Volume 6

RULES OF CIVIL PROCEDURE ANNOTATED

I TITLE AND SCOPE OF RULES; ONE FORM OF ACTION

- Rule 1 Title and scope of Rules
- Rule 2 One form of action

II COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

- Rule 3 Commencement of actions; fees and costs
- Rule 3.01 Commencement of action
- Rule 3.02 Circuit civil fees and costs
- Rule 3.03 District civil fees and costs
- Rule 4 Process
- Rule 4.01 Summons; issuance; by whom served
- Rule 4.02 Summons; form
- Rule 4.03 Summons; return
- Rule 4.04 Personal service; summons and initiating document
- Rule 4.05 Parties who may be constructively served
- Rule 4.06 Warning order; affidavit
- Rule 4.07 Warning order attorney
- Rule 4.08 Constructive service; when effective
- Rule 4.09 Personal service in addition to constructive service
- Rule 4.10 Defense by party constructively served
- Rule 4.11 Court control of property; bond
- Rule 4.12 Exemption of Commonwealth and political subdivisions
- Rule 4.13 Plaintiff may be examined touching his claim
- Rule 4.14 Counterclaim disclosed allowed
- Rule 4.15 Unknown defendant
- Rule 4.16 Summons; amendment
- Rule 5 Service and filing of pleadings and other papers
- Rule 5.01 Service; when required
- Rule 5.02 Service; how made
- Rule 5.03 Service; proof of
- Rule 5.04 Service; numerous defendants
- Rule 5.05 Filing
- Rule 5.06 Filing; discovery material
- Rule 6 Time
- Rule 6.01 Computation

- Rule 6.02 Enlargement
- Rule 6.03 Unaffected by expiration of term
- Rule 6.04 For motions; affidavits
- Rule 6.05 Additional time after service by mail

III PLEADINGS AND MOTIONS

- Rule 7 Pleadings allowed; form of motions
- Rule 7.01 Pleadings
- Rule 7.02 Motions and other papers
- Rule 7.03 Privacy protection for filings made with the court
- Rule 8 General rules of pleading
- Rule 8.01 Claims for relief
- Rule 8.02 Defenses; form of denials
- Rule 8.03 Affirmative defenses
- Rule 8.04 Effect of failure to deny
- Rule 8.05 Pleading to be concise and direct; consistency
- Rule 8.06 Construction of pleadings
- Rule 9 Pleading special matters
- Rule 9.01 Capacity
- Rule 9.02 Fraud, mistake, condition of mind
- Rule 9.03 Conditions precedent
- Rule 9.04 Official document or act
- Rule 9.05 Judgment
- Rule 9.06 Special damages
- Rule 10 Form of pleadings
- Rule 10.01 Caption; names of parties
- Rule 10.02 Paragraphs; separate statements
- Rule 10.03 Adoption by reference; exhibits
- Rule 11 Signing of pleadings, motions, and other papers; sanctions
- Rule 12 Defenses and objections; when and how presented; motion for judgment on pleadings
- Rule 12.01 When presented
- Rule 12.02 How presented
- Rule 12.03 Motion for judgment on the pleadings
- Rule 12.04 Preliminary hearing
- Rule 12.05 Motion for more definite statement
- Rule 12.06 Motion to strike
- Rule 12.07 Consolidation of defenses in motion
- Rule 12.08 Waiver or preservation of certain defenses
- Rule 13 Counterclaims and cross-claims
- Rule 13.01 Compulsory counterclaims
- Rule 13.02 Permissive counterclaims
- Rule 13.03 Counterclaim exceeding opposing claim
- Rule 13.04 Counterclaims against the Commonwealth
- Rule 13.05 Counterclaim maturing or acquired after pleading
- Rule 13.06 Omitted counterclaim
- Rule 13.07 Cross-claim against co-party

- Rule 13.08 Additional parties may be brought in
- Rule 13.09 Separate trials; separate judgment
- Rule 14 Third-party practice
- Rule 14.01 When defendant may bring in third party
- Rule 14.02 When plaintiff may bring in third party
- Rule 14.03 Special amici curiae in bond issue proceedings
- Rule 15 Amended and supplemental pleadings
- Rule 15.01 Amendments
- Rule 15.02 Amendments to conform to the evidence
- Rule 15.03 Relation back of amendments
- Rule 15.04 Supplemental pleadings
- Rule 16 Pretrial procedure; formulating issues

IV PARTIES

- Rule 17 Parties plaintiff and defendant; capacity
- Rule 17.01 Real party in interest
- Rule 17.02 Married persons
- Rule 17.03 Infants and persons of unsound mind
- Rule 17.04 Prisoners
- Rule 18 Joinder of claims
- Rule 18.01 Independent or alternative claims
- Rule 18.02 Dependent claims
- Rule 19 Joinder of persons needed for just adjudication
- Rule 19.01 Persons to be joined if feasible
- Rule 19.02 Determination by court whenever joinder not feasible
- Rule 19.03 Pleading reasons for nonjoinder
- Rule 19.04 Exception of class actions
- Rule 20 Permissive joinder of parties
- Rule 20.01 Permissive joinder
- Rule 20.02 Separate trials
- Rule 21 Misjoinder and nonjoinder of parties
- Rule 22 Interpleader
- Rule 23 Class actions
- Rule 23.01 Prerequisites to class action
- Rule 23.02 Class actions maintainable
- Rule 23.03 Determination by order whether class action to be maintained; notice; judgment; actions conducted partially as class actions
- Rule 23.04 Orders in conduct of actions
- Rule 23.05 Dismissal or compromise
- Rule 23.06 Appeals
- Rule 23.07 Class counsel
- Rule 23.08 Attorney's fees and nontaxable costs
- Rule 24 Intervention
- Rule 24.01 Intervention of right
- Rule 24.02 Permissive intervention
- Rule 24.03 Procedure

- Rule 25 Substitution of parties
- Rule 25.01 Death
- Rule 25.02 Incompetency
- Rule 25.03 Transfer of interest
- Rule 25.04 Public officers; death or separation from office

V DEPOSITIONS AND DISCOVERY

- Rule 26 General provisions governing discovery
- Rule 26.01 Discovery methods
- Rule 26.02 Scope of discovery
- Rule 26.03 Protective orders
- Rule 26.04 Sequence and timing of discovery
- Rule 26.05 Supplementation of responses
- Rule 26.06 Effect of taking deposition or questioning deponent
- Rule 27 Depositions before action or pending appeal
- Rule 27.01 Before action
- Rule 27.02 Pending appeal
- Rule 27.03 Perpetuation by action
- Rule 28 Persons before whom depositions may be taken
- Rule 28.01 Within the state
- Rule 28.02 Without the state
- Rule 28.03 Depositions to be used in other states
- Rule 29 Stipulations regarding discovery procedure
- Rule 30 Depositions upon oral examination
- Rule 30.01 When depositions may be taken
- Rule 30.02 Notice of examination: general requirements; special notice; nonstenographic recording; production of documents and things; deposition of organization
- Rule 30.03 Examination and cross-examination; record of examination; oath; objections
- Rule 30.04 Motion to terminate or limit examination
- Rule 30.05 Submission to witness; changes; signing
- Rule 30.06 Certification and filing by officer; copies; exhibits
- Rule 30.07 Failure to attend or to serve subpoena; expenses
- Rule 31 Depositions upon written questions
- Rule 31.01 Serving questions; notice
- Rule 31.02 Officer to take responses and prepare record
- Rule 31.03 Orders for the protection of parties and deponents
- Rule 32 Use of depositions in court proceedings
- Rule 32.01 Use of depositions
- Rule 32.02 Objections to admissibility
- Rule 32.03 Effect of taking or using depositions
- Rule 32.04 Effect of errors and irregularities
- Rule 33 Interrogatories to parties
- Rule 33.01 Availability; procedures for use
- Rule 33.02 Scope; use at trial
- Rule 33.03 Option to produce business records

- Rule 34 Production of documents and things and entry upon land for inspection and other purposes
- Rule 34.01 Scope
- Rule 34.02 Procedure
- Rule 34.03 Persons not parties
- Rule 35 Physical and mental examination of persons
- Rule 35.01 Order for examination
- Rule 35.02 Report of examining physician or health care expert
- Rule 36 Requests for admission
- Rule 36.01 Request for admission
- Rule 36.02 Effect of admission
- Rule 37 Failure to make discovery; sanctions
- Rule 37.01 Motion for order compelling discovery
- Rule 37.02 Failure to comply with order
- Rule 37.03 Expenses on failure to admit
- Rule 37.04 Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection
- Rule 37.05 Expenses against the Commonwealth
- Rule 37.06 Expenses against the Commonwealth—Renumbered

Table of Laws and Rules

Table of Cases

Volume 7

VI TRIALS

- Rule 38 Jury trials of right
- Rule 38.01 Right preserved
- Rule 38.02 Demand
- Rule 38.03 Same; specification of issues
- Rule 38.04 Waiver
- Rule 39 Trial by jury or by the court
- Rule 39.01 By jury
- Rule 39.02 By the court
- Rule 39.03 Advisory jury and trial by consent
- Rule 40 Assignment of cases for trial
- Rule 41 Dismissal of actions
- Rule 41.01 Voluntary dismissal; effect thereof
- Rule 41.02 Involuntary dismissal; effect thereof
- Rule 41.03 Dismissal of counterclaim, cross-claim, or third-party claim
- Rule 41.04 Costs of previously dismissed action
- Rule 42 Consolidation; separate trials
- Rule 42.01 Consolidation
- Rule 42.02 Separate trials

```
Rule 43 Trial procedure and the introduction of evidence
Rule 43.01 Burden of proof
Rule 43.02 Order of proceeding in trial
Rule 43.03 Postponement of trial; motion and affidavit
Rule 43.04 Form of evidence; trial by deposition
Rule 43.05 Scope of examination and cross-examination; leading
              questions
Rule 43.06 Same; examination of adverse party
Rule 43.07 Impeachment of witnesses
Rule 43.08 Same; prior contradictory statements
Rule 43.09 Separation of witnesses
Rule 43.10 Avowals
Rule 43.11 Affirmation in lieu of oath
Rule 43.12 Evidence on motions
Rule 43.13 Affidavits; definition and content
Rule 44 Proof of official record
Rule 44.01 Authentication of copy
Rule 44.02 Proof of lack of record
Rule 44.03 Other proof
Rule 45 Subpoena
Rule 45.01 Form; issuance
Rule 45.02 For production of documentary evidence
Rule 45.03 Service; Notice
Rule 45.04 Protection of a person subject to a subpoena
Rule 45.05 Subpoena for a hearing or trial; personal attendance
Rule 45.06 Contempt
Rule 46 Exceptions unnecessary
Rule 47 Jurors
Rule 47.01 Examination of jurors
Rule 47.02 Alternate jurors
Rule 47.03 Peremptory challenges
Rule 48 Juries of less than twelve; majority verdict
Rule 49 Special verdicts and interrogatories
Rule 49.01 Special verdicts
Rule 49.02 General verdict accompanied by answer to interrogatories
Rule 50 Motion for a directed verdict and for judgment
           notwithstanding the verdict
Rule 50.01 Motion for directed verdict
Rule 50.02 Motion for judgment notwithstanding the verdict;
              alternative motion for new trial
Rule 50.03 Conditional rulings on grant or denial of motion for
              judgment notwithstanding the verdict
Rule 50.04 Judgment notwithstanding verdict; assessment of
              damages
Rule 51 Instructions to jury; objections
Rule 52 Findings of the court
Rule 52.01 When required; effect
Rule 52.02 Amendment
```

- Rule 52.03 Sufficiency of evidence to support findings
- Rule 52.04 Failure to make finding on essential issue of fact; necessity for request
- Rule 53 Master Commissioners of circuit courts
- Rule 53.01 Appointments; deputies
- Rule 53.02 Judicial sales; settlements; receiverships; qualifications of master commissioner
- Rule 53.03 Powers
- Rule 53.04 Proceedings
- Rule 53.05 Report
- Rule 53.06 Compensation
- Rule 53.07 Limit on compensation
- Rule 53.08 Accounting

VII JUDGMENT

- Rule 54 Judgments; costs
- Rule 54.01 Definition and construction
- Rule 54.02 Judgment upon multiple claims or involving multiple parties
- Rule 54.03 Demand for judgment
- Rule 54.04 Costs
- Rule 55 Default
- Rule 55.01 Judgment
- Rule 55.02 Setting aside default
- Rule 55.03 Plaintiffs, counterclaimants, cross-claimants
- Rule 55.04 Judgment against the Commonwealth or the United States
- Rule 56 Summary judgment
- Rule 56.01 For claimant
- Rule 56.02 For defending party
- Rule 56.03 Motion and proceedings thereon
- Rule 56.04 Case not fully adjudicated on motion
- Rule 56.05 Form of affidavits; further testimony
- Rule 56.06 When affidavits are unavailable
- Rule 56.07 Affidavits made in bad faith
- Rule 57 Declaratory judgments
- Rule 58 Signing and entry of judgments and orders in trial courts
- Rule 59 New trials; amendment of judgments
- Rule 59.01 Grounds
- Rule 59.02 Time for motion
- Rule 59.03 Time for serving affidavits
- Rule 59.04 On initiative of court
- Rule 59.05 Motion to alter, amend or vacate a judgment
- Rule 59.06 Preservation of error
- Rule 59.07 Proceedings in lieu of new trial
- Rule 60 Relief from judgment or order
- Rule 60.01 Clerical mistakes

- Rule 60.02 Mistake; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.
- Rule 60.03 Independent actions
- Rule 60.04 When appeal pending
- Rule 60.05 Writs abolished
- Rule 61 Errors; harmless; substantial
- Rule 61.01 Harmless error
- Rule 61.02 Substantial error
- Rule 62 Stay of proceedings to enforce a judgment
- Rule 62.01 Motions after verdict or judgment
- Rule 62.02 Pending appeal of injunction judgments [Deleted]
- Rule 62.03 Pending appeal of judgment other than injunction judgment [Deleted]
- Rule 62.04 Stay of judgment upon multiple claims
- Rule 63 Disability of a Judge

VIII PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

- Rule 64 Seizure of person or property
- Rule 65 Injunctions
- Rule 65.01 Injunctive relief
- Rule 65.02 Requisites of restraining order or injunction; parties bound
- Rule 65.03 Restraining order
- Rule 65.04 Temporary injunction
- Rule 65.05 Restraining order and injunction bond
- Rule 65.06 Enforcement of restraining orders and injunctions
- Rule 65.07 Interlocutory relief in Court of Appeals prior to final judgment [Deleted]
- Rule 65.08 Interlocutory relief pending appeal from final judgment [Deleted]
- Rule 65.09 Interlocutory relief in Supreme Court [Deleted]
- Rule 66 Receivers
- Rule 67 Deposit in court
- Rule 67.01 In an action
- Rule 67.02 Court may order deposit or seizure of property
- Rule 67.03 Money paid into court
- Rule 68 Offer of judgment
- Rule 69 Provisional remedies and enforcement of judgments
- Rule 69.01 Service upon defendants in respect to proceedings for attachment or writ of possession
- Rule 69.02 Post-judgment garnishment; service; answer; disposition of funds
- Rule 69.03 Execution
- Rule 70 Judgment for specific acts
- Rule 71 Process in behalf of and against persons not parties

xviii

Court
Rule 76.01 Scope of rule [Deleted]

IX APPEALS

Rule 72 Appeals from district courts Rule 72.01 Scope of rule [Deleted] Rule 72.02 When and how taken [Deleted] Rule 72.04 Record on appeal from district court [Deleted] Rule 72.06 Perfecting appeals and cross-appeals from district court [Deleted] Rule 72.08 Time in which appeal from district court must be perfected [Deleted] Rule 72.10 Statement of appeal from district court [Deleted] Rule 72.12 Appellee's counterstatement [Deleted] Rule 72.13 Costs [Deleted] Rule 73 All appeals Rule 73.01 General provisions [Deleted] Rule 73.02 When and how taken [Deleted] Rule 73.03 Notice of appeal [Deleted] Rule 73.04 Supersedeas bond [Deleted] Rule 73.05 Bond on appeal Rule 73.06 Failure to file or insufficiency of supersedeas bond [Deleted] Rule 73.07 Judgment against surety [Deleted] Rule 73.08 Certification of record on appeal [Deleted] Rule 74 Cross-appeals Rule 74.01 Cross-appeals [Deleted] Rule 74.02 Transfer of appeal from Court of Appeals to Supreme Court [Deleted] Rule 75 Record on appeal Rule 75.01 Procedures for designation of evidence or proceedings reported by a court reporter [Deleted] Rule 75.02 Transcript of evidence and proceedings [Deleted] Rule 75.03 Form of testimony [Deleted] Rule 75.04 Statement of points Rule 75.05 Record to be abbreviated [Deleted] Rule 75.06 Stipulation as to record [Deleted] Rule 75.07 Record to be prepared and transmitted by clerk [Deleted] Rule 75.08 Power of court to correct or modify record [Deleted] Rule 75.09 Orders as to original papers Rule 75.10 Record for preliminary hearing in an appellate court [Deleted] Rule 75.11 Several appeals [Deleted] Rule 75.12 Appeals in forma pauperis Rule 75.13 Narrative statement [Deleted] Rule 75.14 Bystanders bill [Deleted] Rule 75.15 Record on appeal; agreed statement [Deleted] Rule 76 Practice and procedure in Court of Appeals and Supreme

Rule 76.02 Perfecting appeals and cross-appeals [Deleted] Rule 76.03 Prehearing conference [Deleted] Rule 76.04 Time in which appeals and cross-appeals must be perfected Rule 76.05 Special Appeals of the Court of Appeals Rule 76.06 Statement of appeal Rule 76.08 Statement of cross-appeal Rule 76.10 Record of previous appeal Rule 76.12 Briefs [Deleted] Rule 76.14 Prehearing conference Rule 76.15 Special appeals of the Court of Appeals Rule 76.16 Oral arguments [Deleted] Rule 76.18 Transfer of appeal from Court of Appeals to Supreme Court Rule 76.20 Motion for discretionary review [Deleted] Rule 76.21 Cross motion for discretionary review [Deleted] Rule 76.22 Motion to advance [Deleted] Rule 76.24 Substitution of parties [Deleted] Rule 76.25 Review of Workers' Compensation Board decisions [Deleted] Rule 76.26 Submission of appeals [Deleted] Rule 76.28 Opinions [Deleted] Rule 76.30 Effective date of opinions [Deleted] Rule 76.32 Petitions for rehearing [Deleted] Rule 76.33 Intermediate relief in appellate court [Deleted] Rule 76.34 Motions [Deleted] Rule 76.36 Original proceedings in appellate court [Deleted] Rule 76.37 Certification of question of law [Deleted] Rule 76.38 Effective date and reconsideration of orders [Deleted] Rule 76.40 Time [Deleted] Rule 76.42 Costs [Deleted] Rule 76.43 Number of documents required for docketing [Deleted] Rule 76.44 Stay pending review by United States Supreme Court

X COURTS AND CLERKS

- Rule 77 Courts and clerks
- Rule 77.01 Courts always open

[Deleted]

Rule 77.02 Trials and hearings; orders in chambers; review of trial dockets

Rule 76.46 Preservation and disposition of records [Deleted]

- Rule 77.03 Clerk's office and orders by clerk
- Rule 77.04 Notice of entry of judgments and orders
- Rule 78 Motion days; submission of motions
- Rule 79 Books and records to be kept by clerks of courts
- Rule 79.01 Dockets
- Rule 79.02 Entry of satisfaction of judgment

- Rule 79.03 Indices and calendars
- Rule 79.04 Other records
- Rule 79.05 Original record; removal and transfer
- Rule 79.06 Clerks of the Court of Appeals and Supreme Court [Deleted]
- Rule 80 Stenographic report or transcript as evidence

XI GENERAL APPLICATION OF THESE RULES

- Rule 81 Relief heretofore available by common law writs
- Rule 81A Exemption of governmental units from giving bond
- Rule 82 Jurisdiction and venue unaffected
- Rule 83 Local rules
- Rule 84 Forms [Deleted]
- Rule 85 Title
- Rule 86 Effective date
- Rule 87 Amendment of rules

XII SPECIAL RULES OF THE CIRCUIT COURT FOR THE ECONOMICAL LITIGATION DOCKET

- Rule 88 Scope of rules relating to the economical litigation docket
- Rule 89 Economical litigation docket
- Rule 90 Discovery and status conference
- Rule 91 Telephone conferences
- Rule 92 Motions; enlargement of time; summary judgment
- Rule 93 Discovery
- Rule 93.01 Depositions
- Rule 93.02 Interrogatories
- Rule 93.03 Production of documents and things and entry upon land for inspection and other purposes
- Rule 93.04 Exchange of information
- Rule 94 Certificate of compliance
- Rule 95 Pretrial conference
- Rule 96 Sanctions
- Rule 97 Presence of counsel
- Rule 98 Procedures for using videotape equipment to record court proceedings

XIII MEDIATION RULES

- Rule 99 Mediation
- Rule 99.01 Authority, preamble and scope
- Rule 99.02 Mediation defined
- Rule 99.03 Referral of cases to mediation
- Rule 99.04 No stay of proceedings
- Rule 99.05 Appointment of mediator
- Rule 99.06 Mediator compensation
- Rule 99.07 Mediation procedure
- Rule 99.08 Attendance at mediation conference

Rule	99.09	Reporting to the court
Rule	99.10	Agreement
Rule	99.11	Confidentiality
Rule	100 C	ode of Conduct for Mediators
Rule	100.01	Purpose
Rule	100.02	Competency
Rule	100.03	Impartiality
Rule	100.04	Confidentiality
Rule	100.05	Consent
Rule	100.06	Self-determination
Rule	100.07	Separation of mediation from legal and other professional advice
Rule	100.08	Conflicts of interest
Rule	100.09	Protecting the integrity of the mediation process
APPENDIX		Appendix of Official Forms

Table of Laws and Rules

Table of Cases

Index