignment if possible, or thereafter at the earliest time possible, in the exercise of due diligence, in order to permit the Commonwealth and the defendant sufficient time in advance of the pre-trial conference to evaluate the case and meaningfully participate in a pre-trial conference.

V. The Pre-Trial Conference

The prosecuting attorney and defense counsel shall confer prior to the scheduled pre-trial hearing in order to conference the case and to prepare a written pre-trial conference report. In accordance with Mass. R. Crim. P. 11(a), the defendant shall be available for attendance at the pre-trial conference. Further, the court may require the conference to be held at court under the supervision of a judge or magistrate. The pre-trial conference may occur on the same day as

the pre-trial hearing provided that the prosecution has furnished discovery to the defendant at least seven days prior to the pre-trial hearing.

The parties shall discuss those matters set forth in Mass. R. Crim. P. 11(a)(1), and shall reflect the results of the conference in the written conference report filed in accordance with Mass. R. Crim. P. 11(a)(2). Counsel shall also discuss whether the case can be disposed of by means of a plea and, if so, shall propose a date for change of plea within the conference report. Except where the parties have tentatively reached an agreement to resolve the case by change of plea, counsel shall set forth within the conference report proposed dates for any anticipated pretrial events (motion filing and hearing dates, etc.) and a proposed trial date which shall be determined according to the designated case track for the lead charge of the indictment.

VI. The Pre-Trial Hearing

Counsel who are going to try the case shall attend the pre-trial conference and pre-trial hearing and shall personally sign the conference report. In all cases the defendant shall be available for the pre-trial hearing in the courthouse, and shall sign the completed conference report when necessary to waive constitutional rights or when the report contains stipulations as to material facts. The conference report shall be tendered to the first session judge for his examination and approval before the clerk accepts it for filing.

The first session or room list judge shall personally meet with counsel and examine the proposed conference report so as to bring it into conformity with the spirit and language of Mass. R. Crim. P. 11. The judge shall determine the likelihood of trial, its length, and the issues in dispute. At this hearing the judge has the responsibility to foster plea negotiations within constitutional parameters and may, in her discretion, send the case to any available criminal session for a pre-trial hearing, and the judge sitting in the receiving session shall conduct the pretrial hearing.

At the pre-trial hearing, the judge shall confirm the case track designation assigned at arraignment or designate a different track in accordance with Section III. In the event the parties are unable to resolve the case and seek further dates, the judge shall thereafter establish dates for the filing of any disputed motions, hearing dates, a final pre-trial conference, and a trial date. In the event that such dates are scheduled in a session other than the first or room list session, such dates shall be tentative until approved by the first session or room list judge.

VII. Final Case Track Designation

At the pre-trial hearing, the judge shall confirm the case track designation assigned at arraignment or designate a different track in accordance with Section III. In the event the parties are unable to resolve the case and seek further dates, the judge shall thereafter establish dates for the filing of any disputed motions, hearing dates, a final pre-trial conference, and a firm trial date. In the event that such dates are scheduled in a session other than the first session, such dates shall be tentative until approved by the first session or room list judge.

In confirming the final case track designation applicable to the case, the judge may consider whether any special circumstances exist to warrant placing the case on an alternate track. Special circumstances may be raised orally by counsel at the pre-trial hearing or may be set forth in a written submission to the court. Special circumstances include, but are not limited to: unavailability of a victim or essential witness; information relating to the victim's capacity to testify at trial within the time frame established by the case track; issues relating to a defendant's competency to stand trial or criminal responsibility; the need for a change of venue based on pretrial publicity; existence of multiple defendants; anticipated delays occasioned by necessary forensic or scientific testing (e.g. DNA testing, drug analysis of multiple samples, etc.); necessity for extended pre-trial hearings such as *Daubert/Lanigan, Dwyer/Lampron, Adjutant, Blaisdell*-type hearings, or similar proceedings; but not including motions to dismiss or motions to suppress statements, evidence, search warrants, or identifications. Counsel shall be afforded an opportunity to be heard regarding the existence of any special circumstance.

After consideration of special circumstances, the judge shall confirm the final case track designation applicable to the case and shall so designate on the record. Cases designated on the "A" Track shall presumptively be tried within 180 days of arraignment. Cases designated on the "B" Track shall presumptively be tried within 270 days of arraignment. Cases designated on the "C" Track shall presumptively be tried within 360 days of arraignment.

Following the court's determination of the final case track designation, the judge, in consultation with counsel, shall schedule a trial date, falling within the presumptive time periods set forth above. The judge shall also schedule dates for any contemplated pre-trial proceedings as reflected in the pre-trial conference report, and shall schedule a final pre-trial conference fourteen days prior to the assigned trial date. The selection of a trial date by trial counsel, either as reflected in the pre-trial conference report or following the pre-trial hearing, shall be deemed to be the equivalent of the district attorney placing the case on the trial list under G.L. c. 278, §1 , and in accordance with Mass. R. Crim. P. 11 (a)(1)(C) , shall not be changed without express permission of the court.

VIII. Amendments to the Scheduling Order

The court recognizes that there are cases which by their very nature and complexity require special tracking standards and, as well, that unanticipated events may delay the trial of a case or require that a previously determined date be extended or continued. Therefore, a Scheduling Order may, from time to time and for good cause shown, be amended upon oral motion of the parties. Special consideration for extending a Scheduling Order shall be given when the request is jointly made by the prosecutor and defense attorney and supported by good cause. All requests for an enlargement or limitation of a scheduled event shall in the first instance, be made by oral motion to the judge sitting in the session where the case is assigned. If the session judge hearing the motion denies the motion to enlarge or amend the Scheduling Order, the aggrieved party may file a motion for reconsideration with the session judge who heard the oral motion. The motion for reconsideration shall be in writing and set forth a statement specifying in detail the facts upon which the moving party then relies in support of said motion.

The motion for reconsideration, and any opposition thereto, shall be submitted on the briefs without personal appearance or oral argument by counsel within seven days of the denial or the oral motion.

In the event the Scheduling Order is amended, the clerk shall enter the amended dates in the court's electronic docket and shall revise the Scheduling Order accordingly.

IX. Early Disposition Procedure

At any time within 45 days of the pre-trial conference, counsel may advance the case for an early disposition by notifying the first session or room list clerk who shall schedule the case for a hearing.

X. Final Pre-Trial Conference

A final pre-trial conference shall be held fourteen days prior to the scheduled trial date. Trial counsel shall attend the final pre-trial conference. Prior to the conference, counsel shall meet for the purpose of preparing a Joint Pre-trial Memorandum, which shall be filed with the court at the time of said final pre-trial conference. Unless all counsel agree otherwise, counsel for the Commonwealth shall be responsible for preparing and circulating the first draft of the memorandum which shall contain the following component parts:

(1) Agreed statement of facts to be read to the jury during impanelment. (If counsel are unable to agree, each attorney shall submit a proposed statement of facts);

(2) Proposed stipulations of the parties;

(3) List of names of prospective witnesses;

(4) List of proposed exhibits;

(5) Statement of disputed legal issues, including but not limited to evidentiary issues (i.e. privilege, immunity, fresh complaint testimony, rape-shield, etc.);

(6) List of anticipated pre-trial or trial motions to be heard by the trial judge;

(7) Whether the defendant or any witness is in custody, and if so, where;

(8) Whether the defendant or any witness requires an interpreter or other similar needs and, if so, the language or service sought; and

(9) Estimated length of trial.

XI. Continuances of Trial Date

A motion to continue a trial date, once set or confirmed by the court, shall be in writing and supported by good cause in conformity with Mass. R. Crim. P. Rule 10. Such motion shall include the following:

(a) whether the motion is a joint motion; and if not a joint motion, state, if known, whether there is opposition;

(b) the defendant's custody status;

(c) the specific grounds for the requested continuance, including when counsel learned of the grounds necessitating the request;

(d) the date when the case was first assigned a trial date;

(e) whether the trial date has been previously continued and, if so, the number of such continuances and the reasons therefor.

Special consideration for continuing a trial date shall be given when a motion to continue is jointly made by the prosecutor and defense attorney.

If the judge denies any motion to continue the trial, the judge shall state the reasons for such denial.

XII. Procedures Applicable to the First Session

In counties utilizing a first session the following procedures shall apply. In counties utilizing a room list system of case assignments, the room list session shall perform the proceedings described below.

The first session shall receive all presentments by the grand jury, shall conduct all arraignments, bail reviews, dangerousness hearings, and other pre-trial hearings and proceedings. The first session judge may utilize a magistrate's session to conduct arraignments, bails and pretrial proceedings as assigned by the first session judge, and may also transfer cases to available criminal sessions for discrete events (e.g. a pre-trial conference or pre-trial hearing). All trial dates shall be set in the first session and all motions for continuance or amendment to the case track designation shall take place in the first session.

The first session judge shall assign cases scheduled for trial to the criminal trial sessions then sitting. Ordinarily, cases involving defendants in custody, defendants whose pre-trial liberty is reasonably believed to present unusual risks to society, and cases given priority by statute (i.e., criminal proceedings for sex crimes involving child victims or witnesses), shall be given priority.

Once in every two months, the Regional Administrative Justice or his/her designee shall conduct a tracking review of all cases that have been scheduled but not reached for trial within

the presumptive time, as amended or extended by the court. All such cases shall be prioritized for trial at the earliest available date.

XIII. Multi-Location, Single Session, and Specialized Session Counties

In those counties where from time to time there are only single judge criminal sessions or counties where there are specialized sessions, the duties imposed upon the first session judge by part XII may be modified as necessary.

XIV. Judicial Discretion

It is understood that specific situations may arise from time to time which require some variation from the procedures set forth above. In the interest of justice and to address specific concerns in unusual circumstances, and in the promotion of judicial efficiency, the first session judge, in his or her sound discretion, may extend the time periods and alter procedural requirements herein before mandated.

XV. Effect of this Standing Order

The procedures set forth herein are intended to facilitate the timely, fair and accurate resolution of criminal cases and to ensure the efficient use of court resources. They do not supplant any existing rule of criminal procedure or statute. A defendant's statutory right to a speedy trial is determined by Mass. R. Crim. P. 36 and not by reference to this Standing Order.

June 1, 2009, effective September 8, 2009.

Standing Order 1-83: Civil Action Cover Sheets

Applicable to all counties

In order to facilitate court case data collection and the transfer procedure in the Superior Court Department in the several counties of the Commonwealth pursuant to G.L. c. 231, s. 102C and Rule 29 of the Superior Court Department (1974) as amended, it is hereby ORDERED that:

1. The Clerk-Magistrate of the Superior Court Department in each county shall make available a "Civil Action Cover Sheet ." Form MTC 002 shall be used for that purpose.

2. The Clerk-Magistrate not accept for filing any Complaint or other Pleading (hereafter "Complaint") which commences a civil action unless accompanied by a Civil Action Cover Sheet completed and signed by the attorney or pro se party filing such pleading.

3. The Clerk-Magistrate, however, is authorized to accept for filing a Complaint without a Civil Action Cover Sheet submitted therewith if the Clerk-Magistrate is satisfied by representation of the offering counsel or pro se party, by averments, in the Complaint, or otherwise, that the

Statute of Limitations will run before the filing of the Civil Action Cover Sheet can be accomplished. In such event, the Civil Action Cover Sheet shall be filed within ten (10) days thereafter.

4. Failure to file the Civil Action Cover Sheet within that time will result in the imposition by the court of sanctions in the form of costs.

5. The Clerk-Magistrate is further directed to report periodically, in writing, to the Administrative Justice of the Superior Court Department, actions in which there has been a failure to comply with the notice to file a Civil Action Cover Sheet.

6. The Clerk-Magistrate is authorized to rely upon the representations contained in a Civil Action Cover Sheet as to the amount of damages claimed or expected in determining whether to transfer civil actions to the District Court Department. The Clerk-Magistrate is further authorized to transfer to the District Court Department any Civil Action in which the Clerk-Magistrate finds that there is a willful failure to comply with the notice to file a Civil Action Cover Sheet.

Adopted December 1, 1983.

Standing Order 1-82: Chapter 231, Section 60B, of the General Laws-Medical Malpractice Action against Provider of Health Care

Amended

Applicable to All Counties

In order to expedite the handling of medical malpractice tribunals pursuant to G.L. c. 231, s. 60B , it is hereby ORDERED, effective November 1, 1982, that:

1. Whenever an action for malpractice, error, or mistake against a provider of health care, as defined in the statute, has been entered in the office of a Clerk-Magistrate of the Superior Court (in Suffolk County the Clerk-Magistrate for Civil Business), the Clerk-Magistrate shall, upon the filing of the defendant's answer, forthwith notify in writing the applicable Regional Administrative Justice, enclosing a copy of the complaint and answer.

2. Thereafter, the Regional Administrative Justice shall designate a justice sitting within his region as a single justice to convene a medical malpractice tribunal.

3. With respect to such medical malpractice tribunals, three copies of the plaintiffs offer of proof (G.L. c. 231, s. 60B, para. 1) shall be filed with the Clerk and a copy provided to the defendant(s) not less than five (5) days prior to the date of the hearing before the tribunal.

4. Unless otherwise specifically ordered by the Regional Administrative Justice, the single justice designated by the Regional Administrative Justice to convene a medical malpractice tribunal shall retain jurisdiction of the case as to the hearing by the tribunal until the tribunal has

made its finding. Such continuing jurisdiction shall include and comprehend retention of the papers by the designated justice upon leaving the county in which the action is pending and, if necessary, a return by the justice to that county for the purpose of conducting the tribunal hearing.

This standing order supercedes Standing Order No. 1-82, dated October 20, 1982.

Adopted October 20, 1982, effective November 1, 1982. Amended August 25, 1988, effective October 1, 1988; amended effective December 5, 1994.

Standing Order 5-81: Uniform Procedures Regarding Petitions for Abortion Authorization under G.L. c. 112, § 12

Amended

Applicable to all Counties

(1) Upon the filing of a petition or motion (petition) under G.L. c. 112, § 12S , inserted by St. 1980, ch. 240 (a copy of which is attached), the Clerk-Magistrate (clerk) shall immediately bring the matter to the attention of the Regional Administrative Justice or His/Her Designee who will either hear the petition in his/her session or, through the clerk, assign it for a hearing in another session.

In any event, the matter shall be given priority over all other cases then pending "so that the court may reach a decision promptly and without delay so as to serve the best interests of the pregnant woman." G.L. c. 112, § 12S , inserted by St. 1980, ch. 240 . In this regard, the court should not decline to decide a case brought under § 12S because of any pleading omissions or other technical defects and shall assist the minor, particularly if unrepresented by counsel, in presenting relevant facts and by liberally construing the pleadings. (A copy of a form petition, which is to be made easily available to petitioners, is attached.)

If the petition is filed in a county in which no session is being held, the clerk of court who received the petition shall immediately notify the Chief Justice of the Superior Court by telephone of the pending petition. The Chief Justice shall then take such action as is necessary to reach a decision promptly and without delay so as to serve the best interests of the pregnant woman.

(2) Although § 12S permits a pregnant woman less than eighteen years of age to participate in proceedings in the Superior Court Department in her own behalf, it is preferable that the minor be represented by counsel. The statute requires that the court advise her that she has a right to court-appointed counsel and that the court shall, upon her request, provide her with such counsel.

Also, the court may appoint a guardian ad litem to represent the minor or may make such other orders as necessary pursuant to Mass. R. Civ. P. 17(b) . The compensation for counsel and/or

for the guardian ad litem shall be certified by the justice as an expense incident to the operation of the court. If the minor requests waiver of costs and fees, as provided by St. 1980, c. 539 , such costs and fees are to be waived.

(3) As provided by § 12S , all proceedings shall be confidential and all pleadings and other papers filed shall be designated anonymously. For example, the proceedings shall be titled Mary Moe, Mary Doe, etc. If the minor files papers which do not insure her anonymity, the court shall have the papers processed in a manner which will insure anonymity and shall return the defective papers to the minor or her counsel. An affidavit shall accompany the papers in the case. Such affidavit shall reveal the minor's true identity. The affidavit shall be sealed in an envelope which will be identifiable by having the docket number of the case inscribed upon it. All such envelopes shall be kept in a separate file by the clerks of the various courts. All papers in the proceeding shall be impounded.

The clerks of the various courts should undertake to insure that the minor's contact with the clerk's office is confidential and expeditious to the fullest extent practicable. For example, assistance in filing a petition should be provided in a confidential setting, such as a private office. Similarly, one or more persons in the clerk's office should be at all times available to answer questions asked by a minor, either in person or by phone, and to assist the minor in expeditiously presenting her petition to the court. Each clerk shall designate one or more persons to receive and process § 12S petitions and shall insure that one such person is available to insure prompt treatment.

(4) All proceedings under c. 112, § 12S , shall be conducted jury-waived with a court reporter present. The statute requires the court to make in writing specific factual findings and legal conclusions supporting his or her decision and to order that a record of evidence be maintained which includes his or her own findings and conclusions.

(5) Suggested guidelines, originally emanating from a memorandum of the Single Justice for Suffolk County in Planned Parenthood League of Massachusetts v. Bellotti, No. 81-124 Civil (Supreme Judicial Court for Suffolk County; Liacos, J. Single Justice) (June 16, 1981), are attached hereto.

This standing order supersedes Standing Order No. 5-81, dated July 31, 1981. As added July 31, 1981, effective August 1, 1981; and amended, effective October 1, 1988.

PETITION
COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT DEPARTMENT

CIVIL ACTION NO. _____
(G.L. c. 112, § 12S)

_____ ss.

_____

IN THE MATTER OF MARY MOE PETITION

_____

1. This action is brought pursuant to G.L. c. 112, § 12S. By this action the plaintiff, a woman under the age of eighteen years, seeks an order of the Court permitting her to obtain an abortion.

2. The plaintiff is a resident of _____City or Town in the County of_____, Massachusetts.

3. The plaintiff is _____ years of age and is unmarried.

4. The plaintiff believes that she is approximately _____weeks pregnant.

5. (Cross out the section which does not apply).

One or both of the plaintiff's parents or guardians have refused to consent to the performance of an abortion.

The plaintiff has decided not to seek the consent of one or both of her parents or guardians.

6. (Cross out if inapplicable)

The plaintiff is unable to pay the fees and costs of this proceeding.

WHEREFORE, the plaintiff requests:

1. That this Court enter an Order authorizing a physician to perform an abortion on plaintiff without parental consent.

2. That these papers be impounded, to protect the privacy of the plaintiff.

3. (Cross out if you do not desire to have fees and costs paid by the Court).

That this Court waive payment of all fees and costs by plaintiff.

4. (Cross out if you do not want a lawyer to assist you at no charge).

That this Court appoint an attorney to represent the plaintiff at the Commonwealth's expense.

[Please sign "Mary Moe" and sign the affidavit provided by the clerk using your own name].

_____

Mary Moe

Date: _____

Suggested Guidelines

The following guidelines for handling § 12S petitions ("petitions") are suggested to the Superior Court. These guidelines are intended to supplement amended Superior Court Standing Order No. 5-81 and not to replace it.

1. Petitions should ordinarily be heard on any day the court is in session.

2. Petitions should be heard as expeditiously as possible upon filing with the Clerk/Magistrate's office, and on the same day if practical.

3. All technical defects in the proceedings and in the pleadings and papers should ordinarily be disregarded by the Court and by the Clerk/Magistrate.

4. Hearings must be confidential and should be held in the judge's lobby except where physically impossible. The petitioner ("minor") should be permitted to have present any person she desires (social worker, counselor, parent, friend), but the judge should exclude all unnecessary court personnel or others. The minor should be free to choose whether to go forward without counsel.

5. The minor should not be required to state her true name. After explaining the impoundment procedures used to ensure confidentiality, the judge may wish to ask the minor her true first name in order to address her by it during the hearing. The transcript should not contain the minor's full true name since she will have previously stated her identity on a sealed affidavit held by the Clerk/Magistrate pursuant to Superior Court Standing Order 5-81.

6. It is contemplated that the judge will conduct the hearing on a "two-tier" basis with "maturity" determined first, and "best interest" addressed only if maturity is not found.

7. As to the "maturity" finding, inquiry may be appropriate in such areas as the minor's age and school and work experience, any history of mental illness or other treatment relating to mental competence, and whether the abortion decision is a personal decision and not one forced upon the minor by another and whether the minor has discussed her decision with other persons. In any inquiry as to the minor's maturity and her understanding of the nature, consequences and significance of her abortion choice, or in any inquiry as to her best interests, it is suggested that the judge should avoid the creation of the appearance of seeking to promote a particular set of moral values by inquiring into the minor's or her parents' views as to the morality of abortion; or into whether the minor considers a fetus to be an "unborn child," as to whether the minor believes she is in some way taking or destroying life.

8. Where the court finds a minor is not mature, it must make a determination of whether the abortion or childbirth alternative is in her "best interest". The court may be guided in making such a determination by the substantially coextensive doctrine of substituted judgment. That doctrine essentially requires a court to determine what an incompetent person would choose were she fully competent, while bearing in mind her expressed choice and partial competency. Various considerations may be relevant to a "best interest" determination. As to this finding, the court may inquire into the minor's reasons for not seeking her parents' consent. Where the minor is accompanied by one parent who supports her petition, that support should be given great if not dispositive weight.

9. Where the court preliminarily concludes that the minor is mature, appointment of a guardian ad litem should ordinarily be unnecessary. Where the court preliminarily concludes that the minor is not fully mature, it should consider whether such an appointment is necessary to assure protection of the minor's best interest or whether it would lead to unnecessary delay, particularly if the minor is represented by counsel, or has been counseled by competent professionals, or is accompanied by a parent or other adult.

10. In view of the statutory mandate for expeditious decisions, petitions may be decided in chambers and should, in any event, be decided as promptly as possible, and ordinarily within twenty-four hours or less. The Clerk/Magistrate should inform the minor of the decision as soon as possible and in the manner which the minor requests.

11. The Judge or Clerk/Magistrate should give the minor a copy of an order under § 12S bearing the court's docket number, and a copy of her sealed affidavit bearing the same docket number. Where the decision can be made immediately, the Judge may choose to have the minor wait, deliver the order and a copy of the affidavit to her, and seal the original affidavit in her presence.

12. A petition should not be denied or a hearing delayed solely because the minor has not selected a particular clinic, hospital or doctor for performance of the abortion. If the judge

authorizes an abortion for an immature minor on the "best interest" basis, he may inquire into her contemplated plans in order to assure himself that the particular course of medical treatment she intends to follow will be in her best interests.

13. Appointed counsel in § 12S proceedings should be paid for in the same fashion as in criminal cases or in such other fashion as the Chief Administrative Justice of the Trial Court finds is best suited for such proceedings.

Standing Order 9-80: Requests for Special Assignment of Justices to Civil Actions

Applicable to All Counties. Applicable to All Civil Actions.

In order to facilitate and clarify the orderly processing of requests by counsel for assignment of certain civil actions to a justice to be specially designated for pre-trial or trial proceedings or both, it is hereby ORDERED that the following uniform procedure is to be employed:

1. Definition. The term "party" shall mean the attorney of record for a party, if represented by counsel, or, if the party is not represented by an attorney, the party acting pro se.

2. If all of the parties agree that a particular civil action should be specially assigned to a justice of the Superior Court, designated by the Chief Justice of the Superior Court, they shall jointly complete and execute a "Request for Special Assignment of a Justice" in the form annexed hereto marked "Request A" Request A shall in each instance be accompanied by a copy of the current docket entries.

3. If a party (but not all of the parties) desires such a special assignment, the party(ies) seeking the assignment shall complete and execute a "Request for Special Assignment of a Justice" in the form annexed hereto marked "Request B." Request B shall in each instance be accompanied by a copy of the current docket entries.

4. Request A, fully completed, shall be submitted by the parties to the Chief Justice for his/her consideration and action thereon.

5. Request B, fully completed, shall be submitted by the requesting party(ies) to the Chief Justice for his/her consideration and action thereon. The submitting party(ies) shall notify all nonassenting parties of the submission to the Chief Justice; nonassenting parties will have *seven days from receipt* of the Request to submit a letter to the Chief Justice in opposition to the Request succinctly stating the grounds for the opposition thereto. Additionally, nonassenting parties may also recommend judges who would be acceptable for the special assignment should the request be approved by the Chief Justice.

6. Even if all parties have agreed, in his/her discretion the Chief Justice may require a conference with the parties before taking action on a Request. If so, the parties will be notified seasonably of time and place.

7. The Chief Justice will notify all parties of his/ her decision on each Request submitted, and, if allowed, of the identity of the justice specially appointed.

This standing order supercedes Standing Order 9-80 dated August 25, 1988.

Adopted December 1, 1980. Amended August 25, 1988, effective October 1, 1988; amended January 17, 2000, effective February 28, 2000.

Request A

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
CIVIL ACTION NO._____

_____ ss.

_____

vs.

_____

JOINT REQUEST FOR SPECIAL ASSIGNMENT

[Pursuant to Standing Order No. 9-80, as Amended]

All of the parties to the above-entitled action jointly request that this case be assigned to a justice of the Superior Court to be specially designated by the Chief Justice to conduct proceedings herein. A copy of the current docket entries is attached hereto.

1. List **all** parties (including third-parties) and counsel of record.

Plaintiffs / Counsel

_____

_____

Defendants / Counsel

_____

_____

2. Please provide a brief description of the case.

3. Why should this case be specially assigned? Are there any novel issues or questions of law? What is the expected length of the trial?

4. Counsel (parties) have conferred and all agree that the following judges would be acceptable for this special assignment[1]:

1.
2.
3.
4.
5.
6.

_____

_____

(Counsel for) All Plaintiffs

_____

_____

(Counsel for) All Defendants

Dated:

(1) It is understood that the Chief Justice reserves the right, however, to designate any justice of the court.

Request B

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
CIVIL ACTION NO._____

_____ ss.

_____

vs.

_____

REQUEST (NON-JOINT) FOR SPECIAL ASSIGNMENT

[Pursuant to Standing Order No. 9-80, as Amended]

The following parties to the above-entitled action request that this case be assigned to a justice of the Superior Court to be specially designated by the Chief Justice to conduct the proceedings herein. A copy of the current docket entries is attached hereto.

1. List all parties (including third-parties) and counsel of record.

Plaintiffs / Counsel

_____

_____

Defendants / Counsel

_____

_____

2. Please provide a brief description of the case.

3. Why should this case be specially assigned? Are there any novel issues or questions of law? What is the expected length of the trial?

4. List the names of **all** parties opposing this request:

5. The requesting party suggests that the following judges would be acceptable for this special assignment[1]:

1.
2.
3.
4.
5.
6.

_____

_____

_____

Attorneys for the requesting party(ies).

Dated:

(1). It is understood that the Chief Justice reserves the right, however, to designate any justice of the court.

Adopted December 1, 1980. Amended August 25, 1988, effective October 1, 1988; amended January 17, 2000, effective February 28, 2000.

Administrative Directive 09-1, Business Litigation Sessions

Superior Court Business Litigation Sessions

The Business Litigation Sessions of the Superior Court (BLS) are permanent sessions of the Superior Court located in the Suffolk County Superior Court. The Suffolk County Civil Clerk's Office is the clerk's office for the BLS.

If a plaintiff, when filing an action, seeks to have a case accepted into the BLS, the plaintiff shall file the case in the Suffolk County Civil Clerk's Office and complete the BLS Civil Action Cover Sheet, articulating the reasons why the plaintiff believes the case should be accepted into the BLS. Failure to complete the BLS Civil Action Cover Sheet will result in the case being assigned to a Suffolk County Time Standards Session. A copy of the completed BLS Civil Action Cover Sheet shall be served on all defendants with the complaint.

The complaint, with the BLS Civil Action Cover Sheet, shall be brought forthwith by the clerk to the BLS Administrative Justice, who will determine whether to accept the case into the BLS. Cases that fall within any of the following categories may be accepted into the BLS in the sound discretion of the BLS Administrative Justice, based principally on the complexity of the case and the need for substantial case management:

a.1 claims relating to the governance and conduct of internal affairs of entities
a.2 claims relating to employment agreements
a.3 claims relating to liability of shareholders, directors, officers, partners, etc.

b.1 shareholder derivative claims
b.2 claims relating to or arising out of securities transactions

c.1 claims involving mergers, consolidations, sales of assets, issuance of debt, equity and like interests

d.1 claims to determine the use or status of, or claims involving, intellectual property
d.2 claims to determine the use or status of, or claims involving, confidential, proprietary or trade secret information
d.3 claims to determine the use or status of, or claims involving, restrictive covenants

e.1 claims involving breaches of contract or fiduciary duties, fraud, misrepresentation, business torts or other violations involving business relationships

f.1 claims under the U.C.C. involving complex issues

g.1 claims arising from transactions with banks, investment bankers and financial advisers, brokerage firms, mutual and money funds

h.1 claims for violation of antitrust or other trade regulation laws
h.2 claims of unfair trade practices involving complex issues

i.1 malpractice claims by business enterprises against professionals

j.1 claims by or against a business enterprise to which a government entity is a party

k.1 other commercial claims, including insurance, construction, real estate and consumer matters involving complex issues.

If a case is accepted into the BLS, the BLS Administrative Justice shall assign the case to either the BLS1 Session or the BLS2 Session and issue a Notice of Acceptance into the Business Litigation Session. If a case is not accepted into the BLS, the BLS Administrative Justice shall issue a Notice of Denial of Acceptance into the Business Litigation Session, and the case shall be assigned to or returned to a Time Standards Session.

Where a case has been accepted into the BLS, once each defendant has filed a responsive pleading, or has been defaulted for failure to do so, the clerk of the assigned BLS session shall schedule a Rule 16 conference to establish a Tracking Order appropriate to the case. The parties shall confer with each other prior to this Rule 16 conference in an attempt to agree upon, or narrow their differences as to, a proposed Tracking Order.

Nothing in this Administrative Directive changes the statutory requirements for venue. Since improper venue may be waived, the BLS Administrative Justice does not consider the appropriateness of venue in determining whether to accept a case into the BLS. If a plaintiff files a complaint in Suffolk County without proper venue, and the case is accepted into the BLS, any party may move to dismiss or transfer the case for improper venue, and the case shall be dismissed without prejudice or transferred in accordance with G.L. c. 223. Failure to file such a motion within the time limits prescribed by Mass. R. Civ. P. 12(h)(1) shall constitute a waiver of improper venue.

If a plaintiff files an action in Suffolk County and does not seek to have the case accepted into the BLS, or if a plaintiff files an action in any other county, and the case is therefore assigned to a Time Standards Session, any party may move to transfer the case to the BLS by filing, in the Time Standards Session, pursuant to Superior Court Rule 9A , a motion for transfer. Where a case has been filed in a county other than Suffolk, if a party fails to oppose a motion to transfer, the failure shall be deemed a waiver of the defense of improper venue. If a motion to transfer to the BLS is approved by the judge in the Time Standards Session, the clerk of the Time Standards Session shall promptly bring the motion to the attention of the BLS Administrative Justice, who will allow or deny the motion. Consequently, the case shall be transferred to the BLS only with the approval of, first, the judge in the Time Standards Session and, second, the BLS Administrative Justice.

Effective: January 19, 2009

Rules Governing Persons Authorized to Admit to Bail Out of Court

Rule 1 Definitions

A. "Bail Magistrate" is a person authorized to admit to bail out of court, including a clerk-magistrate or assistant clerk of the Superior Court, District Court, or Boston Municipal Court who has registered with the Office of Bail Administration, a bail commissioner inside or outside of Suffolk County, or, if appointed by the Governor in accordance with G.L. c. 221, § 53or G.L. c. 218, § 36 , a master in chancery or a justice of the peace, respectively.

B. "Jurisdiction" refers to the territory within which a bail magistrate may set or take bail or release on personal recognizance.

C. "Division" refers to the Brighton, Central, Charlestown, Dorchester, East Boston, Roxbury, South Boston, or West Roxbury Division of the Boston Municipal Court.

D. "Home Court" - with respect to bail commissioners, it refers to the district court or county listed in their commissions of appointment. With respect to Superior Court clerk-magistrates and assistant clerks, it refers to the superior courthouse in the county where their designated office is located. With respect to District or Boston Municipal Courts clerk-magistrates and assistant clerks, it refers to the district or division, respectively, listed in their commissions or the district or division to which they are regularly assigned.

E. "Professional Bondsman" refers to a person or agent for a corporation who acts as a bail or surety for a defendant in a criminal case and who has received, has been promised, or expects to receive a fee, pay, or reward for acting as bail or surety. Such person must be approved and registered as a professional bondsman by the Superior Court.

Rule 2

The Chief Justice of the Superior Court shall establish a Superior Court Committee on Bail for the purpose of appointing bail commissioners, drafting rules governing bail magistrates, overseeing the bail magistrates, and enforcing compliance by all bail magistrates with applicable statutes and rules.

Rule 3

The purpose of setting terms for any pre-trial release is to assure the presence at court of the person released. Any person charged with an offense other than an offense punishable by death, or for any offense on which a warrant of arrest has been issued by the Superior Court, is required by law to be released on his personal recognizance pending trial unless the person setting the terms of release determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required. In making a determination as to whether to release a person on personal recognizance or bail, the bail magistrate shall consider the factors set forth in G.L. c. 276, § 58 . Each decision shall be reached on the basis of all available information pertaining to the factors set forth in the statute.

Rule 4

These rules shall apply only to out of court releases by bail magistrates on personal recognizance or bail. They shall apply even when the setting of bail was done by another if the taking of bail is done by them.

Rule 5

Bail magistrates shall comply with all laws governing their activities, including the provisions set forth in these rules. Failure to comply with such laws or rules may result in the suspension or termination of the power of the bail magistrate to admit persons to bail.

Rule 6

All bail magistrates shall comply with any training and educational requirements established by the Office of Bail Administration.

Rule 7

Clerk-magistrates and assistant clerks of the Superior, District, and Boston Municipal Courts who admit persons to bail must register with the Office of Bail Administration on a form approved by the Superior Court before exercising the authority of a bail magistrate. Any of the above who fails to so register shall not be authorized to admit persons to bail.

Clerk-magistrates and assistant clerks of the Superior, District, and Boston Municipal Courts and bail commissioners employed by the court shall not permit their out of court bailing activities to interfere with their regular court duties or attendance in court.

While clerk-magistrates must maintain the proper functioning of their offices, they shall not unreasonably restrict or exclude an assistant clerk from participating in out of court bailing.

Rule 8

The jurisdiction of clerk-magistrates and assistant clerks of the Superior Court shall be limited to the county in which they are elected or appointed, respectively. They may admit to bail any person held within their county even when such person is held on charges outside of that county.

Rule 9

The jurisdiction of clerk-magistrates or assistant clerks of the District and Boston Municipal Courts to admit a person to bail shall be limited to the district or division, respectively, to which they are appointed. They may admit to bail any person held within their district or division even when such person is held on charges outside of that district or division.

Rule 10

The jurisdiction of bail commissioners to admit a person to bail shall be limited to the geographical area contained in their commission. They may admit to bail any person held within their geographical area even when such person is held on charges outside of that geographical area.

Rule 11

The jurisdiction of masters in chancery and justices of the peace to admit a person to bail shall be limited to the county or judicial district, respectively, to which they are appointed. They may admit to bail any person held within their county or judicial district even when such person is held on charges outside of that county or judicial district.

Rule 12

The jurisdiction of clerk-magistrates or assistant clerks of the District and Boston Municipal Courts may be extended to any other judicial district or division, respectively, by written permission of the Chief Justice of their court. A copy of the application for such permission shall be sent to the Office of Bail Administration by the applicant, and if approved, a copy of the

permission shall be forwarded to the Office of Bail Administration by the Chief Justice of such court.

Rule 13

The jurisdiction of bail magistrates may be temporarily extended to any other judicial district or division by a Justice of the Superior Court upon notification by the Office of Bail Administration that emergency coverage is required. Such coverage authorizations shall be for a specific period of time, but may be extended in the same manner as originally authorized.

Rule 14

The fee charged by a bail magistrate is governed by G.L. c. 262, § 24 . The statute provides that such fee shall be received only by the bail magistrate who goes to the place of detention and completes the release. Fee splitting arrangements are prohibited.

This rule does not prohibit the taking of bail or releasing on personal recognizance for less than the maximum fee or without charge. However, if a fee is charged, payment shall be made in advance of the release.

The bail magistrate shall release a person without charging a fee if circumstances justify the release and the person is not able to pay the fee.

Clerk-magistrates and assistant clerks of the Superior, District, and Boston Municipal Courts and bail commissioners employed by the court shall not receive any fee or compensation, in addition to their salaries, for releasing a prisoner on bail or on personal recognizance during regular court hours.

Rule 15

A bail magistrate shall not receive anything other than the statutory fee for admitting a person to bail.

Rule 16

Unless restricted by the Superior Court or the Chief Justice of the District or Boston Municipal Courts, all bail magistrates are entitled to participate fairly in the out of court bailing activity in their jurisdiction, so long as they are willing and able to respond to all calls for their services with reasonable promptness.

In order to effectuate the purposes of this rule and to provide prompt out of court bailing services to all jails and holding facilities in a jurisdiction, the Justices of the Superior Court Committee on Bail may prepare and implement a plan for such coverage. All bail magistrates authorized in a jurisdiction affected by such a plan shall comply with it.

The bail magistrate shall not unduly delay the release of a defendant for the purpose of stacking or combining multiple defendants for release at a police holding facility or jail.

Rule 17
A bail magistrate shall not respond to calls for their services from a professional bondsman, surety agent, or money lender. A bail magistrate may only respond to calls from a defendant, someone calling on the defendant's behalf, a defendant's attorney, or the authorities at a jail or facility holding the defendant.

Rule 18
A bail magistrate shall only administer an oath or affirmation if the affiant is physically present. An oath or affirmation shall not be administered by telephone.

Rule 19
A bail magistrate shall not delegate the authority to admit a defendant to bail to a police officer, jail official, professional bondsman, or any other person.

Rule 20
A bail magistrate shall perform the duties impartially, with dignity and in a manner that befits the performance of a judicial act.

Rule 21
A bail magistrate shall administer an oath to a defendant admitted to bail, and to each person accepted as surety, that such person will perform the requirements of his recognizance or bond.

Oaths administered in the course of admitting a defendant to bail shall be given with solemnity and dignity.

Rule 22
A bail magistrate must ensure that each defendant has his own recognizance. Two or more defendants cannot be joined in one recognizance, even if they are jointly charged with the same crime. Each recognizance must be accompanied by a separate affidavit.

Rule 23
A bail magistrate shall not accept as surety a bondsman who has received, who has been promised, or who expects to receive pay or reward for acting as surety unless such proposed surety is at the time duly registered as a professional bondsman.

If the surety offered is an agent of a surety company, the bail magistrate shall, before accepting the surety, satisfy himself that the company is authorized to act as surety in criminal cases in the Commonwealth; that it is financially sound; that the agent purporting to bind the surety company in recognizance is properly authorized to do so; that the surety company will deal fairly with the defendant in all respects; and that there are no conditions indicating that the surety company is likely to lose interest in assuring a defendant's presence in court.

Rule 24

A bail magistrate shall verify that a professional bondsman has registered with the Superior Court, and that such bondsman has the necessary assets to satisfy his outstanding bail bond obligations.

Rule 25

A bail magistrate shall not accept as surety any professional bondsman if it appears that such bondsman's obligations as surety in criminal cases will be greater than the limit set by Rule 22 of the Superior Court's Rules Governing Professional Bondsmen (1991).

Rule 26

If the security offered is of the kind authorized by G.L. c. 276, § 79 , a bail magistrate shall make careful inquiry as to the ownership of such property.

Rule 27

A bail magistrate shall not accept as surety any person who has previously been rejected as surety by any bail magistrate in the same proceeding.

Rule 28

A bail magistrate shall satisfy himself beyond a reasonable doubt that the person offered as surety is the person he claims to be.

Rule 29

The bail magistrate shall take all necessary steps to make certain that all persons admitted to bail and all sureties fully understand their obligations. This applies especially where such persons are not familiar with the English language. Bail magistrates must be equally certain that they understand the responses made by the persons admitted to bail or sureties under examination.

Rule 30

A bail magistrate shall not be a creditor of a defendant or a surety.

Rule 31

A bail magistrate shall not, directly or indirectly, provide substantive legal advice to a defendant whom he is admitting to bail as to any matter concerning the defendant's case. A bail magistrate may provide general procedural information to the defendant.

Rule 32

A bail magistrate shall not admit a person to bail in any proceeding in which he has acted or expects to act as counsel, nor shall he act as counsel in any proceeding in which he has at any time admitted such person to bail.

Rule 33

A bail magistrate shall not accept as surety any attorney or any such attorney's relative or employee if such attorney is directly or indirectly employed by the person being admitted to bail.

Rule 34

A bail magistrate shall not offer or give any gift, compensation, or reward to anyone for procuring or influencing the selection of a bail magistrate or for selecting any particular attorney or professional bondsman.

Rule 35

A bail magistrate is prohibited from taking or receiving any gift, commission, pay, or reward, tangible or intangible, from any person who lends money or offers bonds, bank books, or other securities to a person in custody or to any other person for the benefit of the defendant for use in depositing bail or security.

Rule 36

A bail magistrate is prohibited from procuring or recommending a particular professional bondsman or a person to lend the defendant money or property.

Rule 37

A bail magistrate is prohibited from referring a defendant to any attorney, a firm of attorneys, or other advisor, nor shall he, directly or indirectly, contact any such person on a defendant's behalf.

Rule 38

A bail magistrate shall not, directly or indirectly, lend or procure the lending of money, bonds, bank books, or other securities to a defendant or to any person for the benefit of the defendant for use in depositing as bail or security with himself or any other bail magistrate, or for use in paying, rewarding, or giving security to any professional bondsman, attorney, or other advisor.

Rule 39

A bail magistrate who releases an individual in custody on personal recognizance or on bail shall advise him of G.L. c. 276, § 82A , which provides that a person who fails to appear in court without sufficient excuse shall be punished by a fine of not more than $10,000 or by imprisonment in a house of correction for not more than one year, or both, in the case of a misdemeanor, and by a fine of not more than $50,000 and imprisonment in a state prison for not more than five years, or a house of correction for not more than two and one-half years, or by fine and imprisonment, in the case of a felony.

Rule 40

All bail magistrates shall maintain a dedicated checking account with the bail magistrate's name and the title "Bail Magistrate" listed on numbered checks. It shall be used exclusively for depositing and transferring bail funds, and must be of a type where monthly statements include a page or pages showing copies of cancelled checks. A bail magistrate is prohibited from

commingling personal funds with bail funds collected and deposited into the dedicated account. A bail magistrate may use personal funds to pay required bank fees. All bail funds not delivered to a court the following day shall be deposited into the dedicated checking account at the earliest feasible time. Bail funds to be delivered to courts outside of the bail magistrate's home court must be transferred using a check from the dedicated bail account and shall include on the check's memo line the defendant's name and docket number if available.

No later than five days after the dedicated bail account has been opened, the bail magistrate shall notify the Office of Bail Administration in writing of the name of the bank and the account number. A complete and accurate written register of account activity must be maintained at all times. The bail magistrate shall forward to the Office of Bail Administration copies of monthly statements from the dedicated bail account within seven days of receipt.

Separate checks must be used for each recognizance document transferred.

Rule 41

A bail magistrate may accept bail from a defendant or surety in the form of cash, a bank check, treasurer's or cashier's check, or U.S. Government money order made payable only to the bail magistrate authorizing the release.

Rule 42

The bail magistrate shall deliver all recognizances, certificates (affidavits) of sureties, other necessary documents, and all money, bank books, bonds and other security deposited with the bail magistrate to the clerk-magistrates' offices of the appropriate courts within the time frames established by this rule.

If the defendant is required to appear at the bail magistrate's home court, the bail magistrate shall deliver the recognizance, bail funds, and all other related items to the court no later than 8:30 a.m. on the next court day.

If the defendant is required to appear at a court outside the bail magistrate's home court, the bail magistrate shall deliver the recognizance, bail funds, and all other related items to the court by 4:30 p.m. on the third business day after the day on which the release was authorized. In addition, the bail magistrate must send by facsimile transmission or other electronic means a copy of the recognizance form to the appropriate court within 24 hours of the release. This responsibility may be satisfied where the jail or police authorities fax the recognizance, but the ultimate responsibility remains with the bail magistrate.

Rule 43

All certificates (affidavits) of sureties required by G.L. c. 276, § 61 , and any amendments thereof that may be made, shall comply with all requirements of the statute. All sureties shall answer the following questions under an oath administered by the bail magistrate:

"Have you received or been promised pay or reward for acting as surety in this case?"

"Do you expect to receive pay or reward or a promise of pay or reward for your becoming surety in this case?"

"Are you approved and registered with the Superior Court as a professional bondsman?"

(This question is to be answered whether or not the other answers of the surety indicate that he is acting for hire.)

"Have you become bail or surety in criminal cases on five separate occasions during the now current calendar year?"

The surety, pursuant to G.L. c. 276, § 61 , must complete an inventory of his net worth, including a full and detailed description of all personal and real property. A bail magistrate shall make careful inquiry as to the surety's ownership of such property. For example:

A. Motor vehicles, full information as to:

(a) mortgages, liens, and other encumbrances;

(b) engine number;

(c) make, type, mileage, and year of manufacture;

(d) nature of use being made of it;

(e) location of garage where it is usually kept; and

(f) assessed value, if any;

B. Shares of capital stock of corporations, full information as to:

(a) exact corporate name of corporation;

(b) name of state of incorporation;

(c) class of stock, whether common or preferred;

(d) par value of each share of stock;

(e) market value of the stock and whether listed on any stock exchange. If not listed, state where there is a market for the stock;

(f) whether or not the stock stands in the surety's name on the books of the corporation. If not in the surety's name, in whose name;

(g) whether or not the stock is subject to any existing pledge, mortgage, or other lien and, if it is, for how much and to whom and the nature of the obligation for which it is security; and

(h) whether or not dividends have been regularly paid on the stock and if so, how much in each of the last three years.

Rule 44

A bail magistrate shall submit a report on forms approved by the Superior Court, to the Office of Bail Administration by the second Monday of the month accounting for the total number of releases, i.e. cash bail releases, releases on personal recognizance, and releases for money owed to a court, that were authorized during the prior calendar month. Such report shall also include the totals of cash bail, bail fees, and other funds collected. The Superior Court may at any time amend such forms to require that additional information be reported.

The forms to be used for this purpose are the Bail Report Cover Sheet and the report page (yellow copy) from the recognizance form approved by the Court pursuant to G.L. c. 276, § 65 . They are attached hereto and included by reference as part of these rules.

All bail magistrates on active status shall submit a report each month even if no releases have been authorized during that reporting period.

Rule 45

A bail magistrate may request to be placed on inactive status as a bail magistrate by submitting a written request for inactive status with the Office of Bail Administration. A bail magistrate on inactive status shall not be authorized to admit anyone to bail out of court. The Office of Bail Administration shall notify all police holding facilities and jails within a bail magistrate's jurisdiction of his inactive status.

A bail magistrate on inactive status may return to active status by submitting a written request to the Office of Bail Administration. A bail magistrate's inactive status will be reactivated upon acknowledgment in writing by the Office of Bail Administration. The Office of Bail Administration may require a bail magistrate to participate in training sessions before being returned to active status.

Effective July 1, 2014

Footnote: Superior Court Rules Governing Professional Bondsmen, Rule 22

No bondsman shall become or at any time be surety in criminal cases for an amount of bail greater than the fair value of his property or the property of the company he represents, less encumbrances and liabilities, as stated in:

(a) His application for approval and registration, or
(b) If he has been required to make a statement under Rule 21, in the most recent statement so required and made.