

Table of Contents

PART I THE LAW OF CIVIL PROCEDURE

CHAPTER 1. INTRODUCTION TO THE FEDERAL COURT SYSTEM

- § 1:3 The present federal court system
- § 1:4 Other federal courts
- § 1:5 The Court of Appeals for the First Circuit
- § 1:6 The District Court for the District of Massachusetts

CHAPTER 2. THE FEDERAL RULES OF CIVIL PROCEDURE

- § 2:1 Which proceedings the federal rules govern
- § 2:2 The *Erie* problem
- § 2:7 Local Rules of the U.S. District Court for the District of
Massachusetts

CHAPTER 3. SUBJECT-MATTER JURISDICTION

- § 3:1 Introduction
- § 3:2 Exclusive federal jurisdiction
- § 3:4 Federal-question jurisdiction—Arising under
- § 3:5 Federal-question jurisdiction—Constitution, laws, or treaties
of the United States
- § 3:6 Federal-question jurisdiction—The well-pleaded complaint
rule
- § 3:7 Diversity jurisdiction—In general
- § 3:8 Diversity jurisdiction—Citizenship
- § 3:9 Diversity jurisdiction—Citizenship—Corporations
- § 3:10 Diversity jurisdiction—Citizenship—Unincorporated
associations
- § 3:12 Diversity jurisdiction—Citizenship—Classes
- § 3:13 Diversity jurisdiction—Citizenship—Decedents, infants, and
incompetents
- § 3:15 Diversity jurisdiction—Amount in controversy
- § 3:16 Diversity jurisdiction—Amount in controversy—Class
actions
- § 3:16.50 Diversity jurisdiction—Mass actions *[New]*
- § 3:18 Supplemental jurisdiction
- § 3:19 Supplemental jurisdiction—Limitations in diversity actions
- § 3:20 Supplemental jurisdiction—District court discretion
- § 3:21 Removal of actions—In general
- § 3:22 Removal of actions—Actions not removable

- § 3:24 Removal of actions—Specific actions removable—Actions against federal officers
- § 3:31 Removal of actions—Specific actions removable—Class actions
- § 3:33 Removal of actions—Procedure
- § 3:34 Removal of actions—Remand of removed actions
- § 3:35 Removal of actions—Remand of removed actions—Review of remand orders

CHAPTER 4. JURISDICTION OVER PERSONS AND THINGS

- § 4:1 Introduction
- § 4:2 Personal jurisdiction
- § 4:3 Personal jurisdiction—The Massachusetts long-arm statute
- § 4:4 Personal jurisdiction—Due-process requirements
- § 4:5 Personal jurisdiction—Due-process requirements—Minimum contacts
- § 4:6 Personal jurisdiction—Due-process requirements—Minimum contacts—Specific jurisdiction
- § 4:7 Personal jurisdiction—Due-process requirements—Minimum contacts—General jurisdiction
- § 4:8 Personal jurisdiction—Due-process requirements—Fair play and substantial justice: The Gestalt factors
- § 4:11 Notice requirements

CHAPTER 5. VENUE

- § 5:1 Introduction
- § 5:2 The general venue provision
- § 5:3 Specific venue provisions
- § 5:4 Change of venue and dismissal for forum non conveniens
- § 5:5 Change of venue—Multidistrict litigation

CHAPTER 6. CASE-OR-CONTROVERSY REQUIREMENT

- § 6:1 Introduction
- § 6:2 Standing
- § 6:3 Standing—Taxpayer standing
- § 6:4 Ripeness
- § 6:5 Mootness
- § 6:6 Advisory opinions
- § 6:7 Political questions

CHAPTER 7. ABSTENTION

- § 7:1 Introduction
- § 7:2 *Pullman* abstention
- § 7:3 *Burford* abstention
- § 7:4 *Younger* abstention
- § 7:5 The *Colorado River* doctrine

TABLE OF CONTENTS

CHAPTER 8. DETERMINING THE GOVERNING LAW

- § 8:2 The *Erie* doctrine
- § 8:3 The *Erie* doctrine and choice of law
- § 8:4 Massachusetts choice-of-law rules

CHAPTER 9. EFFECTS OF FORMER ADJUDICATION

- § 9:1 Introduction
- § 9:2 Res judicata (claim preclusion)
- § 9:3 Collateral estoppel (issue preclusion)

PART II OVERVIEW OF LITIGATION PROCESS

CHAPTER 10. THE LITIGATION PROCESS

- § 10:1 Introduction
- § 10:2 Commencement of the action
- § 10:3 Serving the complaint
- § 10:4 Responding to the Complaint or Answer [*Retitled*]
- § 10:5 Amending pleadings
- § 10:6 Motion practice
- § 10:7 Case management
- § 10:8 Discovery
- § 10:9 Final pretrial conference
- § 10:10 The trial process

PART III RULE-BY-RULE ANALYSIS OF FEDERAL RULES OF CIVIL PROCEDURE WITH CORRESPONDING LOCAL RULES

Federal Rules of Civil Procedure for the United States District Courts

I Scope of Rules—One Form of Action

- FRCP 1 Scope and Purpose
- AC 1:1 In General

II Commencement of Action; Service of Process, Pleadings, Motions, and Orders

- FRCP 4 Summons
- LR 4.1 Service of Process—Dismissal for Failure to Make Service
 - AC 4:5 Waiving of Service
 - AC 4:14 Territorial Limits of Effective Service
 - AC 4:16 Time Limit for Service
- FRCP 5 Serving and Filing Pleadings and Other Papers

- LR 5.1 Form and Filing of Papers
- LR 5.4 Filing and Service by Electronic Means
 - AC 5:3 How Service Made
 - AC 5:4 Filing
- FRCP 5.2 Privacy Protection for Filings Made with the Court
 - AC 5.2:1 In General
- FRCP 6 Computing and Extending Time; Time for Motion Papers
 - AC 6:1 Computing Time
 - AC 6:3 Extending Time
 - AC 6:4 Motions, Notices of Hearing, and Affidavits

III Pleadings and Motions

- FRCP 7 Pleadings Allowed; Form of Motions and Other Papers
- LR 7.1 Motion Practice
- FRCP 7.1 Disclosure Statement
 - AC 7.1:1 In General
- FRCP 8 General Rules of Pleading
 - AC 8:2 Claim for Relief
 - AC 8:4 Affirmative Defenses
- FRCP 9 Pleading Special Matters
 - AC 9:3 Fraud or Mistake; Conditions of Mind
- FRCP 10 Form of Pleadings
 - AC 10:2 Caption; Names of Parties
- FRCP 11 Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions
 - AC 11:1 General Scope
 - AC 11:4 Sanctions
- FRCP 12 Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing
 - AC 12:1 In General
 - AC 12:2 Time to Serve a Responsive Pleading
 - AC 12:4 Motion to Dismiss for Lack of Subject-Matter Jurisdiction
 - AC 12:5 Motion to Dismiss for Lack of Personal Jurisdiction
 - AC 12:6 Motion to Dismiss for Improper Venue
 - AC 12:8 Motion to Dismiss for Failure to State a Claim upon Which Relief Can Be Granted
 - AC 12:10 Motion for Judgment on the Pleadings
 - AC 12:11 Motion for a More Definite Statement
 - AC 12:12 Motion to Strike
 - AC 12:13 Joining Motions and Waiving and Preserving Certain Defenses
- FRCP 13 Counterclaim and Crossclaim
 - AC 13:8 Omitted Counterclaims
 - AC 13:9 Crossclaim against Coparty
- FRCP 14 Third-Party Practice
 - AC 14:1 Third-party Practice—In General
 - AC 14:2 Third-Party Practice—Admiralty or Maritime Claims

TABLE OF CONTENTS

FRCP 15 Amended and Supplemental Pleadings

LR 15.1 Addition of New Parties

AC 15:1 In General

AC 15:2 Amendments before Trial

AC 15:3 Amendments during and after Trial

AC 15:4 Relation Back of Amendments

AC 15:5 Supplemental Pleadings

FRCP 16 Pretrial Conferences; Scheduling; Management

LR 16.1 Early Assessment of Cases

LR 16.2 Exemptions From Fed.R.Civ.P. 16(b)

LR 16.3 Case Management Conferences

LR 16.4 Alternative Dispute Resolution *[New]*

LR 16.6 Scheduling and Procedures in Patent Infringement Cases *[New]*

AC 16:3 Scheduling Conferences and Orders

AC 16:7 Final Pretrial Conferences

AC 16:8 Sanctions

Rule 16.1 Multidistrict Litigation *[New]*

IV Parties

FRCP 17 Plaintiff and Defendant; Capacity; Public Officers

AC 17:4 Minor or Incompetent Person

FRCP 19 Required Joinder of Parties

AC 19:2 Persons Required to Be Joined if Feasible

AC 19:3 When Joinder is not Feasible

FRCP 21 Misjoinder and Nonjoinder of Parties

AC 21:1 In General

FRCP 22 Interpleader

AC 22:1 Interpleader—In General

FRCP 23 Class Actions

AC 23:2 Rule 23(a) Prerequisites *[Retitled]*

AC 23:6 Types of Class Actions—Class Seeks Final Equitable Relief

AC 23:7 Types of Class Actions—Predominance of Legal or Factual Questions

AC 23:11 Certification Order

AC 23:16 Dismissal or Compromise

AC 23:17 Appeals

AC 23:19 Attorney's Fees and Nontaxable Costs

AC 23:20 Statute of Limitations—Equitable Tolling

FRCP 23.1 Derivative Actions

AC 23.1:1 In General

FRCP 24 Intervention

AC 24:2 Intervention as of Right

FRCP 25 Substitution of Parties

AC 25:4 Transfer of Interest

V Depositions and Discovery

FRCP 26 Duty to Disclose; General Provisions Governing Discovery

- LR 26.2 Sequences of Discovery
 - AC 26:5 Required Disclosures—Expert Testimony
 - AC 26:8 Discovery—In General
 - AC 26:11 Discovery—Experts
 - AC 26:13 Protective Orders
- FRCP 30 Depositions by Oral Examination
 - AC 30:3 When Leave Required
 - AC 30:7 Depositions of a Corporation or Other Entity
 - AC 30:12 Review by Witness
- Rule 31 Depositions by Written Questions
- FRCP 32 Using Depositions in Court Proceedings
 - AC 32:5 Using Depositions—Unavailable Witness
 - AC 32:7 Limitations on Use
 - AC 32:8 Objections to Admissibility
- FRCP 33 Interrogatories to Parties
- FRCP 34 Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes
- FRCP 35 Physical and Mental Examinations
- LR 35.1 Disclosure of Medical Information in Personal Injury Cases
- FRCP 36 Requests for Admission
 - AC 36:5 Effect of an Admission; Withdrawing or Amending It
- FRCP 37 Failure to Make Disclosures or to Cooperate in Discovery; Sanctions
 - AC 37:5 Sanctions—Failure to Comply with Discovery Order
 - AC 37:6 Sanctions—Failure to Make Automatic Disclosures

VI Trials

- FRCP 38 Right to a Jury Trial; Demand
 - AC 38:3 Jury Demand
 - AC 38:4 Specifying Issues
 - AC 38:5 Waiver and Withdrawal of Jury Demand
- FRCP 39 Trial by Jury or by the Court
 - AC 39:3 When No Jury Demand is Made
 - AC 39:4 Advisory Jury
- FRCP 40 Scheduling Cases for Trial
- LR 40.1 Assignment of Cases
- LR 40.2 Conflict of Court Appearances
- FRCP 41 Dismissal of Actions
- LR 41.1 Dismissal for Want of Prosecution
 - AC 41:3 Voluntary Dismissal by Order of the Court
 - AC 41:5 Involuntary Dismissal—Failure to Comply with Rules or Order
 - AC 41:6 Involuntary Dismissal for Want of Prosecution
- FRCP 42 Consolidation; Separate Trials
 - AC 42:2 Consolidation
- FRCP 43 Taking Testimony
- LR 43.1 Trial

TABLE OF CONTENTS

- FRCP 44 Proving an Official Record
 - AC 44:3 Proving a Foreign Official Record
- FRPC 44.1 Determining Foreign Law
 - AC 44.1:1 In General
- FRCP 45 Subpoena
 - AC 45:3 Issuance
 - AC 45:4 Service
 - AC 45:4.50 Place of Compliance *[New]*
 - AC 45:5 Protecting a Person Subject to Subpoena
 - AC 45:6 Duties in Responding to a Subpoena
 - AC 45:6.1 Transferring Subpoena—Related Motions *[New]*
 - AC 45:7 Contempt
- FRCP 48 Number of Jurors; Verdict
 - AC 48:1 In General
- FRCP 50 Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling
 - AC 50:2 Judgment as a Matter of Law
 - AC 50:3 Renewed Motion for Judgment as a Matter of Law after Trial
 - AC 50:4 On Appeal
- FRCP 51 Instructions to the Jury; Objections; Preserving a Claim of Error
 - AC 51:3 Instructions
 - AC 51:4 Objections
 - AC 51:5 Assigning Error; Plain Error; and Appellate Review
- FRCP 52 Findings and Conclusions by the Court; Judgment on Partial Findings
 - AC 52:2 Findings and Conclusions
 - AC 52:3 Effect on Appeal
 - AC 52:4 Amended or Additional Findings
- FRCP 53 Masters
 - AC 53:6 Action on the Master’s Order, Report, or Recommendations

VII Judgment

- FRCP 54 Judgment; Costs
 - AC 54:2 Definition and Form of Judgment
 - AC 54:3 Judgment on Multiple Claims or Involving Multiple Parties
 - AC 54:4 Demand for Judgment; Relief to be Granted
 - AC 54:5 Costs Other Than Attorney’s Fees
 - AC 54:6 Attorney Fees and Related Nontaxable Expenses
- FRCP 55 Default; Default Judgment
 - AC 55:3 Entering a Default Judgment
 - AC 55:4 Setting Aside a Default or Default Judgment
 - AC 55:5 Default Judgments against the United States
- FRCP 56 Summary Judgment
 - LR 56.1 Motions for Summary Judgment
 - AC 56:2 Summary Judgment—In General
 - AC 56:4 Affidavits and Other Materials Relied Upon

- AC 56:5 Standard
- AC 56:7 Partial Summary Judgment
- AC 56:8 When Affidavits Are Unavailable
- AC 56:9 Sanctions for Bad Faith Affidavits
- AC 56:10 Appellate Review
- FRCP 58 Entering Judgment
- LR 58.2 Satisfaction of Judgments
 - AC 58:2 Separate Document
- FRCP 59 New Trial; Altering or Amending a Judgment
 - AC 59:1 Motions for New Trial
 - AC 59:2 Motions to Alter or Amend Judgment
- FRCP 60 Relief from a Judgment or Order
 - AC 60:2 Corrections Based on Clerical Mistakes or Mistakes Arising from Oversight or Omission
 - AC 60:3 Relief for Other Reasons
 - AC 60:5 Other Powers to Grant Relief
- FRCP 62 Stay of Proceedings to Enforce a Judgment
- LR 62.2 Supersedeas Bond
 - AC 62:2 Automatic 14-Day Stay *[Retitled]*
- FRCP 62.1 Indicative Ruling on a Motion for Relief That is Barred by a Pending Appeal *[New]*
 - AC 62.1:1 In General
- FRCP 63 Judge's Inability to Proceed
 - AC 63:1 In General

VIII Provisional and Final Remedies

- FRCP 65 Injunctions and Restraining Orders
 - AC 65:2 Preliminary Injunction
 - AC 65:3 Temporary Restraining Order
 - AC 65:4 Security
 - AC 65:5 Contents and Scope of Every Injunction and Restraining Order
- FRCP 65.1 Proceedings against a Surety
 - AC 65.1:1 Rule 65.1—In General
- FRCP 67 Deposit into Court
- LR 67.1 Sureties
- LR 67.4 Payments and Deposits Made with the Clerk
 - AC 67:2 Depositing Funds or Property into Court
- FRCP 68 Offer of Judgment
- LR 68.2 Settlement
 - AC 68:1 Offer of Judgment—In General
 - AC 68:2 Consequences of an Unaccepted Offer
- FRCP 69 Execution
 - AC 69:1 Execution—In General
- FRCP 71.1 Condemning Real or Personal Property
 - AC 71.1:4 Process
 - AC 71.1:5 Appearance or Answer
 - AC 71.1:8 Trial of the Issues

TABLE OF CONTENTS

IX Special Proceedings

- FRCP 72 Magistrate Judges: Pretrial Order
 - AC 72:2 Non-Dispositive Matters
 - AC 72:3 Dispositive Motions

X Districts Courts and Clerks

- FRCP 77 Conducting Business; Clerk's Authority; Notice of an Order or Judgment

XI General Provisions

- FRCP 81 Applicability of the Rules in General; Removed Actions
- LR 81.2 Definition of A Judicial Officer
 - AC 81:2 Removed Actions
 - AC 81:3 Law Applicable
- FRCP 82 Jurisdiction and Venue Unaffected
- FRCP 83 Rules by District Courts; Judge's Directives
- LR 83.3 Photographing, recording and Broadcasting
 - LR 83.3.2 Participation in Pilot Program
- LR 83.4 Courtroom Searches; Courtroom Seating
 - LR 83.5.1 Bar of the District Court
 - LR 83.5.2 Appearances
 - LR 83.5.3 Practice by Persons Not Members of the Bar
 - LR 83.5.4 Practice by Law Students
 - LR 83.5.5 Practice by Pro Se Litigants
 - LR 83.5.6 Ongoing Obligations
 - LR 83.5.7 Registration for Electronic Case Management/Electronic Case Files (CM/ECF)
- LR 83.6 Rules of Disciplinary Enforcement
 - LR 83.6.1 Rules of Professional Conduct
 - LR 83.6.2 Jurisdiction for Disciplinary Matters
 - LR 83.6.3 Forms of Misconduct
 - LR 83.6.4 Forms of Discipline
 - LR 83.6.5 Disciplinary Proceedings
 - LR 83.6.6 Temporary Suspension
 - LR 83.6.7 Disbarment by Consent
 - LR 83.6.8 Discipline After Criminal Conviction
 - LR 83.6.9 Reciprocal Discipline
 - LR 83.6.10 Reinstatement
 - LR 83.6.11 Public Access and Confidentiality
- FRCP 84 Forms
 - AC 84:1 In General
- FRCP 87 Civil Rules Emergency *[New]*
- LR 112.4 Corporate Disclosure Statement

APPENDIX A Local Rules of the United States District Court for the District of Massachusetts

APPENDIX B Rules For United States Magistrates

**Judges in The United States District Court For The
District of Massachusetts**

Authority of United States Magistrate Judges

Rule 2 Non-dispositive Pre-trial Matters

Rule 3 Dispositive Pre-trial Motions and Prisoner Cases

Rule 4 Special Master References and Trials by Consent

Trial of Misdemeanors

Rule 11 Pretrial Procedures for Class A Misdemeanors

Rule 12 Record of Proceedings

APPENDIX C SELECTED FORMS

Form 1 Fee Schedule

Form 2 Civil Cover Sheet

Form 3 Civil Category Sheet

Form 4 Summons in a Civil Action

Form 5 Summons and Complaint Against Third-Party Defendant

Form 8 Notice of Scheduling Conference

Form 10 Bill of Costs

APPENDIX D Attorney Handbook

**APPENDIX E Electronic Case Filing Administrative
Procedures**

Table of Laws and Rules

Table of Cases

Index