

**FAMILY COURT RULES OF PROCEDURE FOR DOMESTIC
RELATIONS PROCEDURE FOR THE FAMILY COURT OF
RHODE ISLAND**

**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 Family Court of the State of Rhode Island in all civil proceedings of a legal or equitable nature, arising out of:

(1~~a~~) ~~f~~Family relationships including marriage, divorce, separation, support, paternity, adoption and custody of children in such aforesaid matters; and

(2~~b~~) ~~d~~Disputes arising out of contracts entered into between spouses or persons intending to marry.

These rules ~~They~~ shall be construed to secure the just, speedy, and inexpensive determination of every action. They shall be known as the Family Court Rules of Domestic Relations Procedure and may be cited as R.Dom.Rel.P.

(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 Family 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 R.Dom.Rel.P. 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, including post judgment final relief..

(B) Certificate of Service. Where the R.Dom.Rel.P. requires service of a document to be certified by an attorney of record or a self-represented litigant, the following certification may 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.

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. The Plaintiff/Petitioner shall file a Civil Case Cover Sheet for each named party with any Case Initiating Document(s). 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 Public Resources, Forms.

(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 R.Dom.Rel.P. require a document to be filed, filing shall mean electronic filing using the EFS unless stated otherwise.

(F) Notice. Where the R.Dom.Rel.P. 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) Public Access Portal. The point of entry for electronic access to case information from the Judiciary's database whether at the courthouse or remotely. The database is an electronic collection of court records displayed as a register of actions or docket sheet. The register of actions or docket sheet lists parties, case

events, document filings, or other activities in a case set forth in chronological order.

(I) Service. Where the R.Dom.Rel.P. 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.

(J) Signature. Where the R.Dom.Rel.P. 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 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 Public Resources, Forms.

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.

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

(4) Clerk Review; Acceptance/Rejection Procedure: Following submission, the Family 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 Family Court are limited in scope as follows:

(A) Complaints filed without a signature where required;

(B) Complaints and motions for post judgment relief filed without the required documents as set forth in the Family Court’s Electronic Filing System Guidelines;

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

Rule 2. One Form of Action

~~Except as provided in Rule 64A, there shall be one (1) form of action to be known as “civil action.”~~

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

Rule 3. Commencement of 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 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 depositing 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.~~

Rule 4. Process, Attachment, Trustee Process, Arrest

~~(a) **Summons: Form.** The summons shall bear the 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 defendant, 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 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.

(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:-~~

- (1) For attorneys and self-represented litigants who are Registered Users, a summons shall be generated by the court and attached to the case following the acceptance of the complaint, Civil Case Cover Sheet, and all other required documents by the court. Registered Users can retrieve the summons through the Public Access Portal;
- (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. 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 the sheriff's deputy, within the sheriff's county unless otherwise provided 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.

(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:

(A) ~~i~~In an action ~~of~~ for divorce or a complaint for divorce from bed and board separation, or relief without commencement of divorce proceedings by delivering a copy of the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents to the individual personally or, if the person serving the process makes return that after diligent effort he or she has been unable to serve the ~~defendant~~ individual personally, by any other method ordered by the court to give notice of the action to the defendant; and

(B) ~~i~~In all other actions by delivering a copy of the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents to the ~~defendant~~ individual personally or by leaving copies thereof at the ~~defendant's~~ 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, unless otherwise provided by law, 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 an 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.

(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.

(6) Upon any party when the state child support agency is attempting to notice a party of a complaint, petition, or motion, other than a complaint for paternity or parentage, or to adjudge a party in contempt that the state child support agency has filed in accordance with its responsibilities under Title IV-D of the Social Security Act, the state child support agency may provide notice by sending a copy of the complaint, petition, or motion, along with a Language Assistance Notice, by first class mail to the address of record with the state child support agency, along with a letter requesting the appearance of said party before the court in order to respond or otherwise address the merits pertaining to the complaint, petition, or motion. The letter or notice shall inform the party that if the party appears and agrees to waive personal service under this rule and thereby confers jurisdiction on the court over the person, the matter shall proceed to the merits. The letter or notice shall also inform the party that if the party fails to appear or if a party appears but does not agree to waive personal service under this rule, the matter shall pass and the party shall be served with personal service as provided within these rules. The court, in its discretion, may require future notice regarding any party to be served in accordance with subdivision (d)(1) to (5). After being noticed in accordance with this paragraph:

(A) If the party appears and agrees to submit to the jurisdiction of the court to address the underlying merits of any pending matter, or otherwise waives the right to be noticed in accordance with subdivision (d)(1) to (5), the court may proceed to the merits of the underlying matter and exercise jurisdiction over the person throughout the proceedings to the same extent as if the party had been noticed in accordance with subdivision (d)(1) to (5);

(B) If the party fails to appear or appears but does not agree to address the underlying merits of any pending matter or otherwise declines to waive the right to be noticed in accordance with subdivision (d)(1) to (5), the court shall not proceed to hearing and may not default the party or take any other adverse action against said party regarding that specific matter then pending before the court. The state child support agency shall then be required to serve process on the party in accordance with subdivision (d)(1) to (5).

(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, and Language Assistance Notice to 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.

(h) Proof of ServiceReturn. 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 or the sheriff's deputy, the~~ that person shall make affidavit thereof. A copy of ~~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) 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 sheriffs of the several counties or their deputies, or to other officers authorized by law to serve the same,~~ 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.

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

(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 hereunder shall be subject to the provisions of Rule 65(c).

(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, 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, or Cross-~~C~~claim.* Attachment may be utilized by a party bringing a counterclaim; or a cross-claim; in the same manner as upon an original claim.
- (6) *Subsequent Attachment.* After service of the summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents 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).
- (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 return~~ the proof of service as provided in subdivision (h)(b) of this rule.

(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, 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 version of the writ of arrest is located on the Judiciary's website at www.courts.ri.gov under the heading of Public Resources, Forms.
- (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.

Rule 5. Service and Filing of Pleadings and Other Papers

(a) Service: When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties in accordance with Rule 1(b)(1)(I) 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 (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 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) Making 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.

(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 with someone of suitable age and discretion residing there.

(B) Mailing a copy to the last known address of the person served. Service by mail is complete upon 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 him or her or by mailing it to him or her at his or her last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the person to be served; or leaving it at the person's office with the person's clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.~~

(c) ~~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 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 Rule 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 judge shall note ~~thereon~~ the filing date and forthwith transmit them to the office of the clerk.

(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 52(b), 59(b), (d), and (e), and 60(b) 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~~ six (6) days, and a cross-motion not later than two (2) 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, except as otherwise provided in Rule 59(c), opposing affidavits may

be served not later than one (1) 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.

III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed - Form of Motions

(a) Pleadings.

- (1) *In Actions Other Than Adoption.* There shall be a complaint and an answer; a reply to a counterclaim noted ~~denominated~~ as such; an answer to a cross-claim, if the answer contains a cross-claim. No other pleading shall be allowed.
- (2) *Adoption.* In an action to adopt a child there shall be a petition and an answer by any person who wishes to object. No other pleading shall be allowed.

(b) Motions and Other Papers.

- (1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of 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 notice of hearing of such a motion shall be served and filed not later than six (6) days before the time specified for the hearing. Such motion shall be deemed 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:

~~1. A motion to assign;~~

~~(A)2. A motion to consolidate cases for trial;~~

~~(B)3. A motion to enlarge the time for permitting an act to be done under Rule 6(b)(2) after the expiration of the specified period;~~

~~4. A motion to take a deposition of a party or witness.~~

~~(C)5-~~ A motion to amend pleadings under Rule 15;

~~(D)6-~~ A motion for an order for physical or mental examination under Rule 35;

~~(E)7-~~ A motion to compel answers to interrogatories under Rule 37(a);

~~(F)8-~~ A motion to compel more responsive answers to interrogatories under Rule 37(a); and

~~(G)9-~~ A motion to compel production and inspection or to permit entry and inspection under Rule 34(b);

~~and the notice of the hearing of such a motion shall be served and filed not later than six (6) days before the time specified for the hearing. Such motion 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 three (3) 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 and a motion to compel more responsive answers to interrogatories shall specify the number of days for compliance.

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

~~(e) **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, or cross-claim, shall contain:

- (1) ~~a~~ A short and plain statement of the claim showing that the pleader is entitled to relief;
- (2) ~~a~~ A demand for judgment for the relief ~~to which the pleader seeks~~ deems himself or herself entitled; and
- (3) ~~In actions for divorce, or separation~~ divorce from bed and board, and separate maintenance, a statement as to whether any other actions seeking similar relief are pending between the parties and, if so, an enumeration thereof.

Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials. A party shall state in short and plain terms the party's ~~his or her~~ defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies, except that an averment charging a party with adultery does not require a response. If the 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, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, 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 pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to Be Concise and Direct; Consistency.

- (1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.
- (2) A party may set forth two (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 or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal 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 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 condition of mind of a person may be averred generally.

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

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

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

(h) Domicile, Residency of Parties. A plaintiff seeking a divorce absolute shall set forth in the complaint that either the plaintiff or the defendant has been a domiciled inhabitant of this state and the state where each of the parties is domiciled at the time the action is commenced and the state or states where each of the parties has resided in this state for during the preceding twelve (12) months. In the event the plaintiff lacks knowledge or information concerning the domicile or residence of the defendant, the plaintiff shall so state.

Rule 10. Form of Pleadings

(a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the name of the court, the county, 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. Parties shall be referred to as plaintiff and defendant, except that in adoption proceedings the party seeking to adopt shall be referred to as petitioner.

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

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference 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, 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.

A pleading which seeks a divorce, a divorce from bed and board, or separate maintenance separation shall be verified by the party seeking such relief. In all other actions, pleadings need not be verified or accompanied by an affidavit unless otherwise specifically required by rule or statute. 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 the attorney's 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 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 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.~~

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

(a) When Presented. 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 ~~him or her~~, unless the court directs otherwise when service of process is made pursuant to an order of court. A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within twenty (20) days after being served ~~the service upon the party~~. 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. 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:

- (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.
- (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, or cross-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) ~~H~~Lack of jurisdiction over the subject matter;;
- (2) ~~H~~Lack of jurisdiction over the person;;
- (3) ~~i~~llproper venue;;
- (4) ~~i~~lnsufficiency of process;;
- (5) ~~i~~lnsufficiency 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.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which

the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such 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 the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense, or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses. 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.

(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.

(i) In those cases filed with the Family Court under the provisions of Title 15, Chapter 8 (Uniform Law on Paternity), Chapter 9 (Support of Children), Chapter 10 (Support of Parents), Chapter 11.1 (Full Enforcement of Support Obligations ~~Reciprocal Enforcement of Support~~), and Chapter 13 (Divorce or Separation Proceedings - Support for Children Receiving Public Assistance) the ~~S~~summons served upon a defendant may be made returnable for a time and day certain as long as the defendant shall have at least twenty days (20) after service of the ~~S~~summons, ~~and~~ ~~C~~omplaint, Language Assistance Notice, and all other required documents upon the defendant to file his or her answer upon the ~~P~~laintiff and with the ~~C~~ourt.

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

(a) **Compulsory Counterclaims.** A pleading shall state as a counterclaim any claim within the jurisdiction of the ~~C~~ourt 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.

(b) **Permissive Counterclaims.** A pleading may state as a counterclaim any claim within the jurisdiction of the ~~C~~ourt that the pleader has 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 or her pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) **Omitted Counterclaim.** When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment. In the event that a pleader fails to set up a counterclaim in the nature of a cross complaint seeking a divorce, the court may grant leave to set up the counterclaim by amendment based upon the grounds as set forth herein, but may also grant leave to set up the counterclaim by way of amendment on a showing by affidavit or otherwise that the pleader delayed filing of such amendment in order to seek reconciliation between the parties or intended to withhold the allegations of the counterclaim in order to mitigate or avoid

exacerbation of relations between the parties. This ground may be allowed for amendment without regard to the lapse of time between the filing of the initial complaint and the filing of the motion to amend.

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

(h) 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. [Reserved.]

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 the longer, unless the court otherwise orders.

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure 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 ~~suberved~~ 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 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:

- (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 an executor, administrator, guardian, 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 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.

(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 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~~ the complaint or in a reply setting forth a counterclaim and the defendant in an answer setting forth a counterclaim may join either as independent or as alternative claims as many claims within the jurisdiction of the ~~C~~ourt, either legal or equitable or both, as the plaintiff 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 if the requirements of Rule 13 are satisfied.

(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.

Rule 19. Necessary Joinder of Parties

(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, the person 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 ~~it's~~ the court's 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 Effect of Failure to Join: Names of Omitted Persons and Reasons for Nonjoinder to Be Pleaded.** In any pleading in which relief is asked, the pleader shall set forth the names, if known to the pleader, of 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~~ the party asserts no claim and who asserts no claim against ~~him or her~~ the party, 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.

Rules 22 and 23. [Reserved.]

Rule 24. Intervention

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

- (1) ~~When~~ When a statute of this state confers an unconditional right to intervene; ~~or~~
- (2) ~~When~~ 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) ~~When~~ 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) ~~When~~ When a statute of this state confers a conditional right to intervene; or
- (2) ~~When~~ 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 the party 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 or her~~ the party's 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.

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 upon order of the court 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. An order to take testimony by deposition shall be granted only upon motion with notice to all parties who have appeared in the action and upon good cause shown. The court may condition the order on such terms with respect to the furnishing of transcripts as it deems just and proper. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. Except as provided in Rule 27(a) depositions shall be taken only in accordance with these rules.~~

(b) Discovery: Scope and of Examination; Limitations. ~~(1) *Scope of Examination.*~~ Unless otherwise ordered limited by order of the court as provided by Rule 30(b) or (d) in accordance with these rules, the scope of discovery is as follows:

(1) In General. ~~the deponent Parties may be examined~~ 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 ~~examining~~ 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 ~~relevant facts~~. It is not ground for objection that the information sought ~~testimony~~ will be inadmissible at the trial if the ~~testimony~~ 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) [Reserved.]

(32) ~~Limitation-Trial Preparation: Materials.~~ A party shall not require a ~~deponent to~~ the production or submit for inspection of any writing obtained or prepared by the adverse party, ~~his or her~~ 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.

(4) Trial Preparation: Experts. 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 the court may determine.

(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.

~~(c) **Examination and Cross-Examination Protective Orders.** 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. 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.

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

~~**(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 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 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.~~

(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(e), 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:

- (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 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 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 or Pending Appeal~~

~~(a) **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.~~

~~(b) **Pending Appeal.** If an appeal has been taken from a judgment of this court or before the taking of an appeal if the time therefor has not expired, the court may allow the taking of depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in this court. In such case the party who desires to perpetuate the testimony may make a motion in this court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in this court. The motion shall show:~~

- ~~(a¹)~~ ¶The names and addresses of persons to be examined and the substance of the testimony which ~~he or she~~ the party expects to elicit from each; and

(b2) ~~¶~~The reasons for perpetuating their testimony.

If the court finds that the perpetuation of the testimony is proper to avoid failure or delay of justice, ~~¶~~ the court may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in this court.

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. In a non-stenographic deposition, no officer or court appointed person need be present.

(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) ~~¶~~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) ~~¶~~Before a person commissioned by the court, and a person so commissioned shall have the power by virtue of ~~his or her~~ the commission to administer any necessary oath and take testimony; or
- (3) ~~¶~~Pursuant to a letter of request (whether or not captioned a letter rogatory). A commission or a letter ~~rogatory~~ of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter ~~rogatory~~ of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter ~~rogatory~~ of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter ~~rogatory~~ of request 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 ~~rogatory~~ of request 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 without order of court, 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 the use of subpoena as provided in Rule 45.
- (2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(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, except that leave is not required:
 - (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.

(b) Notice of Examination: General Requirements; Special Notice; Method of Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone Time and Place.

- (1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party in the action . The notice shall state include in the motion papers a notice of examination which states the proposed 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 party person or the particular class or group to which he or she 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. 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.~~

- (2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by non-stenographic means.
- (3) With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders.
- (4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes:
 - (A) The officer's name and business address;
 - (B) The date, time, and place of the deposition;
 - (C) The name of the deponent;
 - (D) The administration of the oath or affirmation to the deponent; and
 - (E) An identification of all persons present.

If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.
- (5) 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 a motion is served or an order is granted for taking a deposition by oral examination, the court may, on application of any party or the person to be examined and for good cause shown, 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 traveling 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.** The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded electronically and transcribed unless the parties agree otherwise. 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, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination parties served with notice of taking a deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim. 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, ~~counsel~~ attorneys, and parties to the action shall not be permitted unless notice of same has been given to all ~~counsel~~ 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 self-represented litigant, shall put the witness on oath or affirmation and shall in person, or by someone acting under such person's direction and in such person's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means in accordance with subdivision (b)(2) of this rule. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings, shall be noted by the officer upon the record of the deposition, but the examination shall proceed with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and that party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Schedule and Duration; Motion to Terminate or Limit Examination.

- (1) Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. A 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 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 judicial officer ~~justice~~ of the Family Court 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 ~~subdivision~~ Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order 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. 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) **Submission to Review by 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. 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 prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.~~

(f) Certification and Filing by Officer; Transmittal Between Parties; 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 the officer and that the deposition transcript 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. Rather, the self-represented litigant, examining attorney, or the attorney ordering a stenographic transcription shall securely seal the original deposition transcript in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall retain the original transcript, subject to making it available to the court or any other party upon request. The officer shall then place the deposition in an envelope indorsed with the title of the action and marked "Deposition of (here insert the name of witness)". Documents dealing with discovery, including but not limited to Requests for Admission, Notices of Depositions, transcripts of Depositions, Requests for Production and Interrogatories, shall be transmitted between and shall not be filed with the clerk of court. Answers to such requests shall be transmitted between counsel or to the parties where no entry of appearance has been filed, and shall not be filed with the clerk of court. If such matters become the subject of litigation, as in a Motion~~

~~to Compel, counsel shall be prepared to present to the court copies of the Requests and the Answer, if any, at the hearing on such motion.~~

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

(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 the 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 and his or her~~ the other party and that party's attorney in so attending, including reasonable attorney's fees.

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

(a) Serving ~~Interrogatories~~ Questions; Notice. ~~A party desiring to take the deposition of any person upon written interrogatories shall include in the motion papers a notice of~~

~~examination which shall state the name and address of the person to be examined, the interrogatories to be asked, and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within fifteen (15) days after the motion to take the deposition is granted, any other party 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.~~

- (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 fifteen (15) days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within five (5) days after being served with cross questions, a party may serve redirect questions upon all other parties. Within five (5) days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all ~~interrogatories~~ questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f) to take the testimony of the witness in response to the ~~interrogatories~~ questions and to prepare, certify, and ~~file or mail the deposition~~ 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), attaching thereto the copy of the notice and the ~~interrogatories~~ questions received by ~~him or her~~ the officer.

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

~~(d) **Orders for the Protection of Parties and Deponents.** After a motion is served or an order is granted for taking a deposition on written interrogatories and prior to the taking of the testimony of the deponent, the court in which the action is pending, on objection 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.~~

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

(a) **Use of Depositions.** At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the 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 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.

(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.

(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.

(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.

(e) Effect of Errors and Irregularities in Depositions.

(1a) *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.

(2b) *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.

(3e) *As to Taking of Deposition.*

(A1) 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.

(B2) 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.

(C3) Objections to the form of written ~~interrogatories~~ 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 ~~interrogatories~~ questions and within five (5) days after service of the last interrogatories authorized.

(4d) *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~~ other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership, governmental entity, or unincorporated 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 and without leave of court, except that, if service is made by the plaintiff within twenty (20) days after service upon the defendant, leave of court granted with or without notice must first be obtained.

The Each interrogatoryies shall be answered separately and fully in writing under oath. If the interrogatory is objected to, the reasons for the objection shall be stated. Each answer shall be preceded by the interrogatory to which it responds. 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 and objections on the party 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~~ the party's answers a party may serve specific written objections to particular interrogatories, stating the grounds on which ~~they~~ the objections are based. The party shall answer to the extent the interrogatory is not objectionable. 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 permitted by the Rhode Island Rules of Evidence as provided in Rule 26(d) for the use of the deposition of a party. Interrogatories may be served before or 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~~ another party provided nor shall the total number of interrogatories shall not exceed thirty (30) unless the court otherwise orders for good cause shown. The provisions of Rule ~~26(c)~~ 30(b) are applicable for the protection of the party from whom answers to interrogatories are sought under this rule.

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 not later than ten (10) 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. Any party may serve on any other party a request:

(1) To produce and permit the requesting party, or someone acting on the requesting party's behalf, to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) Any designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, audio recordings, images, and other data or data compilations) stored in any medium from which information can be obtained either directly or, if necessary, after translation, by the responding party into a reasonably usable form; or

(B) 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.

(2) To permit entry upon designated land or other property possessed or control by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation thereon, within the scope of Rule 26(b).

~~Subject to the provisions of Rule 30(b), any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the party's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and any other data compilations from which intelligence can be perceived, with or without the use of detection devices) or to inspect and copy, test, or sample any tangible thing which constitutes or contains matters within the scope of Rule 26(b) and which are in the possession, custody, or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).~~

(b) Procedure. The request 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 serve a written response within forty (40) days after the service of the request, except that a defendant may serve a response within sixty (60) days after service of the summons, complaint, Language Assistance Notice, and all other required documents upon that defendant. ~~be obligated to comply therewith unless within twenty (20) days after service thereof, or within such~~ The court may allow a 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 response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to the request or other failure to respond to the request or any part thereof, or any 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. 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 physician or to produce for such examination the party's agent or the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Findings. 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 the physician's 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 requiring delivery on such terms as are just, and if a physician fails or refuses to make such a report the court may exclude ~~his or her~~ that expert's testimony if offered at the trial.

(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, 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 the party 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 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. 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: Sanctions –~~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.

(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, the party 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.~~

~~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) 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) 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~~ii~~) 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

(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 requested 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, he or she 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

Rule 38. Jury Trial of Right [Reserved]

~~(a) **Right Preserved.** The right of trial by jury as declared by Article I, Section 15 of the constitution of this state or as given by a statute shall be preserved to the parties inviolate.~~

~~(b) **Demand.** Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than ten days after the service of the last pleading directed to such issue. Such demand may be indorsed upon a pleading of the party.~~

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

~~(d) Waiver.~~ The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by the party of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without consent of the parties.

Rule 39. Trial by Jury or by the Court [Reserved]

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

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

~~(c) Advisory Jury and Trial by Consent.~~ In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury or the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

Rule 40. Assignment of Cases for Trial - Continuances

(a) Assignment of Cases for Trial. Cases may be assigned for trial or other disposition to the appropriate calendar ~~(1)~~ 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 ~~(3)~~ by motion upon notice to the adverse parties. Precedence shall be given to actions entitled thereto by statute. Unless ordered by the court, no trial of an action seeking a divorce or a separation shall commence sooner than sixty ~~(60)~~ days after the action has been commenced.

(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 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 a 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.* Subject to the provisions of Rule 66(j), and of any statute of this state, an action may be dismissed by the plaintiff without order of court:

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

(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.

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

(b) Involuntary Dismissal; Effect Thereof.

(1) *On Court's Own Motion.* The court may, in its discretion, dismiss any action for lack of prosecution where the action has been pending for more than five (5) years, or, at any time, for failure of the plaintiff to comply with these rules. 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 and ~~to~~ upon the plaintiff if the plaintiff's address ~~is~~ be known. If there ~~is~~ be no attorney of record and if the plaintiff's address is not known, such notice shall be published as directed by the court 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, ~~in an action tried by the court without a jury,~~ 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. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a).

- (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, or Cross-claim. The provisions of this rule apply to the dismissal of any counterclaim, or cross-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 county or different counties, ~~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 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 county where the action is pending or in a different county of any claim, cross-claim, counterclaim, or of any separate issue or of any number of claims, cross-claims, counterclaims, or issues.

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 Rules of 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-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) Record of Excluded Evidence. ~~In an action tried by a jury, if~~ an objection to a question propounded to a witness is sustained by the court, the examining attorney may make a specific offer of what ~~he or she~~ is expected to be proven by the answer of the witness. ~~The court shall require the offer to be made out of the hearing of the jury.~~ The court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. ~~In actions tried without a jury the same procedure may be followed, except that~~ The court upon request, shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

(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 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. A witness may be examined on direct examination, on cross-examination by all other parties, and on redirect examination. No further examination shall be permitted except by leave of court.

(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 or jury. 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 not, except with the approval of the court or in accordance with a Family Court Rule of Practice or an administrative order, withdraw any books,

papers, documents, plats, and things introduced in evidence. ~~If the court approves the withdrawal of evidence no original paper for the 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~~ that office is admissible as evidence that the records of ~~his or her~~ that 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 ~~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:

- (1) qQuash or modify the subpoena if it is unreasonable and oppressive; or

(2) ~~e~~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 the a duly authorized officer in accordance with Title 9, Chapter 5 (Writs, Summons, and Process) of the Rhode Island General Laws ~~sheriff, by the sheriff's 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 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. Prior notice of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b). A subpoena may be served at any place within the state.

(d) Subpoena for Taking Depositions. ~~Proof of entry of an order authorizing the taking of 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~~ discovery permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of ~~subdivision (b) of Rule 30~~ Rule 26(c) and subdivision (b) of this Rule.

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

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

Rule 46. Exceptions Unnecessary

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the party's grounds therefor if requested; and if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party. With the consent of the court a party may object to an entire line of testimony, or to the entire testimony of a witness, or to testimony on a single subject matter, and if such objection shall be overruled, it shall not be necessary for the party to repeat his or her objection thereafter, but every part of such testimony thereafter introduced shall be deemed to have been duly objected to and the objection overruled.

Rule 47. Jurors [Reserved]

~~(a) Examination of Jurors.~~ The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper. The examination shall be conducted under oath if requested.

~~(b) Alternate Jurors.~~ The court may direct that one or two jurors in addition to the regular panel be called and impanelled to sit as alternate jurors as provided by law.

Rule 48. Juries of Less Than Six – Majority Verdict [Reserved]

~~The jury shall consist of no more than six (6) members. The parties may stipulate that the jury shall consist of any number less than six (6) or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.~~

Rule 49. Special Verdicts and Interrogatories [Reserved]

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

~~(b) General Verdict Accompanied by Answer to Interrogatories.~~ The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict,

judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

~~(c) Verdicts on Multiple Counts.~~ In cases tried by a jury on more than one count, the court may require the jury to return a separate verdict as to each count.

Rule 50. Motion for a Directed Verdict [Reserved]

~~(a) When Made; Effect.~~ A motion for a directed verdict may be made at the close of the evidence offered by an opponent or at the close of all the evidence. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury. When a motion for a directed verdict is made without resting at the close of the evidence offered by an opponent, the court in lieu of granting the motion may order the claim involuntarily dismissed, which dismissal shall be without prejudice.

~~(b) Reservation of Decision on Motion.~~ Whenever a motion for a directed verdict is made at the close of all the evidence, the court may reserve decision upon said motion subject to a later determination and if decision is reserved the court shall submit the action to the jury. When the jury is discharged the court shall forthwith enter a decision on the motion reserved whether or not the jury returned a verdict.

~~(c) Conditional Rulings on Grant of Motion.~~ If a reserved motion for a directed verdict has been granted, either party may serve a conditional motion for a new trial within the time provided in Rule 59(b). The court shall rule on such motion for a new trial by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for a new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the Supreme Court has otherwise ordered. In case the new trial has been conditionally denied and on appeal error has been asserted in that denial, then if the judgment is reversed on appeal, further proceedings shall be in accordance with the order of the Supreme Court.

Rule 51. Argument of Counsel -~~Instructions to Jury~~

~~(a) Time for Argument.~~ Counsel for each party shall be allowed one (1) hour for argument. Before the commencement of argument the court may allow further time. When more than one (1) attorney is to be heard on behalf of the same party, the time may be divided as they may elect.

~~(b) Instructions to Jury; Objections.~~ At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. No party may assign as error the giving or the failure to give an instruction unless the party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the party's objection. Opportunity shall be given to make the objection out of the hearing of the jury.

Rule 52. Findings by the Court

~~(a) Requirement.~~ In all actions tried upon the facts without a jury or with an advisory jury, ~~the~~ court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b) and on motions under Rule 59.

~~(b) Amendment.~~ Upon motion of a party made not later than ten (10) days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59.

Rule 53. Masters

~~(a) Appointment and Compensation.~~ The court may appoint a special master in any appropriate action which is pending therein. As used in these rules the word "master" includes a referee, ~~and an auditor, an examiner, and any other individual or entity possessing such special expertise sufficient to serve the purpose or purposes for which a master may be appointed under this rule and the singular includes the plural.~~ The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court, may direct. The master shall not retain ~~his or her~~ the report as security for ~~his or her~~ compensation, but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) Reference.

- (1) *By Agreement.* The court may appoint a master in all cases where the parties agree that the case may be so tried.
- (2) *Without Agreement.* In absence of agreement of the parties, a reference shall be the exception and not the rule. ~~In actions to be tried by a jury, a reference shall be made only when an investigation of accounts is required; in an action to be tried without a~~

~~jury,~~ Save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) Powers. The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order. The master may require the production ~~before him or her~~ of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The master may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses under oath and may ~~himself or herself~~ examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in the Rhode Island Rules of Evidence Rule 43(e) ~~for a court sitting without a jury.~~

(d) Proceedings.

- (1) *Meetings.* When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within twenty (20) days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make the ~~master's~~ report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.
- (2) *Witnesses.* The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence the witness may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.
- (3) *Statement of Accounts.* When matters of accounting are in issue before the master, the master may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific

items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as the master directs.

(e) Report.

- (1) *Contents and Filing.* The master shall prepare a report upon the matters submitted to ~~him or her~~ the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the clerk of the court and serve on all parties notice of the filing. ~~in an action to be tried without a jury,~~ Unless otherwise directed by the order of reference, the master shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing. Unless otherwise directed by the order of reference, the master shall serve a copy of the report on each party.
- (2) *In Non-jury Actions-Acceptance of Report.* ~~In actions to be tried without a jury~~ The court shall accept the master's findings of fact unless clearly erroneous. Within ten (10) days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d). The court after hearing may adopt ~~it~~ the report or may reject it in whole or in part or may receive further evidence or may recommit ~~it~~ the report to the master with instructions.
- (3) *In Jury Actions.* ~~In an action to be tried by a jury,~~ the master shall not be directed to report the evidence. The master's findings upon the issues submitted to him or her are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objection in point of law which may be made to the report. [Reserved.]
- (4) *Stipulation as to Findings.* The effect of a master's report is the same whether or not the parties have consented to the reference; but when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.
- (5) *Draft Report.* Before filing his or her report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

Rule 53A. Standing Masters [Reserved]

~~(a) Appointment and Compensation.~~ The Chief Judge, as he or she deems necessary, may appoint members of the Bar of Rhode Island to serve as standing masters to assist the Family Court in the conduct of its business. Persons appointed as masters shall serve at the pleasure of the Chief Judge and shall receive for their services such compensation as he shall fix.

~~(b) Powers. A master shall hear all matters referred to him or her by the Chief Judge. A master shall have the power to regulate all proceedings before him or her and to do all acts and take all measures necessary or proper for the efficient performance of a master's duties. A master may require the production before him or her of evidence on all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto, and may rule upon the admissibility of evidence. A master may issue subpoenas for the appearance of witnesses and may put witnesses on oath and may himself or herself examine them and may call parties to the proceeding and examine them upon oath. A witness who is duly sworn in a proceeding before a master is subject to the penalties of perjury. If a witness after being duly summoned fails to appear or having appeared refuses to answer questions or produce evidence, the master shall place in the record a report describing the witness' conduct and refer the matter to the judge of the court who may then proceed to punish the witness as for contempt.~~

~~(c) Proceedings Generally; Report and Proposed Order. At the completion of a hearing held for a purpose other than seeking compliance with an order to provide support, a master shall enter into the record a report containing his or her findings together with a proposed written order and shall file with the clerk of the court all papers relating to the matter. All parties to the proceeding shall receive prompt notice of a master's report and proposed order. If a report and proposed order are entered into the record in the presence of the parties or their attorneys, that shall constitute adequate notice with respect to such parties. In the event a report and proposed order are entered into the record with neither a party nor a party's attorney present, the clerk of the court shall forthwith mail to such party notice of the filing and a copy of the proposed order. At the time a party or a party's attorney is given notice of a master's report and proposed order, he or she shall be provided with a verbatim copy of subdivision (c) of this rule.~~

~~(d) Compliance Proceedings; Report and Proposed Order. At the completion of a hearing held for the purpose of seeking compliance with an order to provide support, a master shall enter into the record a report containing his or her findings together with a proposed written order and shall file with the clerk of the court all papers relating to the matter. All parties to the proceeding shall receive prompt notice of a master's report and proposed order in the same manner as provided in subdivision (c) of this rule. When a proposed order denies in full or in part the relief requested by a petitioning party, the petitioning party may file objections and seek review pursuant to subdivision (e) of this rule. When a proposed order recommends that a party be held in contempt for failure to comply with an order to provide support, the master shall report the matter to a judge of the court for a hearing which shall be held promptly. Upon the entry of a report recommending that a party be held in contempt for failure to comply with an order to provide support, all parties to the proceeding shall be notified of the day, the time and place the matter shall be heard by a judge of the court. At the hearing the judge shall consider the report of the master, receive evidence from the parties and enter such order as the judge deems to be appropriate.~~

~~(e) Objections and Review. A party may, within 20 days after the entry of a master's report of his or her findings and proposed order, file with the court written objections to all or any part thereof. If no objections are filed within that period, the master's findings and proposed order, other than one which recommends that a party be held in contempt for failure to comply with an~~

~~order to provide support, shall become the decree of the court. If a party files objections, a hearing shall be scheduled before a judge of the court who may affirm the proposed order or may modify it or may reject it in whole or in part or may receive further evidence or may recommit the matter with instructions~~

VII. JUDGMENT

Rule 54. Judgment - Costs

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

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more ~~then~~ than one (1) claim for relief is presented in an action, whether as a claim, counterclaim, cross-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 no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

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

~~(2) *By the Court.* In all other cases t~~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 (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 ~~and shall accord a right of trial by jury to the parties when and as required by statute.~~

~~(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 the Servicemembers Civil Relief Act (50 U.S.C.A. App. § 501, et seq.) ~~Article 1 of the "Soldiers' and Sailors' Civil Relief Act" of 1940, as amended,~~ except upon order of the court in accordance with that Act.~~

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

(d) Plaintiffs, Counterclaimants, Cross-Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff 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, other than for divorce, or to obtain a declaratory judgment 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 favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim, other than for divorce, is asserted or a declaratory judgment is sought 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 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~~ an adverse party's pleading, but 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 an adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that he or she 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. Declaratory Judgments

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

Rule 58. Entry of Judgment

(a) After Trial or Hearing. Subject to the provisions of Rule 54(b):

(1) ~~u~~Upon a general verdict of a jury, or 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 clerk, unless the court otherwise orders, shall forthwith ~~prepare~~, sign, and enter the judgment without awaiting any direction by the court;

(~~2~~3) ~~u~~Upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment and sign it, and the clerk shall thereupon enter it.;
or

(~~3~~2) ~~u~~Upon a decision by the court granting a divorce from the bond of marriage:

(A) ~~t~~The court shall promptly approve the form of an interlocutory decision pending entry of final judgment and sign it and the clerk shall thereupon enter it; and

~~(Bii) a~~Unless otherwise provided by statute, not sooner than three (3) months from the date of decision entry of an interlocutory judgment the court, upon request of the prevailing party, shall promptly approve the form of a final judgment and sign it and the clerk shall thereupon enter it.;

Every judgment shall be set forth on a separate document. A judgment is effective and shall be deemed entered when so set forth and signed by ~~the clerk~~ a judicial officer. Entry of the judgment shall not be delayed for the taxing of costs. Attorneys and self-represented litigants shall submit forms of judgment upon direction of the court.

(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 in a proceeding seeking child support or 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.

(d) Child Support Orders. All court orders providing for the commencement, modification, or suspension of any order for child support or for a cash medical support order or provision to obtain or maintain medical insurance for a child shall contain a certification by the attorney for the party presenting the order to the court or the self-represented litigant that he or she has complied with the requirements of G.L. § 15-5-16.2(h)(1) (registration of orders).

Rule 59. New Trials - Amendment of Judgments

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

(b) Time for Motion. A motion for a new trial shall be served not later than ten (10) days:

(1i) aAfter the entry of an ~~interlocutory~~ decision pending entry of final judgment granting a divorce from the bond of marriage; ~~or~~

(2ii) aAfter entry of any other judgment except where an ~~interlocutory~~ decision pending entry of final judgment granting a divorce has previously been entered in the action.

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has ten (10) days after such service within which to serve opposing affidavits, which period may be extended for an additional period not

exceeding twenty (20) days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. Not later than ten (10) days after entry

- (1) of an ~~interlocutory decision pending entry of final judgment~~ granting a divorce from the bond of marriage or
- (2) after entry of any other judgment except where an ~~interlocutory decision pending entry of final judgment~~ granting a divorce has previously been entered

the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party, ~~and~~ After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order shall specify the grounds therefor.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than ten (10) days after entry of the judgment.

Rule 60. Relief From Judgment or Order

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

(b) 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 a 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.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) 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~~ tThe procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Rule 61. Harmless Error

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

Rule 62. Stay of Proceedings to Enforce a Judgment

(a) Automatic Stay; Exceptions - Injunctions and Receiverships. Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of twenty (20) days after its entry or until the time for appeal from the judgment as ~~extended by Rule 4 of the Rules of Appellate Procedure~~ has expired. Unless otherwise ordered by the court, a temporary order of support, a temporary order of custody, an interlocutory or permanent injunction, or a judgment in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay on Motion 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) Injunction Pending Appeal. When an appeal is taken from ~~an interlocutory decision pending entry of final~~ or final judgment with respect to an injunction, the court in its discretion, subject to revision by the Supreme Court, may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as ~~it~~ the court considers proper for the security of the rights of the adverse party.

(d) Stay Upon Appeal. Except as provided in subdivisions (a) and (c) of this rule, the taking of an appeal from a judgment shall operate as a stay of execution upon the judgment during the

pendency of the appeal, and no supersedeas bond or other security shall be required as a condition of such stay.

(e) Stay of Judgment as to Multiple Claims or Multiple Parties. When ~~the~~ a court has ordered a final judgment under the conditions stated in Rule 54(b), it 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 ~~the Judicial Officers~~ Justices Not Limited. The provisions of this rule do not limit the statutory power of any judicial officers ~~justice~~ to stay execution upon motion and for cause shown.

Rule 63. ~~Disability of a Justice~~ Inability of a Judicial Officer to Proceed

~~If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then, by order of the Chief Judge, any other justice may perform those duties; but if such other justice is satisfied that he or she cannot perform those duties because he or she did not preside at the trial or for any other reason, he or she may make such order as the circumstances may require.~~

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 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. Temporary Support, Custody, Legal Fees - Expedited Hearings

(a) Service. A party seeking temporary support, custody, or ~~counsel~~ attorney's fees and costs or modification of such orders shall make service of the notice of motion and accompanying papers in the manner prescribed in subdivision (d) or (e) of Rule 4 upon the party against whom relief is sought, except that if such party is represented by an attorney in the action, service shall be made on the attorney in the manner prescribed in Rule 5(b).

(b) Statement of Needs. Motions for temporary support or ~~counsel~~ attorney's fees and costs, or miscellaneous petitions without the commencement of divorce proceedings shall be accompanied by a supporting affidavit containing a statement of the applicant's current assets, liabilities, income, and expenses. A party who opposes the motion shall file an affidavit containing a statement of his or her current assets, liabilities, income, and expenses. The most current version of the supporting affidavit is located on the Judiciary's website at

www.courts.ri.gov under the heading of Public Resources, Forms. The failure to file a supporting affidavit as set forth herein shall not be grounds for a dismissal in the first instance.

(c) Time of Hearing; Expedited Hearing. The motion shall be served at least twenty (20) days before the time fixed for the hearing unless, on application of the movant with or without notice, the court for good cause shown orders the motion to be heard sooner.

(d) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of a motion under this rule, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the motion.

Rule 64A. Post Final Judgment Relief

(a) Service. A party seeking post final judgment relief shall serve a summons, ~~and~~ complaint, Language Assistance Notice, and all other required documents in the manner prescribed in subdivision (d) or (e) of Rule 4 upon the party against whom relief is sought.

(b) Statement of Needs. Complaints for modification of alimony or support obligations made pursuant to this rule shall be accompanied by a supporting affidavit containing a statement of the applicant's current assets, liabilities, income, and expenses. A party who opposes the complaint shall file an affidavit containing a statement of his or her current assets, liabilities, income, and expenses. The most current version of the supporting affidavit is located on the Judiciary's website at www.courts.ri.gov under the heading of Public Resources, Forms. The failure to file a supporting affidavit as set forth herein shall not be grounds for a dismissal in the first instance.

(c) Appearance Deemed Denial. Appearance by or on behalf of the party opposing the complaint shall be deemed a denial.

(d) Time of Hearing; Expedited Hearing. The complaint, Language Assistance Notice, and all other required documents shall be served at least ten (10) days before the time fixed for the hearing unless, on request of the applicant with or without notice, the court for good cause shown orders the complaint heard sooner. If service is made less than ten (10) days before the time fixed for the hearing, the court for good cause shown may nevertheless order the hearing to proceed on the day fixed or at some other appropriate time.

Rule 65. Injunctions

(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; Motion for Emergency Relief; Notice; Hearing; Duration; Hearing Dissolution; Modification; Denial.

(1) Notice. No ~~motion for a~~ temporary restraining order ~~or motion for emergency relief~~ 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 motion for temporary restraining order or motion for emergency relief granted without notice and any order granted pursuant there to 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 ~~as the court fixes~~, not to exceed thirty (30) days, ~~as the court fixes~~. A copy of the motion, affidavit, and order shall be served personally on the adverse party. If the person making service, after diligent effort, is unable to personally serve the adverse party, service may be accomplished by any other method ordered by the court.

(2) Duration. ~~unless within~~ The court may extend the time so fixed within the order for an additional period by consent or for good cause shown and after hearing of argument by the parties or attorneys counsel, is extended for an additional period.

(3) Expedited Hearing. In case a temporary restraining order ~~or an order for emergency relief~~ is granted without notice, the ~~motion for a preliminary injunction requesting such relief~~ 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 motion~~ and, if ~~he or she~~ the moving party does not do so, the court shall dissolve the temporary restraining order ~~or the order granting emergency relief.~~

(4) Dissolution or Modification. On two (2) days' notice to the party who obtained the temporary restraining order ~~or an order granting emergency relief~~ without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move ~~its~~ for the 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.

(5) Denial. If ~~an application~~ a motion for a temporary restraining order ~~or a motion for emergency relief~~ without notice to the adverse party is made to and denied by one (1) judicial officer justice of the court, such ~~application motion~~ shall not again be made to any other judicial officer justice unless there is a material change in circumstances. The judicial officer justice to whom such ~~application motion~~ was originally presented

shall note ~~his or her~~ the court's action in the case file upon the complaint containing such application the motion.

(c) Security. Upon the issuance of a restraining order, an order for emergency relief, or a preliminary injunction, the court may order the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

A surety upon a bond or undertaking under this rule submits ~~himself~~ 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. ~~His or her~~ 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~~ the surety's ~~if their~~ last known addresses ~~are known~~.

(d) Form and Scope of Injunction, ~~or~~ Restraining Order or Order for Emergency Relief. Every order granting an injunction or emergency relief and every restraining order shall be specific in terms; shall describe in reasonable detail the act or acts sought to be restrained or the acts ordered to be performed; and is binding only upon the parties to the action who receive notice of the order by personal service, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Rule 66. Receivers

(a) Number of Receivers. Ordinarily but one (1) receiver shall be appointed upon application for the appointment of a receiver, and, unless special exigencies shall appear, such receiver shall be a resident of this state.

(b) Appointment of Temporary Receiver. A temporary receiver shall not be appointed ex parte except upon a showing in writing by the applicant under oath, accompanied by the certificate of the applicant's attorney, satisfactory to the court, that the application is made in good faith for the protection of a business property or assets affected by such appointment; that facts be set forth justifying the appointment of a receiver and that the appointment of a temporary receiver is desirable to protect the status quo pending final hearing for the appointment of a receiver. Before acting upon an application for the appointment of a temporary receiver the court may call in for consultation, so far as practicable, all the interested parties or their attorneys ~~counsel~~, or the court may in its discretion set down the matter of the appointment of a temporary receiver at as early a date as is practicable, with such notice as the court may order.

If an application for the ex parte appointment of a temporary receiver is made to and denied by one (1) judicial officer ~~justice~~ of the court such application shall not be again made to any other judicial officer ~~justice~~ unless there is a material change in circumstances. The judicial officer ~~justice~~ to whom such application was originally presented shall note his or her action in the case file ~~upon the complaint~~ containing such application.

(c) **Counsel to Receiver.** A receiver may employ such counsel as may be approved by the court upon written application by the receiver after such notice as the court may in its discretion require; provided, however, that except for cause shown the court will not approve the employment:

- (1a) ~~Of~~ counsel by a receiver when the receiver ~~counsel himself or herself~~ is a member of the Rhode Island bar; or
- (2b) ~~Of~~ more than one (1) attorney or firm as counsel even though there be more than one (1) receiver.

(d) **Form of Decree.** The decree appointing a permanent receiver shall include, among other matters, orders with respect to the operation of the business by the receiver if such operation is sought, and shall definitely fix ~~the time~~:

- (1) The time for filing of an inventory by the receiver;
- (2) The time for filing of statements of assets and financial condition of the receivership;
- (3) ~~¶~~ The time for filing of reports respecting creditors, debtors, and claimants; and
- (4) ~~¶~~ The time within which creditors and claimants shall file their claims.

The court may in its discretion require that a decree appointing a temporary receiver shall include the matters provided for in this rule, and in every case where a temporary receivership shall have continued for a period of more than thirty (30) days a decree shall be entered in accordance with the provisions of this rule.

(e) **Reports of Condition.** Reports shall be filed ~~in~~ with the court by the receiver, unless otherwise ordered, ~~each~~ every thirty (30) days, setting forth the financial condition of the receivership and, in case the receiver is operating a business, the receiver's recommendations as to its further continuance, and, if the receiver is not operating a business, the receiver's recommendations as to the disposition of the assets. The court may, upon application duly made, order that these reports be sealed and be opened and subject to inspection only upon application to the court.

(f) **Filing of Claims; Reports Thereon.** Each creditor or claimant shall, before a day certain to be fixed by the court in each case, in the decree appointing the receiver, file with the receiver a statement of ~~his or her~~ the creditor's or claimant's claim, which statement shall set out ~~his or her~~ the address, the nature and amount of such claim and of any security or lien held by the creditor or claimant to which ~~he or she~~ the creditor or claimant is or claims to be entitled, and also any claim to preference or priority in payment to any other creditor or claimant.

The receiver shall file a report recommending the allowance or disallowance, in whole or in part, of all claims filed with the receiver within a reasonable time after the period fixed by the court for filing claims shall have expired and a suitable order shall be included in the decree

appointing a receiver requiring such a report. Upon filing such report the receiver shall give due notice of such filing and of the hearing assigned thereon, ~~by mail~~, or such other notice as may be ordered, to each creditor and other party in interest and shall include in such notice to any creditor a statement as to the disposition recommended by said report of the claim of such creditor.

(g) Failure to Report; Notification of Court. It shall be the duty of the clerk to inform the court of the failure of a temporary receiver or receivers to file such reports as may from time to time be called for by the court either under a rule of court or in the original order or decree of appointment or in any subsequent order or decree. Such failure to so report shall be a matter for investigation and for appropriate action by the court acting upon its own initiative, whether or not complaint is made by any party in interest.

(h) Continuance of Business. The court will order the continuance of the business of a corporation or partnership for which a receiver is appointed only when the complaint or petition contains a prayer to this effect or upon an application in writing by any party in interest and upon cause being shown. Notice to all interested parties of the pendency of a complaint or petition for receivership shall set forth that a continuance of the business is sought in the proceedings.

(i) Allowance of Fees. Allowances of fees to a receiver and the receiver's counsel, either on account or in full, shall only be made on hearing after such notice as the court shall order. Failure to comply with any order of the court may, unless explained to the satisfaction of the court, be a ground for refusing compensation to such receiver and the receiver's attorney entirely or for diminishing the amount of such allowances.

(j) Dismissal of Receivership Action. An action in which a receiver has been appointed shall not be dismissed except by order of the court.

~~**(k) Security.** Before exercising his or her authority, a receiver shall furnish security in the amount and form directed by the court in the order of appointment.~~

Rule 66A. Commissioners

(a) Commissioner to Partition. In an action in which the court orders the partition of real property, it may appoint one (1) or more commissioners to partition the property in kind or by sale as directed by the court.

(b) Allowance of Fees. Allowances of fees and expenses to a commissioner shall only be made on hearing after such notice as the court shall order.

~~**(c) Security.** Before exercising his or her authority, a commissioner shall furnish security in the amount and form directed by the court in the order of appointment.~~

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 county shall be the registrar of the court for that county and shall have charge of all funds and things deposited in cases pending before the court in said county, including funds received pursuant to Chapter 11.1 of Title 15, Full Enforcement of Support Obligations. 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 Family Court and indorsed "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 Family Court for the county. 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 and a justice of the court.~~

(c) No fees shall be charged by the clerk in any county 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, other than for divorce, 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, ~~i.e., shall not be disclosed to the jury,~~ and evidence thereof is not admissible except in a proceeding to determine interests 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

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 in proceedings supplementary to and in aid of a judgment, and in proceedings on and 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 these rules for taking depositions.

Rule 70. Judgment for Specific Acts

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specified act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by ~~a master in chancery or~~ some other person appointed by the court, and the act when so done, has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. When any order or judgment is for money, land, or for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

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

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

Rule 71A. Adoption

(a) Contents of Petition. A petition for adoption of a child under eighteen (18) years of age shall be verified by the petitioner and shall contain:

- (1) The name, age, citizenship, marital status, and domicile of the petitioner and relationship, if any, to the child;
- (2) If the petitioner is married and his or her spouse is not also a petitioner, the name, age, and citizenship of such spouse and his or her relationship, if any, to the child;

- (3) The name, age, and birthplace of the child, if known;
- (4) The date on which and the name of the agency or other source from which the petitioner received the child;
- (5) The name and residence of each natural parent and guardian or custodian of the child to be adopted. If unknown to the petitioner, the petition shall contain a statement setting forth the extent of his or her inquiry and knowledge concerning those facts and the circumstances under which the petitioner received the child. If the child was received from a licensed adoption agency or the Department of Children, Youth, and Families and its successor agencies ~~Social and Rehabilitative Services~~, such statement may be omitted;
- (6) A description and estimate of the value of all property belonging to the child;
- (7) The name by which the child shall be known;
- (8) A statement that the petitioner desires to establish a parental relationship with the child and is able to support him or her;
- (9) The name of any person whose consent to the adoption is required but who has not consented and a statement of the circumstances which excuse the lack of such consent.

(b) Consent to Adoption. Consents required by law shall be annexed to the petition.

IX. APPEALS

Rule 72. Certification

(a) Upon Motion of a Party. Whenever a statute provides for certification of an action or of any question arising therein by the Family Court to the Supreme Court application for certification shall be made by motion served on every other party at least ten (10) ~~five (5)~~ days prior to the time fixed for hearing thereon. The motion shall specify the matter sought to be certified.

(b) Upon Court's Own Initiative. Whenever a statute provides for certification of an action or any question arising therein to the Supreme Court on the initiative of the Family Court, the court shall, prior to certification, afford the parties an opportunity to be heard on the issue of certification and on the form any certified question shall take, irrespective of whether the applicable statute directs the Family Court to certify or vests in the Family Court discretion with respect to certification.

Rule 73. Appeal from a Judgment, Order, or Decree of a General Magistrate or a Magistrate

(a) Referral of Appeal. An appeal from a judgment, order, or decree of a general magistrate or a magistrate shall be referred to the chief judge or the chief judge's designee. The review shall be appellate in nature and on the record.

(b) Notice of Appeal. A Notice of Appeal shall be filed in the Providence/Bristol County Domestic Relations Clerk's Office within twenty (20) days of the entry of the judgment, order, or decree being appealed. The chief judge may extend the time for filing the Notice of Appeal for good cause. The Notice of Appeal shall specify the parties taking the appeal and shall designate the judgment, order, or decree being appealed. The most current version of the Notice of Appeal is located on the Judiciary's website at www.courts.ri.gov under the heading of Public Resources, Forms.

(d) Orders. The chief judge or the chief judge's designee may make such orders for injunction, stay pending appeal, temporary restraining order, or other orders which may be required for the protection of the rights of the parties until the appeal is heard and decided.

(e) The Record on Appeal. Except where otherwise provided, the filings and exhibits admitted into evidence, the transcript of the proceedings, and the docket entries shall constitute the record on appeal.

(f) Transcripts of Testimony. Within twenty (20) days of filing the Notice of Appeal, the appellant shall order a transcript of the parts of the proceedings that the appellant deems necessary for inclusion in the record. If the appellee deems a transcript of other parts of the proceedings to be necessary, the appellee shall immediately order such parts from the court reporter or seek an order requiring the appellant to do so.

(g) Statement of Issues and Memorandum of Law. Within twenty (20) days after the record on appeal is completed, the appellant shall submit a statement of the issues on appeal and a memorandum of law in support of the allegations of error. The appellee shall have twenty (20) days to respond.

(h) Conferences. The chief judge or the chief judge's designee may schedule a conference to identify and narrow the outstanding appellate issues, to explore possibilities for settlement and, if necessary, to schedule further proceedings.

(i) Power of the Chief Judge or the Chief Judge's Designee Not Limited. Nothing contained in this rule limits the authority of the chief judge or the chief judge's designee to alter the time frames set forth in this rule when the interests of justice and equity so require.

Rules 743 to 76. [Reserved]

X. FAMILY COURT AND CLERKS

Rule 77. Family Court and Clerks

(a) **Family Court Always Open.** Subject to law, the Family 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.** Unless otherwise provided by statute, all trials and hearings upon the merits shall be conducted in open court and so far 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 county with a clerk or 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 as of course by the clerk; but the clerk's action may be suspended or rescinded by the court upon cause shown.

~~(d) **Notice of Orders or Judgments.** Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing 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.~~

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

In accordance with Rule 58(a)(3) and applicable statutory provisions, Whenever upon a motion calendar a written order is required by the court, any interested prevailing party may file with the court a proposed judgment, in the clerk's office an order carrying the same into effect with a eCertificate of Service in accordance with Rule 1(b)(1)(B) that the proposed judgment has been sent a copy has been mailed to all the other parties. If only one (1) proposed judgment order is filed and no objection thereto be is filed within seven (7) days thereafter, the clerk shall enter the order judgment upon approval of the court. If more than one (1) proposed judgment order is filed or if an objection be is filed within said seven (7) days, the proposed judgment order shall be entered only by the court. If an objection be is filed as aforesaid, it the objection shall contain a notice of the hearing thereon with a eCertificate of Service in accordance with Rule 1(b)(1)(B) that a copy has been sent mailed to all the other parties. In the event two (2) or more proposed judgments orders concerning the same motion are filed within said seven (7) days, any prevailing party may file a motion to enter a judgment an order, with notice of the hearing thereon to all the other parties.

(e) Transmittal of Papers. ~~At the direction of any justice of the court, the clerks for the several counties shall transmit the papers in any action from one county to another w~~When a matter has been duly set down for hearing in a county 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 county in which the case is pending. ~~The clerk for the county in which the case is heard shall certify the proceedings had in his or her county to the clerk for the county in which the case is pending and, at the direction of any justice of the court, shall return to such clerk all the papers, to be kept there on file.~~

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 county 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 county to which it is transferred.

(f) Written Order From Motion Calendar. ~~Whenever upon a motion calendar the court directs preparation of a written order is required by the court, any interested party may file with the court a proposed order, in the clerk's office an order carrying the same into effect with a eCertificate of Service in accordance with Rule 1(b)(1)(B) that the proposed order has been sent a copy has been mailed to all the other parties. If only one (1) proposed order is filed and no objection is thereto be filed within seven (7) days thereafter, the clerk shall enter the order upon approval of the court. If more than one (1) proposed order is filed or if an objection be is filed within said seven (7) days, the order shall be entered only by the court. If an objection be is filed as aforesaid, it the objection shall contain a notice of the request for a hearing thereon with a eCertificate of Service in accordance with Rule 1(b)(1)(B) that a copy has been sent mailed to all the other parties. In the event two (2) or more proposed orders concerning the same motion are filed within said seven (7) days, any interested party may file a motion to enter an order, with notice of the hearing thereon to all the other parties.~~

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

Rule 78. Stenographic Reports - Transcripts of Testimony

Every party requesting a court ~~reporter stenographer~~ to transcribe testimony taken in court by ~~the court reporter him or her~~ shall be required to pay for the transcript ~~forthwith deposit with the clerk of said court such sum as the court stenographer shall estimate to be the cost of transcription, computed at a the rate of not to exceed three dollars (\$3.00) per page for originals thereof and one dollar and fifty cents (\$1.50) per page for copies thereof. The rate to be charged for transcripts ordered by any branch, department, agency, board, or commission of the government of the State of Rhode Island shall not exceed two-three dollars and fifty cents (\$2.500) per page for originals thereof and one dollar and fifty cents (\$1.050) per page for copies thereof. The clerk shall pay to said court stenographer the cost of such transcript upon presentation thereof, and shall cause the date and amount of such payment to be endorsed thereon. The minimum charge of a transcript shall be five dollars (\$5.00). Policies and procedures regarding the ordering, payment, and delivery of transcripts shall be promulgated by the Supreme Court Finance and Budget Office of the Administrative Office of State Courts. The~~

most current version of the transcript policy and procedure is located on the Judiciary's website at www.courts.ri.gov under the heading of Quick Links on the home page.

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

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

(b) Judgments and Orders. ~~The clerk shall keep in a Record Book of Judgments a correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, and any other order which the court may direct to be kept.~~

(be) Indices. Indices of the docket and of every judgment shall be kept by the clerk according to law and the general orders of the court.

(cd) Other Books and Records of the Clerk. The clerk shall also keep such other books and records as may be required by law or by order of the judicial officers ~~justices~~ of the court.

XI. SPECIAL RULES FOR CERTAIN ACTIONS

Rule 80. Review of Administrative Action

(a) Mode of Review. When a statute provides for review by the Family Court of any action by a governmental agency, department, board, commission, or officer, whether by appeal or petition or otherwise or when any judicial review of such action was heretofore available by extraordinary writ, 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 the plaintiff seeks ~~to which he or she believes himself 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. ~~Trial of facts where provided by statute or otherwise shall be without jury unless the constitution of the State of Rhode Island or a statute gives the right to trial by jury.~~ 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) **Additional Applicability.** In addition to the proceedings described in Rule 1, these rules govern proceedings in the Family Court under Chapter 11.1 of ~~†~~Title 15, Full Enforcement of Support Obligations ~~the Reciprocal Enforcement of Support Act~~, except where that Chapter provides for a different procedure.

(b) ~~**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.]**

(c) **Writ of Mandamus.** Actions to obtain relief by writ of mandamus shall be according to these rules.

(d) **Terminology in Statutes.** Except as provided in subdivision (a), 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 Family Court or the venue of actions therein.

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 justices of the Family Court and administrative orders promulgated by the chief judge 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 purposes 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 Public Resources, Forms, 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 Rhode Island Rules of Domestic Relations Procedure and may be cited as R.Dom.Rel.P.~~

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 Family Court unless granted leave to do so by the Family Court or by the Supreme Court. Unless the Family Court or the Supreme Court permits otherwise, any attorney who is granted such leave to practice before the Family 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 Family 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 Public Resources, Forms.

Rule 86. Proposed Effective Date

These amended rules shall take effect November 5, 2014 ~~January 1, 1984~~. They govern all proceedings in actions brought after they take effect and also all further proceedings 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.

Rule 87. ~~Washington's Birthday and Rhode Island Independence Day~~

~~Wherever any rule of Domestic Relations Procedure of the Family Court contains any provision with respect to holidays, such rule shall be and is hereby amended to except therefrom Washington's Birthday and Rhode Island Independence Day, in accordance with § 8-7-10 of the General Laws of 1956 as amended.~~

APPENDIX OF FORMS

Introductory Statement

1. The following forms are located on the Judiciary's website at www.courts.ri.gov under the heading of Public Resources, Forms ~~are illustrative~~ and are sufficient under the rules ~~intended for illustration only~~. They are limited in number. No attempt is made to furnish a manual of forms. Each form assumes the action to be brought in Providence County.

Affidavit

Affidavit in Support of Complaint for an Order of Protection From Domestic Violence

Affidavit in Support of Complaint for an Order of Protection From Domestic Violence – When Either Party is a Juvenile

Affidavit in Support of Complaint for an Order of Protection From Sexual Abuse – When Either Party is a Juvenile

Affidavit in Support of Complaint for Civil Protective Order When Either Party is a Juvenile

Affidavit of Non-military Service

Affidavit of Indigency

Appeal from Decision of a Magistrate

Appeal to Supreme Court

Child Support Guidelines Worksheet

Civil Case Cover Sheet – Electronic Filing

Complaint for a Protective Order When Either Party is a Juvenile

Complaint for an Order of Protection from Domestic Violence

Complaint for an Order of Protection from Domestic Violence – When Either Party is a Juvenile

Complaint for an Order of Protection from Sexual Abuse

Complaint for Divorce or Divorce from Bed and Board

Complaint for Separate Maintenance Without Commencement of Divorce Proceedings

Complaint – Miscellaneous

Decision Pending Entry of Final Judgment

Entry of Appearance

Final Judgment

Final Judgment – Living Separate and Apart

Judgment for Protection from Domestic Violence

Judgment for Protection from Sexual Assault

Judgment for Protection When Either Party Is a Juvenile

Motion for Excusal from Court Attendance

Motion Form

Motion to Proceed in Forma Pauperis

Motion to Proceed in Forma Pauperis – Affidavit in Support

Motion to Proceed in Forma Pauperis – Notice of Appeal

Motion to Proceed in Forma Pauperis – Transcript

Motion to Withdraw Exhibits

Notice of Appeal

Notice to Withdraw Exhibits

Objection Form

Order for Protection from Domestic Violence - Ex Parte

Order for Protection from Sexual Assault - Ex Parte

Order for Protection when Either Party Is a Juvenile - Ex Parte

Order for Transcript

Order Form

Order - Consent (Mediation)

Order - Consent (Miscellaneous)

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

Record of Withdrawn Exhibits

Sheriff's Information

Statement Listing Children

Statement of Assets, Liabilities, Income, and Expenses (DR-6 Financial Statement

Stipulation

Stipulation to Withdraw Exhibits

UCCA Registration Form

Withdrawal of Appearance

Subpoena

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 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 2. ~~In some forms following Form 2 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.

[DELETE ALL FORMS FROM RULES]

