

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

TABLE OF CONTENTS

AC 14:1	Third-party Practice—In General
AC 14:2	Third-Party Practice—Admiralty or Maritime Claims
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 <i>[New]</i>
LR 16.6	Scheduling and Procedures in Patent Infringement Cases <i>[New]</i>
AC 16:3	Scheduling Conferences and Orders
AC 16:7	Final Pretrial Conferences
AC 16:8	Sanctions
Rule 16.1	Multidistrict Litigation <i>[New]</i>
FRCP Rule 16.1	Multidistrict Litigation <i>[New]</i>

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 <i>[Retitled]</i>
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

TABLE OF CONTENTS

FRCP 43	Taking Testimony
LR 43.1	Trial
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 <i>[New]</i>
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 <i>[New]</i>
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

TABLE OF CONTENTS

AC 71.1:5 Appearance or Answer
AC 71.1:8 Trial of the Issues

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**

**APPENDIX F Supreme Judicial Court Rule 3:03: Legal
assistance to the Commonwealth and to indigent criminal
defendants and to indigent parties in civil proceedings**

Table of Laws and Rules

Table of Cases

Index