

Table of Contents

Rules Of Civil Procedure

I Scope of Rules—One Form of Action

- Rule 1 Scope of Rules
 - § 1.1 Scope of rules—Generally
 - § 1.6 Courts to which applicable—Supreme Judicial Court or Appeals Court single justice
 - § 1.7 Courts to which applicable—Probate and Family Courts
 - § 1.8 Courts to which applicable—Land Court
 - § 1.10 Courts to which applicable—Juvenile Court *[New]*
- Rule 2 One Form of Action
 - § 2.1 In general
 - § 2.2 Merger of law and equity—Scope

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

- Rule 3 Commencement of Action
 - § 3.2 Relation of commencement to service of process
 - § 3.4 Relation of commencement to lis pendens
 - § 3.16 What constitutes commencement—Mail
 - § 3.17 What constitutes commencement—Filing
- Rule 4 Process
 - § 4.1 Scope of rule
 - § 4.2 Service of summons—Relation to commencement of action
 - § 4.9 Modes of service—Service within commonwealth on individual
 - § 4.13 Modes of service—Service within Commonwealth on Commonwealth or agency
 - § 4.14 Modes of service—Service within Commonwealth on political subdivision
 - § 4.17 Modes of service—Service outside Commonwealth—The statute
 - § 4.18 Modes of service—Service outside Commonwealth — Alternative methods
 - § 4.19 Return of service—Contents
 - § 4.21 Return of service—Time
 - § 4.22 Amendment of process or return
- Rule 4.1 Attachment
 - § 4.1.1 Attachment—Scope
 - § 4.1.4 Attachment—Relation to lis pendens
 - § 4.1.5 Attachment—Relation to trustee process

- Rule 4.2 Trustee Process
 - § 4.2.1 Scope and limitations—Generally
- Rule 5 Service and Filing of Pleadings and Other Papers
 - § 5.2 Service requirements—Types of papers
 - § 5.5.1 Electronic service *[Retitled]*
 - § 5.5.2 Electronic filing *[New]*
 - § 5.9 Filing requirements—Methods of filing
 - § 5.12 Sanctions for failure to file
- Rule 6 Time
 - § 6.1 Computation of time
 - § 6.2 Enlargement of time—Generally
 - § 6.3 Enlargement of time prior to expiration
 - § 6.4 Enlargement of time after expiration

III Pleadings and Motions

- Rule 7 Pleadings Allowed: Form of Motions
 - § 7.8 Motions—Form
- Rule 8 General Rules of Pleading
 - § 8.1 Pleadings—Generally
 - § 8.2 Claims for relief—Statement of claim
 - § 8.4 Claims for relief—Demand for judgment
 - § 8.5 Defenses—Form of denials
 - § 8.6 Affirmative defenses—Generally
 - § 8.13 Affirmative defenses—Estoppel
 - § 8.17 Affirmative defenses—Laches
 - § 8.24 Alternative and hypothetical pleading
- Rule 8.1 Special Requirements for Certain Consumer Debts
 - § 8.1.1 Scope of Rule
 - § 8.1.2 Pleading
 - § 8.1.3 Affidavit concerning the debt
 - § 8.1.4 Affidavit providing documentation of debt
 - § 8.1.5 Affidavit regarding address verification
 - § 8.1.6 Statute of limitations certification
- Rule 9 Pleading Special Matters
 - § 9.2 Averments of fraud, mistake, duress, undue influence—
Generally
 - § 9.7 Conditions precedent
 - § 9.11 Special damages
- Rule 10 Form of Pleadings
 - § 10.2 Caption
 - § 10.2.1 Format of Documents *[New]*
 - § 10.5 Incorporation by reference
- Rule 11 Appearances and Pleadings
 - § 11.1 Scope of rule
 - § 11.2 Signing—Requirement and form
 - § 11.3 Signing—Attorney’s obligation
 - § 11.4 Signing—Verification
 - § 11.5 Representation—Appearance

TABLE OF CONTENTS

- § 11.6 Representation—Withdrawal
- Rule 12 Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on Pleadings
 - § 12.2 Defendant’s options
 - § 12.6 Defenses presented by answer
 - § 12.7 Motion to dismiss—Generally
 - § 12.8 Motion to dismiss—Lack of jurisdiction over subject matter
 - § 12.9 Motion to dismiss—Lack of jurisdiction over the person
 - § 12.10 Motion to dismiss—Improper venue
 - § 12.11 Motion to dismiss—Forum non conveniens
 - § 12.12 Motion to dismiss—Insufficiency of process or service of process
 - § 12.13 Motion to dismiss—Failure to state a claim upon which relief can be granted
 - § 12.14 Motion to dismiss—Affirmative defenses
 - § 12.15 Motion to dismiss—Matters outside the pleadings
 - § 12.17 Motion to dismiss—Prior action pending
 - § 12.17.1 Motion to dismiss—Amount of damages [*New*]
 - § 12.18 Motion for judgment on the pleadings
 - § 12.19 Motion to strike
 - § 12.21 Motion for more definite statement
 - § 12.23 Consolidation of defenses
 - § 12.24 Waiver of defenses
 - § 12.25 Non waiver of defenses
- Rule 13 Counterclaim and Cross-Claim
 - § 13.2 Counterclaim—Definition
 - § 13.8 Types of counterclaims—Generally
 - § 13.9 Compulsory counterclaims—Generally
 - § 13.14 Compulsory counterclaims—“Arises out of” test
 - § 13.25 Permissive counterclaims
 - § 13.29 Testing the sufficiency of a counterclaim or cross-claim—Generally
- Rule 14 Third-Party Practice
 - § 14.7 Who is subject to impleader
 - § 14.17 Nexus of claims
- Rule 15 Amended and Supplemental Pleadings
 - § 15.1 Scope of rule—Generally
 - § 15.2 Types of amendments—Amendments as of course
 - § 15.3 Types of amendments—Amendment on motion
 - § 15.4 Amendment after dismissal of complaint
 - § 15.6 Amendments to conform to evidence—Generally
 - § 15.7 Amendments to conform to evidence—Amendment by motion or implied consent
 - § 15.8 Amendments to conform to evidence—Amendment after objection
 - § 15.9 Relation back of amendments
 - § 15.10 Effect of amendment—Generally
 - § 15.12 Supplemental pleadings

Rule 16 Pre-trial Procedure: Formulating Issues

- § 16.1 Scope of rule
- § 16.2 Pretrial conference
- § 16.3 Pretrial order

IV Parties

Rule 17 Parties Plaintiff and Defendant: Capacity

- § 17.2 Real party in interest—General
- § 17.4 Real party in interest—Executors, administrators, guardians, bailees, trustees, et al.
- § 17.7 Infants or incapacitated persons [*Retitled*]

Rule 18 Joinder of Claims and Remedies

- § 18.1 Scope of rule

Rule 19 Joinder of Persons Needed for Just Adjudication

- § 19.2 Persons who must be joined—Generally
- § 19.3 Persons who must be joined—Indispensability to relief of parties

Rule 21 Misjoinder and Non-Joinder of Parties

- § 21.2 Misjoinder of parties

Rule 23 Class Actions

- § 23.1 Scope of rule
- § 23.2 Effect of judgment with respect to absentees
- § 23.3 Conditions for maintenance
- § 23.4 Impracticability of joinder
- § 23.5 Common questions of law or fact
- § 23.6 Typicality of representative’s claims or defenses
- § 23.7 Fair and adequate protection of the class’ interests
- § 23.8 Predominance of common questions
- § 23.9 Necessary superiority of class action
- § 23.10 Consumer protection
- § 23.11 Multi-claim torts cases
- § 23.12 Notice
- § 23.13 Dismissal or compromise
- § 23.14 Mootness
- § 23.15 Orders to ensure adequate representation and intervention
- § 23.16 Form of trial
- § 23.17 Residual funds [*New*]
- § 23.18 Disposition of residual funds [*New*]

Rule 23.1 Derivative Actions by Shareholders

- § 23.1.2 Plaintiff’s shareholder status at the time of suit
- § 23.1.3 Verification of complaint by oath
- § 23.1.4 Contemporaneous–ownership–of–stock requirement
- § 23.1.5 Plaintiff’s attempt to secure corporate action

Rule 24 Intervention

- § 24.2 Intervention of right
- § 24.3 Permissive intervention
- § 24.4 Motion to intervene
- § 24.5 Rights of intervenor

TABLE OF CONTENTS

- Rule 25 Substitution of Parties
 - § 25.3 Incapacity *[Retitled]*
 - § 25.4 Transfer of interest

V Depositions And Discovery

- Rule 26 General Provisions Governing Discovery
 - § 26.1 Scope of rule
 - § 26.2 Interrelation of discovery devices
 - § 26.3 Scope of discovery—Generally
 - § 26.3.50 Claims of privilege or protection *[New]*
 - § 26.4 Scope of discovery—Insurance
 - § 26.5 Scope of discovery—Trial preparation materials
 - § 26.6 Scope of discovery—Experts
 - § 26.7 Protective orders
 - § 26.7.50 Mistaken Production of Privileged or Protectable Information *[New]*
 - § 26.8 Supplementation
 - § 26.9 Electronically Stored Information *[New]*
- Rule 27 Depositions Before Action or Pending Appeal
 - § 27.3 Pre-action procedure—Notice and service
- Rule 28 Persons Before Whom Depositions May be Taken
 - § 28.1 Scope of rule
- Rule 29 Stipulations Regarding Discovery Procedure
 - § 29.2 Discovery stipulations generally
- Rule 30 Depositions Upon Oral Examination
 - § 30.1 Scope of rule
 - § 30.2 Leave of court—When necessary
 - § 30.2.50 Remote means: Videoconferencing or telephone *[New]*
 - § 30.3 Deposition notice and other formalities
 - § 30.4 Receiving evidence
 - § 30.5 Sanctions; motions to limit or terminate
 - § 30.6 Deposition—closing formalities
 - § 30.7 Use of Audiovisual depositions at trial—Preliminaries
 - § 30.8 Audiovisual Depositions of treating physicians and expert witnesses—use at trial
- Rule 32 Use of Depositions in Court Proceedings
 - § 32.2 Use of depositions—Generally
 - § 32.8 Use of depositions—Effect of errors or irregularities
- Rule 33 Interrogatories to Parties
 - § 33.4 How answered
 - § 33.6.1 Failure to answer interrogatories—Default *[New]*
 - § 33.7 Use at trial
- Rule 34 Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes
 - § 34.1 Scope of rule
 - § 34.3 Form of request
 - § 34.4 Response

- § 34.5 Motion to compel discovery
- § 34.7 Action for discovery
- Rule 35 Physical and Mental Examination of Persons
 - § 35.1 Scope of rule
 - § 35.2 Availability of physical or mental examination
 - § 35.3 Form of motion
 - § 35.4 Good cause
 - § 35.5 Conditions of examination
 - § 35.6 Reports
 - § 35.7 Further discovery from physicians
 - § 35.8 Sanctions
- Rule 37 Failure to Make Discovery: Sanctions
 - § 37.1 Scope of rule
 - § 37.11 Failure to comply with order—Sanctions

Table of Laws and Rules

Table of Cases

Table of Contents

Rules Of Civil Procedure (Continued)

VI Trials

- Rule 38 Jury Trial of Right
 - § 38.2 Demand—Issues triable of right by a jury
 - § 38.3 Demand and waiver
- Rule 39 Trial by Jury or by the Court
 - § 39.1 Scope of rule
 - § 39.2 Nullification of demand
 - § 39.3 Withdrawal of jury demand
 - § 39.6 The advisory jury
- Rule 41 Dismissal of Actions
 - § 41.1 Scope of rule
 - § 41.3 Voluntary dismissal—Plaintiff's option
 - § 41.11 Involuntary dismissal—After plaintiff's evidence
 - § 41.12 Involuntary dismissal—Effect
- Rule 42 Consolidation: Separate Trials
 - § 42.1 Scope of rule
 - § 42.2 Consolidation
 - § 42.3 Separation for trial
- Rule 43 Evidence
 - § 43.2 Testimony—Direct and cross-examination
- Rule 45 Subpoena
 - § 45.2 Subpoena—Form
 - § 45.6 Subpoena—Deposition
 - § 45.7 Subpoena—Duces tecum
 - § 45.7.10 “Documents only” subpoena *[New]*
 - § 45.7.20 Subpoena—Duces tecum—Applicable procedures *[New]*
- Rule 46 Exceptions Unnecessary
 - § 46.2 Absence of objection or request—Effect
- Rule 47 Jurors
 - § 47.1 Scope of rule
 - § 47.2 Examination of jurors—Mandatory questions
 - § 47.2.1 Voir dire by attorneys or unrepresented parties *[New]*
 - § 47.6 District Court juries *[New]*
- Rule 48 Number of Jurors—Majority Verdict
 - § 48.3 Percentage required for verdict
- Rule 49 Special Verdicts and Interrogatories
 - § 49.3 When to employ a special verdict or jury interrogatories
 - § 49.4 Special verdict—Omitted issues
 - § 49.5 Special verdict—Nature and form of questions

- § 49.6 Special verdict—Instructions to jury
- § 49.7 Special verdict—Entry of judgment
- Rule 50 Motion for a Directed Verdict and for Judgment Notwithstanding the Verdict
 - § 50.1 Scope of rule
 - § 50.4 Directed verdict—No disagreement on material facts or determinative fact
 - § 50.6 Directed verdict—Insufficiency of plaintiff’s evidence
 - § 50.7 Directed verdict—Affirmative defenses
 - § 50.8 Directed verdict—Against defendant
 - § 50.9 Directed verdict—Need and time for motion—Statement of grounds
 - § 50.11 Directed verdict—Effect of motion
 - § 50.12 Directed verdict—Appellate review
 - § 50.13 Judgment notwithstanding the verdict—Purpose of procedure
 - § 50.14 Judgment notwithstanding the verdict—Need for prior directed verdict motion
 - § 50.17 Judgment notwithstanding the verdict—Alternative motion for a new trial
 - § 50.18 Judgment notwithstanding the verdict—Appellate review
- Rule 51 Argument: Instructions to Jury
 - § 51.1 Scope of rule
 - § 51.2 Argument
 - § 51.3 Jury instructions—Time of request
 - § 51.4 Jury instructions—Form of requests
 - § 51.5 Jury instructions—Court’s response to requests
 - § 51.6 Jury instructions—Objections
 - § 51.7 Jury instructions—Appellate review *[New]*
- Rule 52 Findings by the Court
 - § 52.2 Findings—When necessary
 - § 52.3 Findings—How made
 - § 52.4 Findings—Form
 - § 52.5 Findings—Amendment
 - § 52.6 Appellate review—Sufficiency of the evidence
 - § 52.7 Appellate review—“Clearly erroneous”
- Rule 53 Masters
 - § 53.2 Conditions and propriety of reference

VII Judgment

- Rule 54 Judgments: Costs
 - § 54.2 Definition of judgment
 - § 54.4 Judgment upon multiple claims—General
 - § 54.5 Identifying multiple claims
 - § 54.6 Determining no just reason for delay and directing entry of judgment
 - § 54.7 Effect of demand for judgment
 - § 54.9 Demand for judgment—Default cases

TABLE OF CONTENTS

- § 54.10 Costs
- § 54.11 Interest *[New]*
- Rule 55 Default
 - § 55.1 Default—Scope of rule
 - § 55.2 Entry of default
 - § 55.3 Entry of default judgment—By the clerk
 - § 55.4 Judgment by default—Entry by court
 - § 55.5 Judgment by default—Notice and hearing
 - § 55.6 Judgment by default—Judicial discretion
 - § 55.7 Judgment by default—Soldiers’ and Sailors’ Civil Relief Act of 1940
 - § 55.8 Setting aside default or default judgment
- Rule 55.1 Special Requirements for Defaults and Default Judgments for Certain Consumer Debts
 - § 55.1.1 Scope of Rule
 - § 55.1.2 Default—Affidavit
 - § 55.1.3 Non-entry of default
 - § 55.1.4 Judgment
 - § 55.1.5 Service
- Rule 56 Summary Judgment
 - § 56.1 Scope of rule
 - § 56.2 Summary judgment—Related forms of relief
 - § 56.3 Summary judgment—Dispositive
 - § 56.3.50 SLAPP motion practice *[New]*
 - § 56.4 Summary judgment—Not dispositive
 - § 56.5 Time for serving motions and affidavits
 - § 56.6 Form of motion and affidavits
 - § 56.7 Proceedings on motion hearings—Sources considered
 - § 56.8 Grounds for summary judgment
 - § 56.9 Cases not fully adjudicated
 - § 56.10 Appellate review
- Rule 57 Declaratory Judgment
 - § 57.1 Scope of rule
 - § 57.2 Procedural principles
- Rule 58 Entry of Judgment
 - § 58.1 Scope of rule
 - § 58.3 Entry of judgment—By clerk without instructions
 - § 58.5 Separate document
 - § 58.6 Effect of entering judgment
- Rule 59 New Trials: Amendment of Judgments
 - § 59.2 Grounds for new trial—General
 - § 59.3 Verdict against the weight of the evidence
 - § 59.4 Excessive or inadequate verdict
 - § 59.6 Errors of law
 - § 59.8 Misconduct of counsel
 - § 59.13 Hearing on new trial motion
 - § 59.15 Motion to alter or amend a judgment
 - § 59.16 Appellate review

- Rule 60 Relief From Judgment or Order
 - § 60.1 Scope of rule
 - § 60.2 Clerical mistakes
 - § 60.3 Substantive relief—Generally
 - § 60.4 Substantive relief—For mistake
 - § 60.7 Substantive relief—For excusable neglect
 - § 60.8 Substantive relief—For newly-discovered evidence
 - § 60.9 Substantive relief—For fraud
 - § 60.11 Substantive relief—For a void judgment
 - § 60.14 Substantive relief—For inequity in prospective application
 - § 60.15 Substantive relief—For any other reason justifying relief
 - § 60.16 Independent action
- Rule 61 Harmless Error
 - § 61.1 Scope of rule
 - § 61.3 Particular errors—Evidentiary
 - § 61.4 Particular errors—Conduct of trial
- Rule 63 Unavailability of a Judge; Receipt of Verdict [*Retitled*]
 - § 63.2 Successor judge

VIII Provisional And Final Remedies And Special Procedures

- Rule 64 Report of Case
 - § 64.2 Report after verdict or finding
 - § 64.3 Interlocutory finding or order
 - § 64.5 Supreme Judicial Court single justice—As trial court
- Rule 64A Requests for Rulings of Law in District Court
 - § 64A.1 Scope of rule
- Rule 65 Injunctions
 - § 65.1 Scope of rule
 - § 65.2 Temporary restraining orders—Function and procedure
 - § 65.4 Preliminary injunction—Grounds
 - § 65.7 Form and scope of injunctions and restraining orders
 - § 65.8 Persons bound by a restraining order or injunction
 - § 65.10 Appellate review
- Rule 65.1 Security: Proceedings Against Sureties
- Rule 65.3 Proceedings for Contempt
 - § 65.3.2 Applicability
 - § 65.3.7 Contempt proceedings—Trial
 - § 65.3.8 Appellate review
- Rule 66 Receivers
- Rule 67 Deposit in Court
 - § 67.1 Scope of rule
 - § 67.2 Deposit into court
 - § 67.3 Disposition of deposit
- Rule 68 Offer of Judgment
 - § 68.1 Scope of rule
- Rule 72 Probate Accounts

TABLE OF CONTENTS

IX Courts And Clerks

Rule 77 Courts and Clerks

§ 77.5 Notice of orders or judgments

§ 77.7 Electronic Filing [*New*]

Rule 80 Stenographic Report or Transcript

§ 80.1 Scope of rule

§ 80.4 District Court—Court reporters

X General Provisions

Rule 81 Applicability of Rules

§ 81.2 Exempt proceedings

§ 81.4 Writs abolished

§ 81.5 Certiorari

§ 81.6 Mandamus

§ 81.8 Procedure not specifically prescribed

Rule 84 Forms

Table of Laws and Rules

Table of Cases

Index