RULES OF CIVIL PROCEDURE

COMMONWEALTH SUPERIOR COURT

EFFECTIVE DATE DECEMBER 22, 2014

E-FILED
CNMI SUPREME COURT
E-filed: Mar 03 2015 03:56PM
Clerk Review: Mar 03 2015 04:11PM
Filing ID: 56851653
Case No.: ADM-2015
Nora Borja

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE
RULE 83 OF THE COMMONWEALTH RULES OF CIVIL PROCEDURE

ADMINISTRATIVE ORDER 2015-ADM-0003-RUL

ORDER

¶ 1 On October 22, 2014, the attached proposed *Rule 83 of the Commonwealth Rules of Civil Procedure* was submitted to the Eighteenth Northern Marianas Commonwealth Legislature for approval. Sixty (60) days have elapsed since submission and neither house of the Legislature has disapproved of the proposed rule.

¶2 IT IS HEREBY ORDERED that *Rule 83 of the Commonwealth Rules of Civil Procedure* is adopted as permanent pursuant to Article 4, § 9 of the NMI Constitution. This Rule became effective on December 22, 2014, and the former Rule 83, which took effect on May 24, 2004, is hereby repealed and replaced by this Rule.

SO ORDERED this 3rd day of March, 2015.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
PERRY B. INOS
Associate Justice

E-FILED
CNMI SUPREME COURT
E-filed: Mar 03 2015 03:56PM
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Rule 83. Small Claims Procedure.

(a) APPLICABILITY. A plaintiff may file a case under this small claims procedure for any civil action within the jurisdiction of the court, involving a claim the value of which is five thousand ($5,000.00) dollars or less, exclusive of interest, attorneys' fees and costs.

(b) NATURE AND PURPOSE. This procedure is to enable small claims to be justly decided and fully disposed of with less formality, paperwork, and expenditure of time than is required by the ordinary procedure for larger claims. Parties are to be encouraged to handle small claims personally without counsel, and clerks are expected to aid the parties in doing this. No individual who is not an attorney licensed to practice in the Northern Mariana Islands may represent another natural person or a corporation; provided, however, that an employee with first-hand knowledge of the facts of the underlying claim may appear on behalf of an employer. The pleadings, any action taken by the court, and any payments received, or reports from a party of payments received, shall be noted under the proper date on the small claims docket card for each case. The entries on the docket card shall ordinarily constitute the entire record and no further information need be recorded or kept except as expressly directed for small claims.

(c) PLEADINGS. The plaintiff shall state the nature and amount of the claim on the summons and complaint form. The clerk shall copy this information onto the docket card. No other written pleading shall be required of any party unless the court otherwise orders.

(d) SMALL CLAIMS SUMMONS AND COMPLAINT. Upon the signing of a claim on the small claims docket as provided in paragraph (c) above, the clerk of the court shall issue and give to the plaintiff a copy of the small claims summons and complaint. The plaintiff shall serve a copy of the summons and complaint on the defendant at least five business days prior to the date on which the matter is to be heard by the court. If the plaintiff is acting without

counsel, the clerk issuing the summons will instruct the plaintiff how the summons shall be served and return of service made, unless it is clear the plaintiff already understands this. The plaintiff shall file a declaration of service no later than the day before the date on which the matter is to be heard by the court. The clerk shall impress upon the plaintiff that the plaintiff must appear personally or by counsel, at the time and place stated in the summons, and should bring any records or other documents that will support the plaintiff's claim.

The failure to serve the summons and complaint at least five business days prior to the hearing date shall not be grounds for dismissal of the complaint. However, if the defendant is present, the judge shall ask the defendant whether the defendant is prepared to proceed. If the defendant is not prepared to proceed, the judge shall grant a reasonable continuance to allow the defendant to prepare a defense.

Should the plaintiff fail to effect service at least five business days prior to the hearing, or to file the return of service by the day before the hearing, the hearing date shall be vacated unless the defendant appears at the hearing. If the hearing date is vacated, it will be plaintiff's responsibility to arrange a new hearing date with the clerk and have the revised summons served on the defendant. A plaintiff shall not be reimbursed for additional costs for service of process which are the result of the failure to timely file the return of service as required herein.

(e) CONDUCT OF THE HEARING.

(1) At the start of the hearing, the judge shall ask the plaintiff to describe more fully the substance or basis of the plaintiff's claim. The judge shall then ask whether the defendant agrees with or disputes the plaintiff's claim. If the claim involves a number of items, the judge may require the plaintiff to present to the court and to the opposing party a written list of the items/claims, showing their respective dates and amounts.

(2) If the defendant does not dispute the claim, the judge shall enter judgment in favor of the plaintiff and against the defendant.

(3) If the defendant disputes the claim or any part thereof, or if the defendant claims an offset or counterclaim against the plaintiff, the judge shall ask the defendant to describe more fully the substance or basis of the dispute, offset, or counterclaim, and shall then set the case for trial.

(f) TRIAL. The trial shall be conducted informally and in a manner that will do substantial justice between the parties. Witnesses shall be sworn, but the court shall not be bound by the usual rules of procedure or evidence, except those concerning privileged communications and the right against self-incrimination. The court will assist the parties, as it deems appropriate, to expedite the presentation of the evidence being offered. Upon conclusion of the hearing, all exhibits will be released back to the party who introduced them.

(g) DEFAULTS. If a defendant who has been served at least five business days before the hearing date fails to appear personally, or by counsel, judgment may be entered by default where the claim is for a clearly determined amount of money, or on proof by the plaintiff of the amount due if the claim is for damages that are not clearly determined. If the plaintiff fails to appear personally, or by counsel, the action may be dismissed for want of prosecution; or the court may make any other disposition thereof that justice may require.

(h) SETTING ASIDE DEFAULT. On motion and upon a showing of good cause, the court may relieve a party from a judgment by default.

(i) ORDERS IN AID OF JUDGMENT. If judgment is entered for the plaintiff and the amount due has been determined, judgment shall be entered on the docket card. If the defendant is present, the judge shall, as a matter of course, inquire whether either party desires an

order in aid of judgment. If either party requests an order in aid of judgment, the judge shall hold a hearing on the application immediately, unless good cause is shown for delaying the hearing. The matter shall then proceed as upon any application for an order in aid of judgment. If the opposing party is not present, the applicant for the order in aid of judgment must apply to the clerk and have said order served on the judgment debtor in accordance with paragraph (d) above.

(j) APPEAL. Any party may appeal an adverse judgment to the Superior Court within 30 days after the judgment was entered, by filing a Notice of Appeal and by paying a filing fee of $150.00. The Notice of Appeal shall conform to the requirements of Rule 3(c)(1) of the Northern Mariana Islands Supreme Court Rules, except that a separate entry of judgment need not be attached. Within 30 days of the filing of a Notice of Appeal, the judge to which the case is assigned shall set the case for a status conference. At the status conference, the judge may issue appropriate orders for the conduct of the case, in accordance with the Commonwealth Rules of Civil Procedure.

(k) DISMISSALS. The court, after notice to the plaintiff and the opportunity to be heard, may dismiss without prejudice any case for which plaintiff fails to file a return of service within 120 days from the date the case is commenced.

(l) OTHER PROCEDURES. All matters in small claims proceedings which are not expressly covered by this rule shall be governed by the Commonwealth Rules of Civil Procedure.

E-FILED
CNMI SUPREME COURT
E-filed: Jul 6 2009 1:57PM
Clerk Review: Jul 07, 2009
Filing ID: 25953077
Case No.: ADM-Administrative Orders
Jocelyn Castro Park

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE:
COMMONWEALTH RULES OF CIVIL PROCEDURE –
DORMANT DOCKET FOR MORTGAGE FORECLOSURE PROCEEDINGS

2009-ADM-0003-RUL

ADMINISTRATIVE ORDER

On April 27, 2009, the Chief Justice submitted the attached proposed rule of civil procedure entitled Dormant Docket for Mortgage Foreclosure Proceedings to the Commonwealth legislature for consideration. Pursuant to Article IV, § 9 of the Commonwealth Constitution, a proposed rule "shall become effective sixty (60) days after submission unless disapproved by a majority of the members of either house of the legislature." Sixty days have elapsed since submission and neither house of the legislature has disapproved of the proposed rule. Accordingly, the proposed rule shall become effective immediately.

SO ORDERED this 6th day of July, 2009.

/s/
MIGUEL S. DEMAPAN
Chief Justice

/s/
ALEXANDRO C. CASTRO
Associate Justice

/s/
JOHN A. MANGLONA
Associate Justice

Proposed Addition to the Commonwealth Rules of Civil Procedure

Rule 73. Dormant Docket for Mortgage Foreclosure Proceedings

(a) PURPOSE. To provide parties to a foreclosure action ample time to negotiate an agreement allowing the mortgagor to cure the alleged default and prevent full foreclosure of the subject property.

(b) PROCESS. A plaintiff may request by motion to the court that a foreclosure action be moved from the active docket to the mortgage foreclosure dormant docket, where it may remain for up to twenty-four (24) months.

(c) REMOVAL TO ACTIVE DOCKET. At any time while the action is on the mortgage foreclosure dormant docket, any party may request that the action be moved back to the active docket. If an action is moved from the mortgage foreclosure dormant docket to the active docket, it may not be transferred back to the dormant docket again unless approved by the court, upon good cause shown and on such terms and conditions as the court may establish.

(d) DISMISSAL. If an action has been pending on the mortgage foreclosure dormant docket for twenty-four (24) months, the court shall dismiss the action without further notice and without prejudice, unless prior to the dismissal a party seeks to extend the twenty-four (24) month period for good cause shown.

(e) EXPIRATION. This Rule shall expire five (5) years from the date it becomes effective, unless extended, or sooner if rescinded.

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**IN RE THE
COMMONWEALTH RULES OF CIVIL PROCEDURE,
43(A), TAKING OF TESTIMONY**

SUPREME COURT NO. 2008-ADM-0004-RUL

ORDER

¶1 On February 1, 2008, the attached Amendments to the *Commonwealth Rules of Civil Procedure, 43(a), Taking of Testimony* were submitted to the Sixteenth Northern Mariana Islands Legislature for approval. Sixty (60) days have elapsed since submission and neither house of the Legislature has disapproved of the Amendments.

¶2 IT IS HEREBY ORDERED that the Amendments are permanent and made a part of the *Commonwealth Rules of Civil Procedure* pursuant to Article IV, § 9A of the Constitution of the Northern Mariana Islands. The Amendments are effective as of April 1, 2008.

Dated this 2nd day of April, 2008.

/s/
MIGUEL S. DEMAPAN
Chief Justice

/s/
ALEXANDRO C. CASTRO
Associate Justice

/s/
JOHN A. MANGLONA
Associate Justice

Amendment to the Commonwealth Rules of Civil Procedure 43(a)

Rule 43. Taking of Testimony

(a) FORM. In all trials the testimony of witnesses shall be taken orally in open court, except as provided by Commonwealth law or by these rules, the Commonwealth Rules of Evidence, or other rules adopted by the Supreme Court. In civil cases, experts may testify by contemporaneous transmission from a different location if they have been made available for a pre-trial deposition. For good cause in compelling circumstances and with appropriate safeguards, the Court may permit testimony in open court by contemporaneous transmission from a different location.

Effective April 1, 2008

**IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**IN RE THE
COMMONWEALTH RULES OF CIVIL PROCEDURE**

JUDICIAL ADMINISTRATIVE ORDER NO. 2004-100

¶1 On March 23, 2004, the attached Amendments to the *Commonwealth Rules of Civil Procedure* were submitted to the Fourteenth Northern Mariana Islands Legislature for approval. Sixty (60) days have elapsed since submission and neither house of the Legislature has disapproved of the Amendments. The Amendments pertain to:

(1) Rule 4(e)(2);

(2) Rule 4(m);

(3) Rule 5(b);

(4) Rule 6;

(5) Rule 30(h)(1);

(6) Rule 38;

(7) Rule 40(b);

(8) Rule 65.

¶2 IT IS HEREBY ORDERED that the Amendments are permanent and made a part of the *Commonwealth Rules of Civil Procedure* pursuant to Article IV, § 9 of the Constitution of the

Northern Mariana Islands. The Amendments are effective as of May 24, 2004.

Dated this 2nd day of June, 2004.

MIGUEL S. DEMAPAN, Chief Justice

ALEXANDRO C. CASTRO, Associate Justice

JOHN A. MANGLONA, Associate Justice

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

AMENDMENTS TO THE COMMONWEALTH RULES OF CIVIL PROCEDURE

(Effective May 24, 2004)

Com. R. Civ. P. 4(e)(2):

(e) SERVICE UPON INDIVIDUALS WITHIN A JURISDICTION OF THE UNITED STATES. Unless otherwise provided by Commonwealth law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in any jurisdiction of the United States (including the Commonwealth):

(1) in any manner prescribed or authorized by any law of the Commonwealth; or

(2) by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode or of business with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

Com. R. Civ. P. 4(m):

(m) TIME LIMIT FOR SERVICE. If service of the summons and complaint is not made upon a defendant within 240 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice, or may direct that service be effected within a specific time, provided, however, that the failure to make service within 240 days after the filing of the complaint shall not be grounds for dismissal of the complaint as to a defendant once that defendant has been served; and provided further, that if the plaintiff shows good cause for the failure, the Court shall extend the time for service for an appropriate period, and an extension shall be freely given when justice so requires. This subdivision does not apply to service in a foreign country pursuant to subdivision (f) or (j)(1).

Com. R. Civ. P. 5(b):

(b) SAME; HOW MADE.

(1) Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney's or party's last known address or, if no address is known, by leaving it with the clerk of court; provided, however, that service by mail shall not be permitted with respect to any document relating to a motion for which a hearing date has been fixed, or relating to a matter which has been set for trial, within 10 days of such hearing or trial date. Delivery of a copy within this role means; handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof, or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office leaving it at the person's dwelling house or usual place of adobe with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(2) Notwithstanding the provisions of paragraph (1) of this subdivision (b), service of an order which requires a person to appear before the court for any proceedings following the entry of a judgment may be served upon such persons in the manner provided for the service of a summons and complaint as set forth in Rule 4 (e).

Com. R. Civ. P. 6:

(d) FOR MOTIONS AND AFFIDAVITS.

(1) A written motion made prior to the entry of a judgment, other than a motion which may be heard ex parte, and notice of hearing thereof, shall be filed and served not later than 30 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. Any opposition to the motion shall be filed and served not later than nine days after service of the motion. Any reply to the opposition shall be filed and served not later than six days after service of the opposition. When a motion, opposition, or reply is supported by affidavit, the affidavit shall be served with such motion, opposition, or reply. The word "days" means regular working days, and excludes weekends and CNMI government holidays."

Com. R. Civ. P. 30(h)(1):

(h) VENUE OF DEPOSITIONS.

(1) The deposition of a party shall be taken at a location within the Commonwealth, if such party resided in the Commonwealth or had its principal place of business there at the time of the commencement of the action. The deposition of a party may be taken elsewhere provided that the parties stipulate to such arrangement. All persons shall bear their own costs in attending the depositions. As used in this Paragraph (h)(1), the word "party" includes individuals, partnerships, associations or corporations. In the case of a party required to make a designation under Rule 30(b)(6), the word "party" shall also include individuals designated to testify on behalf of a party pursuant to that role.

Com. R. Civ. P. 38:

(b) DEMAND. Any party may demand a trial by jury of any issue triable of right by a jury by (1) serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 60 days after the last pleading has been filed, and (2) filing the demand as required by Rule 5(d), and (3) paying the jury trial fee established by the court. Such demand may be indorsed upon a pleading of the party.

(d) WAIVER. A party may withdraw his demand for jury but no later than thirty (30) days prior to trial. The party who did not demand a jury trial has seven (7) after the withdrawal by the other party to file a request for a jury trial.

Com. R. Civ. P. 40(b):

(b) MEMORANDUM THAT CASE IS AT ISSUE.

(1) When a case is at issue, a party may serve and file an at-issue memorandum stating:

(A) the title and number of the case;

(B) the nature of the case;

(C) that all essential parties have been served with process or appeared and that the case is at issue as to those parties;

(D) whether the case is entitled to legal preference and, if so, a citation to the section of the code or statute granting the preference;

(E) whether a jury is demanded;

(F) the time estimated for the trial;

(G) the time is estimated that discovery will be complete;

(H) whether a pre-trial conference is requested; and

(I) the names, addresses and telephone numbers of the attorney for the parties or of parties appearing without counsel.

For the purposes of this role, a case may be considered at issue notwithstanding any counterclaim, cross-claim, or third party complaint that is not at issue if the same has been on file for six months or more. This rule shall not affect the authority of the court to order a severance of a counterclaim, cross-claim, or third-party complaint.

(3) This memorandum shall be filed and served in accordance with the requirements of Rule 7 regarding notice and filing of motions.

Com. R. Civ. P. 65:

(c) SECURITY. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the Commonwealth or of any officer or agency thereof.

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I. SCOPE OF RULES -- ONE FORM OF ACTION

Rule 1. Scope and Purpose of Rules.

These rules govern the procedure in the Superior Court of the Commonwealth of the Northern Mariana Islands ("the Superior Court") in all suits of a civil nature whether cognizable as cases at law or in equity, except as otherwise provided in Rules 81 and 83. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

Rule 2. One Form of Action.

There shall be one form of action to be known as "civil action."

II. COMMENCEMENT OF ACTIONS; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

Rule 3. Commencement of Action.

A civil action is commenced by filing a complaint with the court.

Rule 4. Summons.

(a) FORM. The summons shall be signed by the clerk, bear the seal of the court, identify the court and the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff. It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint. The court may allow a summons to be amended.

(b) ISSUANCE. Upon or after the filing of the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is in proper form, the clerk shall sign, seal, and issue it to the plaintiff for service on the defendant. A summons, or a copy of the summons if addressed to multiple defendants, shall be issued for each defendant to be served.

(c) SERVICE WITH COMPLAINT; BY WHOM MADE.

(1) A summons shall be served together with a copy of the complaint. The plaintiff is responsible for service of a summons and complaint within the time allowed under subdivision (m) and shall furnish the person effecting service with the necessary copies of the summons and complaint.

(2) Service may be effected by any person who is not a party and who is at least 18 years of age. At the request of the plaintiff, however, the court may direct that service be effected by the court's summons officer, or other person or officer specially appointed by the court for that purpose. Such an appointment must be made when the plaintiff is authorized to proceed in forma pauperis.

(d) WAIVER OF SERVICE; DUTY TO SAVE COSTS OF SERVICE; REQUEST TO WAIVE.

(1) A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant.

(2) An individual, corporation, or association that is subject to service under subdivision (e), (f), or (h) and that receives notice of an action in the manner provided in this paragraph has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request:

(A) shall be in writing and shall be addressed directly to the defendant, if an individual, or else to an officer or managing or general agent (or other agent authorized by appointment or law to receive service of process) of a defendant subject to service under subdivision (h);

(B) shall be dispatched through first-class mail or other reliable means;

(C) shall be accompanied by a copy of the complaint;

(D) shall inform the defendant, by means of a text prescribed in an official form promulgated pursuant to Rule 84, of the consequences of compliance and of a failure to comply with the request;

(E) shall set forth the date on which the request is sent;

(F) shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, or 60 days from that date if the defendant is addressed outside the Commonwealth of the Northern Mariana Islands; and

(G) shall provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing.

If a defendant located within the Commonwealth fails to comply with a request for waiver, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.

(3) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed outside the Commonwealth.

(4) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a summons and complaint had been served at the time of filing the waiver, and no proof of service shall be required.

(5) The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under subdivision (e), (f), or (h), together with the costs, including a reasonable attorneys' fee, of any motion required to collect the costs of service.

(e) SERVICE UPON INDIVIDUALS WITHIN A JURISDICTION OF THE UNITED STATES. Unless otherwise provided by Commonwealth law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in any jurisdiction of the United States (including the Commonwealth):

(1) in any manner prescribed or authorized by any law of the Commonwealth; or

(2) by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(f) SERVICE UPON INDIVIDUALS IN A FOREIGN COUNTRY. Unless otherwise provided by federal or Commonwealth law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within any jurisdiction of the United States:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(B) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(C) unless prohibited by the law of the foreign country, by:

(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

(g) SERVICE UPON INFANTS AND INCOMPETENT PERSONS. Service upon an infant or an incompetent person in a jurisdiction of the United States shall be effected: (A) by serving the summons and complaint upon any guardian ad litem appointed by the court; or (B) in the manner prescribed by the law of the jurisdiction in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that jurisdiction.

Service upon an infant or an incompetent person in a place not within the jurisdiction of the United States shall be effected in the manner prescribed by paragraph (2)(A) or (2)(B) of subdivision (f) or by such means as the court may direct.

(h) SERVICE UPON CORPORATIONS AND ASSOCIATIONS. Unless otherwise provided by Commonwealth law, service upon a domestic or foreign corporation (including public corporations organized and existing under the laws of the Commonwealth) or upon a partnership or other unincorporated association that is subject to suit under a common name, and from which a waiver of service has not been obtained and filed, shall be effected:

(1) in a jurisdiction of the United States (including the Commonwealth) in the manner prescribed for individuals by subdivision (e)(1), or by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant, or

(2) in a place not within any jurisdiction of the United States in any manner prescribed for individuals by subdivision (f) except personal delivery as provided in paragraph (2)(c)(i) thereof.

(i) SERVICE UPON THE COMMONWEALTH, AND ITS AGENCIES, CORPORATIONS, OR OFFICERS.

(1) Service upon the Commonwealth shall be effected by delivering a copy of the summons and of the complaint to the attorney general or to an assistant attorney general or clerical employee of the office of the attorney general, at the office of the attorney general, or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the attorney general.

(2) Service upon an officer or agency of the Commonwealth shall be effected by serving the Commonwealth in the manner prescribed by paragraph (1) of this subdivision and

by also serving or sending a copy of the summons and of the complaint by registered or certified mail to the officer or agency.

(3) The court shall allow a reasonable time for service of process under this subdivision for the purpose of curing the failure to serve multiple officers or agencies of the Commonwealth if the plaintiff has effected service on the attorney general.

(j) SERVICE UPON FOREIGN STATE, OR LOCAL GOVERNMENTS.

(1) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608.

(2) Service upon a state, territory, municipal corporation, or other governmental organization subject to suit shall be effected by delivering a copy of the summons and of the complaint to its chief executive officer or by serving the summons and complaint in the manner prescribed by the law of that state or territory for the service of summons or other like process upon any such defendant.

(k) TERRITORIAL LIMITS OF EFFECTIVE SERVICE. All process may be served anywhere within the Commonwealth, and, when not prohibited by law, beyond the territorial limits of the Commonwealth.

(l) PROOF OF SERVICE. If service is not waived, the person effecting service shall make proof thereof to the court. Proof of service in a place not within any jurisdiction of the United States shall, if effected under paragraph (1) of subdivision (f), be made pursuant to the applicable treaty or convention, and shall, if effected under paragraph (2) or (3) thereof, include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court. Failure to make proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

(m) TIME LIMIT FOR SERVICE. If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision does not apply to service in a foreign country pursuant to subdivision (f) or (j)(1).

(n) SEIZURE OF PROPERTY; SERVICE OF SUMMONS NOT FEASIBLE. If a statute of the Commonwealth so provides, the court may assert jurisdiction over property. Notice to claimants of the property shall then be sent in the manner provided by the statute or by service of a summons under this rule.

Rule 5. Service and Filing of Pleadings and Other Papers.

(a) SERVICE; WHEN REQUIRED. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) SAME; HOW MADE. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by

delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney's or party's last known address or, if no address is known, by leaving it with the clerk of the court; provided, however, that service by mail shall not be permitted with respect to any document relating to a motion for which a hearing date has been fixed, or relating to a matter which has been set for trial, within 10 days of such hearing or trial date. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof, or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(c) SAME; NUMEROUS DEFENDANTS. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) (1) FILING; CERTIFICATE OF SERVICE; PAPERS NOT TO BE FILED. All papers after the complaint required to be served upon a party, together with a certificate of service, shall be filed with the court within a reasonable time after service, except as otherwise provided in this subdivision (d).

(2) The certificate of service shall show the date and manner of service, and may be made by written acknowledgment of service, a certificate made by a member of the bar of the court, or an affidavit of the person who served the paper.

(3) Failure to file proof of service does not affect the validity of the service. The burden of proving valid service, however, is on the party responsible for obtaining service of process.

(4) The following papers may not be filed, unless offered as relevant to the determination of an issue in a law and motion proceeding or other hearing, or unless ordered filed for good cause: requests for production of documents and tangible things, and responses; requests for entry upon land for inspection, and responses; requests for physical and mental examination of persons, and responses; interrogatories, and responses, requests for admission, and responses; notices of deposition upon oral examination or upon written questions.

(5) Unless the paper served is a response, the original of any paper served but not filed shall be maintained, with the original proof of service attached, by the party serving the paper. The original of a response shall be served, and it shall be retained by the person upon whom it is served. All original papers shall be retained until six months after the final disposition of the cause unless the court upon motion or for good cause orders any paper to be preserved for a longer period.

(e) FILING WITH THE COURT DEFINED. The filing of papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices.

(f) SERVICE BY FACSIMILE MACHINE. Documents may be filed with the clerk of court by facsimile machine (fax) under the following conditions:

(1) If the attorney is off-island and the attorney has local counsel, the document shall be faxed to local counsel who will make a plain paper copy of the faxed document and file it with the court.

(2) An attorney who is not required to have local counsel may not file documents by facsimile except in emergency situations where time is a critical factor.

(3) Facsimile transmissions will be accepted and filed by the clerk of the court during the working day. Facsimile transmissions received after 5:00 p.m. will be filed the following business day. Facsimile transmissions received after 5:00 p.m. of the due date will not be filed the following business day.

(4) The clerk shall file stamp the facsimile copy as an original and the signature on the copy shall constitute the required signature under Rule 11(a).

(5) All filings must be accompanied by a cover sheet stating the title of the document, the sender, the number of pages, the case caption and number, the name of the parties, the number of copies the clerk must make, and any other pertinent filing instructions.

(6) Unless otherwise permitted by the court, the clerk is not required to respond to facsimile inquiries to verify the receipt of a facsimile transmission. The clerk may so respond to telephone inquiries.

(7) All facsimile copies must be clear and legible. The clerk will notify the sender by telephone that the copies transmitted were not clear and legible and that the sender must retransmit. What is clear and legible shall be determined solely by the clerk of the court. When the clerk must notify counsel and/or parties who are off-island, the clerk will call collect.

(8) Any amendments to a filing require re-transmission of the entire filing, as amended. Single page corrections by facsimile will not be accepted.

(9) Original documents must be received by the clerk within 14 days of the filing of the facsimile transmission. If originals are not timely submitted, the documents transmitted by facsimile will not be considered proper filings, and the court may make such orders as are just, including but not limited to an order striking papers, staying further proceedings until compliance is complete, or dismissing the proceeding, or any part thereof upon receipt of the original document, the clerk shall remove and destroy the facsimile copy and insert the original in the file with the notation thereon "Filed (with original filing information) by fax."

(g) SERVICE BY THE COURT. The court may serve an attorney with orders, judgments, notices, or any other documents by depositing the same into a box maintained for that attorney at the clerk's office. Service shall be deemed complete upon depositing the same into the box.

(h) SERVICE ON PARTY APPEARING PRO SE. On application of a party, the court may order any party who is appearing without an attorney and who does not maintain an office or residence within the Northern Mariana Islands at which service can be made by delivery in the manner provided by Rule 5(b), either:

(1) to designate an address within the Northern Mariana Islands at which service can be made by delivery, or

(2) to designate the clerk as a person authorized to receive service of all documents requiring service on the party. If designated to accept service for a party, the clerk, on receipt of papers served in this representative capacity, shall forthwith mail the papers to the party at the party's last-known address.

Rule 6. Time.

(a) COMPUTATION. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed

shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. Except where the period of time is expressed in "calendar days," when the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 77(c), "legal holiday" includes those days declared as legal holidays pursuant to 1 CMC § 311, and any other day designated as a legal holiday by the Commonwealth.

(b) ENLARGEMENT. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.

(c) SHORTENING TIME. When it is necessary to shorten time for the hearing of a motion, the party who desires to shorten time shall file a separate motion to shorten time, accompanied by a declaration setting forth the reasons why it is necessary to shorten time, and stating that the opposing party has been given notice of the motion to shorten time. If it is not possible to give the opposing party notice of the motion to shorten time, the moving party shall explain in the declaration why it is not possible to give notice, and what efforts were made to give notice. Whenever possible the court shall ensure time is afforded the opposing party to oppose by declaration or other pleading a motion to shorten time. The court need not hold a hearing on the motion to shorten time, but may order that the motion to shorten time be heard prior to the matter the movant desires heard on shortened time. If the motion to shorten time is granted, the court may order the parties to proceed with the matter at a time to be fixed by the court.

(d) FOR MOTIONS AND AFFIDAVITS.

(1) A written motion made prior to the entry of a judgment, other than a motion which may be heard ex parte, and notice of hearing thereof, shall be filed and served not later than 21 calendar days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. Any opposition to the motion shall be filed and served not later than nine calendar days after service of the motion. Any reply to the opposition shall be filed and served not later than six calendar days after service of the opposition. When a motion, opposition, or reply is supported by affidavit, the affidavit shall be served with such motion, opposition, or reply.

(2) A written motion made after the entry of a judgment, other than a motion which may be heard ex parte, and notice of hearing thereof shall be filed and served not later than 14 calendar days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. Any opposition to the motion shall be filed and served not later than seven calendar days after service of the motion. Any reply to the opposition shall be filed and served not later than two calendar days after service of the opposition. When a motion, opposition, or reply is supported by affidavit, the affidavit shall be served with such motion, opposition, or reply.

(e) ADDITIONAL TIME AFTER SERVICE BY MAIL. Whenever a party has the right or is required to do some act to take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three days shall be added to the prescribed period.

III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed; Form of Motions.

(a) PLEADINGS. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) MOTIONS AND OTHER PAPERS.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of a writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. The title of the motion shall fairly identify its subject.

(2) The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Rule 11.

(4) Two copies of every memorandum relating to a motion shall be filed with the court. One of the copies shall be marked "Law Clerk's Copy." The court may require the filing of such additional copies of the motion and memorandum as it deems necessary.

(5) A party making a motion may (and, if the motion involves a question of the interpretation of law, shall) file together with the motion a separate memorandum of reasons, including citation of supporting authorities, why the motion should be granted. Affidavits and other documents setting forth or evidencing facts on which the motion is based shall be filed with the motion.

(6) Except by prior permission of the court, the memorandum of law in support of or in opposition to a motion may not exceed 25 pages, and a reply memorandum may not exceed 15 pages. Pages containing exhibits, the table of contents, the table of citations and addenda containing statutes, rules, regulations, etc., are excluded from the page limitation. Where counsel files a memorandum of law that exceeds the page limitations contained herein, without first seeking and obtaining permission of the court, the court, in its discretion, may:

(i) strike all pages in excess of the page limitation;

(ii) return the memorandum of law to counsel so that counsel can delete text in order to bring the memorandum in compliance with this rule; or

(iii) strike the memorandum of law.

(7) A Notice of Hearing shall be attached to or incorporated in each written motion filed with the court. The day, date, and time of hearing shall be designated by the filing clerk at the time of filing or as soon thereafter as practicable. Parties are not to designate the day, date, and time of hearing unless authorized to do so by the filing clerk or other authorized court personnel.

(c) FORM. All pleadings and papers to be filed in the court shall be typewritten, printed, mimeographed, or otherwise similarly prepared, upon unruled, opaque, unglazed white paper of standard quality not less than sixteen pound weight, 8½ x 11 inches in size. Each sheet shall have a margin at the top, bottom and left-hand side (except as otherwise provided in subdivision (d) of this rule) of not less than 1½ inches. All papers shall be typewritten in heavily inked black ribbon or printed in black. The type shall be standard 10 pitch pica or equivalent. Only one side of the paper shall be used, and the lines on each page shall be double-spaced; provided, however, descriptions of real property, and quotations, and footnotes may be single spaced. All pages shall be numbered consecutively at the bottom and shall

be firmly bound together at the top. Exhibits may be fastened to pages of the specified size and, when prepared by a machine copying process, shall be equal to typewritten material in legibility and permanency of image. Signatures and all other handwritten entries on papers shall be in black or blue ink. This subdivision (c) shall not apply to forms furnished by the court.

(d) FLAT FILING. In order that files in the clerk's office may be kept under the system commonly known as "flat filing," all papers presented for filing shall be flat and unfolded.

(e) FORMAT. Except as provided in subdivision (f) of this rule, the first page of all papers to be filed with the court shall be in the following form:

(1) The space at the top left of the center of the page shall contain the name, office address including the ZIP Code and telephone number of the attorney for the party on whose behalf the paper is filed, or of the party if the party is appearing in person;

(2) The space at the top right of the center of the page shall be left blank for use by the clerk of the court.

(3) There shall be centered the name of the court, which shall not be less than three inches from the top of the page;

(4) The space to the left of the center of the page and below the name of the court shall contain the title of the cause, which title shall include the names of all of the parties. Thereafter, the title in all subsequent pleadings may be appropriately abbreviated.

(5) In the space to the right of the title of the cause, there shall be listed the case number followed by the title of the paper (which shall include appropriate notation if a jury trial is demanded in the paper).

(6) In the space to the right of the title of the cause, each motion and any opposition or reply filed in response thereto shall contain a blank space for the date of the hearing, the time of the hearing, and the judge to whom the motion is assigned. The format shall be as follows:

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

	)	CIVIL ACTION NO.
	)	
Plaintiff,	)	
	)	MOTION/OPPOSITION/REPLY
vs.	)	
	)	Date: , 199__
Defendant.	)	Time:
_____	)	Judge:_____

The information on the initial motion will be filled in by the filing clerk. Any opposition or reply filed with respect to a particular motion shall include the required information in the caption.

(7) All documents filed with the court that require the signature of a judge shall comply with the following format:

(Name of Judge), Presiding Judge
or Associate Judge

If the name of the judge is not known, the signature line must read as follows:

Judge of the Superior Court

(f) MULTIPLE PLEADINGS. Where two or more pleadings or other papers are filed together, only the first page of the first paper must follow all of the requirements of subdivision (e) of this rule. In addition thereto, there shall be listed and combined after the case number, the title of the paper, and the titles of all of the other papers that are being filed together.

(g) DEMURRERS, PLEAS, ETC., ABOLISHED. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

(h) ARGUMENT ON MOTIONS. The following time limitations shall apply in respect to oral argument upon motions: the moving party will have a maximum of 15 minutes to present his or her oral argument in support of pending motion; the non-moving party will then have a maximum of 15 minutes for rebuttal; and the moving party will than have a maximum of 5 minutes for reply. Argument in excess of these limitations is disfavored, and leave to enlarge the times specified herein will be granted only in exceptional circumstances.

Rule 8. General Rules of Pleadings.

(a) CLAIMS FOR RELIEF. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(b) DEFENSES; FORM OF DENIALS. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(c) AFFIRMATIVE DEFENSES. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) EFFECT OF FAILURE TO DENY. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) PLEADING TO BE CONCISE AND DIRECT; CONSISTENCY.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(f) CONSTRUCTION OF PLEADINGS. All pleadings shall be so construed as to do substantial justice.

Rule 9. Pleading Special Matters.

(a) CAPACITY. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) FRAUD, MISTAKE, CONDITION OF THE MIND. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) CONDITIONS PRECEDENT. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) OFFICIAL DOCUMENT OR ACT. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) JUDGMENT. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render.

(f) TIME AND PLACE. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) SPECIAL DAMAGE. When items of special damage are claimed, they shall be specifically stated.

Rule 10. Form of Pleadings.

(a) CAPTION; NAMES OF PARTIES. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint, the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) PARAGRAPHS; SEPARATE STATEMENTS. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) ADOPTION BY REFERENCE; EXHIBITS. Statements in a pleading may be adopted by reference or in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions.

(a) SIGNATURE. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) REPRESENTATIONS TO COURT. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) SANCTIONS. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) *How Initiated.*

(A) *By Motion.* A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within nine calendar days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorneys' fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) *On Court's Initiative.* On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an

attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) *Nature of Sanction; Limitations.* A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) *Order.* When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) INAPPLICABILITY TO DISCOVERY. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

Rule 12. Defense and Objections -- When and How Presented -- By Pleading or Motion -- Motion for Judgment on Pleadings.

(a) WHEN PRESENTED.

(1) Unless a different time is prescribed in a statute of the Commonwealth, a defendant shall serve an answer:

(A) within 20 days after being served with the summons and complaint, or

(B) if service of the summons has been timely waived on request under Rule 4(d), within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside any jurisdiction of the United States.

(2) A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after being served. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs.

(3) Unless a different time is fixed by court order, the service of a motion permitted under this rule alters these periods of time as follows:

(A) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) HOW PRESENTED. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted.

No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) MOTION FOR JUDGMENT ON THE PLEADINGS. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) PRELIMINARY HEARINGS. The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) MOTION FOR MORE DEFINITE STATEMENT. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just; and may award the movant reasonable attorneys' fees and costs incurred in connection with the motion.

(f) MOTION TO STRIKE. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) CONSOLIDATION OF DEFENSES IN MOTION. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) WAIVER OR PRESERVATION OF CERTAIN DEFENSES.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Rule 13. Counterclaim and Cross-Claim.

(a) COMPULSORY COUNTERCLAIMS. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the present of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this rule 13.

(b) PERMISSIVE COUNTERCLAIMS. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) COUNTERCLAIM EXCEEDING OPPOSING CLAIM. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) [RESERVED].

(e) COUNTERCLAIM MATURING OR ACQUIRED AFTER PLEADING. A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) OMITTED COUNTERCLAIM. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

(g) CROSS-CLAIM AGAINST CO-PARTY. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) JOINDER OF ADDITIONAL PARTIES. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(i) SEPARATE TRIALS; SEPARATE JUDGMENTS. If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

Rule 14. Third-Party Practice.

(a) WHEN DEFENDANT MAY BRING IN THIRD PARTY. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 10 days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert

against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third party defendant for all or part of the claim made in the action against the third-party defendant.

(b) WHEN PLAINTIFF MAY BRING IN THIRD PARTY. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

Rule 15. Amended and Supplemental Pleadings.

(a) AMENDMENTS. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining or response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) AMENDMENTS TO CONFORM TO THE EVIDENCE. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to so amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) RELATION BACK OF AMENDMENTS. An amendment of a pleading relates back to the date of the original pleading when

(1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or

(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleadings, or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

The delivery or mailing of process to the attorney general, or an agency or officer who would have been a proper defendant if named, satisfies the requirement of subparagraphs (A) and (B) of this paragraph (3) with respect to the Commonwealth or any agency or officer thereof to be brought into the action as a defendant.

(d) SUPPLEMENTAL PLEADINGS. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

Rule 16. Pretrial Conferences; Scheduling; Management.

(a) PRETRIAL CONFERENCES; OBJECTIVES. In any action, the court may in its discretion, or shall upon request of any party, direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation, and;

(5) facilitating the settlement of the case.

(b) SCHEDULING AND PLANNING. Not earlier than 30 days after the filing of the last pleading permitted by Rule 7, upon the request of any party, the court shall set the case for a scheduling conference. Following a scheduling conference, the court shall, as soon as practicable, enter a scheduling order that limits the time

(1) to join other parties and to amend the pleadings;

(2) to file motions; and

(3) to complete discovery.

The scheduling order also may include

(4) modifications of the times to conduct and respond to discovery, and of the extent of discovery to be permitted;

(5) the date or dates for conferences before trial, a final pretrial conference, and trial; and

(6) any other matters appropriate in the circumstances of the case.

A scheduling order shall not be modified except upon a showing of good cause and by leave of the court.

(c) SUBJECTS FOR CONSIDERATION AT PRETRIAL CONFERENCES. At any conference under this rule consideration may be given, and the court may take appropriate action, with respect to

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and of cumulative evidence, and limitations or restrictions on the use of testimony under Rule 702 of the Commonwealth Rules of Evidence;

(5) the appropriateness and timing of summary adjudication under Rule 56;

(6) the control and scheduling of discovery, including orders affecting disclosures and discovery pursuant to Rule 26 and Rules 29 through 37;

(7) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(8) the advisability of referring matters to a magistrate, judge or master;

(9) settlement and the use of special procedures to assist in resolving the dispute when authorized by statute or local rule;

(10) the form and substance of the pretrial order;

(11) the disposition of pending motions;

(12) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(13) an order for a separate trial pursuant to Rule 42(b) with respect to a claim, counterclaim, cross-claim, or third-party claim, or with respect to any particular issue in the case;

(14) an order directing a party or parties to present evidence early in the trial with respect to a manageable issue that could, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a) or a judgment on partial findings under Rule 52(c);

(15) an order establishing a reasonable limit on the time allowed for presenting evidence; and

(16) such other matters as may facilitate the just, speedy, and inexpensive disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed. If appropriate, the court may require that a party or its representative be present or reasonably available by telephone in order to consider possible settlement of the dispute.

(d) FINAL PRETRIAL CONFERENCE. Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(e) PRETRIAL ORDERS. After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

(f) SANCTIONS. If a party or a party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or a party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B),(C),(D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorneys' fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

IV. PARTIES

Rule 17. Parties Plaintiff and Defendant; Capacity.

(a) REAL PARTY IN INTEREST. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute of the Commonwealth so provides, an action for the use or benefit of another shall be brought in the name of the Commonwealth. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) CAPACITY TO SUE OR BE SUED. The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of the individual's domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the Commonwealth, except that a partnership or other unincorporated association, which has no such capacity by the law, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States or of the Commonwealth.

(c) INFANTS OR INCOMPETENT PERSONS. Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

Rule 18. Joinder of Claims and Remedies.

(a) JOINDER OF CLAIMS. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as ultimate claims, as many claims, legal or equitable, as the party has against an opposing party.

(b) JOINDER OF REMEDIES; FRAUDULENT CONVEYANCES. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim of money.

Rule 19. Joinder of Persons Needed for Just Adjudication.

(a) PERSONS TO BE JOINED IF FEASIBLE. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the

claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

(b) DETERMINATION BY COURT WHENEVER JOINDER NOT FEASIBLE. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) PLEADING REASONS FOR NONJOINDER. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) EXCEPTION OF CLASS ACTIONS. This rule is subject to the provisions of Rule 23.

Rule 20. Permissive Joinder of Parties.

(a) PERMISSIVE JOINDER. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) SEPARATE TRIALS. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

Rule 21. Misjoinder and Non-Joinder of Parties.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any state of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Rule 22. Interpleader.

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to

similar liability may obtain such interpleader by way of cross-claim or counter-claim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

Rule 23. Class Actions.

(a) PREREQUISITES TO CLASS ACTION. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) CLASS ACTIONS MAINTAINABLE. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of title controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE MAINTAINED; NOTICE; JUDGMENT; ACTIONS CONDUCTED PARTIALLY AS CLASS ACTIONS.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under

subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) ORDERS IN CONDUCT OF ACTIONS. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) DISMISSAL OR COMPROMISE. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

Rule 23.1 Derivative Actions by Shareholders.

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

Rule 23.2 Actions Relating to Unincorporated Associations.

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

Rule 24. Intervention.

(a) INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the Commonwealth confers an unconditional right to

intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) PERMISSIVE INTERVENTION. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the Commonwealth confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement, it issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) PROCEDURE. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the Commonwealth gives a right to intervene. When the constitutionality of a law of the Commonwealth affecting the public interest is drawn in question in any action in which the Commonwealth or an officer, agency, or employee thereof is not a party, the court shall notify the attorney general of the Commonwealth. A party challenging the constitutionality of legislation should call the attention of the court to its consequential duty, but failure to do so is not a waiver of any constitutional right otherwise timely asserted.

Rule 25. Substitution of Parties.

(a) DEATH.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) INCOMPETENCY. If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against the party's representative.

(c) TRANSFER OF INTEREST. In case of any transfer of interest, the action my be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

(d) PUBLIC OFFICERS; DEATH OR SEPARATION FROM OFFICE.

(1) When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the

officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) A public officer who sues or is sued in an official capacity, may be described as a party by the officer's official title rather than by name; but the court may require the officer's name to be added.

V. DEPOSITIONS AND DISCOVERY

Rule 26. General Provisions Governing Discovery.

(a) DISCOVERY METHODS. Parties may obtain discovery by one or more of the following methods: deposition upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examination; and requests for admission.

(b) DISCOVERY SCOPE AND LIMITS. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In General.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

(2) *Insurance Agreements.* A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) *Trial Preparation: Materials.* Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the

materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) *Trial Preparation: Experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this rule, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinion on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this rule; and (ii) with respect to discovery obtained under subdivision (b)(4)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(c) PROTECTIVE ORDERS. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court;

(6) that a deposition after being sealed be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37 (a)(4) apply to the award of expenses incurred in relation to the motion.

(d) SEQUENCE AND TIMING OF DISCOVERY. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) SUPPLEMENTATION OF RESPONSES. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement the response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (A) the party knows or has reason to believe that the response was incomplete or incorrect when made, or (B) the party knows or has reason to believe that the response though complete and correct when made is no longer complete and correct and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(f) DISCOVERY CONFERENCE. At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any limitation proposed to be placed on discovery;

(4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and each party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on

discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16.

(g) SIGNING OF DISCOVERY REQUESTS, RESPONSES, AND OBJECTIONS. Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable attorneys' fees.

Rule 27. Depositions Before Action or Pending Appeal.

(a) BEFORE ACTION.

(1) *Petition.* A person who desires to perpetuate testimony regarding any matter that may be cognizable in the court may file a verified petition in the court. The petition shall be entitled in the name of the petitioner and shall show: (1) that the petitioner expects to be a party to an action cognizable in the court but is presently unable to bring it or cause it to be brought, (2) the subject matter of the expected action and the petitioner's interest therein, (3) the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it, (4) the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and (5) the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) *Notice and Service.* The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served in the manner provided in Rule 4(d) for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not

served in the manner provided in Rule 4(d), an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17(c) apply.

(3) *Order and Examination.* If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 34 and 35.

(4) *Use of Deposition.* If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in the court, in accordance with the provisions of Rule 32(a).

(b) PENDING APPEAL. If an appeal has been taken from a judgment of the court or before the taking of an appeal if the time therefor has not expired, the court may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the court. In such case the party who desires to perpetuate the testimony may make a motion in the court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the court. The motion shall show (1) the names and addresses of the persons to be examined and the substance of the testimony which the party expects to elicit from each; and (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the court.

(c) PERPETUATION BY ACTION. This rule does not limit the power of the court to entertain an action to perpetuate testimony.

Rule 28. Persons Before Whom Depositions May be Taken.

(a) WITHIN THE UNITED STATES AND THE COMMONWEALTH. Within the United States, the Commonwealth, or a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court. A person so appointed has power to administer oaths and take testimony. The term officer as used in Rules 30, 31, and 32 includes a person appointed by the court or designated by the parties under Rule 29.

(b) IN FOREIGN COUNTRIES. Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or convention, or (2) pursuant to a letter of request (whether or not captioned a letter rogatory), or (3) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States or of the Commonwealth, or (4) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in [here name the country]." When a letter of request or any other device is used

pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States or the Commonwealth under these rules.

(c) DISQUALIFICATION FOR INTEREST. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

Rule 29. Stipulations Regarding Discovery Procedure.

Unless otherwise directed by the court, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures governing or limitations placed upon discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the court.

Rule 30. Depositions Upon Oral Examination.

(a) WHEN DEPOSITIONS MAY BE TAKEN; WHEN LEAVE REQUIRED.

(1) A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b), if the person to be examined is confined in prison or if, without the written stipulation of the parties,

(A) a proposed deposition would result in more than 10 depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) the person to be examined already has been deposed in the case; or

(C) a party seeks to take a deposition before the time specified in any order regarding the scheduling of discovery, unless the notice contains a certification, with supporting facts, that the person to be examined is expected to leave the Commonwealth and be unavailable for examination in the Commonwealth unless deposed before that time.

(b) NOTICE OF EXAMINATION; GENERAL REQUIREMENTS; METHOD OF RECORDING; PRODUCTION OF DOCUMENTS AND THINGS; DEPOSITION OF ORGANIZATION; DEPOSITION BY TELEPHONE.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to, or included in, the notice.

(2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost

of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by non-stenographic means.

(3) With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date, time, and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule and Rules 28(a), 37(a)(1), 37(b)(1) and 45(d), a deposition taken by such means is taken at the place where the deponent is to answer questions.

(c) EXAMINATION AND CROSS-EXAMINATION; RECORD OF EXAMINATION; OATH; OBJECTIONS. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Commonwealth Rules of Evidence except Rules 103 and 615. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subdivision (b)(2) of this rule. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) SCHEDULE AND DURATION; MOTION TO TERMINATE OR LIMIT EXAMINATION.

(1) Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under paragraph (3).

(2) By order, the court may limit the time permitted for the conduct of a deposition, but shall allow additional time consistent with Rule 26(b)(2) if needed for a fair examination of the deponent or if the deponent or another party impedes or delays the examination. If the court finds such an impediment, delay, or other conduct that has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorneys' fees incurred by any parties as a result thereof.

(3) At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) REVIEW BY WITNESS; CHANGES; SIGNING. If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

(f) CERTIFICATION AND FILING BY OFFICER; EXHIBITS; COPIES; NOTICE OF FILING.

(1) The officer shall certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate shall be in writing and accompany the record of the deposition. Unless otherwise ordered by the court, the officer shall securely seal the deposition in an envelope or package indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the court in which the action is pending or send it to the attorney who arranged for the transcript or recording, who shall store it under conditions that will protect it against loss, destruction, tampering, or deterioration. Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the

officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(g) FAILURE TO ATTEND OR TO SERVE SUBPOENA; EXPENSES.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by the party and that party's attorney in attending, including reasonable attorneys' fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorneys' fees.

(h) VENUE OF DEPOSITIONS.

(1) The deposition of a party shall be taken at a location within the Commonwealth, if such party resided in the Commonwealth or had its principal place of business there at the time of the commencement of the action. The deposition of a party may be taken elsewhere provided that the parties stipulate to such arrangement and, if the change of venue of the deposition is for the convenience of the party being deposed, all other parties shall be entitled to be reimbursed for their reasonable additional expenses incurred by reason of the taking of the deposition in a location outside of the Commonwealth. As used in this Paragraph (h)(1), the word "party" includes individuals, partnerships, associations or corporations. In the case of a party required to make a designation under Rule 30(b)(6), the word "party" shall also include individuals designated to testify on behalf of a party pursuant to that rule.

(2) Except as otherwise provided in (1), above, no person who does not maintain his or her principal residence or principal place of business in the Commonwealth may be required to appear for the taking of his or her deposition in the Commonwealth unless the party noticing the deposition provides to such person, in advance of the deposition, a round-trip economy-class airline ticket between such person's principal place of residence or principal place of business and the place where the deposition is to be held.

(i) DISPOSAL OF DEPOSITION. Except for transcripts of depositions which have been admitted into evidence, after judgment has become final and no appeal is taken from it or, if appealed, and the matter is finally determined, counsel for the party filing the transcript with the court will have 30 days to withdraw it from the court. If not so withdrawn, the clerk of the court may destroy the transcript.

Rule 31. Depositions Upon Written Questions.

(a) SERVING QUESTIONS; NOTICE.

(1) A party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b), if the person to be examined is confined in prison or if, without the written stipulation of the parties,

(A) a proposed deposition would results in more than 10 depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) the person to be examined has already been deposed in the case; or

(C) a party seeks to take a deposition before the time specified in any order regarding the scheduling of discovery.

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

(4) Within 14 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within seven days after being served with cross questions, a party may serve redirect questions upon all other parties. Within seven days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) OFFICER TO TAKE RESPONSES AND PREPARE RECORD. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

(c) NOTICE OF FILING. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

Rule 32. Use of Deposition in Court Proceedings.

(a) USE OF DEPOSITIONS. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for other purpose permitted by the Commonwealth Rules of Evidence.

(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) that the witness is dead; or

(B) that the witness is out of the Commonwealth, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of

presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

A deposition taken without leave of court pursuant to a notice under Rule 30(a)(2)(c) shall not be used against a party who demonstrates that, when served with the notice, it was unable through the exercise of diligence to obtain counsel to represent it at the taking of the deposition; nor shall a deposition be used against a party who, having received less than 11 days notice of a deposition, has promptly upon receiving such notice filed a motion for a protective order under Rule 26(c)(2) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the Commonwealth, of the United States, or of any State or territory thereof and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition taken may also be used as permitted by the Commonwealth Rules of Evidence.

(b) OBJECTIONS TO ADMISSIBILITY. Subject to the provisions of Rules 28(b) and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) FORM OF PRESENTATION. Except as otherwise directed by the court, a party offering deposition testimony pursuant to this rule may offer it in stenographic or non-stenographic form, but, if in non-stenographic form, the party shall also provide the court with a transcript of the portions so offered. On request of any party in a case tried before a jury, deposition testimony offered other than for impeachment purposes shall be presented in non-stenographic form, if available, unless the court for good cause orders otherwise.

(d) EFFECT OF ERRORS AND IRREGULARITIES IN DEPOSITIONS.

(1) *As to Notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) *As to Disqualification of Officer.* Objection to taking a deposition because of a disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) *As to Taking of Deposition.*

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time

allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.

(4) *As to Completion and Return of Deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been ascertained.

Rule 33. Interrogatories to Parties.

(a) AVAILABILITY. Without leave of court or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number including all discrete subparts, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26(b). Without leave of court or written stipulation, interrogatories may not be served before the time specified in any order regarding the scheduling of discovery.

(b) ANSWERS AND OBJECTIONS.

(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.

(2) The answers, and objections, if any, shall be made and numbered in the order of the interrogatories. An answer or objection need not be preceded by the interrogatory. The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown. When there is an objection to part of an interrogatory which is separable from the remainder, the part to which there is no objection shall be answered.

(5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(6) Answers to interrogatories with respect to which objections were served and which are subsequently ordered to be answered shall be served within 15 days after it is determined that they should be answered, unless the court directs otherwise.

(c) SCOPE; USE AT TRIAL. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

(d) OPTION TO PRODUCE BUSINESS RECORDS. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is

substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

Rule 34. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.

(a) SCOPE. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect, copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) PROCEDURE. The request shall set forth, either by individual item or by category, the items to be inspected, and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. Without leave of court or written stipulation, a request may not be served before the time specified in any order requiring the scheduling of discovery.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(c) PERSONS NOT PARTIES. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45.

Rule 35. Physical and Mental Examinations of Persons.

(a) ORDER FOR EXAMINATION. When the mental or physical condition (including the blood group) of a party or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) REPORT OF EXAMINER.

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requesting

party a copy of the detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that the party is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the court may exclude the examiner's testimony if offered at trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other rule.

Rule 36. Request for Admission.

(a) REQUEST FOR ADMISSION. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Without leave of court or written stipulation, requests for admission may not be served before the time specified in any order regarding the scheduling of discovery.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as the parties may agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. The answers, and objections, if any, shall be made and numbered in the order of the requests for admission. An answer or objection need not be preceded by the request for admission. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it. When there is an objection to a request for admission and it is subsequently determined that the request is proper, the matter, the admission of which is requested, shall be deemed admitted unless within 10 days after such determination, or such other period as the court directs, the party to whom the request was directed

serves a statement denying the matter or setting forth the reasons why such party cannot admit or deny the matter, as provided in this rule.

(b) EFFECT OF ADMISSION. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

Rule 37. Failure to Make Disclosure or Cooperate in Discovery: Sanctions.

(a) MOTION FOR ORDER COMPELLING DISCOVERY. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:

(1) *Application.* An application for an order compelling discovery may be made to the court.

(2) *Motions.* If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party objects to or fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, or if a party objects to a request for admission submitted under Rule 36, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) *Evasive or Incomplete Disclosure, Answer or Response.* For purposes of this subdivision an evasive or incomplete answer or response is to be treated as a failure to answer or respond.

(4) *Expenses and Sanctions.*

(A) If the motion is granted or if the requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorneys' fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the discovery without court action, or that the opposing party's response or objection was substantially justified, or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorneys' fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorneys' fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) FAILURE TO COMPLY WITH ORDER.

(1) *Failure to be Sworn or to Answer Question.* If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of court.

(2) *Failure to Obey Discovery Order.* If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorneys' fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) FAILURE TO ADMIT. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorneys' fees. The court shall make the order unless it finds that (A) the request was held objectionable pursuant to Rule 36(a), or (B) the admission sought was of no substantial importance, or (C) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (D) there was other good reason for the failure to admit.

(d) FAILURE OF PARTY TO ATTEND AT OWN DEPOSITION OR SERVE ANSWERS TO INTERROGATORIES OR RESPOND TO REQUEST FOR INSPECTION. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorneys' fees, caused by the failure unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has a pending motion for a protective order as provided by Rule 26(c).

(e) [RESERVED].

(f) [RESERVED].

(g) FAILURE TO PARTICIPATE IN THE FRAMING OF A DISCOVERY PLAN. If a party or a party's attorney fails to participate in good faith in the development and submission of a proposed discovery plan as required by Rule 26(f), the court may, after opportunity for hearing, require such party or attorney to pay to any other party the reasonable expenses, including attorneys' fees, caused by the failure.

VI. TRIALS

Rule 38. Jury Trial of Right.

(a) RIGHT PRESERVED. The right of trial by jury as given by a statute of the Commonwealth shall be preserved to the parties inviolate.

(b) DEMAND. Any party may demand a trial by jury of any issue triable of right by a jury by (1) serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 60 days prior to the date set by the court for trial of the case, and (2) filing the demand as required by Rule 5(d), and (3) paying the jury trial fee established by the court. Such demand may be indorsed upon a pleading of the party.

(c) SAME; SPECIFICATION OF ISSUES. In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) WAIVER. The failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

(e) REFUND OF JURY FEES. In any case where a jury trial has been demanded but subsequently waived or withdrawn pursuant to Rule 38(d) prior to the summoning of a jury panel, the clerk shall refund any jury trial fees paid pursuant to statute or court rule.

Rule 39. Trial by Jury or by the Court.

(a) BY JURY. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the statutes of the Commonwealth.

(b) BY THE COURT. Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) ADVISORY JURY AND TRIAL BY CONSENT. In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury or, except in actions against the Commonwealth when a statute of the Commonwealth provides for trial without a jury, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

Rule 40. Assignment of Cases for Trial.

(a) TRIAL CALENDAR. The court shall provide by rule for the placing of actions upon the trial calendar (1) without request of the parties or (2) upon request of a party and notice to the other parties, in the manner provided in subdivision (b) of this rule or (3) in such other manner as the court deems expedient. Precedence shall be given to factions entitled thereto by any statute of the Commonwealth.

(b) MEMORANDUM THAT CASE IS AT ISSUE.

(1) When a case is at issue, a party may serve and file an at-issue memorandum stating:

(A) the title and number of the case;

(B) the nature of the case;

(C) that all essential parties have been served with process or appeared and that the case is at issue as to those parties;

(D) whether the case is entitled to legal preference and, if so, a citation to the section of the code or statute granting the preference;

(E) whether a jury is demanded;

(F) the time estimated for the trial;

(G) the time it is estimated that discovery will be completed;

(H) whether a pre-trial conference is requested; and

(I) the names, addresses and telephone numbers of the attorney for the parties or of parties appearing without counsel.

For the purposes of this rule, a case may be considered at issue notwithstanding any counterclaim, cross-claim, or third-party complaint that is not at issue if the same has been on file for six months or more.

This rule shall not affect the authority of the court to order a severance of a counterclaim, cross-claim, or third-party complaint.

(2) A party not in agreement with the information or estimates given in an at-issue memorandum shall, within 10 days after the service thereof, serve and file a memorandum on the party's behalf.

(c) UNAVAILABLE WITNESSES. When a party learns or has reason to believe in advance of the date set for trial that a person whom that party intends to call or has called as a witness will not appear, with or without cause, the party shall, unless the party prefers to proceed to trial without the witness, move in writing for a continuance as far in advance of the trial date as practicable.

(d) CONTINUANCE TO SECURE THE PRESENCE OF A WITNESS.

(1) Unless good cause is shown, a continuance will not be granted on the date set for trial because of the absence of a witness, unless it appears that the party seeking the continuance has served a subpoena upon that witness in accordance with the provisions of Rule 45(b).

(2) A party moving for a continuance to secure the presence of a witness shall explain in writing or, if the need for a continuance arises on the date of trial, in open court why the party believes a continuance will enable the party to secure the presence of the witness, and state the facts to which the witness is expected to testify.

(e) STIPULATIONS. All stipulations affecting the scheduling of trials, except stipulations which are made in open court and recorded, shall be in writing and signed by both parties, and shall be filed with the court. Except to prevent injustice, no stipulation which does not satisfy these requirements shall be given effect.

(f) SETTLEMENT. The parties shall promptly notify the court of any settlement or other agreed-upon disposition of a matter which has been set for trial.

Rule 41. Dismissal of Actions.

(a) VOLUNTARY DISMISSAL; EFFECT THEREOF.

(1) *By Plaintiff; By Stipulation.* Subject to the provisions of Rule 23(e), of Rule 66, and of any statute of the Commonwealth, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the Commonwealth, the United States, or any state or territory, an action based on or including the same claim.

(2) *By Order of Court.* Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff s instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) INVOLUNTARY DISMISSAL; EFFECT THEREOF.

(1) For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant.

(2) (A) At the end of each calendar year, the clerk shall prepare a list of all cases pending in the court, other than criminal cases, in which no action was taken by any party during the preceding two years. The clerk shall then mail notice to all persons who have entered an appearance in such a case that, subject to the provisions of subparagraph (c), below, the case will be dismissed without further notice 30 days after the sending of the notice.

(B) After the 30th day following the sending of the notice, without order of the court the clerk shall, subject to the provisions of subparagraph (c), below, enter an

order of dismissal for all cases on the list. It shall not be necessary for the clerk to send notice of the dismissal to any party.

(C) A case shall not be dismissed for lack of prosecution if within 30 days of sending the notice,

(i) there are further proceedings in the case or

(ii) an explanation for the lack of proceedings is filed and the court directs that it not be dismissed.

(3) Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision (b) and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(c) DISMISSAL OF COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) COSTS OF PREVIOUSLY-DISMISSED ACTION. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

Rule 42. Consolidation; Separate Trials.

(a) CONSOLIDATION. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) SEPARATE TRIALS. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as given by a statute of the Commonwealth.

Rule 43. Taking of Testimony.

(a) FORM. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by Commonwealth law or by these rules, the Commonwealth Rules of Evidence, or other rules adopted by the Supreme Court.

(b) TAKING TESTIMONY BY CLOSED-CIRCUIT TELEVISION.

(1) Should counsel or a party deem it necessary that a witness' testimony be taken by closed-circuit television to avoid embarrassment, harassment, threats and the like or to facilitate the taking of the testimony because of the nature of the claim, charge or defense, a motion so requesting shall be filed with the court and served on opposing counsel (or party if not represented by counsel) to take testimony by closed circuit television.

(2) The motion shall provide the name of the witness, the general content of the proposed testimony and the reasons why the witness should not testify personally in court.

(c) [RESERVED].

(d) AFFIRMATION IN LIEU OF OATH. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) EVIDENCE ON MOTIONS. When a motion is based on facts not appearing of record the court may hear the matter on affidavits or depositions presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony.

(f) INTERPRETERS. In any proceeding which may require testimony to be translated into English from a language other than Chamorro or Carolinian, the party who anticipates producing such testimony shall notify the court of that fact at least five days before the time set for producing the testimony. Said notice shall be in writing and filed with the court and shall include the language (and its specific dialect, if any) to be translated as well as the party's proposed translator, if any. A copy of the notice shall be served on the opposing counsel or party if unrepresented. Upon receiving notice of a proposed translator, the opposing counsel or party shall give prompt notice of any objection to the translator. It shall be the responsibility of the party requiring the translator to have the translator present at the proceeding and to pay the costs of same.

Rule 44. Proof of Official Record.

(a) AUTHENTICATION.

(1) DOMESTIC. An official record kept within the Commonwealth, the United States, or any state, district, or commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.

(2) FOREIGN. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) LACK OF RECORD. A written statement that, after diligent search, no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) OTHER PROOF. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

Rule 44.1. Determination of Foreign Law.

A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Commonwealth Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

Rule 45. Subpoena.

(a) FORM; ISSUANCE.

(1) Every subpoena shall

(A) state the name of the court; and

(B) state the title of the action and its civil action number; and

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) set forth the text of subdivisions (c) and (d) of this rule.

A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately.

(2) Every subpoena shall issue from the court.

(3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney who is authorized to practice before the court may, as officer of the court, also issue and sign a subpoena on behalf of the court.

(b) SERVICE.

(1) A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and, if the attendance commanded is on an island other than the island on which service is made, by tendering to that person a round-trip airline ticket for transportation between the place of service and the place where the person's attendance is commanded. When the subpoena is issued on behalf of the Commonwealth or an officer or agency thereof, fees need not be tendered. Prior notice of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b).

(2) Subject to the provisions of clause (ii) of subparagraph (c)(3)(A) of this rule, a subpoena may be served at any place within the Commonwealth. The court upon proper application and cause shown may authorize the service of a subpoena at any other place.

(3) Proof of service when necessary shall be made by filing with the clerk of the court by which the subpoena is issued a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of

this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorneys' fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iii) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel to the Commonwealth to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person t o whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(e) FAILURE TO OBEY. Failure by any person without adequate excuse to obey a subpoena served upon that person shall be ground for the issuance of a bench warrant by the court, and may additionally be deemed a contempt of the court. An adequate cause for failure to obey exists when a

subpoena purports to require a non-party to travel to the Commonwealth to attend or produce, unless airline transportation is provided as required by paragraph (b)(1).

Rule 45.1. Notice to Appear in Lieu of Subpoena.

(a) In the case of the production of a party to the record of any civil action or proceeding or of a person for whose immediate benefit an action is prosecuted or defended or of anyone who is an officer, director, or managing agent of any such party or person, the service of a subpoena upon any such witness is not required if written notice requesting such witness to attend before a court, or at a trial of an issue therein with the time and place thereof, is served upon the attorney of such party or person. Such notice shall be served at least 10 days before the time required for attendance unless the court prescribes a shorter time. The giving of such notice shall have the same effect as service of a subpoena on the witness, and the parties shall have such rights and the court may make such orders, including the imposition of sanctions, as in the case of a subpoena for attendance, before the court.

(b) If the notice specified in subdivision (a) is served at least 20 days before the time required for attendance, or within such shorter time as the court may order, it may include a request that such party or person bring books, documents or other things. The notice shall state the exact materials or things desired and that such party or person has them in the possession or under the control of such party.

(c) The procedure of this rule is alternative to the procedure provided by Rule 45 in the cases herein provided for, and no subpoena duces tecum shall be required.

Rule 46. Exceptions Unnecessary.

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

Rule 47. Selection of Jurors.

(a) EXAMINATION OF JURORS. The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper.

(b) PEREMPTORY CHALLENGES. The court shall allow the number of peremptory challenges provided by 7 CMC § 3102.

(c) EXCUSE. The court may for good cause excuse a juror from service during trial or deliberation.

(d) PROCEDURE. At a time appropriate for each case for which a jury is required, the court shall set a pre-trial hearing for jury selection. The parties and their attorneys shall attend. Counsel shall be provided a copy of the list of the jury panel prior to the hearing.

At the hearing the court will determine if counsel will stipulate to an English-speaking jury. Counsel will then go over the list of prospective jurors and by mutual agreement note any prospective jurors who would not be acceptable on the following grounds:

(1) If an English-speaking jury is stipulated to, any non-English-speaking person.

(2) Any person who is related to any party or such party's counsel so as to clearly disqualify such person.

(3) Any person who is a witness to the subject matter of the lawsuit or otherwise disqualified because of personal knowledge or the like.

(4) Any person who, although not related to counsel or a party, has such friendship/animosity with counsel or a party as would clearly disqualify such person.

(5) If witnesses to the litigation are known or divulged either by court order or voluntarily, any person who is so related or associated with a witness as to clearly disqualify such person.

(6) Any person who is statutorily disqualified by the provisions of 7 CMC §§ 3103, 3104, or 3111.

(7) Any other person who should be disqualified for any other reason.

A list of the names to be stricken from the list by mutual agreement of counsel shall be presented to the court for its approval. The court may decline to strike any of the names on the list. The list of the names finally stricken shall be filed with the court.

From the remaining names on the list, counsel will either: (A) settle on a list of persons to be served for jury service; or (B) have the court direct the Department of Public Safety to serve all remaining persons on the list.

Subject to the orders of the court, persons other than parties who are knowledgeable about the citizens of the Commonwealth, may participate in the selection procedure set forth in this subdivision.

The procedure set forth in this subdivision does not affect challenges for cause or peremptory challenges exercised at trial.

Rule 48. Number of Jurors -- Participation in Verdict.

The court shall seat a jury of six members, unless the parties shall stipulate to a lesser number. All jurors shall participate in the verdict unless excused from service by the court pursuant to Rule 47(c). Unless the parties otherwise stipulate, (1) the verdict shall be unanimous and (2) no verdict shall be taken from a jury reduced in size to fewer than six members.

Rule 49. Special Verdicts and Interrogatories.

(a) SPECIAL VERDICTS. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written form of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) GENERAL VERDICT ACCOMPANIED BY ANSWER TO INTERROGATORIES. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the

appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

Rule 50. Judgment as a Matter of Law in Actions Tried by Jury; Alternative Motion for New Trial; Conditional Rulings.

(a) JUDGMENT AS A MATTER OF LAW.

(1) If during a trial by jury, a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot, under the controlling law, be maintained or defeated without a favorable finding on that issue.

(2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

(b) RENEWAL OF MOTION FOR JUDGMENT AFTER TRIAL; ALTERNATIVE MOTION FOR NEW TRIAL. Whenever a motion for a judgment as a matter of law made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed by service and filing not later than 10 days after entry of judgment. A motion for a new trial under Rule 59 may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested in the alternative. If a verdict was returned, the court may, in disposing of the renewed motion, allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned, the court may, in disposing of the renewed motion, direct the entry of judgment as a matter of law or may order a new trial.

(c) SAME: CONDITIONAL RULINGS ON GRANT OF MOTION FOR JUDGMENT AS A MATTER OF LAW.

(1) If the renewed motion for judgment as a matter of law is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) The party against whom judgment as a matter of law has been rendered may serve a motion for a new trial pursuant to Rule 59 not later than 10 days after entry of the judgment.

(d) SAME: DENIAL OF MOTION FOR JUDGMENT AS A MATTER OF LAW. If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment,

nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

Rule 51. Instructions to Jury: Objection.

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. The court, as its election, may instruct the jury before or after argument, or both. No party may assign as error the giving or the failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury.

Rule 52. Findings by the Court; Judgment on Partial Findings.

(a) EFFECT. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Findings of act and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in subdivision (c) of this rule.

(b) AMENDMENT. Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the court an objection to such findings or has made a motion to amend them or a motion for judgment.

(c) JUDGMENT ON PARTIAL FINDINGS. If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect for a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule.

Rule 53. Masters.

(a) APPOINTMENT AND COMPENSATION. The court in which any action is pending may appoint a special master therein. As used in these rules, the word "master" includes a referee, an auditor, an examiner, and an assessor. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain the master's report as security for the master's compensation; but when the party ordered to pay the

compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) REFERENCE. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) POWERS. The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order. The master may require the production before the master of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The master may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in the Commonwealth Rules of Evidence for a court sitting without a jury.

(d) PROCEEDINGS.

(1) *Meetings.* When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make the report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) *Witnesses.* The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, the witness may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

(3) *Statement of Accounts.* When matters of accounting are in issue before the master, the master may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as the master directs.

(e) REPORT.

(1) *Contents and Filing.* The master shall prepare a report upon the matters submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with clerk of the court and serve on all parties notice of the filing. In an action to be tried without a jury, unless otherwise directed by the order of reference, the master shall file with the report a transcript of the proceedings and of the evidence and the original exhibits. Unless otherwise directed by the order of reference, the master shall serve a copy of the report on each party.

(2) *In Non-Jury Actions.* In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) *In Jury Actions.* In an action to be tried by a jury the master shall not be directed to report the evidence. The master's findings upon the issues submitted to the master are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) *Stipulation as to Findings.* The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) *Draft Report.* Before filing the master's report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

VII. JUDGMENT

Rule 54. Judgments; Costs.

(a) DEFINITIONS; FORM. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) JUDGMENT UPON MULTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIES. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) DEMAND FOR JUDGMENT. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

(d) COSTS; ATTORNEYS' FEES.

(1) *Costs Other than Attorneys' Fees.* Except when express provision therefor is made either in a statute of the Commonwealth or in these rules, costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the Commonwealth, its officers, and agencies shall be imposed only to the extent permitted by law. Such costs may be taxed by the clerk on one day's notice. On motion served within five days thereafter, the action of the clerk may be reviewed by the court.

(2) *Attorneys' Fees.*

(A) Claims for attorneys' fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial.

(B) Unless otherwise provided by statute or order of the court, the motion must be filed and served no later than 14 days after entry of judgment; must specify the judgment and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.

(C) On request of a party or class member, the court shall afford an opportunity for adversary submission with respect to the motion in accordance with Rule 43(e) or Rule 78. The court may determine issues of liability for fees before receiving submissions bearing on issues of evaluation of services for which liability is imposed by the court. The court shall find the facts and state its conclusions of law as provided in Rule 52(a), and a judgment shall be set forth in a separate document as provided in Rule 58.

(D) By order, the court may establish special procedures by which issues relating to such fees may be resolved without extensive evidentiary hearings. In addition, the court may refer issues relating to the value of services to a special master under Rule 53 without regard to the provisions of subdivision (b) thereof.

(E) The provisions of subparagraphs (A) through (D) do not apply to claims for fees and expenses as sanctions for violations of these rules.

(e) ENTRY OF JUDGMENTS AND ORDERS.

(1) In all cases, the notation of judgments and orders in the civil docket by the clerk will be made at the earliest practicable time. The notations of judgment will not be delayed pending taxation of costs, but a blank space may be left in the form of judgment for insertion of costs by the clerk after they have been taxed or there may be inserted in the judgment a clause reserving jurisdiction to tax and apportion the costs by subsequent order.

Rule 55. Default.

(a) ENTRY. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

(b) JUDGMENT. Judgment by default may be entered as follows:

(1) *By the Clerk.* When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and is not an infant or incompetent person.

(2) *By the Court.* In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. If, in order to enable

the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the Commonwealth.

(c) SETTING ASIDE DEFAULT. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(d) PLAINTIFFS, COUNTERCLAIMANTS, CROSS-CLAIMANTS. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) JUDGMENT AGAINST THE COMMONWEALTH. No judgment by default shall be entered against the Commonwealth or an officer or agency thereof unless the claimant establishes a claim or right to relief by evidence satisfactory to the court.

Rule 56. Summary Judgment.

(a) FOR CLAIMANT. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) FOR DEFENDING PARTY. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) MOTION AND PROCEEDINGS THEREON. The motion shall be governed by the provisions of Rule 6(d). The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) CASE NOT FULLY ADJUDICATED ON MOTION. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) FORM OF AFFIDAVITS; FURTHER TESTIMONY; DEFENSE REQUIRED. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response,

by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) WHEN AFFIDAVITS ARE UNAVAILABLE. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) AFFIDAVITS MADE IN BAD FAITH. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to his rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorneys' fees, and any offending party or attorney may be adjudged guilty of contempt.

Rule 57. Declaratory Judgments.

The procedure for obtaining a declaratory judgment pursuant to 7 CMC § 2421, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Rule 58. Settlement of Judgments, Orders, and Findings and Conclusions.

(a) SETTLEMENT OF JUDGMENTS AND ORDERS BY THE COURT.

(1) Within 10 days after the announcement of the decision of the court awarding any judgment or order which requires settlement and approval as to form by the judge, the prevailing party shall prepare a draft of the order or judgment embodying the court's decision and serve a copy thereof upon each party who has appeared in the action and mail or deliver a copy to the clerk. Any party thus receiving the proposed draft of judgment or order shall within five days thereafter serve upon the prevailing party and mail or deliver to the clerk a statement of his approval or disapproval as to the form of the draft and, in the latter instance, a statement of his objections and the reasons therefor and a draft of the order or judgment which is proposed as a substitute for the initial draft. At the expiration of 15 days after the announcement of the decision the clerk will submit to the judge for such further proceedings as are necessary in the circumstances all drafts and accompanying papers which have been received.

(2) No judgment need be signed by the judge, but an initialed approval on the draft of judgment will be sufficient evidence of direction to enter it and authorization to the clerk to note the judgment forthwith in the civil docket.

(b) SETTLEMENT OF FINDINGS OF FACT AND CONCLUSIONS OF LAW. Within 10 days after the announcement of the decision of the court awarding judgment in any action tried upon the facts without a jury, including actions in which a jury may have been called and acted only in an advisory capacity under Rule 39(c) of these rules, the prevailing party shall, unless the court otherwise orders, prepare a draft of the findings of fact and conclusions of law required by Rule 52(a) of these rules, and serve a copy thereof upon each party who has appeared in the action and mail or deliver a copy to the clerk. Any party thus receiving the proposed draft of findings of fact and conclusions of law shall within five days thereafter serve upon the prevailing party and mail or deliver to the clerk a statement of approval or disapproval of the form of the draft and, in the latter instance, a statement of objections and

the reasons therefor and a draft of the findings and conclusions which are proposed as a substitute for the initial draft. At the expiration of 15 days after the announcement of the decision, the clerk will submit to the judge for such further proceedings as are necessary in the circumstances all drafts and accompanying papers which have been received.

Rule 59. New Trials; Amendment of Judgments.

(a) GROUNDS. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) TIME FOR MOTION. A motion for a new trial shall be served not later than 10 days after the entry of the judgment.

(c) TIME FOR SERVING AFFIDAVITS. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) ON INITIATIVE OF COURT. Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

(e) MOTION TO ALTER OR AMEND A JUDGMENT. A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

Rule 60. Relief From Judgment or Order.

(a) CLERICAL MISTAKES. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) MISTAKES; INADVERTENCE; EXCUSABLE NEGLECT; NEWLY DISCOVERED EVIDENCE; FRAUD, ETC. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from

a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided by law, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audit querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Rule 61. Harmless Error.

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 62. Stay of Proceedings to Enforce a Judgment.

(a) AUTOMATIC STAY; EXCEPTIONS -- INJUNCTIONS, RECEIVERSHIPS, AND PATENT ACCOUNTINGS. Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) STAY ON MOTION FOR NEW TRIAL OR FOR JUDGMENT. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

(c) INJUNCTION PENDING APPEAL. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) STAY UPON APPEAL. When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. Unless the court finds that justice requires otherwise, a supersedeas bond staying execution of a money judgment shall be in the amount of the judgment plus 10% of the amount to cover interest and any award of damages for delay plus $250 to cover costs. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) STAY IN FAVOR OF THE COMMONWEALTH OR AGENCY THEREOF. When an appeal is taken by the Commonwealth or an officer or agency thereof and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) [RESERVED].

(g) POWER OF APPELLATE COURT NOT LIMITED. The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an

appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(h) STAY OF JUDGMENT AS TO MULTIPLE CLAIMS OR MULTIPLE PARTIES. When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

Rule 63. Inability of a Judge to Proceed.

If a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. In a hearing or trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

VIII. PROVISIONAL AND FINAL REMEDIES

Rule 64. Seizure of Property.

At the commencement of and during the course of an action, all remedies providing for seizure of property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the Commonwealth.

Rule 64.1. Security for Costs.

(a) SECURITY FOR COSTS. Any party may be required by order of the court to furnish security for costs in an amount and on such terms as are just. The court may modify an order to furnish security for costs at any time.

(b) FAILURE TO FURNISH SECURITY. The failure of a party to furnish security for costs after being directed to do so shall, as appropriate, constitute grounds for an involuntary dismissal under Rule 41(b), or be treated as a default under Rule 55.

Rule 65. Injunctions.

(a) PRELIMINARY INJUNCTION.

(1) *Notice.* No preliminary injunction shall be issued without notice to the adverse party.

(2) *Consolidation of Hearing with Trial on Merits.* Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a)(2) shall be so construed and applied as to save the parties any rights they may have to trial by jury.

(b) TEMPORARY RESTRAINING ORDER; NOTICE; HEARING; DURATION. A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified

complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. On two days notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) SECURITY. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the Commonwealth or of any officer or agency thereof.

The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

(d) FORM AND SCOPE OF INJUNCTION OR RESTRAINING ORDER. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Rule 65.1. Sureties.

(a) JURISDICTION OF COURT. Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

(b) MEMBERS OF THE BAR AND COURT OFFICERS. No member of the bar or officer or employee of the court may be a surety or guarantor of any bond or undertaking in any proceeding in the court.

(c) EXECUTION OF BOND. Except as otherwise provided by law, it shall be sufficient if a bond or similar undertaking is executed by the surety or sureties alone.

(d) SECURITY. Except as otherwise provided by law or order of the court, a bond or similar undertaking must be secured by:

(1) The deposit of cash or obligations of the United States in the amount of the bond; or

(2) The guaranty of a company or corporation holding a certificate or authority from the Secretary of the Treasury pursuant to 31 U.S.C. § 9304; or

(3) The guaranty of two individual residents of the Northern Mariana Islands each of whom owns unencumbered real or personal property within the Northern Mariana Islands worth the amount of the bond, in excess of legal obligations and exemptions.

(e) INDIVIDUAL SURETIES. Every person acting as surety pursuant to subdivision (d)(3) of this rule shall file an affidavit:

(1) Giving such person's name, occupation, and residential and business addresses;

(2) Showing that such person is qualified to act as surety;

(3) In criminal cases, stating that such person will not encumber or dispose of the property on which such person's qualification as surety depends while the bond remains in effect.

(f) SERVICE. The party on whose behalf a bond is given shall promptly, after approval and filing of the bond, serve a copy of it on all other parties to the proceeding, but such service need not be made on the Government of the Northern Mariana Islands in a criminal case.

(g) MODIFICATION OF BOND. The amount or terms of a bond or similar undertaking may be changed at any time as justice requires, by order of the court on its own motion or on motion of a party.

Rule 66. Receivers.

An action wherein a receiver has been appointed shall not be dismissed except by order of the court. In all respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

Rule 67. Deposit in Court.

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. The party making the deposit shall serve the order permitting deposit on the clerk of the court. Money paid into court shall be deposited in an interest bearing account or invested in an interest bearing instrument approved by the court.

Rule 68. Offer of Judgment.

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

Rule 69. Execution.

A judgment for the payment of money may be enforced by any means authorized by Commonwealth law. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the law existing at the time the remedy is sought. In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules.

Rule 70. Judgment for Specific Acts; Vesting Title.

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the Commonwealth, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the court.

Rule 71. Process in Behalf of and Against Persons Not Parties.

When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if that person were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if a party.

IX. SPECIAL PROCEEDINGS

Rule 71.1. Condemnation of Property.

(a) APPLICABILITY OF RULES. The condemnation of real property shall be by eminent domain. The procedures for the condemnation of real property are set forth in 1 CMC Div. 9, Ch. 2. Except as otherwise provided therein, these rules govern the procedure for the condemnation of real and personal property.

(b) JOINDER OF PROPERTIES. The plaintiff may join in the same action one or more separate pieces of property, whether in the same or different ownership and whether or not sought for the same use.

(c) COMPLAINT.

(1) *Caption.* The complaint shall contain a caption as provided in Rule 10(a), except that the plaintiff shall name as defendants the property, designated generally by kind, quantity, and location, and at least one of the owners of some part of or interest in the property.

(2) *Contents.* The complaint shall contain a short and plain statement of the authority for the taking, the use for which the property is to be taken, a description of the property sufficient for its identification, the interests to be acquired, and as to each separate piece of property a designation of the defendants who have been joined as owners thereof or of some interest therein. Upon the commencement of the action, the plaintiff need join as defendants

only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendants all persons having or claiming an interest in that property whose names can be ascertained by a reasonably diligent search of the records, considering the character and value of the property involved and the interests to be acquired, and also those whose names have otherwise been learned. All others may be made defendants under the designation "Unknown Owners." Process shall be served as provided in subdivision (d) of this rule upon all defendants, whether named as defendants at the time of the commencement of the action or subsequently added, and a defendant may answer as provided in subdivision (e) of this rule. The court meanwhile may order such distribution of a deposit as the facts warrant.

(3) *Filing.* In addition to filing the complaint with the court, the plaintiff shall furnish to the clerk at least one copy thereof for the use of the defendants and additional copies at the request of the clerk or of a defendant.

(d) PROCESS.

(1) *Notice; Delivery.* Upon the filing of the complaint the plaintiff shall forthwith deliver to the clerk joint or several notices directed to the defendants named or designated in the complaint. Additional notices directed to defendants subsequently added shall be so delivered. The delivery of the notice and its service have the same effect as the delivery and service of the summons under Rule 4.

(2) *Same; Form.* Each notice shall state the court, the title of the action, the name of the defendant to whom it is directed, that the action is to condemn property, a description of the defendant's property sufficient for its identification, the interest to be taken, the authority for the taking, the uses for which the property is to be taken, that the defendant may serve upon the plaintiff's attorney an answer within 20 days after service of the notice, and that the failure so to serve an answer constitutes a consent to the taking and to the authority of the court to proceed to hear the action and to fix the compensation. The notice shall conclude with the name of the plaintiff's attorney and an address within the Commonwealth where the attorney may be served. The notice need contain a description of no other property than that to be taken from the defendants to whom it is directed.

(3) *Service of Notice.*

(A) *Personal Service.* Personal service of the notice (but without copies of the complaint) shall be made in accordance with Rule 4 upon a defendant whose residence is known and who resides within the Commonwealth, the United States, or a territory subject to the administrative or judicial jurisdiction of the United States.

(B) *Service by Publication.* Service by publication may be had in accordance with the provisions of 7 CMC § 1104(b). Unknown owners may be served by publication in a like manner by a notice addressed to "Unknown Owners."

(4) *Return; Amendment.* Proof of service of the notice shall be made and amendment of the notice or proof of its service allowed in the manner provided for the return and amendment of the summons under Rule 4.

(e) APPEARANCE OR ANSWER. If a defendant has no objection or defense to the taking of the defendant's property, the defendant may serve a notice of appearance designating the property in which the defendant claims to be interested. Thereafter the defendant shall receive notice of all proceedings affecting it. If a defendant has any objection or defense to the taking of the property, the defendant shall serve an answer within 20 days after the service of notice upon the defendant. The answer shall identify the property in which the defendant claims to have an interest, state the nature and extent of the interest claimed, and state all the defendant's objections and defenses to the taking of the property. A defendant waives all defenses and objections not so presented, but at the trial of the issue of just compensation, whether or not the defendant has previously appeared or answered, the defendant

may present evidence as to the amount of the compensation to be paid for the property, and the defendant may share in the distribution of the award. No other pleading or motion asserting any additional defense or objection shall be allowed.

(f) AMENDMENT OF PLEADINGS. Without leave of court, the plaintiff may amend the complaint at any time before the trial of the issue of compensation and as many times as desired, but no amendment shall be made which will result in a dismissal forbidden by subdivision (i) of this rule. The plaintiff need not serve a copy of an amendment, but shall serve notice of the filing, as provided in Rule 5(b), upon any party affected thereby who has appeared and, in the manner provided in subdivision (d) of this rule, upon any party affected thereby who has not appeared. The plaintiff shall furnish to the clerk of the court for the use of the defendants at least one copy of each amendment, and shall furnish additional copies on the request of the clerk or of a defendant. Within the time allowed by subdivision (e) of this rule a defendant may serve an answer to the amended pleading, in the form and manner and with the same effect as there provided.

(g) SUBSTITUTION OF PARTIES. If a defendant dies or becomes incompetent or transfers an interest after the defendant's joinder, the court may order substitution of the proper party upon motion and notice of hearing. If the motion and notice of hearing are to be served upon a person not already a party, service shall be made as provided in subdivision (d)(3) of this rule.

(h) [RESERVED].

(i) DISMISSAL OF ACTION.

(1) *As of Right.* If no hearing has begun to determine the compensation to be paid for a piece of property and the plaintiff has not acquired the title or a lesser interest in or taken possession, the plaintiff may dismiss the action as to that property, without an order of the court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

(2) *By Stipulation.* Before the entry of any judgment vesting the plaintiff with title or a lesser interest in or possession of property, the action may be dismissed in whole or in part, without an order of the court, as to any property by filing a stipulation of dismissal by the plaintiff and the defendant affected thereby; and, if the parties so stipulate, the court may vacate any judgment that has been entered.

(3) *By Order of the Court.* At any time before compensation for a piece of property has been determined and paid and after motion and hearing, the court may dismiss the action as to that property, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, but shall award just compensation for the possession, title or lesser interest so taken. The court at any time may drop a defendant unnecessarily or improperly joined.

(4) *Effect.* Except as otherwise provided in the notice, or stipulation of dismissal, or order of the court, any dismissal is without prejudice.

(j) DEPOSIT AND ITS DISTRIBUTION. The plaintiff shall deposit with the court any money required by law as a condition to the exercise of the power of eminent domain; and, although not so required, may make a deposit when permitted by statute. In such cases the court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation. If the compensation finally awarded to any defendant exceeds the amount which has been paid to that defendant on distribution of the deposit, the court shall enter judgment against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to the defendant, the court shall enter judgment against that defendant and in favor of the plaintiff for the overpayment.

Rule 72. Habeas Corpus Cases.

Proceedings in habeas corpus cases shall be had in accordance with 6 CMC § 7101 et seq., and, to the extent not inconsistent therewith, the provisions of these rules.

X. COURTS AND CLERKS

Rule 77. Court and Clerks.

(a) COURT ALWAYS OPEN. The court shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(b) TRIALS AND HEARINGS; ORDERS IN CHAMBERS. All trials upon the merits shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the Commonwealth; but no hearing, other than one ex parte, shall be conducted outside the Commonwealth without the consent of all parties affected thereby.

(c) CLERK'S OFFICE AND ORDERS BY CLERK. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, legal holidays, and other days as ordered by the presiding judge of the court. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk. The clerk is also authorized to grant, sign, and enter the following orders without further direction by the court:

(1) Orders on consent extending once (for 10 days) the time within which to plead or otherwise defend or to make any motion (except a motion for a new trial) if the time originally prescribed to plead, defend, or move has not expired;

(2) Orders on consent for the substitution of attorneys;

(3) Orders on consent satisfying a judgment or an order for the payment of money, annulling bonds, and exonerating sureties. The clerk shall promptly prepare and enter on the docket any order or judgment which the clerk is authorized to make without order of the court.

Any action taken by the clerk pursuant to this subdivision (c) may be suspended or altered or rescinded by the court upon cause shown.

(d) NOTICE OF ORDERS OR JUDGMENTS. Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear, and shall make a note in the docket of the mailing. Any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Commonwealth Rules of Appellate Procedure.

Rule 78. Motion Days.

(a) PRE-JUDGMENT MOTIONS. All pre-judgment motions requiring notice and hearing shall be heard and decided at 9:00 a.m. on Wednesdays (except those Wednesdays which fall on a legal holiday), unless the court shall by order fix a different date or time.

(b) POST-JUDGMENT MOTIONS. All post-judgment motions requiring notice and hearing shall be heard and decided at 1:30 p.m. on Mondays (except those Mondays which fall on a legal holiday), unless the court shall by order fix a different date or time.

(c) ORDERS. To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

Rule 79. Books and Records Kept by the Clerk and Entries Therein.

(a) CIVIL DOCKET. The clerk shall keep a book known as "civil docket" of such form and style as may be prescribed by the court, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action.

(b) CIVIL JUDGMENTS AND ORDERS. The clerk shall keep, in such form and manner as the court may prescribe, a correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, and any other order which the court may direct to be kept.

(c) INDICES; CALENDARS. Suitable indices of the civil docket and of every civil judgment and order referred to in subdivision (b) of this rule shall be kept by the clerk under the direction of the court. There shall be prepared under the direction of the court calendars of all actions ready for trial, which shall distinguish "jury actions" from "court actions."

(d) OTHER BOOKS AND RECORDS OF THE CLERK. The clerk shall also keep such other books and records as may be required from time to time by the court.

Rule 80. Transcript as Evidence.

Whenever the testimony of a witness at a trial or hearing which was electronically recorded or stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who recorded, transcribed or reported the testimony.

XI. GENERAL PROVISIONS

Rule 81. Applicability in General.

(a) TO WHAT PROCEEDINGS APPLICABLE. These rules apply in all matters before the court, unless specifically provided otherwise by law or applicable rule of procedure.

(b) SCIRE FACIAS AND MANDAMUS. The writs of scire facias and mandamus are abolished. Relief heretofore available by mandamus or scire facias may be obtained by appropriate action or by appropriate motion under the practice prescribed in these rules.

Rule 82. Jurisdiction and Venue Unaffected.

These rules shall not be construed to extend or limit the jurisdiction of the court or the venue of actions therein.

Rule 83. Small Claims Procedure.

(a) APPLICABILITY. A plaintiff may file a case under this small claims procedure for any civil action within the jurisdiction of the court, involving a claim the value of which is three thousand ($3,000.00) dollars or less, exclusive of interest, attorneys' fees and costs.

(b) NATURE AND PURPOSE. This procedure is to enable small claims to be justly decided and fully disposed of with less formality, paperwork, and expenditure of time than is required by the ordinary procedure for larger claims. Parties are to be encouraged to handle small claims personally without counsel, and judges and clerks are expected to aid the parties in doing this. Provided that no individual, who is not an attorney licensed to practice in the Northern Mariana Islands, may represent another natural person or a corporation. An employee with first-hand knowledge of the facts of the underlying claim may appear on behalf of an employer. The pleadings, any action taken by the court, and any payments received, or reports from a party of payments received, shall be noted under the proper date on a small claims docket card for each case. The entries on the docket card shall ordinarily constitute the entire record and no further information need be recorded or kept except as expressly directed for small claims.

(c) PLEADINGS. The plaintiff (or counsel for plaintiff) shall state the nature and amount of the claim on the Summons and Complaint form (hereafter simply referred to as "summons"). The clerk shall copy this information onto the docket card. No other written pleading shall be required of any party unless the court otherwise orders in a particular case for special cause.

(d) SMALL CLAIMS SUMMONS AND COMPLAINT. Upon the signing of a claim on the small claims docket as provided in paragraph (c) above, the clerk of the court shall issue and give to the plaintiff (or counsel) a small claims summons and complaint in duplicate, which shall be served on the defendant(s) at least five business days prior to date that the matter is to be heard by the court. The remaining copy of the summons shall be returned to the clerk at least three business days before the hearing date with the return of service endorsed on it. If the plaintiff is acting without counsel, the clerk issuing the summons will instruct the plaintiff how the summons shall be served and return of service made, unless it is clear the plaintiff already understands this. The clerk shall impress upon the plaintiff that the plaintiff must appear personally or by counsel, at the time and place stated in the summons and should bring any records or other documents that will support the plaintiff's claim. The summons, with return of service endorsed on it, is to be attached to the docket card and preserved, unless and until the defendant appears before the court personally, or by counsel, after which it may be destroyed.

Should the plaintiff fail to file the endorsed return of service at least three days before the hearing, the hearing date shall be vacated. Thereafter, it will be plaintiff's responsibility to arrange a new hearing date with the clerk and have the revised summons served on the defendant at plaintiff's expense. A plaintiff shall not be reimbursed for additional service of process costs which are the result of the failure to timely file the return of service as required herein.

(e) TRIAL. A trial will be held on the hearing date unless the court determines that either party is not prepared to go forward on that date. In that event, the court, in its discretion, will determine whether the matter should be reset to allow that party to produce evidence.

(f) CONDUCT OF THE HEARING. At the start of the hearing the judge shall ask the plaintiff to describe more fully the substance or basis of the plaintiff's claim. The judge shall then ask whether the defendant disputes the plaintiff's claim. If the claim, or any counter-claim made, involves a number of items, the judge may require either party making such claims to present to the court and to the opposing party a written list of the items/claims, showing their respective dates and amounts. If no settlement can be reached, the judge shall then proceed with the hearing on the points in dispute,

informally and in a manner that will do substantial justice between the parties. Witnesses shall be sworn; but the court shall not be bound by the usual rules of procedure or evidence, except those concerning privileged communications and the right against self-incrimination. The court will assist the parties, as it deems appropriate, to expedite the presentation of the evidence being offered. Upon conclusion of the hearing all exhibits will be released back to the party who introduced them.

(g) DEFAULTS. If a defendant who has been served five days or more before the hearing date fails to appear personally, or by counsel, judgment may be entered by default where the claim is for a clearly determined amount of money, or on proof by the plaintiff of the amount due if the claim is for damages or any amount that is not clearly determined. If the plaintiff fails to appear personally, or by counsel, the action may be dismissed for want of prosecution; or the court may make any other disposition thereof that justice may require.

(h) ORDERS IN AID OF JUDGMENT. If judgment is entered for the plaintiff and the amount due has been determined, judgment shall be entered on the docket card. If the defendant(s) is/are present the judge shall, as a matter of course, inquire how soon the amount due can be paid, and whether either party desires an order in aid of judgment. If either party requests an order in aid of judgment, the judge shall hold a hearing on the application immediately, unless good cause is shown for delaying the hearing. The matter shall then proceed as upon any application for an order in aid of judgment. If the opposing party is not present, the applicant for the order in aid of judgment must apply to the clerk and have said order served on the judgment debtor in accordance with paragraph (d) above.

(i) NEW TRIAL. Any defendant who has had a small claims judgment rendered against him/her may appeal the judgment by requesting, in writing, a new trial in the Superior Court within 30 days after the judgment was entered. The defendant must pay a new fee of $40 in order to file the appeal. Upon the conclusion of said new trial, if the court determines that the defendant's request for a new trial was frivolous or for the purpose of delay, the court may assess court costs against the defendant and award additional fees and costs to the plaintiff.

(j) DISMISSALS. The court may dismiss without prejudice all cases for which plaintiffs fail to file a return of service within 120 days from the date the case is commenced. In addition, cases will be dismissed where judgment was obtained but no other action has been taken in the case for 120 days from the date judgment was entered.

(k) OTHER PROCEDURES. All matters in small claims proceedings which are not expressly covered by this rule shall be governed by the Commonwealth Rules of Civil Procedure.

Rule 83.1. Absence of Counsel.

Whenever an attorney plans to be away from the Northern Mariana Islands, or otherwise unavailable for the transaction of business at the attorney's regular office in the Northern Mariana Islands, for a period of three consecutive working days or more, such attorney shall notify all courts and law offices in the Northern Mariana Islands of the intended absence. The notice shall be given in writing, not later than 15 days prior to the anticipated dates of absence, shall request that no matters requiring the personal attention of the attorney be scheduled during the period of such absence, and shall indicate whether another attorney will be available in the absent attorney's office to handle emergency matters during the absence.

Rule 83.2. Citation of Authority

(a) CASES INCLUDED IN THE COMMONWEALTH REPORTERS. Any cases published in the Commonwealth Reporter or Northern Mariana Islands Reporter or designated "for publication" in slip opinion form, may be cited by counsel as support for a legal proposition. This shall include any Trial and Appellate Division opinions of the District Court of the Northern Mariana Islands which are

or were not published in the Federal Supplement. It shall also include any Ninth Circuit Court of Appeals cases which are not reported in the Federal Reporter but which dispose of cases originating from the Northern Mariana Islands.

(b) CASES NOT INCLUDED IN THE COMMONWEALTH REPORTER. Should counsel wish to cite a matter decided in the Commonwealth Trial Court or Superior Court which is not published in the Commonwealth Reporter and is not on file as a slip opinion in the Commonwealth Law Library, counsel shall notify all other parties, in writing, no later than 48 hours before the hearing date of any motion, trial, or other hearing at which the case is to be used and provide all other parties and the court with a copy of the case.

(c) CASES NOT INCLUDED IN THE NORTHERN MARIANA ISLANDS REPORTER. Should counsel wish to cite a matter decided in the Commonwealth Supreme Court which is designated as an unpublished opinion, counsel shall notify all other parties in writing, 48 hours before the hearing date of any motion, trial, or other hearing at which the case is to be used and provide all other parties and the court with a copy of the case. Should the Supreme Court create a rule or other limitation on the use of its unpublished decisions, counsel shall act in accordance with that rule or limitation.

(d) USE OF SECONDARY AUTHORITY WHEN PRIMARY AUTHORITY IS AVAILABLE. Citations to the secondary authorities American Jurisprudence ("Am.Jur.") and Corpus Juris Secundum ("C.J.S.") as primary authority for a legal proposition is strictly prohibited unless accompanied by a parenthetical explanation stating the reason why primary authority could not be found to support the proposition. No references to either of these authorities will be considered by the court unless cited in compliance with this provision.

(e) PROVIDING THE COURT WITH UNAVAILABLE AUTHORITY. Should counsel or a party deem it necessary to cite any authority that is not available in the Commonwealth Law Library, a copy of that authority must be attached to the memorandum in which it is cited. If the authority in question is a treatise or book, the party citing this authority must provide the court with excerpts from that authority sufficient to reveal a full understanding of the author's opinion on the proposition for which the treatise or book is cited. Any party citing a law review article must provide a full copy of the article for the court's review. No authority will be considered by the court unless cited in compliance with this provision.

Rule 84. Forms.

The court may from time to time adopt forms which are intended to indicate the simplicity and brevity of statement which these rules contemplate. Use of said forms will not be mandatory, but is strongly recommended; provided, however, that any forms adopted by the court for small claims proceedings shall be mandatory.

Rule 85. Title.

These rules may be known and cited as the Commonwealth Rules of Civil Procedure ("Com. R. Civ. P.").

Rule 86. Effective Date.

These rules shall become effective 60 days following submission to the president of the senate and speaker of the house unless disapproved by a majority of the members of either house of the legislature. If approved by the above procedure, the exact effective date shall be endorsed hereon. In such event, these rules will govern all proceedings thereafter commenced and, so far as just and practicable, all proceedings then pending.

SCHEDULE ON TRANSITIONAL MATTERS

Section 1. Effect of These Rules on Commonwealth Rules of Practice.

In any instance in which these rules are in conflict with the current Commonwealth Rules of Practice, these rules shall govern. In any instance in which these rules are inapplicable but the Commonwealth Rules of Practice are applicable, the Rules of Practice shall govern.

Comment: This provision is necessary to resolve inconsistencies between the Rules of Practice and the Rules of Civil Procedure, pending the revision of the Rules of Practice which is now underway. It is intended to clarify that, where applicable, the new Rules of Civil Procedure should supersede conflicting provisions of the current Rules of Practice for all civil cases. However, for matters to which the new Rules of Civil Procedure are inapplicable, such as criminal or traffic cases, the current Rules of Practice remain in force.