DISTRICT COURT CIVIL RULES

I. SCOPE OF RULES AND MANDATORY ELECTRONIC FILING – ONE FORM OF ACTION

Rule 1. Scope of Rules and Mandatory Electronic Filing

(a) Scope of Rules. These rules govern the procedure in the District Court of the State of Rhode Island in all suits of a civil nature, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action. They shall be known as the District Court Civil Rules and may be cited as D.C.R.

(b) Mandatory Electronic Filing. In accordance with Art. X of the Rhode Island Supreme Court Rules Governing Electronic Filing, electronic filing is mandatory for cases in the District Court using the Rhode Island Judiciary's (Judiciary) Electronic Filing System. All parties are required to use the Judiciary's Electronic Filing System except for incarcerated individuals or where a waiver is granted in accordance with Art. X, Rule 3(c). Self-represented litigants may electronically file documents in accordance with Art. X, Rule 3(b) but are not required to do so. The D.C.R. must be read in conjunction with Art. X, the Rhode Island Judiciary Rules of Practice Governing Public Access to Electronic Case Information, and the Rhode Island Judiciary User Guide for Electronic Filing.

(1) *Definitions*. For further definitions, see Art. X, Rule 1(c) of the Rhode Island Supreme Court Rules Governing Electronic Filing.

(A) *Case Initiating Document(s).* The first document(s) filed in a case.

(B) *Certificate of Service*. Where the D.C.R. requires service of a document to be certified by an attorney of record or a self-represented litigant, the following certification shall be used:

CERTIFICATE OF SERVICE

I hereby certify that, on the _____ day of _____, _____:

☐ I filed and served this document through the electronic filing system on the following parties: _____.
The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

☐ I served this document through the electronic filing system on the following parties: _____.
The document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

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☐ I mailed or ☐ hand-delivered this document to the attorney for the opposing party and/or the opposing party if self-represented, whose name is _____ at the following address _____.

/s/ NAME_____

(C) *Civil Case Cover Sheet*. A civil case cover sheet shall be filed with any Case Initiating Document(s) and first responsive pleading. The document shall capture identifying information regarding the parties in a case to ensure proper identification within the Judiciary's case management system (CMS), which is party driven. Once the information is entered into the CMS by the court, the document shall be sealed by the court and it shall not be available to the parties or the public due to the identifying information contained therein. The most current version of the Civil Case Cover Sheet is located on the Judiciary's website at www.courts.ri.gov under the heading of Forms, District Court.

(D) *Electronic Filing System (EFS)*. An approved Judiciary-wide system for the filing and service of pleadings, motions and other documents or information via electronic means such as the Internet, a court-authorized remote service provider or through other remote means to and from the Judiciary's CMS.

(E) *Filing*. Where the D.C.R. require a document to be filed, filing shall mean electronic filing using the EFS unless stated otherwise.

(F) *Notice*. Where the D.C.R. require notice to be given, notice shall mean electronic notice using the EFS unless stated otherwise.

(G) *Registered User*. An individual or entity with an assigned username and password authorized by the Judiciary to access and utilize the EFS.

(H) *Service*. Where the D.C.R. require a document or information to be served, sent, delivered, or forwarded, the following shall be applicable:

(i) Subpoenas, complaints, petitions, or other documents that must be hand-delivered or served in person with a summons shall not be served electronically; and

(ii) All other service or notice within a case shall be electronic using the EFS unless stated otherwise.

(I) *Signature*. Where the D.C.R. require an electronic signature on any document, the signature shall be reflected as /s/ NAME unless stated otherwise.

(2) *Language Assistance Notice*. In an effort to provide language assistance to limited English proficient persons, service of Case Initiating Document(s) shall include the

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Language Assistance Notice which informs the recipient of the right to a foreign language interpreter at no cost and contains instructions about how to obtain language assistance services. The most current version of the Language Assistance Notice is located on the Judiciary's website at www.courts.ri.gov under the heading of Forms, District Court.

(3) *Electronic Filing of Documents*. When using the EFS:

(A) All Case Initiating Document(s), including any required documents, attachments, or exhibits, shall be submitted individually as separate files within the same initial submission or filing;

(B) All subsequent pleadings, motions, and other papers, shall be submitted individually with related documents submitted as separate files within the same submission or filing (for example, a motion and memorandum or other supporting attachments or exhibits filed in support of a motion); and

(C) Categories of items such as bills, receipts, invoices, photographs, etc. may be submitted in one attachment or exhibit.

For specific requirements, see the District Court's Electronic Filing System Guidelines.

(4) *Clerk Review; Acceptance/Rejection Procedure*: Following submission, the District Court shall timely review the electronically filed document(s) and shall notify the filing party as to whether the filing is accepted or rejected. Upon acceptance, the submitted document(s) shall be entered into the docket of the case and the docket shall reflect the date and time of filing as set forth in Art. X, Rule 5(b) of the Rhode Island Supreme Court Rules Governing Electronic Filing. In accordance with Art. X, Rule 5(c), grounds for the rejection of a document submitted to the EFS in the District Court are limited in scope as follows:

(A) Complaints filed without a signature where required;

(B) Complaints filed without the required documents as set forth in the District Court's Electronic Filing System Guidelines;

(C) Pleadings not filed in accordance with Rule 1(b)(3); and/or

(D) Discovery requests and responses not filed in accordance with Rule 5(d).

If rejected, the filing will not be docketed and notice will be sent to the Registered User indicating why the document(s) was returned. The rejection notice shall identify the basis for the rejection in accordance with the rules of the court. A rejected filing shall be promptly corrected and resubmitted and shall be deemed to have been

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submitted and filed on the initial filing date for purposes of any statutory or rule-based deadline.

Rule 2. One Form of Action

There shall be one (1) form of action to be known as "civil action."

I. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

Rule 3. Commencement of Action

(a) Commencement of Civil Action. A civil action is commenced ~~(1)~~ by the filing of a complaint, Civil Case Cover Sheet, and all other required documents ~~with the court~~ together with ~~payment of~~ the ~~entry~~ fees prescribed by law. Incarcerated individuals, attorneys who are granted a waiver pursuant to Art. X, Rule 3(c) of the Rhode Island Supreme Court Rules Governing Electronic Filing, and self-represented litigants who do not elect to electronically file pursuant to Art. X, Rule 3(b), ~~or (2) by~~ may deposit~~ing~~ the complaint, Civil Case Cover Sheet, and all other required documents with said fee in the mail addressed to the clerk or file the documents at the clerk's office.~~, or (3) by delivery of a summons and complaint to an officer for service~~. ~~When method (3) is used, the complaint shall be filed with the court within ten (10) days after the completion of service; but in any case where attachment of real or personal property or attachment on trustee process has been made, the complaint shall be filed not later that thirty (30) days after the first such attachment. If the complaint is not timely filed, the action may be dismissed on motion and notice, and in such case the court may, in its discretion, if it shall be of the opinion that the action was vexatiously commenced, tax a reasonable attorney's fee as costs in favor of the defendant, to be recovered of the plaintiff or the plaintiff's attorney.~~

Rule 4. Process, Attachment, Trustee Process, Arrest

(a) Summons: Form. The summons shall bear the ~~s~~Signature ~~or facsimile signature~~ of the clerk, be under the seal or watermark of the court (which shall be generated by the CMS), ~~contain the name of~~ identify the court and the ~~names of the~~ parties, be directed to the defendants, and state the name and address of the plaintiff's attorney or state the name and address of the self-represented litigant except where prohibited by federal or state law.~~,~~ The summons shall also state ~~and~~ the time within which ~~these rules require~~ the defendant ~~to~~ must file an answer and/or appear and defend~~,~~ and shall notify the defendant that ~~in case of his or her~~ failure to do so will result in a judgment by default ~~will be rendered~~ against the defendant for the relief demanded in the complaint. Process issued out of any division of the court may be made returnable in any other division. The court may allow a summons to be amended.

(b) ~~Same~~Summons: Issuance. The summons, ~~may be procured in blank from the clerk and shall be filled out by the plaintiff's attorney~~ as provided in subdivision (a) of this rule, shall be issued in the following manner:~~.~~

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(1) For attorneys and self-represented litigants who are Registered Users, a summons shall be generated electronically by the court and sent to the Registered User through the EFS upon the acceptance of the complaint, Civil Case Cover Sheet, and all other required documents by the court;

(2) For incarcerated individuals, a summons shall be generated electronically by the court and mailed to the individual upon the acceptance of the complaint, Civil Case Cover Sheet, and all other required documents by the court; and

(3) For attorneys who are granted a waiver pursuant to Art. X, Rule 3(c) of the Rhode Island Supreme Court Rules Governing Electronic Filing and self-represented litigants who do not elect to electronically file pursuant to Art. X, Rule 3(b):

(A) A summons shall be generated electronically by the court and handed to the attorney or self-represented litigant at the time of filing the complaint, Civil Case Cover Sheet, and all other required documents at the clerk's office;

(B) If the complaint, Civil Case Cover Sheet, and all other required documents are mailed to the court, a summons shall be generated electronically by the court and mailed to the attorney or self-represented litigant if a self-addressed envelope is included; or

(C) If the complaint, Civil Case Cover Sheet, and all other required documents are mailed to the court, a summons shall be generated electronically by the court and the attorney or self-represented litigant may obtain the summons at the clerk's office.

The plaintiff's attorney or a self-represented litigant shall deliver to the person who is to make service the original summons upon which to make his or her return of service and a copy of the summons, ~~and of the~~ complaint, Language Assistance Notice, and all other required documents for service upon the defendant. Additional summons may be issued against any defendant.

(c) By Whom Served. ~~(1) Except as provided in paragraph (2) of this subdivision, s~~Service of all process shall be made by a duly authorized officer in accordance with Title 9, Chapter 5 (Writs, Summons, and Process) of the Rhode Island General Laws ~~sheriff or sheriff's deputy, within the sheriff's county unless otherwise provided by law, by a town sergeant or constable when authorized by law~~, by any other person authorized by law, or by some person specially appointed by the court for that purpose, except that a subpoena may be served as provided in Rule 45. Special appointments to serve process shall be made freely when substantial savings in travel fees will result.

~~(2) In any circumstance where service may be made pursuant to subdivision (d), service may also be made by mailing a copy of the summons and complaint (by first-class mail, postage prepaid) to the person to be served together with two (2) copies of a Notice and Acknowledgement Form (conforming substantially with that found in the appendix to these rules) and a return envelope, postage prepaid, addressed to the~~

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~~sender. If no acknowledgement of service under this paragraph is received by the sender within twenty (20) days after the date of mailing, service of such summons and complaint shall be made pursuant to subdivisions (d) or (e) of this rule. Unless good cause is shown for not so doing the court shall order the payment of costs for personal service by the person served if such person does not complete and return to the sender within twenty (20) days after mailing, the Notice and Acknowledgement Form. In cases where service is made pursuant to this paragraph, the civil action shall be commenced by filing the complaint and summons and the returned Notice and Acknowledgement Form with the court. Service may not be made pursuant to this paragraph within six (6) months prior to the expiration of the termination of the applicable period of limitations for the action stated in the complaint.~~

(d) Summons: Personal Service. The summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual other than an incompetent person by delivering a copy of the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents to ~~him or her~~ the individual personally or by leaving copies thereof at ~~his or her~~ 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~~ complaint, Language Assistance Notice, and all other required documents to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given.

(2) Upon a person for whom a guardian or conservator has been appointed by serving copies of the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents upon such guardian or conservator and upon the incompetent person in the manner provided in paragraph (1) of this subdivision.

(3) Upon a private corporation, domestic or foreign, by delivering a copy of the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents to an officer, a managing or general agent, or by leaving a copy of the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents at the office of the corporation with a person employed therein, or by delivering a copy of the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents to an agent authorized by appointment or by law to receive service of process provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given.

(4) Upon the state by delivering a copy of the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents to the attorney general or an assistant attorney general.

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(5) Upon a public corporation, body, or authority by delivering a copy of the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents to any officer, director or manager thereof.

(e) Service Outside State: Personal Jurisdiction. When an individual or a foreign corporation is subject to the jurisdiction of the courts of the state, service of process may be made outside the state as follows:

(1) Upon an individual by delivery of a copy of the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents to ~~him~~ the individual personally by any disinterested person, or by mailing a copy of the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents to the individual by registered or certified mail, return receipt requested, or by any other method ordered by the court to give such individual notice of the action and sufficient time to prepare any defense thereto.

(2) Upon a foreign corporation by delivery of a copy of the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents by any disinterested person to the president, secretary, or treasurer of such corporation or to any agent or attorney for service of process designated by the corporation in the state of incorporation, or by mailing a copy of the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents to any such officer or agent or to the corporation at its business address designated in the state of incorporation by registered or certified mail, return receipt requested, or by any other method ordered by the court to give such corporation notice of the action and sufficient time to prepare any defense thereto.

(f) Service Outside the State in Certain Actions. Where service cannot with due diligence be made personally within the state, service of the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents may be made outside the state in the manner provided by subdivision (e) of this rule in the following cases:

(1) Where an interest of a person in property or credits within the state has been brought before the court by attachment or trustee process; or

(2) Where a pleading demands a judgment that a person be excluded from a vested or contingent interest in or lien upon specific real or personal property within the state; or that such an interest or lien of any party be enforced, regulated, defined, determined, or limited.

(g) Service by Publication. Whenever in an action described in subdivision (f) of this rule complete service cannot with due diligence be made by another prescribed method, the court shall order service by publication of a notice of the action in one or more newspapers in such form and for such length of time as the court shall direct. If a statute expressly provides for service of process by publication, publication shall be in the form and manner provided by such statute.

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(h) ~~Return~~ Proof of Service. The person serving the process shall make proof of service thereof on the original process or a paper attached thereto for that purpose, and shall forthwith return it to the plaintiff's attorney or a self-represented litigant. If service is made other than by a duly authorized officer in accordance with Title 9, Chapter 5 (Writs, Summons, and Process) of the Rhode Island General Laws ~~person other than a sheriff, the sheriff's deputy, or a constable licensed by the Chief Judge to serve District Court process~~, ~~he~~ that person shall make affidavit thereof. A copy of ~~A~~any return receipt received in connection therewith shall be filed by the plaintiff's attorney or a self-represented litigant ~~annexed to such process~~ when returned. The plaintiff's attorney or a self-represented litigant shall, within the time during which the person served must respond to the process, file the proof of service with the court. Failure to make proof of service does not affect the validity of the service.

(i) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(j) Summons: Time Limit for Service. If service of the summons, complaint, Language Assistance Notice, and all other required documents is not made upon a defendant within one hundred and twenty (120) days after the commencement of the action 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.

(k~~j~~) Attachment and Trustee Process.

(1) *Availability of Remedies.* In connection with the commencement of any action under these rules, attachment, including trustee process, shall be available to the extent and in the manner provided by law.

(2) *Writ of Attachment: Form.* The writ of attachment shall:

(A) ~~b~~Bear the ~~s~~Signature ~~or facsimile signature~~ of the clerk, be under the seal or watermark of the court, contain the name of the court, the names and residences of the parties and the trustee, if any, and the date of the commencement of the action~~,~~; and

(B) ~~b~~Be directed to a duly authorized officer in accordance with Title 9, Chapter 5 (Writs, Summons, and Process) of the Rhode Island General Laws ~~the sheriff of the county or the sheriff's deputies, or to either of the town sergeants or constables in such county,~~ and command them to attach the goods or estate of the defendant to the value of the amount of the plaintiff's demand for judgment, together with a reasonable allowance for interest and costs, and to make due return of their doings thereon.

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The most current writ of attachment is located on the Judiciary's website at www.courts.ri.gov under the heading of Forms, District Court.

(3) ~~*Same*~~ *Writ of Attachment: Issuance.* The writ of attachment ~~may be procured in blank from the clerk~~, shall be filled out by the plaintiff's attorney or a self-represented litigant as provided in paragraph (2) of this subdivision, and shall be submitted to the court with a motion for its issuance. The motion shall be granted only upon a showing that there is a probability of a judgment being rendered in favor of the plaintiff and that there is a need for furnishing the plaintiff security in the amount sought for satisfaction of such judgment, together with interest and costs. A motion hereunder shall not be granted ex parte. Security may be required in connection with issuance of any writ of attachment.

A surety upon a bond or undertaking under this rule submits ~~himself or herself~~ to the jurisdiction of the court and irrevocably appoints the clerk of the court as ~~his or her~~ the surety's agent upon whom any papers affecting ~~his or her~~ the surety's liability on the bond or undertaking may be served. ~~A~~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~~ send copies to the persons giving the security if their addresses are known.

(4) ~~*Same*~~ *Writ of Attachment: Service.* The plaintiff's attorney or a self-represented litigant shall deliver to the officer making service a copy of the proposed writ of attachment together with a copy of the motion for its issuance and the notice of hearing thereof. When the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents are served upon the defendant as provided in subdivisions (d) through (g) of this rule ~~Rule 4~~, the defendant shall also be served with a copy of the proposed writ of attachment and of the motion for its issuance with the notice of the hearing thereof. An attachment made after service of the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents shall be made as provided in paragraph (6) of this subdivision.

(5) *Attachment on Counterclaim, Cross-~~C~~claim, or Third-~~P~~party Complaint.* Attachment may be utilized by a party bringing a counterclaim, a cross-claim, or a third-party complaint in the same manner as upon an original claim.

(6) *Subsequent Attachment.* After service of the summons and complaint upon the defendant, attachment shall be available to the extent and in the manner provided by law, shall follow the form prescribed in paragraph (2) of this subdivision, and shall be issued in accordance with paragraph (3) of this subdivision. All papers shall be served upon the defendant in the manner provided for service of process under subdivisions (d) through (g) of this rule unless the defendant has appeared in the action, in which case service shall be made as provided in Rule 5(b).

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(7) ~~*Return*~~ *Proof of Service.* Upon service of a writ of attachment and copy thereof, the person making the service shall make ~~his or her~~ the ~~return~~ proof of service as provided in subdivision (h)~~(b)~~ of this rule.

(l~~k~~) Arrest.

(1) *Availability of Remedy.* In connection with the commencement of any action under these rules, a writ of arrest shall be available to the extent and in the manner provided by law.

(2) *Form and Service.* The writ of arrest shall be obtained and filled out in the same manner as a writ of attachment, except that the writ of arrest shall be directed ~~only to the sheriff and the sheriff's deputies~~ a duly authorized officer in accordance with Title 9, Chapter 5 (Writs, Summons, and Process) of the Rhode Island General Laws. It shall be accompanied by such affidavit as may be required by law, and shall be submitted to the court with a motion for its issuance. An order of issuance shall be indorsed on the writ by the court. Service of such writ shall be accompanied by service upon the defendant of a copy of the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents, and ~~return~~ proof of service shall be made in the same manner as ~~return~~ proof of service on a writ of attachment. The most current writ of arrest is located on the Judiciary's website at www.courts.ri.gov under the heading of Forms, District Court.

(3) *Subsequent Writ of Arrest.* After service of the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents upon the defendant a writ of arrest shall be available to the extent and in the manner provided by law and shall be issued and served as provided in paragraph (2) of this subdivision.

(4) *Ne Exeat.* An order of arrest may be entered when the plaintiff has demanded and would be entitled to a judgment requiring the performance of an act, the neglect or refusal to perform which would be punishable by the court as a contempt, and where the defendant is not a resident of the state or is about to depart therefrom, by reason of which nonresidence or departure there is danger that such judgment or order will be rendered ineffectual.

4.1. [Repealed~~.~~]

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 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 in accordance with Rule 1(b)(1)(H) and contain the Certificate of Service in Rule 1(b)(1)(B). Service by or upon those who are not Registered Users shall be in accordance with subdivision

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(b) and contain the certificate of service in Rule 1(b)(1)(B). No service need be made on parties in default for failure to appear except that motions for assessment of damages and 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.

(b) Service~~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 himself or herself is ordered by~~ the court orders service on the party. Motions to withdraw by attorneys and objections thereto must be served upon both the attorney and the party.

(2) For attorneys and self-represented litigants who are Registered Users, service is made electronically using the EFS.

(3) For incarcerated individuals, attorneys who are granted a waiver pursuant to Art. X, Rule 3(c) of the Rhode Island Supreme Court Rules Governing Electronic Filing, and self-represented litigants who do not elect to electronically file pursuant to Art. X, Rule 3(b), service under Rule 5(a) is made by:

(A) Delivering a copy to the person served by:

(i) Handing it to the person;

(ii) Leaving it at the person's office with a clerk or other person in charge~~,~~; or

(iii) Leaving it at the person's dwelling house or usual place of abode.

(B) Mailing a copy to the last known address of the person served. Service by mail is complete on mailing.

(C) Any other means ordered by the court.

~~Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or by mailing it to the attorney at the attorney's last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a within this rule means: handing it to the person to be served; or leaving it at his or her office with his or her 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 his or her 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) Service~~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

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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 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) Filing: No Proof of Service Required.** All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter. Such filing by a party's attorney shall constitute a representation by him or her, subject to the obligations of Rule 11, that a copy of the paper has been or will be served upon each of the other parties as required by subdivision (a) of this rule. No further proof of service is required unless an adverse party raises a question of notice. In such instance the affidavit of the person making service shall be prima facie evidence.~~

(d) Filing; Certificate of Service. All papers after the complaint required to be served upon a party, together with a Certificate of Service in accordance with Rule 1(b)(1)(B) shall be filed with the court within a reasonable time after service, but the following discovery requests and responses shall not be filed with the court until they are used in the proceeding or the court orders their filing:

(1) Interrogatories;

(2) Requests for documents or to permit entry upon land;

(3) Requests for admission;

(4) Answers and responses to items (1) through (3) above;

(5) Notices of deposition; and

(6) Transcripts of depositions.

The court, on motion generally or in a specific case, or on its own initiative, may order the filing of such discovery materials. Notwithstanding anything in this Rule 5(d), any party pressing or opposing any motion for relief under Rules 26(c) or 37 shall file copies of the relevant portions of discovery materials with the court as exhibits to any such motion or opposition. If any moving party under Rule 56 or any opponent relies on discovery documents, copies of the pertinent parts thereof shall be filed with the motion or opposition.

(e) Filing With the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judicial officer ~~judge~~ may permit the papers to be filed with the judicial officer ~~him or her~~, in which event the judicial officer ~~he~~ shall note ~~thereon~~ the filing date and forthwith transmit them to the office of the clerk.

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(f) Effect of Failure to File. If any party to an action fails to file within five (5) days after the service any of the papers required by this rule to be filed, the court, on motion of any party or of its own initiative, may order the papers to be filed forthwith, and if the order be not obeyed, the court may order them to be regarded as stricken and their service to be of no effect.

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 after which the designated period of time begins to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday.

(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) ~~w~~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) ~~u~~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; or

(3) ~~p~~Permit the act to be done by stipulation of the parties; but it may not extend the time for taking any action under Rules 60(b) and 73 except to the extent and under the conditions stated in them.

(c) For Motions - Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than ~~five~~ ten (~~5~~10) 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. When a motion is supported by affidavit, the affidavit shall be served with the motion, and opposing affidavits may be served not later than ~~one~~ three (~~1~~3) day before the hearing, unless the court permits them to be served at some other time.

(d) Additional Time After Electronic Service or Service by Mail. Whenever a party has the right or is required to do some act or 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 electronically or by mail, one (1) day shall be added to the prescribed period.

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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 shall be noted ~~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~~, and shall contain a signature line and other appropriate language so that the trial justice can indicate on the motion its disposition~~. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

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

(3) The following motions and the notice of the hearing of such a motion shall be served and filed not later than ten (10) days before the time specified for the hearing. The following motions shall be deemed to be granted as a matter of course and shall not be placed on the motion calendar unless objection stating the particular ground therefor is served and filed at least three (3) days before the time specified for its hearing:

(A) A motion to amend a pleading;~~.~~

(B) ~~a~~A motion for leave to serve a third-party complaint;~~.~~

(C) ~~a~~A motion for an order for a physical or mental examination;~~.~~

~~a motion to assign,~~

(D) ~~a~~A motion to consolidate cases for trial;~~.~~

(E) ~~a~~A motion to compel answers to interrogatories;~~.~~

(F) ~~a~~A motion to compel more responsive answers to interrogatories;~~.~~

~~a~~A ~~motion to charge a garnishee to the extent shown in the garnishee's affidavit.~~

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(G) ~~a~~A motion to file a complaint out of time;~~.~~

(H) ~~a~~A motion to enlarge time to file answers to interrogatories; ~~or~~ and

(I) ~~a~~A motion to compel production of documents. ~~or~~

~~pursuant to Rule 69 of these Rules, a motion to attach wages or a notice of a nonwage attachment,~~

~~and the notice of hearing thereof shall be filed forthwith upon service. Such motions shall be deemed to be granted as a matter of course and shall not be placed upon the motion calendar unless objection thereto is served and filed at least two (2) days before the time specified for its hearing. A motion to assign shall indicate the calendar to which assignment is desired.~~

A motion to compel answers to interrogatories, a motion to compel production of documents, and a motion to compel more responsive answers to interrogatories shall specify the number of days for compliance. If no such time is specified, it shall be thirty (30) days. If a party fails to respond within the specified time, upon motion to the court, a conditional order for dismissal or default shall enter specifying the number of days for compliance. If no such time is specified, it shall be thirty (30) days. If the party fails to respond to a conditional order for dismissal or default within the specified time, entry for final judgment may be made upon motion to the court.

A motion to charge a garnishee shall be served ~~upon the garnishee and the opposing party~~ in accordance with Rule 69.

The provisions of Rule 6(d) shall not apply to this subdivision.

(4) ~~If an objection be filed to a motion referred to in Rule 7(b)(3) and the objecting party or objecting party's attorney does not appear to argue the objection, the court may award reasonable attorney's fees to the moving party unless, prior to the hearing date, the objecting party files and serves a stipulation withdrawing said objection.~~ All motions shall be signed in accordance with Rule 11.

~~(c) Demurrers, Pleas, etc., Abolished.~~ ~~Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.~~

(c) Electronic Filing of Pleadings, Motions, and Other Papers. When using the EFS, all pleadings, motions, and other papers shall be filed in accordance with Rule 1(b)(3).

Rule 8. General Rules of Pleading

(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~~A short and plain statement of the claim showing that the pleader is entitled to relief;~~,~~ and

(2) ~~a~~A demand for judgment for the relief to which he deems himself entitled.

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 ~~his or her~~ 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 ~~his or her~~ denials as specific denials of designated averments or paragraphs, or the pleader 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, the pleader may do so by general denial subject to the obligations set forth in Rule 11. Denial of the authenticity or validity of a signature shall be by specific negative averment, and a general denial shall not put such signature in issue.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, 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 damages, are admitted when not denied in the responsive pleadings. 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 (2) or more statements of a claim or defense alternately or hypothetically, either in one (1) count or defense or in separate counts or defenses. When two (2) or more statements are made in the alternative and one (1) of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one (1) 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

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whether based on legal or equitable grounds or on both. 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 in a representative capacity or the legal existence of an organized association of persons that is made a party. 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 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 conditions 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 it.

(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 division, 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.

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(b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the content of each of which shall be limited as far as practicable to 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 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; Sanctions

In accordance with Art. X, Rule 7 of the Rhode Island Supreme Court Rules Governing Electronic Filing, ~~E~~every pleading, written motion, and other paper of a party represented by an attorney shall be personally signed by at least one (1) attorney of record in the attorney's individual name and shall state the attorney's address, email address, bar number, and telephone number. An attorney, however, need not sign answers to interrogatories or objections to requests for admission which have been signed by a party. A self-represented litigant ~~party who is not represented by an attorney~~ shall personally sign ~~his or her~~ the pleading, motion, or other paper and state ~~his or her~~ the self-represented litigant's address, email address (if electing to utilize the EFS), and telephone number.

Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by an affidavit. ~~The rule in equity that the averments of an answer under oath must be overcome by the testimony of two (2) witnesses or of one (1) witness sustained by corroborating circumstances is abolished.~~ The signature of an attorney, self-represented litigant, or party constitutes a certificate by the ~~attorney~~ signer that ~~he or she~~ the signer has read the pleading, motion, or other paper; that to the best of ~~his or her~~ the signer's knowledge, information, and belief formed after reasonable inquiry the pleading, motion, or other paper is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that the pleading, motion, or other paper is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation ~~there is good ground to support it; and that it is not interposed for delay~~. If a pleading, motion, or other paper is not signed, unless signed promptly after the omission is called to the attention of the pleader or movant, or is signed with intent to defeat the purpose of this rule, ~~it~~ the pleading, motion, or other paper shall ~~may~~ be stricken ~~as sham and false and the action may proceed as though the pleading had not been served~~. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed the pleading, motion, or other paper, a represented party, or both, any appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee. ~~For a willful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is included.~~

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

(a) When Presented.

(1) A defendant shall serve ~~his or her~~ an answer within twenty (20) days after the service of the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents upon the defendant, unless the court directs otherwise when service of process is made pursuant to an order of court.

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

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

(A~~1~~) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten (10) days after notice of the court's action.

(B~~2~~) If the court grants a motion for a more definite statement, the responsive pleading shall be served within ten (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) ~~l~~Lack of jurisdiction over the subject matter;~~,~~

(2) ~~l~~Lack of jurisdiction over the person;~~,~~

(3) ~~i~~Improper venue;~~,~~

(4) ~~i~~Insufficiency of process;~~,~~

(5) ~~i~~Insufficiency of service of process;~~,~~

(6) ~~f~~Failure to state a claim upon which relief can be granted;~~,~~ and/or

(7) ~~f~~Failure to join an indispensable party.

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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 (1) 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. A motion or an answer presenting the defense of failure of a pleading to state a claim upon which relief can be granted shall be accompanied by a short concise statement of the grounds on which such defense is based.

(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) through (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 the 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 ~~his or her~~ 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 ten (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.

(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 twenty (20) days after the service of the pleading upon him or her 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. A party who makes a motion under this rule may join with it the other motions herein provided for and then available to the party. If a party makes a motion under this rule and does not include therein all defenses and objections then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on any of the defenses or objections so omitted, except as provided in subdivision (h) of this rule.

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(h) Waiver of Defenses. A party waives all defenses and objections which the party does not present either by motion as hereinbefore provided or, if the party has made no motion, in the party's answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, 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. The objection or defense, if made at the trial, shall be disposed of as provided in Rule 15(b) in the light of any evidence that may have been received.

Rule 13. Counterclaim and Cross-~~C~~claim

(a) ~~[Reserved].~~ Compulsory Counterclaims. Except in residential landlord/tenant actions, a pleading shall state as a counterclaim, limited to the jurisdiction of the District Court, 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 presence of third parties of whom the court cannot acquire jurisdiction, except that such a claim need not be so stated if at the time the action was commenced the claim was the subject of another pending action, or if the opposing party's claim is for damage arising out of the ownership, maintenance, operation, use, or control of a motor vehicle by the pleader. If the counterclaim exceeds the jurisdiction of the District Court, it is not considered a compulsory counterclaim.

(b) Permissive Counterclaims. A pleading may state as a counterclaim, limited to the jurisdiction of the District Court, any claim against an opposing party.

(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 his 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, he may by leave of court set up the counterclaim by amendment.

(g) Cross-~~C~~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.

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(h) Additional Parties May Be Brought in. When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order them to be brought in as defendants as provided in these rules.

(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) even if the claims of the opposing party have been dismissed or otherwise disposed of.

(j) Electronic Filing of Counterclaims and Cross-claims. When using the EFS, all counterclaims and cross-claims shall be filed in accordance with Rule 1(b)(3).

Rule 14. Third-~~P~~party Practice

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defendant, as a third-party plaintiff, may cause a summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents to be served upon a person not a party to the action who is or may be liable to the defendant for all or part of the plaintiff's claim against the defendant. 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 ten (10) days after the third-party plaintiff serves his or her 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, Language Assistance Notice, and all other required documents, hereinafter called the third-party defendant, shall make his or her defenses to the third-party plaintiff's claim as provided in Rule 12 and his or her 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, and the third-party defendant shall assert his or her defenses as provided in Rule 12 and his or her 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 that ~~who~~ is or may be liable to him or her 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.

(c) Notice of Assignment. At the time of service of the third-party complaint, notice shall be given to the third-party defendant by the third-party plaintiff as to whether the case is assigned for trial and if so to what date and calendar.

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(d) Filing of Third-party Documents. When using the EFS, all third-party documents shall be filed in accordance with Rule 1(b)(3).

Rule 15. Amended and Supplemental Pleadings

(a) Amendments. A party may amend ~~his or her~~ 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~~ the pleading at any time within twenty (20) days after ~~it~~ the pleading is served. Otherwise a party may amend ~~his or her~~ 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. When filing a motion to amend in the EFS, the amended pleading shall be attached as an exhibit to the motion and filed in accordance with Rule 1(b)(3). Amendments shall be embodied in a fair copy of the whole paper as amended~~, which shall be substituted for the original unless otherwise ordered by the court~~. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be 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 so to 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 promoted ~~subserved~~ thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the objecting party in maintaining his or her 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. Whenever 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 pleading, the amendment relates back to the date of the original pleading. An amendment changing ~~the party~~ or adding a plaintiff or defendant or the naming of a party ~~against whom a claim is asserted~~ relates back if the foregoing provision is satisfied and~~,~~ within the period provided ~~by law for commencing the action against the party, the party to be brought in by amendment~~ by Rule 4(j) for service of the summons, third-party complaint, Language Assistance Notice, and all other required documents, the party against whom the amendment adds a plaintiff, or the added defendant:

(1) ~~h~~Has received such notice of the institution of the action that the party would not be prejudiced in maintaining his or her defense on the merits;~~,~~ and

(2) ~~k~~Knew or should have known that but for a mistake the action would have been brought against the party.

(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. Pre-Trial Procedure - Formulating Issues

In any action the court may in its discretion direct the attorneys for the parties or a self-represented litigant to appear before it for a conference to consider:

(1) The simplification of the issues;

(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;

(4) The limitations of the number of expert witnesses; and/or

(5) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

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.~~;~~ ~~but a~~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 ~~his or her~~ that person's own name without joining ~~with him or her~~ the party for whose benefit the action is brought; and when a statute so provides, an action for the use and benefit of another shall be brought in the name of the state. An insurer who has paid all or part of a loss may sue in the name of the assured to whose right it is subrogated. 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, including one acting in a representative capacity, and of a partnership or other unincorporated association to sue or be sued shall be determined by the law of this state. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized, unless some statute of this state provides to the contrary.

(c) Infants or Incompetent Persons. Whenever an infant or incompetent person has a representative, such as a general guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative, ~~he or she~~ the infant or incompetent person may sue by ~~his or her~~ 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~~ the court deems proper for the protection of the infant or incompetent person.

Rule 18. Joinder of Claims and Remedies

(a) Joinder of Claims. ~~The plaintiff in his or her complaint or in a reply setting forth a counterclaim and the defendant in an answer setting forth a counterclaim may set forth either as independent or alternative claims as many legal claims as he or she may have against an opposing party. There may be a like joinder of claims when there are multiple parties if the requirements of Rules 19 and 20 are satisfied. There may be a like joinder of cross-claims or third-party claims if the requirements of Rules 13 and 14 respectively are satisfied.~~ 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 alternate claims, as many claims, legal or equitable, as that 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 (2) 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 the plaintiff without first having obtained a judgment establishing the claim for money. This rule shall not be applied in actions to recover for personal injury or property damage so as to permit the joinder of a liability or indemnity insurance carrier, unless such carrier is by law or contract liable to the person injured or damaged and is directly subject to suit to enforce such liability.

Rule 19. ~~Necessary Joinder of Parties~~ Joinder of Persons Needed for Just Adjudication

(a) Persons to Be Joined if Feasible. A person who is subject to service of process 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

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(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:

(A) As a practical matter impair or impede the person's ability to protect that interest; or

(B) Leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the person's claimed interest.

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) and (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; and 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) and (2) hereof who are not joined, and the reasons why they are not joined.

~~**(a) Necessary Joinder.** Subject to the provisions of subdivision (b) of this rule, persons having a joint interest which is not also a several interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so, he or she may be made a defendant.~~

~~**(b) Effect of Failure to Join.** When persons who are not indispensable, but who ought to be parties if complete relief is to be accorded between those already parties, have not been made parties and are subject to the jurisdiction of the court, the court shall order them summoned to appear in the action. The court in its discretion may proceed in the action without making such persons parties, if its jurisdiction over them can be acquired only by their consent or voluntary appearance; but the judgment rendered therein does not affect the rights or liabilities of absent persons.~~

~~**(c) Same: Names of Omitted Persons and Reasons for Non-joinder to Be Pleaded.** In any pleading in which relief is asked, the pleader shall set forth the names, if known to the pleader, of~~

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~~persons who ought to be parties if complete relief is to be accorded between those already parties, but who are not joined, and shall state why they are omitted.~~

Rule 20. Permissive Joinder of Parties

(a) Permissive Joinder. All persons may join in one (1) 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 of them will arise in the action. All persons may be joined in one (1) 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 of them 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 he or she asserts no claim and who asserts no claim against him or her, and may order separate trials or make other orders to prevent delay or prejudice.

Rule 21. Misjoinder and Nonjoinder 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 stage 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 counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

Rules ~~22 and~~ 23. [Reserved.]

Rule 24. Intervention

(a) Intervention of Right. Upon timely application any one shall be permitted to intervene in an action:

(1) ~~w~~When a statute of this state confers an unconditional right to intervene; ~~or~~

(2) ~~w~~When the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or

(3) ~~w~~When the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court or an officer thereof.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action:

(1) ~~w~~When a statute of this state confers a conditional right to intervene; or

(2) ~~w~~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 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.

(d) Intervention by the Attorney General. When the constitutionality of an act of the legislature is drawn in question in any action to which the state or an officer, agency, or employee thereof is not a party, the party asserting the unconstitutionality of the act shall notify the attorney general within such time to afford him an opportunity to intervene.

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 by Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. If no motion for substitution is made the action shall be subject to dismissal under Rule 41(b).

(2) In the event of the death of one (1) or more of the plaintiffs or of one (1) 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 on 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 his representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may 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 ~~his or her~~ an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the public 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) When a public officer sues or is sued in ~~his or her~~ an official capacity, the public officer may be described as a party by ~~his or her~~ the officer's official title rather than by name; but the court may require ~~his or her~~ the public officer's name to be added.

V. DEPOSITIONS AND DISCOVERY

Rule 26. ~~Depositions Pending Action~~ General Provisions Governing Discovery; Duty of Disclosure

(a) Discovery Methods. Parties may obtain discovery by one (1) or more of the following methods: depositions upon oral examinations or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property under Rule 34 or 45(a) for inspection and other purposes; physical and mental examinations; and requests for admission. In accordance with Rule 5(d), discovery requests and responses shall not be filed with the court until they are used in the proceeding or the court orders their filing.

~~**(a) When Depositions May Be Taken.** Any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action or for both purposes. After commencement of the action the deposition may be taken without leave of court, except that leave, granted with or without notice, must be obtained if notice of the taking is served by the plaintiff within twenty (20) days after service upon the defendant. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. Except as provided in Rule 27 depositions shall be taken~~

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~~only in accordance with these rules. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.~~

(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 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 these rules shall be limited by the court if it determines that:

(A) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(B) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(C) The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, 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 subdivisions (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

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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~~s~~: Experts.*

(A) 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. A party may depose any person who has been identified as an expert expected to testify when the expert interrogatory has been responded to by the other party. Unless otherwise ordered by the court, the party seeking to depose the expert shall pay the expert the reasonable fee for the time spent attending the deposition and the reasonable expenses incurred in attending the deposition. In the absence of agreement between the parties as to the timing of disclosures required under this subdivision, any party may apply to the court for an order establishing a schedule of such interrogatories, responses, and depositions. Obligation to respond to interrogatories shall be stayed until the ruling on the application.

(B) A party may discover facts known and 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 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 opinions on the same subject by other means.

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(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 this subdivision; and

(ii) 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.

(5) *Claims of Privilege or Protection of Trial Preparation Materials.* When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

~~**(b) Scope of Examination; Limitations.**~~

~~(1) *Scope of Examination.* Unless otherwise ordered by the court as provided by Rule 30(b) or (d), the deponent may be examined 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 examining party 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 relevant facts. It is not ground for objection that the testimony will be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.~~

~~(2) *Limitations.* A party shall not require a deponent to produce or submit for inspection any writing obtained or prepared by the adverse party, the adverse party's attorney, surety, indemnitor, or agent in anticipation of litigation and in preparation for trial unless the court otherwise orders on the ground that a denial of production or inspection will result in an injustice or undue hardship; nor shall the deponent be required to produce or submit for inspection any part of a writing which reflects an attorney's mental impressions, conclusions, opinions, or legal theories, or, except as provided hereinafter and in Rule 35, the conclusions of an expert engaged in anticipation of litigation and in preparation for trial. A party may require any other party to disclose the names and addresses of proposed expert witnesses; except as provided in Rule 35 such disclosure shall be solely for the purpose of enabling the party to investigate the qualifications of such witnesses in advance of trial, unless the court orders the taking of the deposition of such witnesses by any party on the ground that lack of such deposition will result in an injustice or undue hardship. Such order shall issue only on motion after hearing and shall be on such terms and conditions as~~

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~~the court may determine. In an action for personal injury or property damage arising out of negligence, a party may require any other to disclose the policy limits of his or her liability or property damage insurance. Such disclosed matter shall not be introduced in evidence but shall be used solely for the purpose of enabling the party to evaluate the advisability of making or accepting an offer of settlement.~~

(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 in which the action is pending or alternatively, on matters relating to a deposition, the court in the county where the deposition is to be taken 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 disclosure or discovery not be had;

(2) That the disclosure or 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 disclosure or 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 revealed or be revealed only in a designated way; and

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

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

~~**(c) Examination and Cross-Examination.** Examination and cross-examination of deponents may proceed as permitted at the trial of actions in open court, but the cross-examination need not be limited to the subject matter of the examination in chief.~~

(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

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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.

~~**(d) 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, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one 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.~~

~~(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 of a public or private corporation, partnership, or association 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:~~

~~(i) that the witness is dead; or~~

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

~~(iii) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or~~

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

~~(v) 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.~~

~~(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him or her to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.~~

~~Substitution of parties does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and other 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.~~

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(e) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement the response to include information thereafter acquired under the following circumstances:

(1) A party is under a duty seasonably to supplement his 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 that the response was incorrect when made; or

(B) The party knows that the response though correct when made is no longer true or complete 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.

(4) A party is under a continuing duty to furnish answers to interrogatories as provided in Rule 33(c).

~~**(e) Objections to Admissibility.** Subject to the provisions of Rules 28(b) and 32(c), 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.~~

(f) Signing of Discovery Requests, Responses, and Objections. Every discovery request, response, or objection made by a party represented by an attorney shall be signed by at least one (1) attorney of record, other than responses that must be signed by the party, in the attorney's individual name and shall state the attorney's address, email address, bar number, and telephone number. A self-represented litigant shall sign the request, response, or objection and state the self-represented litigant's address, email address (if electing to utilize the EFS), and telephone number. The signature of the attorney, party, or self-represented litigant constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is:

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(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 without substantial justification a certification is made in violation of the rule, the court, upon motion or upon its own initiative, may impose upon the person who made the certification, the party on whose behalf the disclosure, 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 a reasonable attorney's fee.

~~**(f) Effect of Taking or Using Depositions.** A party shall not be deemed to make a person his or her own witness for any purpose by taking his or her deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition as described in paragraph (2) of subdivision (d) of this rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or her or by any other party.~~

Rule 27. Depositions Before Action

The perpetuation of testimony regarding any matter which may be cognizable in this court shall be in accordance with the statutes of this state.

Rule 28. Persons Before Whom Depositions May Be Taken

(a) Within the State. Within the state depositions shall be taken before an officer authorized to administer oaths by the law of the state or before a person appointed by the court. A person so appointed has the power to administer oaths and take testimony.

(b) Outside the State. Within another state, or within a territory or insular possession subject to the dominion of the United States, or in a foreign country, depositions may be taken:

(1) ~~o~~On notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, including any applicable treaty or convention;~~, or~~

(2) ~~b~~Before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his or her commission to administer any necessary oath and take testimony;~~,~~ or

(3) ~~p~~Pursuant to a letter of request (whether or not captioned a letter rogatory). A commission or a letter of request ~~rogatory~~ 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 ~~rogatory~~ that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request ~~rogatory~~ 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 ~~rogatory~~ may be addressed "To the Appropriate Authority in (here name the state, territory, or country)." Evidence obtained in a foreign country in response to a letter of request ~~rogatory~~ need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States 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 the Taking of Depositions

If the parties so stipulate in writing, 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.

Rule 30. Depositions Upon Oral Examination

(a) When Depositions May Be Taken; When Leave Required.

(1) Any 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)(1), if the person to be examined is confined in prison or if, without the written stipulation of the parties:

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

(B) A plaintiff seeks to take a deposition prior to the expiration of thirty (30) days after service of process on any defendant or the filing of a waiver of service, except that leave is not required:

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(i) If a defendant has served notice of taking deposition or otherwise sought discovery; or

(ii) If the notice served by a plaintiff contains a certification, with supporting facts, that the person to be examined is expected to leave the State of Rhode Island and be unavailable for examination in this State unless deposed before that time.

~~**(a) Notice of Examination: Time and Place.** 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 not in default. 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 him or her or the particular class or group to which he the belongs. On motion of any party upon whom the notice is served, the court may for cause shown enlarge or shorten the time. The court may regulate at its discretion the time and order of taking depositions as shall best serve the convenience of the parties and witnesses and the interests of justice.~~

(b) Notice of Examination: General Requirements; Special Notice; 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.

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(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) If documents are requested to be produced at a deposition, the notice to a party deponent shall be accompanied by a copy of a subpoena duces tecum or a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedures of Rules 34 and 45, respectively, shall apply to the request.

(6) A party may in the witness' notice or in a subpoena name as the deponent a public, private, or governmental organization and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall serve and file, prior to the deposition, a written designation which identifies one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and shall 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 person 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), and 37(b)(1), a deposition taken by such means is taken in the county and at the place where the deponent is to answer questions.

~~**(b) Orders for the Protection of Parties and Deponents.** After notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to~~

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~~be examined and upon notice and for good cause shown, the court may make an order that the deposition shall not be taken, or that it may be taken only at some designated time or place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that the deposition be sealed and opened only by order of the court, or that secret processes, developments, or research need not be disclosed; or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or the court may make any other order which justice requires to protect the party or witness from annoyance, undue expense, embarrassment, or oppression. The court may in its discretion where notice is given of the taking of depositions outside the state and at great distances from the place where the case is to be tried, require the party taking the deposition to pay the travelling expenses of the opposite party and of his or her attorney where their attendance is reasonably necessary at the taking of said deposition; and where it appears that the witness whose deposition is sought is under the control of the party taking the deposition, the court may require such witness to be brought within the state and the witness' deposition taken there. The power of the court under this rule shall be exercised with liberality toward the accomplishment of its purpose to protect parties and witnesses.~~

(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 applicable Rhode Island Rules of Evidence except Rules 103 and 615. Subject to a contrary court order or agreement of the parties, no person whose presence at a deposition has been requested by any attorney of record or self-represented litigant shall be excluded from attending the deposition. However, attendance at depositions of persons other than the deposition officer (reporter), the witness, attorneys, and parties to the action shall not be permitted unless notice of same has been given to all attorneys of record and self-represented litigants at least forty-eight (48) hours before the deposition. The officer before whom the deposition is to be taken or, in a non-stenographic deposition, the examining attorney or other person authorized by law, shall put the witness on oath or affirmation and shall ~~personally~~ in person, or by someone acting under ~~the officer's~~ such person's direction and in such person's presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed unless the parties agree otherwise. ~~or recorded by any other means in accordance with subdivision (b)(2) of this rule. The court may order the cost of transcription paid by one or some of, or apportioned among, the parties.~~ 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, and any other objection to the proceedings, ~~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. ~~Evidence objected to shall be taken subject to the objections.~~ In lieu of participating in the oral examination, parties may serve~~d~~ ~~with notice of taking a deposition may~~ written questions in a sealed envelope on the party taking the deposition and that party ~~may~~ shall transmit ~~written interrogatories~~ them to the officer, who shall propound them to the witness and record the answers verbatim.

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(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 person 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)(1) 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 attorney's 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 in which the action is pending or the court in the county where the deposition is being taken may order the officer or examining attorney 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 in which the action is pending. 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 or to obtain a ruling by telephone. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

~~**(d) Motion to Terminate or Limit Examination.** At any time during the taking of the deposition on motion of any 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, any judge of the District 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 subdivision (b). 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. In granting or refusing such order the court may impose upon either party or upon the witness the requirement to pay such costs or expenses as the court may deem reasonable.~~

(e) Review by Witness; Changes; Signing. If requested by the deponent or a party before completion of the deposition, the deponent shall have thirty (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

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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.

~~**(e) Submission to Witness; Changes; Signing.** When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties, or unless the testimony has been transcribed by a court stenographer duly appointed by any court of this state or by a person expressly approved by this court. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign, or unless the testimony has been transcribed by a court stenographer or other approved person.~~

~~If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor, or the fact of transcription by a court stenographer or other approved person; and the deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 32(d) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.~~

(f) Certification and Filing by Officer; ~~Copies;~~ Opening.

(1) The officer or, in a non-stenographic deposition, the examining attorney or self-represented litigant, shall certify on the deposition transcript that the witness was duly sworn ~~by him or her~~ and that the transcript ~~deposition~~ is a true record of the testimony given by the witness. Unless otherwise ordered by the court, the original deposition transcript shall not be filed with the court. ~~The officer~~ Rather, the self-represented litigant, examining attorney, or the attorney ordering a stenographic transcription shall securely seal the original ~~then place the~~ deposition transcript in an envelope indorsed with the title of the action and marked "Deposition of ~~(~~[here insert the name of witness~~)~~]" and shall ~~promptly deliver or mail it to the clerk of the court where the action is pending~~ retain the original transcript, subject to making it available to the court or any other party upon request.

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 party affords to all parties fair opportunity to verify the copies by comparison with the originals; or

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(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) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) Upon being filed, the deposition shall be open to inspection until such time as it is returned by the court to the examining attorney, unless otherwise ordered by the court.

(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 amount of the reasonable expenses incurred by ~~him or her~~ the party and ~~his or her~~ the party's attorney in so attending, including reasonable attorney's 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 ~~he or she~~ 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 amount of the reasonable expenses incurred by ~~him or her~~ the other party and ~~his or her~~ that party's attorney in so attending, including reasonable attorney's fees.

Rule 31. Depositions of Witness Upon Written Questions ~~Interrogatories~~

(a) Serving Questions ~~Interrogatories~~; 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 a 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)(1), if the person to be examined is confined in prison or if, without the written stipulation of the parties, the person to be examined has already been deposed in the case.

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating;

(A) 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

(B) 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 fourteen (14) days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within seven (7) days after being served with cross questions, a party may serve redirect questions upon all other parties. Within seven (7) 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.

~~A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party not in default with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within fifteen (15) days thereafter a party so served may serve cross interrogatories upon the party proposing to take the deposition. Within five (5) days thereafter the latter may serve redirect interrogatories upon a party who has served cross interrogatories. Within five (5) days after being served with redirect interrogatories, a party may serve recross interrogatories upon the party proposing to take the deposition.~~

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions ~~interrogatories~~ 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(b), (c), (e) and (f) to take the testimony of the witness in response to the questions ~~interrogatories~~ and to prepare, certify, and unless otherwise ordered by the court, to send the deposition to the examining attorney or self-represented litigant, who shall retain the transcript as provided in Rule 30(f)(1) ~~file or mail the deposition~~, attaching thereto the copy of the notice and the questions ~~interrogatories~~ received by the officer ~~him~~.

(c) Inspection of Deposition on File. ~~Upon being filed~~ Upon being furnished to the examining attorney, the deposition shall be open to inspection unless otherwise ordered by the court.

~~**(d) Orders for the Protection of Parties and Deponents.** After the service of interrogatories and prior to the taking of the testimony of the deponent, the court in which the action is pending, on motion promptly made by a party or a deponent, upon notice and good cause shown, may make any order specified in Rule 30 which is appropriate and just or an order that the deposition shall not be taken before the officer designated in the notice or that it shall not be taken except on oral examination.~~

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Rule 32. Use of Depositions in Court Proceedings ~~Effect of Errors and Irregularities in Depositions~~

(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 Rhode Island 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 one 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 any other purpose permitted by the Rhode Island Rules of Evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) to testify on behalf of a public or private corporation, partnership, or association 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;

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

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

(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 of a medical witness or any witness called as an expert, other than a party, which has been recorded by videotape by written stipulation of the parties or pursuant to an order of court may be used at trial for any purpose whether or not the witness is available to testify.

A deposition taken without leave of court pursuant to a notice under Rule 30(a)(2) 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 eleven (11) days' notice of a deposition, has promptly upon receiving such notice filed a motion for a protective order under

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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 party to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

(5) Unless otherwise ordered by the court, a true copy of a deposition may be used to the same extent as the original.

Substitution of parties does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or of any State 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 previously taken may also be used as permitted by the Rhode Island Rules of Evidence.

~~**(a) 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.~~

(b) Objections to Admissibility. Subject to the provisions of Rules 28(b) and subdivision (e)(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.

~~**(b) As to Disqualification of Officer.** Objection to taking a deposition because of 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.~~

(c) Effect of Taking or Using Depositions. A party shall not be deemed to make a person the party's own witness for any purpose by taking the person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition as described in subdivision (a)(2) of this rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by that party or by any other party.

~~**(c) As to Taking of Deposition.**~~

~~(1) Objections to the competency of a witness or to the competency, relevancy, or the 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.~~

~~(2) 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.~~

~~(3) Objections to the form of written interrogatories 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 interrogatories and within five (5) days after service of the last interrogatories authorized.~~

(d) 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, in advance of trial, provide the court and all other parties 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) 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, 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.~~

(e) 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 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 the 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,

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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 (5) 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, 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; Answers; Objections. Any party may serve upon any adverse party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may be served after commencement of the action or after the filing of a responsive pleading by the party to whom the interrogatories are directed and without leave of court, except that, if service is made by the plaintiff within ~~twenty~~ sixty (~~2~~60) days after service upon the defendant, leave of court granted with or without notice must first be obtained. The interrogatories shall be answered separately and fully in writing under oath. The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served shall serve a copy of the answers on the parties submitting the interrogatories within forty (40) days after the service of the interrogatories, unless the court on motion and notice and for good cause shown, enlarges or shortens the time. With his or her answers a party may serve specific written objections to particular interrogatories, stating the grounds on which ~~they~~ the objections are based. Failure to serve such objections shall constitute a waiver thereof. Answers to interrogatories to which objection is made may be deferred until an order to answer is entered in accordance with Rule 37(a) upon motion of the interrogating party. Such objections or motion made without substantial justification shall be subject to the sanctions set forth in Rule 37(a).

(b) Scope; Limitations. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the ~~same extent as provided in Rule 26(d) for the use of the deposition of a party~~ extent permitted by the Rhode Island Rules of Evidence. Interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered, but the court on motion of the deponent or the party interrogated, may make such protective order as justice may require. A party shall not serve more than one (1) set of interrogatories upon an adverse party nor shall the number of interrogatories exceed thirty (30) unless the court otherwise orders for good cause shown. The provisions of Rule 30(b) are applicable for the protection of the party from whom answers to interrogatories are sought under this rule.

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An interrogatory is not objectionable merely because it calls for an answer which involves an opinion or contention that relates to fact, or to the application of law to fact, but the court may order that such an interrogatory need not be answered until after other designated discovery has been completed or at some other later time.

(c) Continuing Duty to Answer. If the party furnishing answers to interrogatories shall ~~obtain~~ subsequently obtain information which renders such answers incomplete or incorrect, amended answers shall be served within a reasonable time thereafter but not later than ~~ten~~ thirty (~~1~~30) days prior to the day fixed for trial. Thereafter amendments may be allowed only on motion and upon such terms as the court may direct.

(d) Option to Produce Business Records. If 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 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 for Other Purposes

(a) Scope. Subject to the provisions of Rule 30(b), any party may serve on any other party a request:

(1) ~~t~~To produce and permit the requesting party ~~making the request~~, or someone acting on the requesting party's behalf, to inspect, ~~and~~ copy, test, or sample the following items in the responding party's possess ion, custody, or control:

(A) ~~a~~Any designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, audio recordings, images ~~phono-records~~, and other data or data compilations) stored in any medium from which information can be obtained either directly or, if necessary, after translation~~ed~~, ~~if necessary,~~ by the responding party ~~respondent through detection devices~~ into a reasonably usable form~~), or to inspect and copy, test, or sample~~; or

(B) ~~a~~Any designated 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) ~~t~~To permit entry upon designated land or other property possessed ~~in the possession~~ or controlled ~~of~~ by the responding party, so that the requesting party may ~~upon whom~~

~~the request is served for the purpose of~~ inspect~~ion~~, ~~and~~ measur~~ing~~, survey~~ing~~, photograph~~ing~~, test~~ing~~, or sample~~ing~~ the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall be obligated to comply therewith unless within ~~twenty~~ thirty (~~2~~30) days after service thereof, or within such shorter or longer time as the court may allow, the party serves upon the requesting party an objection to the request, specifying the portion of the request objected to and the grounds of objection. Portions of the request not objected to shall be complied with. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to the request or other failure to permit inspection as requested.

A party who produces documents for inspection 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 request.

(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 Examination of Persons

(a) Order for Examination. When ~~In an action in which~~ the mental or physical condition ~~or~~ the blood relationship of a party, or of an agent or a person in the custody or under the legal control of a party, is in controversy, the court may order the party to submit to a physical or mental or blood examination by a suitably licensed or certified examiner ~~physician~~ or to produce for ~~such~~ for examination ~~his or her agent or~~ the person in ~~his or her~~ 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 ~~Findings~~ Examiner. ~~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 him or her a copy of a detailed written report of the examining physician setting out his or her findings and conclusions, together with like reports of all earlier examinations of the same condition. After such request and delivery the party causing the examination to be made shall be entitled upon request to receive from the party or person examined a like report of any examination, previously or thereafter made, of the same condition. If the party or person examined refuses to deliver such report the court on motion and notice may make an order~~

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~~requiring delivery on such terms as are just, and if a physician fails or refuses to make such a report the court may exclude the physician's testimony if offered at the trial.~~

(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 a 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 and notice 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 such a report the court may exclude the examiner's testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so offered 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 examining physician or the taking of a deposition of the physician in accordance with the provisions of any other rule.

~~(c) Statutory Appointment of Expert Witnesses.~~ ~~The provisions of this rule are in addition to existing statutes authorizing the appointment of expert witnesses. A motion for an order for a mental or physical examination shall specify whether it is made pursuant to subdivision (a) of this rule or to a statutory provision relating to expert witnesses. Upon a motion made pursuant to subdivision (a) of this rule, the court in its discretion may appoint an expert witness in accordance with applicable statutory provisions.~~

Rule 36. ~~Admission of Facts and of Genuineness of Documents~~ Requests for Admission

(a) Request for Admission. ~~After commencement of an action a~~ 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 ~~by~~ the ~~latter of the~~ genuineness of any ~~relevant~~ documents described in ~~and exhibited with~~ the request ~~or of the truth of any relevant matters of fact set forth in the request. If a plaintiff desires to serve a request within twenty (20) days after service upon the defendant, leave of court, granted with or without notice, must be obtained.~~ Copies of the documents shall be served with the request unless copies have already been furnished or made available for inspection and copying. The request may,

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without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons, complaint, Language Assistance Notice, and all other required documents upon that party.

Each of the matters of which an admission is requested shall be separately set forth. The matter is ~~deemed~~ admitted unless, within thirty (30) ~~a period designated in the request, not less than ten (10)~~ days after service of the request, ~~thereof~~ or within such shorter or longer time as the court may allow, ~~on motion and notice,~~ 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 under oath, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of forty-five (45) days after service of the summons, complaint, Language Assistance Notice, and all other required documents upon the defendant. 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 a 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.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

~~either (1) a sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he or she cannot truthfully admit or deny those matters or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part, together with a notice of hearing the objections at the earliest practicable time. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his or her 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. If a request is refused because of lack of information or knowledge upon the part of the party to whom the request is directed, the party shall also show in~~

~~his or her sworn statement that the means of securing the information or knowledge are not reasonably within the party's power.~~

(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 promoted thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining the party's action or defense on the merits. Any admission made by a party ~~pursuant to such request~~ under this rule is for the purpose of the pending action only and ~~neither constitutes~~ is not an admission by the party for any other purpose nor may be used against the party in any other proceeding except in a subsequent action between the same parties involving the same claim.

Rule 37. Refusal to Make Discovery - Consequences

(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 discovery as follows:

(1) *Appropriate Court.* An application for an order to a party may be made to the court in which the action is pending or, on matters relating to a deposition, in the county in which the deposition is being taken. This provision shall also apply to a deponent who is not a party.

(2) *Motion.* If a deponent fails to answer a question propounded or submitted under Rules 30 and 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for production or inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling production or 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.

A motion to compel answers to interrogatories, a motion to compel production of documents, and a motion to compel more responsive answers to interrogatories shall specify the number of days for compliance. If no such time is specified, it shall be thirty (30) days. If a party fails to respond within the specified time, upon motion to the court, a conditional order for dismissal or default shall enter specifying the number of days for compliance. If no such time is specified, it shall be thirty (30) days. If the party fails to respond to a conditional order for dismissal or default within the specified time, entry for final judgment may be made upon motion to the court.

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(3) *Evasive or Incomplete 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 requested discovery is provided after the motion was filed, the court may, 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 attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust. An order compelling discovery may expressly provide for entry of a final judgment dismissing the underlying claim or entry of a default judgment against the nonmoving party if the order is not complied with within thirty (30) days or such shorter or longer time as the court may order or as the parties may stipulate.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and may, 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 attorney's 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.

~~**(a) Refusal to Answer.** If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, he or she may apply to the court for an order compelling an answer. Upon the failure of a deponent or a party to answer any interrogatories submitted under Rule 31 or Rule 33, or upon the furnishing of an inadequate answer to any such interrogatory, or upon the failure of a party to make discovery as requested under Rule 34, the proponent of the question or the requesting party may make like application for such an order. If the motion is granted the court shall, after opportunity for hearing, require the party or deponent whose failure to answer adequately or otherwise to make discovery 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 obtaining the order, including attorney's fees, unless the court finds that opposition was substantially justified or that other circumstances make an award of expenses unjust.~~

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~~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 the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.~~

~~If the motion is granted in part and denied in part, the court may 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) *Contempt.* If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the court, the refusal may be considered a contempt of court.

(2) *Other Consequences.* If any party or an officer, director, or managing agent of ~~the~~ a party or a person designated under Rule 30(b)(6) to testify on behalf of a party fails or refuses to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule ~~requiring him or her to answer designated questions or to make discovery under Rule 34,~~ or ~~an order under~~ Rule 35, ~~or if a party refuses to answer designated questions after the party's objections thereto under Rule 30 have been overruled by the court,~~ the court may make such orders and enter such judgment in regard to the failure or refusal as are just, and among others the following:

(A~~i~~) An order that the matters regarding which the ~~questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental or blood condition sought to be examined,~~ 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~~ii~~) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing ~~in evidence~~ designated ~~documents or things or items of testimony, or from introducing~~ matters in evidence ~~of physical or mental or blood condition sought to be examined~~;

(C~~iii~~) 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~~iv~~)In lieu of any of the foregoing orders or in addition thereto, an order treating as contempt of court the failure to obey any ~~directing the arrest of any party or agent of a party for disobeying any of such~~ orders except an order to submit to a physical or mental or blood examination; and/or

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

In lieu of any of the foregoing orders or in addition thereto, the court may require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's 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) Expenses on Refusal to Admit. If a party fails to admit the genuineness of any documents or the truth of any matter as~~, after being served with a request~~ under Rule 36, ~~to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof~~ and if the party requesting the admissions thereafter proves the genuineness of ~~any such~~ the document or the truth of ~~any such~~ the matter ~~of fact~~, the requesting party may apply to the court for an order requiring the other party to pay ~~him or her~~ the reasonable expenses incurred in making such proof, including reasonable attorney's fees. ~~Unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made.~~

The court shall make the order unless it finds that:

(1) The request was held objectionable pursuant to Rule 36(a);

(2) The admission sought was of no substantial importance;

(3) The party failing to admit had reasonable ground to believe that the party might prevail on the matter; or

(4) 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 without good cause fails

(1) to appear before the officer who is to take the ~~officer's~~ deposition after being served with a proper notice, ~~an order for the taking of his or her deposition has been granted~~, or

(2) to serve answers or objections to interrogatories submitted under Rule 33 after proper service of such 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 on motion may make such orders in regard to the failure as are just, and among others the court may take any action authorized under subparagraph (A), (B) and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under cause (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 may require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's 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.
~~including striking out all or any part of any pleading of that party, or dismissing the action or proceeding or any part thereof, or entering judgment by default against that party. If a party fails to serve amended answers to interrogatories as required by Rule 33(c) the court may enter an order prohibiting that party from introducing evidence as to any matter which ought to have been the subject of amended answers, or the court may in its discretion pass the case on such terms and conditions as are just.~~

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).

VI. TRIALS

Rules 38 and 39. [Reserved.]

Rule 40. Assignment of Cases for Trial – Continuances

(a) Assignment of Cases for Trial. Cases may be assigned for trial or other disposition to the appropriate calendar:

(1) ~~b~~By order of the court including rules of practice and general orders adopted for the purpose of assignment; or

~~(2) by written agreement of the parties filed with the clerk or~~

(2~~3~~) ~~b~~By motion upon notice to the adverse parties.

Precedence shall be given to actions entitled thereto by statute. Cases not assigned for trial within one (1) year after entry may be assigned for trial by the clerk; notice of such assignment shall be served forthwith upon all parties to the action.

(b) Continuances. Continuances shall be granted only upon motion and for good cause shown and upon such terms and conditions as the court shall determine.

(c) Affidavit or Certificate in Support of Motion. The court need not entertain any motion for a continuance based on the absence of a material witness unless such motion be supported by an affidavit which shall state the name of the witness and, if known, the witness' address, the

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facts to which the witness is expected to testify and the basis for such expectation, the efforts which have been made to procure the witness' attendance or deposition, and the expectation which the party has of procuring the witness' testimony or deposition at a future time. Such motion may, in the discretion of the court, be denied if the adverse party will admit that the absent witness would, if present, testify as stated in the affidavit. A motion for a continuance on the ground of sickness of a party or witness shall be accompanied by a certificate of practicing physician stating the fact of said sickness, and the kind, degree, and the time of beginning thereof. Such motion may be denied if the moving party shall not have notified the adverse party as soon as practicable of the illness and forthcoming motion for a continuance.

Rule 41. Dismissal of Actions

(a) Voluntary Dismissal: Effect Thereof.

(1) *By Plaintiff; by Stipulation.* An action may be dismissed by the plaintiff without order of court:

(A~~i~~) ~~b~~By filing notice of dismissal at any time before service by the adverse party of an answer or a responsive pleading or a motion for summary judgment, whichever first occurs;~~,~~ or

(B~~ii~~) ~~b~~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 this or any other state or of the United States an action based on or including such 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 ~~him or her~~ 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~~the counterclaim shall remain pending for independent adjudication by the court despite the dismissal of the plaintiff's claim~~. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal: Effect Thereof.

(1) *On Court's Own Motion.* The court may, at any time, in its discretion dismiss any action for failure of the plaintiff to comply with these rules or any order of court, or for lack of prosecution if the action has been pending for more than five (5) years. Notice that an action will be in order for dismissal on a day certain shall be served

upon ~~mailed to~~ the plaintiff's attorney of record, or if there be not one to the plaintiff if the plaintiff's address ~~be~~ is known. Otherwise such notice shall be published as directed by the court and in accordance with statutory provisions.

(2) *On Motion of the Defendant.* On motion of the defendant the court may, in its discretion, dismiss any action for failure of the plaintiff to comply with these rules or any order of court or for lack of prosecution as provided in paragraph (1) of this subdivision. After the plaintiff has completed the presentation of ~~his or her~~ the plaintiff's evidence, the defendant, without waiving ~~his or her~~ the defendant's right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence.

(3) *Effect.* 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 or for improper venue or for lack of an indispensable party, operates as an adjudication upon the merits.

(c) Dismissal of Counterclaim, Cross-~~C~~claim, or Third-~~P~~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 or a motion for summary judgment is served or, if there is neither, 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 on 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, in the same division or different divisions, ~~it~~ the court 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 the proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate Trials. The court in furtherance of convenience or to avoid prejudice may order a separate trial in the division where the action is pending or in a different division 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.

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Rule 43. Evidence

(a) Form and Admissibility. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by statute, ~~or~~ by these rules, or by the Rhode Island Rules of Evidence. All evidence shall be admitted which is admissible under the statutes of this state~~,~~ or under the Rhode Island ~~r~~Rules of ~~e~~Evidence ~~applied in the courts of this state~~. The competency of a witness to testify shall be determined in like manner.

(b) Scope of Examination and Cross-~~E~~examination. A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him or her by leading questions and contradict and impeach him or her in all respects as if he or she had been called by the adverse party, except by evidence of bad character, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of his or her examination in chief.

(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 presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(f) Examination of Witnesses. The examination and cross-examination of any witness shall be conducted by one (1) attorney only on each side. The attorney shall stand while so examining or cross-examining unless the court otherwise permits.

(g) Copies of Documents. A certified copy of each will, deed or other recorded instrument used in evidence shall be filed in all cases, unless otherwise ordered by the court ~~an original is left on file until the case is finally decided~~.

(h) Order of Trial.

(1) *Opening and Closing.* The party holding the burden of proof ~~affirmative~~ shall in all cases, except on motions, open and close the question before the court. On motions the moving party shall open and close.

(2) *Several Issues.* When there are several issues, with respect to some of which the burden of proof ~~affirmative~~ is on the plaintiff and with respect to others it is on the defendant, the plaintiff shall open and close.

(i) Withdrawal of Evidence. Attorneys shall withdraw forthwith after the final disposition of cases, with the approval of the court, all books, papers, documents, plats, and things

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introduced in evidence and not required by statute, rule, or special order to remain on file, upon leaving copies thereof duly attested by the clerk, if the court shall so direct. If the same are not withdrawn within thirty (30) days the clerks shall not be required to preserve the same; but no original paper for absolute or contingent payment of money, such as a bill, bond, note or the like, shall be taken from the files until the clerk has noted on the face thereof, if the same be the cause of action, the state or result, as the case may be, of the action thereon.

Rule 44. Proof of Official Record

(a) Authentication of Copy. An official record 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. If the office in which the record is kept is outside of this state but within the United States or within a territory or insular possession subject to the dominion of the United States, a certificate that such officer has the custody of the record shall 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 official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his or her office. If the office in which the record is kept is in a foreign state or country, such certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his or her office.

(b) Proof of Lack of Record. A written statement signed by an officer having the custody of an official record or by the officer's deputy that after diligent search no record or an exact copy of a record ~~entry of a specified tenor~~ is found to exist in the records of his or her office is admissible as evidence that the records of his or her office contain no such record or entry, provided that if the record is kept without the state, the statement shall be accompanied by a certificate as required by subdivision (a) of this rule.

(c) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any method authorized by any applicable statute or by any other method authorized by law~~by the rules of evidence at common law~~.

Rule 45. Subpoena

(a) For Attendance of Witnesses; Form; Issuance. Every subpoena shall be issued by the clerk of court or a notary public or other officer authorized by statute, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified.

(b) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:

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(1) ~~q~~Quash or modify the subpoena if it is unreasonable and oppressive; or

(2) ~~c~~Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(c) Service. A subpoena may be served by a duly authorized officer in accordance with Title 9, Chapter 5 (Writs, Summons, and Process) of the Rhode Island General Laws ~~the sheriff, by his deputy, by a constable,~~ or by any other person who is not a party and is not less than eighteen (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 by tendering to the person the fees for one (1) day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the state or an officer or agency thereof, fees and mileage need not be tendered. A subpoena may be served at any place within the state.

(d) Subpoena for Taking Depositions. Proof of service of a notice to take a deposition as provided in Rules 30(a) and 31(a) constitutes a sufficient authorization for the issuance of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce designated books, papers, documents, or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of subdivision (b) of Rule 30 and subdivision (b) of this Rule 45.

(e) Subpoena for a Hearing or Trial. Subpoenas for attendance at a hearing or trial shall be issued at the request of any party in accordance with subdivision (a).

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon ~~him or her~~ that person may be deemed ~~a~~ in contempt of the court in which the action is pending.

Rules 46 to 53. [Reserved.]

VII. JUDGMENT

Rule 54. Judgment - Costs

(a) Definitions; Form. "Judgment" as used in these rules is the formal disposition of a claim by the court. A judgment shall not contain a recital of pleadings or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one (1) 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 (1) or more but fewer than all of the claims or parties only upon an express determination that there is not 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

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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 ~~his or her~~ the party's pleadings.

(d) Allowance of Costs. Costs shall be allowed as of course to the prevailing party as provided by statute and by these rules unless the court otherwise specifically directs.

(e) Taxation of Costs.

(1) *With Notice.* Costs may be ~~taxed~~ assessed by the court upon five (5) days' notice. A copy of the bill of costs, specifying the items in detail, and a copy of any supporting affidavits shall be served with the notice.

(2) *Without Notice.* Costs may be ~~taxed~~ assessed without notice by the clerk upon inspection of the proceedings and files. A party who has obtained taxation of costs without notice shall immediately thereafter serve upon the adverse party notice of the items so taxed. Within five (5) days after such service, any such adverse party may serve notice of ~~retaxation~~ reassessment of costs by the court upon five (5) days' notice to the party who has obtained taxation of costs, specifying the items as to which ~~retaxation~~ reassessment is sought.

(f) Costs on Depositions. The taxation of costs in the taking of depositions shall be subject to the discretion of the court. No costs shall be allowed unless the court finds that the taking of the deposition was reasonably necessary, whether or not the deposition was actually used at the trial. Taxable costs may include the cost of service of subpoena upon the deponent, the reasonable fee of the officer before whom the deposition is taken, the fees and mileage allowances of witnesses, the stenographer's reasonable fee for attendance, and the cost of the transcript of the testimony or such part thereof as the court may fix.

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

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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 if the defendant 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 guardian, guardian ad litem, or such other 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~~ ten (10~~3~~) 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.

(3) *Affidavit Required.* Notwithstanding the foregoing, no judgment by default shall be entered until the filing of an affidavit made by some competent person on the affiant's own knowledge, setting forth facts showing that the defendant is not a person in military service as defined in ~~Article 1 of the "Soldiers' and Sailors' Civil Relief Act" of 1940, as amended~~ the Servicemembers Civil Relief Act (50 U.S.C.A. App. § 501, et seq.).

(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-~~C~~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).

Rule 56. Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim may, at any time after the expiration of twenty (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 his or her favor upon all or any part thereof.

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

(c) Motion and Proceedings Thereon. The motion shall be served at least ten (10) days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve

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opposing affidavits. 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 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 on 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 or a self-represented litigant, shall if practicable ascertain 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 ~~his or her~~ the adverse party's pleading, but ~~his or her~~ an 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 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 his or her 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 this 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 ~~him or her~~ the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Rule 57. [Reserved.]

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Rule 58. Entry of Judgment

(a) After Trial or Hearing. Subject to the provisions of Rule 54(b) the clerk, unless the court otherwise orders, shall forthwith ~~prepare,~~ sign~~,~~ and enter the judgment without awaiting any direction by the court. Every judgment shall be set forth in writing. A judgment is effective and shall be deemed entered when so set forth and signed by the clerk or the judicial officer ~~judge~~. Entry of judgment shall not be delayed for the ~~taxing~~ assessing of costs.

(b) By Agreement. Subject to the provisions of Rule 54(b) the clerk, without awaiting any direction by the court, may enter judgment for a sum certain or denying relief upon agreement or submission in writing by the parties or their attorneys of record, except when any party is an infant or incompetent person.

(c) Upon Order of Supreme Court. The clerk shall enter any judgment specifically directed by the Supreme Court.

Rule 59. [Reserved.]

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) Mistake; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) ~~m~~Mistake, inadvertence, surprise, or excusable neglect;

(2) ~~n~~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) ~~f~~Fraud ~~(whether heretofore denominated intrinsic or extrinsic)~~, misrepresentation, or other misconduct of an adverse party;

(4) ~~t~~The judgment is void;

(5) ~~t~~The judgment has been satisfied, released, or discharged or a prior judgment upon which ~~it~~ the judgment is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

(6) ~~a~~Any other reason justifying relief from the operation of the judgment.

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The motion shall be made within a reasonable time, and for reasons (1), (2), (3) and (6) not more than one (1) 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 set aside a judgment for fraud upon the court. ~~Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and t~~The procedure for obtaining any relief from judgment shall be by motion as prescribed in these rules or by an independent action.

Rule 61. [Reserved.]

Rule 62. Stay of Proceedings to Enforce a Judgment

(a) Automatic Stay. No execution shall issue upon a judgment until the expiration of two (2) days after its entry. In residential landlord/tenant matters, no execution shall issue upon a judgment until the expiration of five (5) days after its entry.

(b) Stay on Motion to Vacate 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 relief from a judgment or order made pursuant to Rule 60.

(c) [Reserved.]~~.~~

(d) Stay Upon Appeal. No execution shall issue upon any judgment after an appeal therefrom to the Superior Court has been claimed in accordance with statutes and applicable procedural rules.

(e) 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.

(f) Power of Judicial Officers ~~Judges~~ Not Limited. The provisions of this rule do not limit the statutory power of any judicial officer ~~judge~~ to stay execution upon motion and for cause shown.

Rule 63. ~~[Reserved]~~ Inability of a Judicial Officer to Proceed

If a trial or hearing has been commenced and the judicial officer is unable to proceed, then, by order of the Chief Judge, any other judicial officer 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 judicial officer shall at the request of a party recall any witness whose testimony is material and disputed and

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who is available to testify again without undue burden. The successor judicial officer may also recall any other witness.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 64. Replevin

(a) Issuance. A plaintiff claiming the possession of goods and chattels wrongfully taken or detained shall proceed by complaint and summons in an action under these rules and in connection therewith may make a motion for issuance of a writ of replevin as provided by law, which shall be served along with the a summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents. The motion shall be granted only upon a showing that there is a probability of a judgment being rendered in favor of the plaintiff and that there is a substantial need for transfer of possession of the goods and chattels to the plaintiff pending adjudication of the claim. In lieu of ordering issuance of the writ of replevin the court may order the defendant to give security for satisfaction of any judgment which may be rendered in the action. A surety upon a bond or undertaking hereunder shall be subject to the provisions of Rule 4(j)(3). A motion or issuance of a writ of replevin shall not be granted ex parte.

(b) Replevin on Counterclaim, Cross-~~C~~claim, or Third-~~P~~party Complaint. Goods or chattels may be replevied on writ of replevin by a party bringing a counterclaim, cross-claim, or third-party complaint in the same manner as upon an original claim, provided that the goods or chattels are located in the division where the action is pending.

(c) Subsequent Issuance. A writ of replevin may be issued subsequent to commencement of the action in accordance with subdivision (a). Such writ may also be issued by way of execution.

Rule 65. Injunctions in Housing Cases

(a) Preliminary Injunction.

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

(2) *Hearing; Consolidation of Hearing With Trial on Merits.* An application for a preliminary injunction shall be heard on evidence or affidavits or both at the discretion of the court. 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.

(b) Temporary Restraining Order; Notice; Hearing; Duration. No temporary restraining order shall be granted without notice to the adverse party unless 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 notice can be served and a hearing had thereon. 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; and shall expire by its terms within such time after entry, not to exceed ten (10) days, as the court fixes,

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unless within the time so fixed the order by consent or for good cause shown and after hearing of argument by the parties or ~~counsel~~ attorneys, is extended for an additional period. 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 may be given precedence of 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 he does not do so, the court shall dissolve the temporary restraining order. On two (2) 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.

If an application for a temporary restraining order without notice to the adverse party is made to and denied by one (1) judicial officer ~~judge~~ of the court, such application shall not again be made to any other judicial officer ~~judge~~ unless there is a material change in circumstances. The judicial officer ~~judge~~ to whom such application was originally presented shall note his or her action in the case file ~~upon the complaint~~ containing such application.

(c) [Reserved.].

(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail 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.

(e) Applicability. This rule shall apply to proceedings brought pursuant to G.L. 1956 (1970 reenactment) § 45-24.2-8.

Rule 66. [Reserved.]

Rule 67. Deposit in Court - Registry

(a) 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.

(b) Registry of Court; Deposit and Withdrawal of Funds. The clerk of the court in each division shall be the registrar of the court for that division and shall have charge of all funds and things deposited in cases pending in said division. Funds so deposited shall be known as registry funds and shall be by certified or cashier's check only payable to the Registry of the District Court and endorsed "for deposit only" by the clerk of the court. Such funds shall be deposited in an ~~savings~~ account designated by the Supreme Court Director of Finance ~~or accounts in some mutual savings bank or banks, or a savings or participation account or accounts in a commercial~~

~~bank or trust company~~ in the name of the Registry of the District Court for the division. Withdrawal from such account shall be only upon written order of the court and shall be sent to the Supreme Court Finance Office for processing. ~~Withdrawal instruments shall be signed by both the clerk of the division and a judge of the court.~~

(c) Registry Fees. No fees shall be charged by the clerk in any division from amounts disbursed from the registry of court for any funds deposited in said registry by any person, firm, corporation, or agency, whether public or private.

Rule 68. Offer of Judgment; Payment into Court

(a) Offer of Judgment. At any time more than ten (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 ~~him or her~~ the defending party for the money or property or to the effect specified in ~~his or her~~ the offer, with costs then accrued. If within ten (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 and thereupon the clerk shall enter judgment.

(b) Payment Into Court. A party defending against a claim may pay into court by depositing with the clerk a sum of money on account of what is claimed, or by way of compensation or amends, and plead that ~~he or she~~ the defending party is not indebted to any greater amount to the party making the claim or that the party making the claim has not suffered greater damages. The party making the claim may:

(1) ~~a~~Accept the tender and have judgment for ~~his or her~~ the party's costs:~~,~~

(2) ~~r~~Reject the tender:~~,~~ or

(3) ~~a~~Accept the tender as part payment only and proceed with ~~his or her~~ the action on the sole issue of the amount of damages.

(c) Offer Not Accepted. An offer under subdivision (a) or (b) above not accepted in full satisfaction shall be deemed withdrawn, and evidence thereof is not admissible except in a proceeding to determine interest or 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, or accepted only as part payment, does not preclude a subsequent offer.

Rule 69. Execution; Supplementary Proceedings; Attachment and Trustee Process After Judgment, Wage Attachment

(a) Execution. Process to enforce a judgment for the payment of money shall be a writ of execution unless the court directs otherwise. The procedure on execution, and in proceedings on in aid of execution shall be in accordance with applicable statutes. In aid of the judgment or execution, the judgment creditor, or ~~his or her~~ a successor in interest when that interest appears of record, may ~~examine any person, including the judgment debtor, in the manner provided in~~

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~~these rules for taking depositions~~ obtain discovery from any person, including the judgment debtor, in the manner provided in these rules.

(b) Citation in Supplementary Proceedings.

(1) *Definition.* A citation in supplementary proceedings is an order issued by the clerk to a judgment debtor ordering him or her to appear before the court at a time and place named to show cause why an examination into his or her circumstances should not be made and a decree be entered ordering ~~him~~ the debtor to pay such judgment in full or by installment.

(2) *Issuance.* A citation may be issued upon application by a judgment creditor, execution on whose judgment has been returned unsatisfied, either in whole or in part.

(3) *Service.* Said citation shall be served by delivering a copy to the judgment debtor or by leaving a copy at the individual's dwelling house or ~~last and~~ usual place of abode of the judgment debtor with ~~some person living there~~ a person of suitable age and discretion then residing therein, at least six (6) days before the date of appearance named ~~therein~~ in the citation.

The clerk may include an order of citation in supplementary proceedings on the same form as the writ of execution issued against the judgment debtor and said citation shall become effective whenever said judgment debtor fails to satisfy the demand of ~~the~~ a duly authorized officer in accordance with Title 9, Chapter 5 (Writs, Summons, and Process) of the Rhode Island General Laws ~~sheriff or constable~~ serving the writ of execution. ~~(See sample of form set forth in appendix).~~ If the execution is to be returned unsatisfied, ~~the~~ a duly authorized officer in accordance with Title 9, Chapter 5 (Writs, Summons, and Process) of the Rhode Island General Laws ~~sheriff or constable~~ shall write or mark the legend "EXECUTION UNSATISFIED, JUDGMENT DEBTOR MUST APPEAR IN COURT" on the copy of the execution left with the judgment debtor.

(4) *Hearing on Citation.* At the hearing on the citation, the court may make or permit to be made by the judgment creditor, an examination of the judgment debtor or other inquiry into the judgment debtor's assets, income, and circumstances and the financial ability of the judgment debtor to pay the judgment.

(5) *Failure to Appear by Debtor.* If the judgment debtor upon whom a citation has been served fails to appear in response thereto, the inquiry may proceed in ~~his or her~~ the judgment debtor's absence and a civil body attachment may be issued for such judgment debtor, as in the manner provided § 9-17-7 for witnesses in civil cases who fail to appear as commanded.

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(c) Decree for Installment Payments.

(1) *Issuance.* If, after allowing the judgment debtor out of ~~his or her~~ income a reasonable amount for the support of the debtor and the debtor's family, if any, the court finds that the debtor is able to pay the judgment in full or by periodic installment payments, it shall enter a decree fixing the amount, frequency, and manner of said payment.

(2) *Modifications.* A further hearing on the subject of the debtor's ability may be held on the motion of any party after notice given to all other parties. Notice shall be given in the manner provided by Rule 5(b), except that no further hearing shall be held regarding a debtor for whom no ability to pay has earlier been determined by the court, unless the court, after examination of an affidavit or the receipt of sworn testimony, finds cause to believe that a new inquiry should be made and permits such a hearing to be scheduled.

(3) *Enforcement.* If a judgment debtor has failed to comply with an installment payment decree, the clerk, upon ~~application~~ receiving a notarized affidavit of noncompliance by an unsatisfied judgment creditor, shall issue a citation which shall order the judgment debtor to appear and show cause for ~~his or her~~ the noncompliance. Service of said citation shall be in a like manner to that provided for service of citations in supplementary proceedings as provided in subdivision (b)(3~~1~~). A civil body attachment may be issued for a judgment debtor who fails to appear in response to a citation to show cause for noncompliance, as in the manner provided by § 9-17-7 for witnesses in civil cases who fail to appear as commanded.

(d) Contempt. A refusal or willful failure to comply within the time stated in the decree shall be punishable as a contempt of court. If, as a result of contempt proceedings, the judgment debtor is imprisoned by order of the court, said incarceration shall not operate to satisfy said judgment or bar any action to reach any assets, either at law or at equity.

(e) Trustee Process After Judgment (Non-wages).

(1) In any action, including small claims actions, where the plaintiff's claim has been reduced to judgment, the defendant's assets, including his or her personal estate, may be attached and be subjected to trustee process in the action in which the judgment has been entered.

(2) On the day of service of a post-judgment writ of trustee process upon a garnishee, other than a writ attaching wages or a writ against a corporate or business entity judgment debtor, the plaintiff shall ~~mail~~ send to the court in accordance with Rule 1(b)(1)(H) and contain the certificate of service in Rule 1(b)(1)(B), and to the defendant at the last known address a copy of the writ of trustee process and a notice thereof ~~(substantially in the form as set forth in the appendix)~~ containing a date for a hearing before the court of any claim for exemption which the defendant may have under federal or state law. The date for the hearing shall be not less than ~~seven~~ five (5~~7~~) nor more than ~~twelve~~ nine (9~~12~~) days after the day of ~~mailing~~ sending of the

notice, in accordance with Rule 1(b)(1)(H) and contain the certificate of service in Rule 1(b)(1)(B).

Said notice shall be deemed to continue in full force and effect without prejudice as a matter of course and shall not be placed upon the motion calendar unless objection thereto is served and filed at least two (2) days before the time specified for its hearing. However, a judgment debtor's failure to object to said motion shall not be deemed as a waiver of any statutory exemptions available to said judgment debtor, and a judgment debtor may move at any time to amend or vacate an order of attachment.

(f) Motion for Attachment of Wages After Judgment. A writ of attachment to be served as a writ of garnishment of wages after the plaintiff's claim has been reduced to judgment in any civil or small claims action shall be issued, in the same action, only upon motion and notice to the defendant and an opportunity to be heard thereon. The notice ~~shall be substantially in the form as set forth in the appendix (Notice and Motion to Attach Wages) and~~ shall contain the date of the hearing, which shall be not less than ten (10) nor more than twenty-five (25) days after the date of the mailing of the notice. The most current version of the notice and writ of attachment is located on the Judiciary's website at www.courts.ri.gov under the heading of Forms, District Court. No wage attachment shall be served upon an employer until after the date of the hearing. Said motion shall be deemed to be granted without prejudice as a matter of course and shall not be placed upon the motion calendar unless objection thereto is served and filed at least two (2) days before the time specified for its hearing. However, a debtor's failure to object to said motion shall not be deemed as a waiver of any statutory exemptions available to said debtor, and a debtor may move at any time to amend or vacate an order of attachment.

(g) Order of Attachment of Wages. If, after the time set for hearing, the motion is granted, then a writ of attachment may be served upon the employer, along with a completed copy of a notice to the employer ~~(substantially in the form as set forth in the appendix)~~. The most current version of the notice to employer is located on the Judiciary's website at www.courts.ri.gov under the heading of Forms, District Court. A writ of attachment so issued shall expire without prejudice unless served upon the employer within forty-five (45) days of its issuance, and no subsequent writ of attachment shall be issued in the same action without notice to the defendant and an opportunity for a hearing as provided herein. The granting of said motion shall relate only to current and identified wages, and recovery in post-judgment process shall be limited to the amount of the judgment plus actual costs expended and post-judgment statutory interest. The ~~W~~writ attaching wages may take one (1) of two (2) forms:

(1) An order to the employer to:

(A~~i~~) ~~w~~Withhold a specified amount from the wages payable to the defendant and to accumulate the amounts withheld until a designated total has been reached;

(B~~ii~~) ~~t~~To report the completion of the withholding to the plaintiff or, if the plaintiff is represented by an attorney ~~counsel~~, to plaintiff's attorney;~~,~~ and~~,~~

(C~~iii~~) ~~t~~To continue to retain said amounts until the employer receives:

(i~~A~~) ~~a~~An ~~O~~order of charge from the ~~C~~court;~~,~~

(ii~~B~~) ~~a~~A release by the employee permitting the funds to be transmitted to the plaintiff;~~,~~ or

(iii~~C~~) ~~a~~A release by the plaintiff permitting the funds to be returned to the employee.~~;~~

(2) An order to the employer to withhold a specified amount from the wages payable to the defendant and to pay over said amounts to the plaintiff or, if the plaintiff is represented by counsel, to plaintiff's attorney on an ongoing basis on each pay date. Payments made by the employer pursuant to this subdivision shall be considered as having been made pursuant to a charge against the employer.

The issuance of the ~~W~~writ of ~~A~~attachment for ~~G~~garnishment shall be without prejudice to the debtor's right to bring a ~~M~~motion for relief based on constitutional or statutory rights or exemptions.

Rule 70. Order to Perform or to Refrain from Performing an Act - Contempt

If an order or judgment directs a party to perform or to refrain from performing a specified act and the party fails to comply within the time specified, the court may adjudge the party in contempt.

Rule 71. ~~[Reserved]~~ 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 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. APPEALS

Rule 72. [Reserved.]

Rule 73. Appeal to the Superior Court

A party may appeal to the Superior Court by filing a notice of appeal with the clerk of the division of the District Court and by simultaneously paying the appropriate appeal fee plus any applicable technology surcharges, in accordance with the applicable statutory law, together with the costs and bond, if any, required by statutory law. The most current version of the appeal form is located on the Judiciary's website at www.courts.ri.gov under the heading of Forms, District Court. The party claiming the appeal shall send a copy of the notice of appeal to the opposing party or parties, or if represented by an attorney ~~counsel~~, to their ~~counsel~~ attorney of record, within five (5) days after the filing of the notice of appeal. If an appeal be so claimed the case

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and papers shall be certified and transmitted to the Superior Court in accordance with statutory law.

Rules 74 to 76. [Reserved.]

X. DISTRICT COURT AND CLERKS

Rule 77. District Court and Clerks

(a) District Court Always Open. Subject to law the District Court shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning 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 insofar as practicable in a regular courtroom. All other acts or proceedings may be done or conducted by a judicial officer ~~judge~~ in chambers, without the attendance of the clerk or other court officials.

(c) Clerk's Office and Orders by Clerk. The clerk's office for each division with the clerk or a deputy clerk in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays. All motions and applications in the clerk's office for issuing ~~mesne~~ process after the commencement of a lawsuit, 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 or deputy clerk; but his or her action may be suspended or rescinded by the court upon cause shown.

(d) Notice of Orders ~~for~~ or Judgments. Immediately upon the entry of any 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 period~~. Such ~~mailing~~ service is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. No notice need be served if an order or judgment is entered in open court in the presence of the parties or their ~~counsel~~ attorneys.

Nothing contained herein shall modify or affect the provisions of Rule 77(f) with respect to notice.

(e) Transmittal of Papers. ~~At the direction of any judge of the court, the clerk or the clerk's deputies shall transmit the papers in any action from one division to another w~~When a matter has been duly set down for hearing in a division other than that in which the action is pending,~~.~~ ~~P~~pleadings, motions, and papers to be filed in such case shall be filed in the office of the clerk for the division in which the case is pending. ~~The clerk for the division in which the case is heard shall certify the proceedings had in the clerk's division to the clerk for the division in which the case is pending and, at the direction of any judge of the court, shall return to such clerk all the papers, to be kept there on file.~~

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When the court orders a change of venue such order shall include a direction to the clerk to ~~transmit all papers to the clerk for the division to which the action is transferred and~~ that thereafter all papers shall be filed and all proceedings taken as if the action had been entered in the division to which it is transferred.

(f) Agreements Between Counsel. All agreements of parties or attorneys involving the business of the court shall be in writing, unless orally made or assented to by them in the presence of the court. Otherwise, they will be considered of no validity.

(g) Written Orders ~~From Any Civil Calendar~~. Whenever ~~upon any civil~~ ~~calendar~~ a written order is ~~either~~ required by the court ~~or chosen to be filed by a party~~, any interested party may file in the clerk's office an order carrying the same into effect with a ~~c~~Certificate of Service in accordance with Rule 1(b)(1)(B) that a copy has been ~~mailed~~ sent to all other parties. If only one (1) order is filed on a particular subject and no objection thereto be filed within four (4) days thereafter, the clerk shall enter the order. If more than one (1) order is filed ~~addressing a particular subject by opposing parties~~ or if objection be filed by ~~any party to any particular order~~ within said four (4) days, ~~an~~ the order ~~addressing the subject matter~~ shall be entered only by the court.

Rule 78. [Reserved.]

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

(a) Docket. The clerk of each division of the District Court shall keep a docket and an alphabetical index thereof, of all actions, complaints, or proceedings ~~either of a civil or criminal nature,~~ that may be entered or had in the division, and shall note in the docket against each case the decision or determination thereof, and all subsequent proceedings, and the judgments therein~~, and in all criminal cases the fines or imprisonment to which the defendant may be sentenced~~.

(b) Entry of Decisions, Judgments, and Proceedings. The clerk of each division of the court shall record the decisions, judgments, and proceedings of such division ~~in a book to be kept for that purpose~~.

(c) The clerk of each division shall tax costs~~, including officer's fees in all cases, civil or criminal,~~ that may be entered, commenced, or pending in such division; and all taxation by the clerk shall be subject to revision by any ~~district court~~ judicial officer ~~judge~~ sitting in the division.

(d) The clerk of each division shall receive all ~~fines and costs in criminal cases, and all~~ court fees in civil cases and shall account therefor as by law required.

(e) The clerk in each division shall have custody of the seal of the division.

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XI. SPECIAL RULES FOR CERTAIN ACTIONS

Rule 80. Review of Administrative Action

(a) Mode of Review. When a statute provides for review by the District Court of any action by a governmental agency, department, board, commission, or officer, whether by appeal or petition or otherwise, proceedings for such review shall be instituted by the filing of a complaint, Civil Case Cover Sheet, and any other required document together with the fees prescribed by law with the court. The complaint shall include a concise statement of the grounds upon which the plaintiff contends he or she is entitled to relief, and ~~shall~~ a demand for judgment for the relief ~~to which~~ the plaintiff seeks ~~believes himself or herself entitled~~. No responsive pleading need be filed unless required by statute or by order of the court.

(b) Time Limits - Notice. The time within which review may be sought shall be provided by law. A copy of the complaint shall be served upon the governmental agency, department, board, commission or officer, and upon all other parties to the proceeding to be reviewed in the manner provided by Rule 5.

(c) Trial or Hearing. These rules, so far as they are applicable, shall govern the review proceedings. The judgment of the court shall affirm, reverse, or modify the decision under review as provided by law.

XII. GENERAL PROVISIONS

Rule 81. Applicability of Rules

(a) To What Proceedings Applicable. These rules do not apply to actions under statutory small claims procedure, except as permitted by Rule 69, ~~n~~or to applications to take the poor debtor's oath.

(b) [Reserved.]~~.~~

(c)~~ Scire Facias Abolished.~~ ~~The writ of scire facias is abolished in civil actions. Relief heretofore available by scire facias may be obtained by appropriate action or by appropriate motion under the practice prescribed in these rules.~~ **[Reserved.]**

~~**(d)** [Reserved].~~

(de) Terminology and Statutes. In applying these rules to any proceedings to which they are applicable, the terminology of any statute which is also applicable, where inconsistent with that in these rules, shall be taken to mean the device or procedure proper under these rules.

Rule 82. Jurisdiction and Venue Unaffected

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

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Rule 83. Rules of Practice and Orders

Rules of practice ~~and general orders~~ which may be adopted from time to time by a majority of the judges of the District Court to further regulate the practice and conduct of business therein shall be deemed adopted under the power by which these rules are made and promulgated as well as pursuant to such other powers as the court may have. The designation of a ~~regulation~~ rule of practice and the conduct of business as an "order" rather than as a "rule" is for the purpose of convenience only and shall have no other effect.

Rule 84. Forms

The forms ~~contained~~ listed in the appendix of forms are located on the Judiciary's website at www.courts.ri.gov under the heading of Forms, District Court, are sufficient under the rules, and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

Rule 85. ~~Title~~ Out-of-State Counsel

~~These rules shall be known as the District Court Civil Rules and may be cited as D.C.R.~~

No person, who is not an attorney and counselor of the Supreme Court of the State of Rhode Island, shall be permitted to act as attorney or counselor for any party in any proceeding, hearing, or trial in the District Court unless granted leave to do so by the District Court or by the Supreme Court. Unless the District Court or the Supreme Court permits otherwise, any attorney who is granted such leave to practice before the District Court shall not engage in any proceeding, hearing, or trial therein unless there is present in the courtroom for the duration of the proceeding, hearing, or trial a member of the bar of Rhode Island who shall be prepared to continue with the proceeding, hearing, or trial in the absence of counsel who has been so granted leave.

Subject to the limitations and exceptions set forth in Art. II, Rule 9 of the Supreme Court Rules for the Admission of Attorneys and Others to Practice Law, leave shall be granted by the District Court, in its discretion, upon a miscellaneous petition signed by the petitioner in a form approved by the Supreme Court, supported by certifications of the attorney seeking admission pro hac vice and of Rhode Island associate counsel, and assented to by the party being represented in a client certification. The most current forms for pro hac vice are located on the Judiciary's website at www.courts.ri.gov under the heading of Forms, District Court.

Rule 86. Effective Date

These amended rules shall take effect on XXX, 2014 ~~April 1, 1970~~. They govern all proceedings in actions brought after they take effect and also all further proceeding in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

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APPENDIX OF FORMS

~~Introductory Statement~~

1. The following forms located on the Judiciary's website at www.courts.ri.gov under the heading of Forms, Superior Court ~~are illustrative~~ and are sufficient under the rules. They are limited in number. No attempt is made to furnish a manual of forms. ~~Each form assumes the action to be brought in the Sixth Division.~~

Appeal of Municipal Decision on Vicious Dog Hearing

Application for Citation and Supplementary Proceedings

Application to Clerk for Entry of Default

Civil Case Cover Sheet - Electronic Filing

Civil Case Cover Sheet to Superior Court

Complaint for Nonpayment of Rent

Complaint for Reason Other Than Nonpayment Rent

Domestic Abuse Affidavit

Entry of Appearance

Five (5) Day Demand Notice for Nonpayment of Rent

Motion to Proceed in Forma Pauperis

Notice of Termination of Tenancy

Notice of Non-compliance

Notice to Employer

Order for Hospitalization in a Mental Hospital

Pro Hac Vice - Attorney Certification for Admission Pro Hac Vice

Pro Hac Vice - Client Certification

Pro Hac Vice - Miscellaneous Petition for Admission Pro Hac Vice

Proof of Financial Responsibility

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Small Claims Notice of Suit Complaint

Small Claims Notice of Suit Answer

Stipulation

Subpoena Duces Tecum

Request for Notice and Motion to Attach Wages

Request for Notice of Attachment (Not for Wages)

Tenant Restraining Order Against Landlord

Verified Motion to Proceed in Forma Pauperis

Witness Subpoena

Writ of Attachment

2. Except where otherwise indicated, each pleading, motion, and other paper should have a caption similar to that of the forms listed above. ~~summons, with the designation of the particular paper substituted for the word "Summons."~~ In ~~the caption of the summons and in~~ the caption of the complaint all parties must be named but in other pleadings and papers, it is sufficient to state the name of the first party on either side, with an appropriate indication of other parties. See Rules 4(b), 7(b)(2), and 10(a).

3. Each pleading, motion, and other paper is to be signed in ~~his or her~~ the individual name by at least one (1) attorney of record (Rule 11). The attorney's name is to be followed by his or her address, email address, bar number, and telephone number ~~as indicated in Form 3~~. ~~In some forms following Form 3 the signature and address are not indicated.~~

4. If a self-represented litigant ~~party is not represented by an attorney~~, the signature, ~~and~~ address, email address (if electing to utilize the EFS), and telephone number of the self-represented litigant ~~party~~ are required in place of those of the attorney.

~~5. These forms are numbered so as to conform as closely as possible to the numbering of the forms appended to the Rhode Island Rules of Civil Procedure. Forms inappropriate to District Court use have been omitted and those numbers used for other purposes or reserved for future use.~~

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~~Form 1. Summons~~

~~STATE OF RHODE ISLAND~~ ~~DISTRICT COURT~~
~~AND PROVIDENCE PLANTATIONS~~ ~~SIXTH DIVISION~~

~~Civil Action, File Number _____~~

~~A.B., Plaintiff~~ ~~)~~
~~v.~~ ~~)~~ ~~Summons~~
~~C.F., Defendant~~ ~~)~~

~~To the Above-Named Defendant:~~

~~The above-named plaintiff has brought an action against you in said District Court for the _____ Division sitting at _____. You are hereby summoned and required to serve upon _____, plaintiff's attorney, whose address is _____, an answer to the complaint which is herewith served upon you, not later than 20 days after service of this summons upon you. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Your answer must also be filed with the court.~~

~~Signed:_____~~
~~Clerk of said court~~

~~Form 2. Writ of Attachment~~

~~To the sheriff of the county of _____, the sheriff's deputies, or to either of the town sergeants or constables in said county:~~

~~We command you to attach, to the extent permitted by law, the goods and chattels and real estate of (name of defendant) of (defendant's place of residence, including town and county) and also to attach the personal estate of the said (name of defendant) in the hands or possession of (name of trustee) of (trustee's place of residence, including town and county) as trustee of the said (name of defendant) and also to attach his or her stock or shares in any banking association or incorporated company to the value of (amount of plaintiff's demand for judgment, together with a reasonable allowance for interest and costs) as demanded by (name of plaintiff) of (plaintiff's place of residence, including town and county) on (date of complaint) in District Court for the Sixth Division, sitting at _____ and make due return of this writ with your doings thereon.~~

~~Form 3. Complaint on a Promissory Note~~

~~**1.** Defendant on or about June 1, 1966, executed and delivered to plaintiff a promissory note (in the following words and figures: (here set out the note verbatim)); (a copy of which is hereto annexed as Exhibit A); (whereby defendant promised to pay to plaintiff or order on June 1, 1963, the sum of two thousand dollars with interest thereon at the rate of six percent, per annum).~~

~~**2.** Defendant owes to plaintiff the amount of said note and interest.~~

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~~Wherefore plaintiff demands judgment against defendant for the sum of two thousand dollars, interest and costs.~~

~~Signed:~~ _____
~~Attorney for Plaintiff~~
~~Address:~~ _____
~~Date:~~ _____

~~Notes~~

~~1. The pleader may use the material in one of the three sets of parentheses. His choice will depend upon whether he desires to plead the document verbatim, or by exhibit, or according to its legal effect.~~

~~2. Under the rules free joinder of claims is permitted. See Rules 8(e) and 18. Consequently, the claims set forth in each and all of the following forms may be joined with this complaint or with each other.~~

~~Ordinarily, each claim should be stated in a separate division of the complaint, and the divisions should be designated as counts successively numbered. In particular the rules permit alternative and inconsistent pleading. See Form 10.~~

~~Form 3-A. Complaint on Book Account~~

~~Defendant owes plaintiff three hundred dollars on book account.~~

~~Form 3-B. Complaint for Possession of Tenements~~

~~**1.** Defendant before June 1, 1969, had lawful and peaceable possession of the lands and tenements of plaintiff situated in (here insert a description of the premises).~~

~~**2.** Plaintiff gave due notice in writing to defendant terminating his or her estate in said premises on June 1, 1969.~~

~~**3.** Defendant has unlawfully refused and still refuses to quit the said premises.~~

~~Wherefore plaintiff demands judgment for possession of said premises and damages from defendant in the sum of fifty dollars and costs.~~

~~Form 4. Complaint on an Account~~

~~Defendant owes plaintiff two thousand dollars according to the account hereto annexed as Exhibit A.~~

~~Wherefore (etc. as in Form 3).~~

~~Form 5. Complaint for Goods Sold and Delivered~~

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~~Defendant owes plaintiff two thousand dollars for goods sold and delivered by plaintiff to defendant between June 1, 1965 and December 1, 1967.~~

~~Wherefore (etc. as in Form 3).~~

~~Notes~~

~~This form may be used where the action is for an agreed price or for the reasonable value of the goods.~~

~~Form 6. Complaint for Money Lent~~

~~Defendant owes plaintiff two thousand dollars for money lent by plaintiff to defendant on June 1, 1968.~~

~~Wherefore (etc. as in Form 3).~~

~~Form 7. Complaint for Money Paid by Mistake~~

~~Defendant owes plaintiff two thousand dollars for money paid by plaintiff to defendant by mistake on June 1, 1968, under the following circumstances: (here state the circumstances with particularity—See Rule 9(b)).~~

~~Wherefore (etc. as in Form 3).~~

~~Form 8. Complaint for Money Had and Received~~

~~Defendant owes plaintiff two thousand dollars for money had and received from one G.H. on June 1, 1968, to be paid by defendant to plaintiff.~~

~~Wherefore (etc. as in Form 3).~~

~~Form 9. Complaint for Negligence~~

~~1.~~ ~~On June 1, 1968, in a public highway called Benefit Street in Providence, Rhode Island, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway in the exercise of due care.~~

~~2.~~ ~~As a result plaintiff was thrown down and had his or her leg lacerated and was otherwise injured, was prevented from transacting his or her business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of two hundred dollars.~~

~~Wherefore plaintiff demands judgment against defendant in the sum of two thousand dollars, interest, and costs.~~

~~Form 10. Complaint for Negligence Where Plaintiff is Unable to Determine Definitely Whether the Person Responsible is C.D. or E.F. or Whether Both are Responsible and~~

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~~Where His Evidence may Justify a Finding of Wilfulness or of Recklessness or of Negligence~~

~~A.B., Plaintiff) ~~
~~v.) Complaint~~
~~C.D. and E.F., Defendants)~~

~~**1.** On June 1, 1968, in a public highway called Benefit Street in Providence, Rhode Island, defendant C.D. or defendant E.F., or both defendants C.D. and E.F. wilfully or recklessly or negligently drove or caused to be driven a motor vehicle against plaintiff who was then crossing said highway in the exercise of due care.~~

~~**2.** As a result plaintiff was thrown down and had his or her leg lacerated and was otherwise injured, was prevented from transacting his or her business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of two hundred dollars.~~

~~Wherefore plaintiff demands judgment against C.D. or against E.F. or against both in the sum of two thousand dollars, interest, and costs.~~

~~Form 11. Complaint for Conversion~~

~~On or about December 1, 1968, defendant converted to his or her own use ten bonds of the _____ Company (here insert brief identification as by number and issue) of the value of two thousand dollars, the property of plaintiff.~~

~~Wherefore plaintiff demands judgment against defendant in the sum of two thousand dollars, interest, and costs.~~

~~Forms 12 to 18. [Reserved]~~

~~Form 19. Motion to Dismiss, Presenting Defenses of Failure to State a Claim, of Lack of Service of Process, and of Lack of Jurisdiction Under Rule 12(b)~~

~~The defendant moves the court as follows:~~

~~**1.** To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.~~

~~**2.** To dismiss the action or in lieu thereof to quash the return of service of summons on the grounds (a) that the defendant is a corporation organized under the laws of Delaware and was not and is not subject to service of process within the State of Rhode Island, and (b) that the defendant has not been properly served with process in this action, all of which more clearly appears in the affidavits of M.N. and X.Y. hereto annexed as Exhibit A and Exhibit B respectively.~~

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~~**3.** To dismiss the action on the ground that the court lacks jurisdiction because the amount in controversy is more than five thousand dollars.~~

~~Signed:~~ _____
~~Attorney for Defendant~~
~~Address:~~ _____

~~Notice of Motion~~

~~To: _____~~

~~Attorney for Plaintiff~~

~~Please take notice that the undersigned will bring the above motion on for hearing before the District Court for the Sixth Division sitting at _____ on the ___ day of _____, 19___, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.~~

~~Signed:~~ _____
~~Attorney for Defendant~~
~~Address:~~ _____

~~**Notes**~~

~~The above motion and notice of motion may be combined and denominated Notice of Motion. See Rule 7(b).~~

~~**Form 20. Answer Presenting Defenses Under Rule 12(b)**~~

~~First Defense~~

~~The complaint fails to state a claim against defendant upon which relief can be granted.~~

~~Second Defense~~

~~If defendant is indebted to plaintiffs for the goods mentioned in the complaint, he or she is indebted to them jointly with G.H. G.H. is alive; is a citizen of the State of Rhode Island and a resident of Providence County, is subject to the jurisdiction of this court, as to both service of process and venue; can be made a party and has not been made a party.~~

~~Third Defense~~

~~Defendant admits the allegation contained in paragraphs 1 and 4 of the complaint; alleges that he or she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint; and denies each and every other allegation contained in the complaint.~~

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~~Fourth Defense~~

~~The right of action set forth in the complaint did not accrue within six years next before the commencement of this action.~~

~~Counterclaim~~

~~(Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a complaint.)~~

~~Cross-Claim against Defendant M.N.~~

~~(Here set forth the claim constituting a cross-claim against defendant M.N. in the manner in which a claim is pleaded in a complaint.)~~

~~**Notes**~~

~~The above form contains examples of defense provided for in Rule 12(b). The first defense raises the legal sufficiency of the complaint. Its effect is equivalent to a general demurrer or a motion to dismiss.~~

~~The second defense is equivalent to a plea in abatement.~~

~~The third defense is equivalent to an answer on the merits.~~

~~The fourth defense is one of the affirmative defenses provided for in Rule 8(c).~~

~~The answer also includes a counterclaim and cross-claim.~~

~~**Form 21. [Reserved]**~~

~~**Form 22-A. Summons and Complaint Against Third-Party Defendant**~~

~~STATE OF RHODE ISLAND~~ ~~DISTRICT COURT~~
~~SIXTH DIVISION~~

~~Civil Action, File Number _____~~

~~A.B., Plaintiff~~	~~)~~	
~~v.~~	~~)~~	
~~C.D., Defendant and Third-~~	~~)~~	
~~Party Plaintiff~~	~~)~~	~~Summons~~
~~v.~~	~~)~~	
~~E.F., Third Party Defendant~~	~~)~~	

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~~To the Above-Named Third-Party Defendant:~~

~~You are hereby summoned and required to serve upon _____, plaintiff's attorney whose address is _____, and upon _____, who is attorney for D.C., defendant and third-party plaintiff, and whose address is _____, an answer to the third-party complaint which is herewith served upon you within 20 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint. Your answer must also be filed with the court. There is also served upon you a copy of the complaint of the plaintiff which you may answer.~~

_____

~~Clerk~~

~~(Seal of District Court for the Sixth Division)~~
~~Dated: _____~~

~~Notice is hereby given to said Third-Party Defendant that said civil action (is not assigned for trial) is assigned for trial in the District Court for the _____ Division at _____ for _____.~~

~~(Date)~~

~~STATE OF RHODE ISLAND~~ ~~DISTRICT COURT~~
~~SIXTH DIVISION~~

~~Civil Action, File Number _____~~

~~A.B., Plaintiff~~	~~)~~	
~~v.~~	~~)~~	
~~C.D., Defendant and Third Party Plaintiff~~	~~)~~	~~Third-Party Complaint~~
~~v.~~	~~)~~	
~~E.F., Third-Party Defendant~~	~~)~~	

~~1. Plaintiff A.B., has filed against defendant C.D., a complaint, a copy of which is hereto attached as "Exhibit C."~~

~~2. (Here state the grounds upon which C.D. is entitled to recover from E.F., all or part of what A.B. may recover from C.D., or upon which A.B. is entitled to recover from E.F. and not from C.D. The statement should be framed as in an original complaint.)~~

~~Wherefore C.D. demands judgment against third-party defendant E.F. for all sums that may be adjudged against defendant C.D. in favor of plaintiff A.B.~~

~~Signed:~~ _____

~~Attorney for C.D.,~~

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~~Third-Party Plaintiff~~

~~Dated:~~ ~~Address:~~ _____

_____

~~Form 22-B. Motion to Bring in Third-Party Defendant~~

~~Defendant moves for leave, as third-party plaintiff, to cause to be served upon E.F. a summons and third-party complaint, copies of which are hereto attached as Exhibit X.~~

~~Signed:~~ _____

~~Attorney for Defendant~~
~~C.D.~~

~~Address:~~ _____

~~Notice of Motion~~

~~(Contents the same as in Form 19. The notice should be addressed to all parties to the action.)~~
~~Exhibit X~~

~~(Contents the same as in Form 22-A.)~~

~~Form 23. Motion to Intervene as a Defendant Under Rule 24~~

~~A.B., Plaintiff~~	~~)~~	
~~v.~~	~~)~~	~~Motion to Intervene as a~~
~~C.D., Defendant~~	~~)~~	~~Defendant~~
~~E.F., Applicant~~	~~)~~	
~~for Intervention~~	~~)~~	

~~E.F. moves for leave to intervene as a defendant in this action in order to assert the defenses set forth in his or her proposed answer, a copy of which is hereto annexed, on the ground that (here insert the grounds of intervention, either of right or in the discretion of the court).~~

~~Signed:~~ _____

~~Attorney for E.F., Applicant~~
~~for Intervention~~

~~Address:~~ _____

~~Notes~~

~~The motion should be accompanied by notice of the proposed motion, as in Form 19, and a copy of the proposed answer.~~

~~Form 24. Request for Production of Documents, Etc., Under Rule 34~~

~~Plaintiff A.B. hereby requests defendant C.D.:~~

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~~**(1)** To produce and permit plaintiff to inspect and to copy each of the following documents:~~

~~(Here list the documents either individually or by category and describe each of them.)~~

~~(Here state the time, place, and manner of making the inspection and performance of any related acts.)~~

~~**(2)** To produce and permit plaintiff to inspect and to copy, test, or sample each of the following objects:~~

~~(Here list the objects either individually or by category and describe each of them.)~~

~~(Here state the time, place, and manner of making the inspection and performance of any related acts.)~~

~~**(3)** To permit plaintiff to enter (here describe property to be entered) and to inspect and to photograph, test, or sample (here describe the portion of the real property and the objects to be inspected):~~

~~(Here state the time, place, and manner of making the inspection and performance of any related acts.)~~

~~**Form 25. Request for Admission Under Rule 36**~~

~~Plaintiff A.B. requests defendant C.D. to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:~~

~~**1.** That each of the following documents, exhibited with this request, is genuine.~~

~~(Here list the documents and describe each document.)~~

~~**2.** That each of the following statements is true.~~

~~(Here list the statements.)~~

~~Signed:~~ _____

~~Attorney for Plaintiff~~

~~Address:~~ _____

~~**Form 26. Allegation of Reason for Omitting Party**~~

~~When it is necessary, under Rule 19(c), for the pleader to set forth in his or her pleading the names of persons who ought to be made parties but who are not so made, there shall be an allegation such as the one set out below:~~

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~~[Party] named in this complaint is not made a party to this action because he or she is not subject to the jurisdiction of this court.~~

~~Form 27. Notice of Appeal~~

~~STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS~~

~~NOTICE OF APPEAL~~

~~[ ] SUPERIOR COURT~~ ~~[ ] FAMILY COURT~~ ~~[ ] DISTRICT COURT~~

_____ ~~COUNTY/DIVISION~~

~~1.~~ **~~2. CASE NO.~~**

~~Vs.~~

~~3. Attorney for Plaintiff~~ ~~Attorney for Defendant~~

~~Date Case First Filed in Lower Court/Agency~~	~~Date of Judgment/ Order Appealed From~~	~~Date Appeal Filed~~

~~PARTY FILING APPEAL:~~

~~[ ] Plaintiff~~ ~~[ ] Petitioner~~ ~~Trial Court Judge~~

~~[ ] Defendant~~ ~~[ ] Respondent~~

~~4. TRIAL COURT ACTION APPEALED~~

~~[ ] **IPR**~~	~~Preliminary Injunction~~	~~[ ] **CJJ**~~	~~Judgment/Judge~~	~~[ ] **DPC**~~	~~Denial Post Conviction~~
~~[ ] **CON**~~	~~Conviction~~	~~[ ] **CDV**~~	~~Directed Verdict~~	~~[ ] **MTR**~~	~~Denial Sent. Reduction~~
~~[ ] **IPT**~~	~~Permanent~~	~~[ ]~~	~~Judgment/Jury~~	~~[ ]~~	~~Dependency/~~

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	Injunction	CJU		DCF	Termination
[ ]	Default Judgment	[ ]	Alimony	[ ]	Summary Judgment
CJD		DAL		DSJ	
[ ]	Dismissal/	[ ]	Probation Viol.	[ ]	Agreed Statement of
CDS	Jurisdiction	PRO		ASF	Facts
[ ]	Dismissal Merits	[ ]	Pre Trial Motion	[ ]	Original Divorce
CDM		PTM		DRP	Petition
[ ]	New Trial Motion	[ ]	Juvenile	[ ]	Custody
CTD	Denied	FCJ		CUS	
[ ]	New Trial Motion	[ ]	Grant Post		
CTG	Granted	PCR	Conviction		

STAGE OF PROCEEDINGS	CIVIL DAMAGES	JUDGMENT FOR
[ ] Pre Trial	[ ] Amount of Judgment $ ____	[ ] Plaintiff
[ ] During Trial	[ ] Denied	[ ] Defendant
[ ] Post Trial	[ ] Granted	[ ] Other _____

SENTENCES		TRIAL TYPES
[ ] Confinement	[ ] Suspended	[ ] Judge
[ ] Special Program	[ ] Probation	[ ] Jury
[ ] Fine/Restitution	[ ] Deferred	[ ] Appeal from Post-Conviction Relief

BAIL/RELEASE STATUS		
[ ] Personal Recognizance	[ ] Surety Bond	[ ] Cash Bond
[ ] Held Without Bail	[ ] Other _____	[ ] Held in Lieu of Bail

5. TRANSCRIPT STATUS		
[ ] Transcript Will Not Be Ordered	Filing Fee Required: [ ] Yes [ ] No	Trial Court
[ ] Transcript Will Be Ordered	Appeal Filing Fee: $150.00	Receipt No. _____
Estimated Cost $_____	Court Reporter: _____	

DATE	FILING ATTORNEY (Print)	REGISTRATION NO.	SIGNATURE
_____	_____	_____	_____

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~~Pursuant to Rule 10 of the rules of the Supreme Court, the appellant shall within 10 days "order from the court reporter a transcript of such parts of the proceeding not already on file as he deems necessary for inclusion in the record."~~

~~DISTRIBUTION~~

~~WHITE--TRIAL COURT, YELLOW--OPPOSING ATTORNEY(S), PINK--SUPREME COURT~~

~~SE-10 (Rev. 11/89)~~

~~Forms 28 and 29. [Reserved]~~

~~Form 30. Suggestion of Death Upon the Record Under Rule 25(a)~~

~~A.B. (describe as a party, or as executor, administrator, or other representative or successor of C.D., the deceased party) suggests upon the record, pursuant to Rule 25(a), the death of C.D. (describe as party) during the pendency of this action.~~

~~Form 31. [Reserved]~~

~~Form 32. Judgment on Decision by the Court~~

~~STATE OF RHODE ISLAND~~ ~~DISTRICT COURT~~
~~AND PROVIDENCE PLANTATIONS~~ ~~SIXTH DIVISION~~

~~Civil Action, File Number _____~~

~~A.B., Plaintiff~~ ~~)~~
~~v.~~ ~~)~~ ~~Judgment~~
~~C.D., Defendant~~ ~~)~~

~~This action came on for trial before the Court, Judge _____ presiding, and the issues having been tried and a decision having been duly rendered,~~

~~It is Ordered and Adjudged:~~

~~(That the plaintiff, A.B., recover of the defendant, C.D., the sum of _____, with interest thereon at the rate of _____ per cent as provided by law, and his or her costs of action.)~~

~~(That the plaintiff take nothing, that the action be dismissed on the merits, and that the defendant, C.D., recover of the plaintiff, A.B., his or her costs of action.)~~

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~~Dated at Providence, Rhode Island, this ___ day of _____, 19___.~~

_____

~~(Judge) (Clerk of Court)~~

~~**Notes**~~

~~1. This form is illustrative of the judgment to be entered upon a decision of the court. It deals only with the cases of decisions by the court awarding a party only money damages or costs, but is adaptable to other decisions by the court.~~

~~2. The clerk, unless the court otherwise orders, is required forthwith, without awaiting any direction by the court to prepare, sign, and enter the judgment upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied. The Judge may sign the judgment himself. See Rule 58.~~

~~**Form 33. Notice of Attachment [Deleted]**~~

~~**Form 34. Notice and Motion of Proposed Wage Attachment**~~

~~STATE OF RHODE ISLAND~~ ~~DISTRICT COURT~~

~~SC~~ ~~_____ DIVISION~~

_____

_____

~~(Address of Court)~~

_____

~~Plaintiff~~

~~vs~~ ~~C.A. NO.~~

_____

_____

~~Defendant~~

~~NOTICE AND MOTION TO ATTACH WAGES~~
~~(Rule 69)~~

~~The above-named Plaintiff (Creditor) having obtained a judgment against you now requests permission from the court to attach your wages.~~

~~Some or all of your wages may be exempt from attachment under Federal or State law. A federal exemption is automatically granted without the necessity of a Court appearance by you. This exemption protects the first $100.50 of your disposable weekly earnings when your disposable earnings are less than $134.00; if more than $134.00, the first 75% is automatically exempt.~~

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~~The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld, such as Social Security, federal and state income taxes and Temporary Disability contributions.~~

~~All wages for one year after the termination of public assistance are exempt from attachment, nor can any wages be attached if you are now receiving any form of public assistance. You have a right to be heard in Court if you claim to have been on public assistance within the last year or claim any exemption other than the automatic federal exemption.~~

~~Your hearing date is _____, 19___, at 9:30 a.m. at the Court's address listed at the top of this form. If you do not appear personally or by your attorney to claim an exemption other than an automatic exemption, the Plaintiff will be allowed to attach your wages to the extent permitted by law without further notice to you.~~

_____

~~CLERK OF COURT~~

_____

~~Plaintiff's Attorney~~ ~~Address~~ ~~Telephone Number~~

~~PROOF OF SERVICE~~

~~I hereby certify that I mailed a copy of the above Notice and Motion to Attach Wages by regular first class U.S. mail, postage pre-paid on the ___ day of _____, 19___, addressed to the defendant at _____.~~

_____

~~(Signature of Plaintiff/Attorney)~~

~~STATE OF RHODE ISLAND~~ ~~DISTRICT COURT~~

~~INSTRUCTIONS FOR FORM 34~~

~~NOTICE AND MOTION OF PROPOSED WAGE ATTACHMENT~~
~~(Rule 69)~~

~~The creditor or creditor's attorney must complete Form 34 and mail a copy by regular mail to the judgment debtor at the last known address, on the same day on which the original is filed with or mailed to the clerk of court.~~

~~The address of the court, caption of case, and date of hearing must be completed before mailing. The date of hearing must be no less than 10 days, nor more than 25 days from the date of mailing. No wage attachment is to be served on the debtor's employer until after the hearing date.~~

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~~If, after the time set for the hearing, it is determined by the court that the wage attachment may proceed, then a writ of attachment may be served upon the employer, along with a completed copy of the form "Notice to Employer." (Substantially as in the form as set forth in the Appendix) (Form 35).~~

~~In all cases, the creditor must file a proof of service prior to the hearing. If a "Notice to Employer" is served, proof of such service must be filed of record.~~

~~Form 35. Notice and Motion to Attach Wages~~

~~STATE OF RHODE ISLAND~~ ~~DISTRICT COURT~~
~~SC~~ ~~_____ DIVISION~~

~~NOTICE AND MOTION~~
~~TO ATTACH WAGES~~

~~PLAINTIFF/CREDITOR (Name and Address)~~	~~PLAINTIFF'S ATTORNEY (Name, Address and Phone)~~
~~DEFENDANT/DEBTOR (Name and Address)~~	~~CIVIL ACTION NO.~~

~~The above-named plaintiff (creditor) has obtained a judgment against you and now requests permission from the court to attach your wages.~~

~~Some or all of your wages may be exempt from attachment under Federal or State law. For example, a state exemption provides that your wages cannot be attached if you received public assistance within the last year, nor can any wages be attached if you are now receiving any form of public assistance. You have a right to be heard in court if you claim to have been on public assistance within the last year or claim any other exemption.~~

~~A federal exemption provides that you must receive from your disposable weekly earnings an amount equal to at least 30 times the federal minimum hourly wage. Also, if your disposable weekly earnings are less than 40 times the minimum hourly wage, only the amount greater than 30 times the minimum hourly wage can be attached. If your disposable weekly earnings are greater than 40 times the minimum wage, the first 75% is exempt. The term "disposable earnings" means that part of your earnings remaining after the deduction from those earnings of any amounts required by law to be withheld, such as Social Security, federal and state income taxes, and unemployment and temporary disability insurance contributions.~~

~~The federal exemption is automatically granted without the necessity of a court appearance by you. You must file an objection and appear in court to claim all other exemptions.~~

DRAFT

~~ADDRESS~~	~~HEARING DATE~~	~~OBJECTION DATE~~
~~____ Division District Court~~ ~~_____~~ ~~_____, Rhode Island~~ ~~Objection to be filed with Clerk of Court at above address~~	~~AM PM~~ ~~Hearing will be held only if you file objection~~	~~You must file objection by this date or there will be no hearing~~

~~TO DEFENDANT(S): HOW TO OBJECT TO WAGE ATTACHMENTS~~

~~If you claim an exemption, you must complete the attached objection and file it with the clerk of the court at least two days prior to the date of the hearing (these dates are listed in box above). You are also required to mail a copy of your objection to the attorney for the plaintiff, or the plaintiff directly if he/she is not represented by an attorney. If you file an objection, you must appear in court on the hearing date listed in the box above. If you do not file an objection and appear personally or by your attorney to claim an exemption, the plaintiff will be allowed to attach your wages to the extent permitted by law without further notice to you.~~

~~FAILURE TO FILE ATTACHED OBJECTION MAY RESULT IN AN ATTACHMENT OF YOUR WAGES WITHOUT FURTHER NOTICE~~

~~ESTA ES UN AVISO LEGAL. USTED PUEDE PERDER PARTE DE SU SUELDO. USTED DEBE BUSCAR AYUDA LEGAL.~~

~~Form 35A. Notice of Attachment (Not for Wages)~~

~~STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS~~

~~NOTICE OF ATTACHMENT (Not for Wages)~~

~~DISTRICT COURT, _____DIVISION~~

~~PLAINTIFF/CREDITOR (NAME & ADDRESS)~~	~~PLAINTIFF'S ATTORNEY (NAME, ADDRESS, & PHONE)~~ -
~~DEFENDANT/DEBTOR (NAME & ADDRESS)~~	~~CASE NO.~~ -
~~TRUSTEE (PERSON/ENTITY HOLDING PROPERTY)~~	~~DESCRIPTION OF PROPERTY ATTACHED~~ -

DRAFT

The above named plaintiff (creditor) has obtained a judgment against you and has attached your property being held by the above-named trustee. See the Writ of Attachment, enclosed. Now the issue is whether the attached property (or funds) will be used to satisfy all or part of that judgment. You may have rights to claim an exemption and have the property released back to you. For example, the money or property may be exempt if it is from:

- Social Security
- Public Assistance
- Pension & Retirement Funds
- Temporary Disability Benefits
- Certain Life Insurance Benefits
- Unemployment Benefits
- Workers' Compensation Benefits

You may have other exemptions. This is not a complete list. The Court allows a hearing where you may claim an exemption, which may stop the attachment.

CERTIFICATION

I certify that on _____, service of the Writ of Attachment was made on the trustee, and on the same day I mailed by regular mail, postage prepaid, copies of the Writ of Attachment and this Notice to the defendant at the address listed above.

_____

Signature of Plaintiff or Plaintiff's Attorney

ADDRESS	**HEARING DATE**	**OBJECTION DATE**
_____ DIV DISTRICT COURT _____ _____, RI_____ Objection to be filed with Clerk of Court at above address	AM PM Hearing will be held only if you file objection	You must file objection by this date or there will be no hearing.

TO DEFENDANT(S): HOW TO OBJECT TO ATTACHMENT

If you claim an exemption, you must complete the attached objection and file it with the clerk at least two days prior to the date of the hearing (these dates are listed in the boxes above). You are also required to mail a copy of your objection to the attorney for the plaintiff or the plaintiff directly if he/she is not represented by an attorney. If you file an objection, you must appear in court on the hearing date listed in the box above. If you do not file an objection and appear personally or by your attorney to claim an exemption, the plaintiff will be allowed to use the attached property to satisfy the judgment against you.

DRAFT

FAILURE TO FILE ATTACHED OBJECTION MAY RESULT IN THE CONTINUED ATTACHMENT OF YOUR PROPERTY

ESTE ES UN AVISO LEGAL. USTED DEBE BUSCAR AYUDA LEGAL.

Form 36. Defendant's Objection to Wage Attachment

STATE OF RHODE ISLAND DISTRICT COURT
SC _____ DIVISION

DEFENDANT'S OBJECTION TO
WAGE ATTACHMENT

PLAINTIFF/CREDITOR (Name and Address)	PLAINTIFF'S ATTORNEY (Name, Address and Phone)
DEFENDANT/DEBTOR (Name and Address)	CIVIL ACTION NO.

INSTRUCTIONS TO THE DEFENDANT

Listed below are several possible defenses to the motion to attach your wages that the plaintiff has filed against you. If one or more of these defenses apply to your case, check the appropriate box(es) below and sign the form. Some of these defenses are technical, and there may be others not listed here. You may consult an attorney and seek representation before filling out this objection.

DEFENDANT'S OBJECTION

[ ] I am presently receiving some form of public assistance in addition to my wages.

[ ] I received some form of public assistance within the last year.

[ ] I am presently not working and have no wages to attach.

[ ] I have other defenses as follows:

WHEREFORE: Because of the defense(s) indicated above, I ask that the court deny plaintiff's motion and not order that my wages be attached.

_____ _____

Name of Defendant (or attorney) Signature of Defendant

DRAFT

_____
_____
___
~~Address~~

-

~~ADDRESS~~	~~HEARING DATE~~	~~OBJECTION DATE~~
____ ~~Division District Court~~ _____ _____ _____, ~~Rhode Island~~	~~AM~~ ~~PM~~	~~You must file objection by this date or there will be no hearing~~
~~Objection to be filed with Clerk of Court at above address~~	~~Hearing will be held only if you file objection~~	

~~TO DEFENDANTS: NOTE THE FOLLOWING~~

~~1. This objection is your response to the plaintiff's attempt to attach your wages.~~

~~2. ON or BEFORE the above objection date, the clerk of the court and the plaintiff or the plaintiff's attorney, if one is listed above, must receive your objection.~~

~~3. If you file an objection, you must appear in court on the above hearing date to claim your objection.~~

~~4. If you do not file an objection and appear at the hearing, your wages will be attached.~~

~~Form 36A. Defendant's Objection to Notice of Attachment (Not for Wages)~~

~~STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS~~

~~DEFENDANT'S OBJECTION TO NOTICE OF ATTACHMENT (Not for Wages)~~

~~DISTRICT COURT, _____DIVISION~~

~~PLAINTIFF/CREDITOR (NAME & ADDRESS)~~	~~PLAINTIFF'S ATTORNEY (NAME, ADDRESS, & PHONE)~~ -
~~DEFENDANT/DEBTOR (NAME & ADDRESS)~~	~~CASE NO.~~ -
~~TRUSTEE (PERSON/ENTITY HOLDING PROPERTY)~~	~~DESCRIPTION OF PROPERTY ATTACHED~~ -

DRAFT

INSTRUCTIONS TO THE DEFENDANT

Listed below are several possible defenses to the attachment of your property which the plaintiff has filed against you. If one or more of these defenses apply to your case, check the appropriate box(es) below and sign the form. There may be other defenses not listed here. You may consult an attorney and seek representation before filling out this objection.

DEFENDANT'S OBJECTION

[ ] Social Security	[ ] Pension & Retirement Funds	[ ] Unemployment Benefits
[ ] Public Assistance	[ ] Temporary Disability Benefits	[ ] Workers' Compensation Benefits
	[ ] Certain Life Insurance Benefits	

WHEREFORE: Because of the defense(s) indicated above, I ask that the court deny plaintiff's attachment and release my property back to me. I certify that on _____, service of this Objection was mailed to the plaintiff's attorney (or plaintiff) at the addresses listed above and to the court at the address listed below.

Signature of Defendant: _____
(or Counsel)

ADDRESS	HEARING DATE	OBJECTION DATE
_____ DIV DISTRICT COURT _____ _____, RI_____ Objection to be filed with Clerk of Court at above address	AM PM Hearing will be held only if you file objection	You must file objection by this date or there will be no hearing.

TO DEFENDANT(S): NOTE THE FOLLOWING

1. THIS OBJECTION IS YOUR RESPONSE TO THE PLAINTIFF'S ATTACHMENT OF YOUR PROPERTY.

2. ON OR BEFORE THE OBJECTION DATE, THE COURT AND THE PLAINTIFF MUST RECEIVE YOUR OBJECTION.

DRAFT

~~3. IF YOU FILE AN OBJECTION, YOU MUST APPEAR IN COURT ON THE HEARING DATE TO CLAIM YOUR OBJECTION.~~

~~4. IF YOU DO NO OBJECT AND APPEAR, THE ATTACHMENT ON YOUR PROPERTY WILL BE ALLOWED.~~

~~FAILURE TO FILE ATTACHED OBJECTION MAY RESULT IN THE CONTINUED ATTACHMENT OF YOUR PROPERTY~~

~~Form 37. Notice to Employer~~

~~STATE OF RHODE ISLAND~~ ~~DISTRICT COURT~~

~~SC~~ _____ ~~DIVISION~~

_____

_____

~~(Address of Court)~~

_____

~~Plaintiff~~

~~vs~~ ~~C.A. NO.~~

_____

_____

~~Defendant~~

~~NOTICE TO EMPLOYER (TRUSTEE/GARNISHEE)~~

~~The Plaintiff (Creditor) in this case seeks to collect on a judgment obtained against your employee (defendant-debtor) by attaching the employee's earnings due from you.~~

~~Once you have been served with a writ of attachment by either a Sheriff or Constable, you must immediately hold part of your employee's earnings. The Federal Law exempts from attachment all of your employee's disposable earnings if they are less than $100.50 per week (30 times the present minimum hourly wage of $3.35). If your employee's earnings are more than $100.50 per week, but less than $134.00 per week, you are required to hold that portion which exceeds $100.50 per week. If your employee's disposable earnings are $134.00 or more per week, you are required to hold 25% of the employee's total disposable earnings.~~

~~The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld, such as Social Security, federal and state income taxes and Temporary Disability contributions.~~

~~Section 10-5-8 of Rhode Island Laws provides for a continuing withholding of your employee's earnings. Effective with the accompanying writ of attachment you are to withhold from your employee's earnings until you are in possession of $_____.~~

DRAFT

~~As employer, you are required to notify the Court and Plaintiff's Attorney by Affidavit what funds are being withheld each pay day from your employee's disposable earnings.~~

~~All earnings withheld should be retained pending:~~

~~(a) instructions from the Court,~~

~~(b) a release to Plaintiff by written authorization from your employee, or~~

~~(c) a release to employee by written authorization from plaintiff.~~

_____

~~CLERK OF COURT~~

_____

~~Plaintiff's Attorney~~ ~~Address~~ ~~Telephone Number~~

~~PROOF OF SERVICE~~

~~I hereby certify that a copy of the above Notice to Employer (Trustee/Garnishee) was served in the following manner:~~

~~( ) Upon the Employer (Trustee/Garnishee) personally.~~

~~( ) To an agent named below authorized by appointment or by law to receive service of process on behalf of Employer (Trustee/Garnishee).~~

~~( ) By leaving it at the office of the corporation with a person employed therein.~~

_____ _____

~~Name of Authorized Agent~~ ~~Deputy Sheriff/Constable~~

~~SERVICE FEE:~~

~~$~~_____

_____

~~DATE OF SERVICE~~

~~**Form 37A. Notice to Employer (Trustee/Garnishee)**~~

~~STATE OF RHODE ISLAND~~ ~~DISTRICT COURT~~

~~SC.~~ ~~_____ DIVISION~~

_____

_____

~~Address of Court~~

_____

~~Plaintiff~~

DRAFT

~~vs~~ ~~C.A. NO.~~ _____

_____

~~Defendant~~

~~NOTICE TO EMPLOYER (TRUSTEE/GARNISHEE)~~

~~The Plaintiff (Creditor) in this case has obtained a Court Order and a charge to collect on a judgment obtained against your employee (defendant-debtor) by attaching the employee's earnings due from you.~~

~~Now that you have been served with a writ of attachment by either a Sheriff or Constable, you must immediately withhold and remit part of your employee's earnings by making periodic payments to~~

_____

~~at~~ _____ ~~in accord with the attached charging Order. The Federal Law exempts from attachment all of your employee's disposable earnings if they are less than $127.50 per week (30 times the present minimum hourly wage of $4.25). If your employee's earnings are more than $127.50 per week, but less than $170 per week, you are required to withhold and remit that portion which exceeds $127.50 per week. If your employee's disposable earnings are $170 or more per week, you are required to withhold and remit 25% of the employee's total disposable earnings.~~

~~The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld, such as Social Security, federal and state income taxes and Temporary Disability contributions.~~

~~As employer, you are also required to notify the Court and Plaintiff's Attorney by Affidavit what funds are being withheld each pay day from your employee's disposable earnings.~~

~~A copy of the Order and charge regarding this attachment is attached to this notice.~~

_____

~~CLERK OF COURT~~

_____

~~Plaintiff's Attorney~~ ~~Address~~ ~~Telephone Number~~

~~PROOF OF SERVICE~~

~~I hereby certify that a copy of the Order and Charge regarding this attachment (Trustee/Garnishee) was served in the following manner:~~

~~( ) Upon the Employer (Trustee/Garnishee) personally~~

DRAFT

~~( ) To an agent named below authorized by appointment or by law to receive service of process on behalf of Employer (Trustee/Garnishee).~~

~~( ) By leaving it at the office of the corporation with a person employed therein.~~

_____	_____
~~Name of Authorized Agent~~	~~Deputy Sheriff/Constable~~
_____	~~SERVICE FEE:~~
~~Date of Service~~	~~$~~_____

~~Form 38. Execution and Citation in Supplementary Proceedings~~

~~STATE OF RHODE ISLAND~~ ~~DISTRICT COURT~~
~~PROVIDENCE & BRISTOL, SC.~~ ~~SIXTH DIVISION~~

~~PLAINTIFF:~~	~~DEFENDANT:~~	~~FILE #:~~
-	-	-

~~TO THE SHERIFF, HIS DEPUTIES, OR THE CONSTABLES IN THE COUNTIES OF PROVIDENCE & BRISTOL,~~

~~GREETING:~~

~~EXECUTION~~

~~Whereas, the above-named plaintiff, did, at the Sixth Division, did on the _____ day of _____, recover judgment of said court against the above-named defendant, of _____, for the sum of $_____, dollars, damages, and costs taxed at the sum of $_____, which sums, in the whole, amount to $_____, dollars, for which execution remains to be done: We command you, therefore, that of the goods and chattels and real estate of the said defendant, alias, within your precinct, you cause to be levied and paid unto the plaintiff the sum of $_____, dollars, and therefore also satisfy your own fees.~~

~~**********~~

~~[ ] Execution unsatisfied, _____, debtor must appear in court.~~

~~CITATION IN SUPPLEMENTARY PROCEEDINGS~~

~~The above execution being unsatisfied, you are hereby required to notify said _____, to appear in person before said court holder at Sixth Division District Court, One Dorrance Plaza, Providence (Courtroom 4A) on _____ at 9:00 A.M. to show cause why an examination into~~

DRAFT

his/her circumstances should not be made and an order entered ordering him/her to pay said judgment in full or by instalments.

Notify _____ that if he/she fails to appear, he/she shall be subject to arrest!

****

HEREOF FAIL NOT, AND MAKE TRUE RETURN OF THIS WRIT AND CITATION AND YOUR DOINGS THEREON.

WITNESS, THE SEAL OF THE SIXTH DIVISION DISTRICT COURT, THIS _____ DAY OF _____, 199___.

PLAINTIFF'S ATTORNEY

SEAL

_____

CLERK

USE REVERSE SIDE FOR RETURN OF SERVICE

PROOF OF SERVICE

I, _____(print name), hereby certify that I served _____(print name) the execution included herein by making personal demand upon said judgment debtor, and that said judgment debtor [ ] did [ ] did not satisfy said execution.

_____ _____

DATE DEPUTY SHERIFF/CONSTABLE

I hereby certify that I served a copy of the citation included herein personally upon the judgment debtor, _____, and notified him/her to appear in court on _____, at 9:00 A.M. at the Sixth Division District Court.

_____ _____

DATE DEPUTY SHERIFF/CONSTABLE

I HEREBY ACKNOWLEDGE THAT I RECEIVED A COPY OF THIS CITATION.

_____

JUDGMENT DEBTOR

DRAFT

[ ] Debtor refused to sign:

DEPUTY SHERIFF/CONSTABLE

COST OF SERVICE OF THIS WRIT/CITATION: _____.

Note to Sheriff/Constable: The date for hearing on citation must be set not less than six days and not more than twenty days from date of service

Form 39. Notice and Acknowledgment of Receipt of Summons and Complaint

STATE OF RHODE ISLAND DISTRICT COURT

A.B., Plaintiff)
vs) C.A. No. 92-_____
C.D.,)
Defendant

NOTICE

To: (Insert name and address of person to be served).

The enclosed summons and complaint are served pursuant to Rule 4(c)(2) of the District Court Rules of Civil Procedure. You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within 20 days.

You must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within 20 days, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within 20 days. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint will have been mailed on (insert date).

DRAFT

~~Signature~~

_____

~~Date~~

~~ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT~~

~~*I declare, under penalty of perjury that I received a copy of the summons and complaint in the above-captioned matter at (insert address).*~~

_____

~~Signature~~

_____

~~Relationship to Entity/Authority to Receive Service of Process~~

_____

~~Date~~

~~Form 40. Post-Judgment Motion for a Charge and Order of Attachment of Wages~~

~~POST-JUDGMENT MOTION FOR A CHARGE AND ORDER~~

~~OF ATTACHMENT OF WAGES~~

~~Plaintiff moves under the authority of Rule 69 of the District Court Rules of Civil Procedure for an Order to the employer:~~

[ ] ~~to withhold the sum of $_____ plus costs of $_____ plus post-judgment statutory interest at the statutory rate of 12 percent per annum from the wages payable to defendant, _____, more particularly set forth in plaintiff's demand on plaintiff's writ of attachment.~~

[ ] ~~to pay said sums withheld on each pay date to plaintiff or plaintiff's attorney by mailing or delivering same to _____.~~

[ ] ~~to charge said employer for all payments made by said employer pursuant to Rule 69 of the District Court Civil Rules.~~

~~To:~~ _____

_____

_____

DRAFT

~~Please take notice that the above motion will be called for hearing before a Judge of said Court on the day of , 199 at if objection be filed and notice thereof be given by the opposing party as required by Rule of Court; otherwise said motion shall be granted by Rule of Court.~~

~~Plaintiff,~~
~~By his/her Attorney,~~

_____

~~CERTIFICATION~~

~~I hereby certify that I did notify the above-named of the pendency of this Motion by mailing a copy hereof postage prepaid to the above parties at their specified addresses.~~

~~ORDER~~

~~The above motion is hereby (granted) (denied) (by rule of court) (after hearing).~~

~~**ENTER:**~~ ~~**BY ORDER:**~~

_____ _____

~~Judge~~ ~~Clerk~~

DRAFT