

Changes to Rule 9A Take Effect on November 1

Massachusetts litigators should be aware of the significant changes to Superior Court Rule 9A—the rule governing service and filing procedure for most motions in civil cases—that take effect today.

For the most part, the changes are a significant improvement. They reorganize Rule 9A for ease of understanding and clarify ambiguous provisions. Because of the extent of the changes, litigators should consult [the text of the amended Rule](#) before serving any Rule 9A package.

Here are the more significant changes:

1. New Meet-and-Confer Obligations

- Requires parties to meet and confer (and file a certification) before filing a motion to dismiss, a motion for summary judgment, or an emergency motion. Rule 9A(a)(1); Rule 9A(a)(8); Rule 9A(d)(1).

2. Limits on the “Statement of Facts” (f/k/a the “9A(b)(5) Statement”)

- Limits the Statement of Facts filed with a motion for summary judgment to 20 pages. Rule 9A(b)(5)(i).
- Limits the Statement of Facts to material facts. Any facts offered purely for background must be in the memorandum. Rule 9A(b)(5)(i)(a). Any quotations from transactional documents or law must be in an addendum. Rule 9A(b)(5)(i)(b-c).
- Prohibits stating additional facts in the responsive Statement of Facts in opposition to a motion for summary judgment. Any additional facts that are a basis for denying summary judgment must be in the memorandum in opposition. Rule 9A(b)(5)(iii)(A)(d); 9A(b)(5)(iii)(B).

3. Procedure for Assenting to Electronic Service

- Permits electronic service if the parties agree in writing and allows parties to revoke that agreement only with ten days written notice. Rule 9A(b)(1)(iii).
- Requires parties to note in the service certification that filings are “served via email” for the clerk to accept a scanned signature. The clerk still requires an

original signature for Rule 9A certificates and papers signed under penalties of perjury. Rule 9A(b)(1)(iii)

4. Requirements for Serving Motions on Third Parties

- Requires parties to serve a motion on a third party if the motion (1) seeks to add the third party as a party; (2) seeks an order or other relief against the third party; (3) affects the third party's personal information or "other interests." Rule 9A(b)(1)(ii).

5. Filing Requirements for Surreplies, Cross-Motions, and Motions to Strike

- Clarifies that, except by agreement or court order, a request for leave to file a surreply or exceed the page limit does not extend the deadline for filing a Rule 9A package. Rule 9A(a)(7).
- Clarifies that cross-motions and motions to strike are filed by the original moving party together with the original motion. Rule 9A(b)(4).
- Creates additional sanctions for non-compliance with Rule 9A, including (1) returning non-compliant submissions to counsel with instructions for refile and (2) "other sanctions" for flagrant violations. Rule 9A(b)(vii).

6. New Exceptions to the Applicability of Rule 9A

- Adds two types of motions not governed by Rule 9A: (1) motions governed by the e-filing rules and (2) motions seeking review of agency decisions that are governed by Superior Court Standing Order 1-96. Rule 9A(d)(3-4).