SUPERIOR COURT RULES OF CIVIL PROCEDURE

I. SCOPE OF RULES AND MANDATORY ELECTRONIC FILLING— ONE FORM OF ACTION

1. Scope of Rules and Mandatory Electronic Filing. — (a) **Scope of Rules.** These rules govern the procedure in the Superior Court of the State of Rhode Island in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action. They shall be known as the Superior Court Rules of Civil Procedure and may be cited as Super.R.Civ.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 Superior 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 Super.R.Civ.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.

(B) *Certificate of Service.* Where the Super.R.Civ.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: _____.
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: _____.
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) *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 case management system (CMS).

(D) *Filing.* Where the Super.R.Civ.P. require a document to be filed, filing shall mean the electronic transmission of a document in electronic form to or from a court/clerk through the Judiciary's electronic filing system or scanned and filed into the Judiciary's CMS at the clerk's office.

(E) *Notice.* Where the Super.R.Civ.P. require notice to be given, notice shall mean electronic notice using the EFS unless stated otherwise.

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

(G) *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.

(H) *Service.* Where the Super.R.Civ.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;

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

(iii) All discovery on a case shall be electronically served using the EFS except when the discovery is of a type which does not lend itself to electronic service (either because it consists of non-conforming documents or is too voluminous), in which case conventional service shall be used.

(I) *Signature*. Where the Super.R.Civ.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 Superior Court's Electronic Filing System Guidelines.

(4) *Clerk Review; Acceptance/Rejection Procedure*: Following submission, the Superior 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 Article X, Rule 5(b) of the Rhode Island Supreme Court Rules Governing Electronic Filing. In accordance with Article X, Rule 5(c), grounds for the rejection of a document submitted to the EFS in the Superior Court are limited in scope as follows:

(A) Pleadings filed without a conventional signature where required;

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

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

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

(E) Documents, including any required documents, attachments, or exhibits, scanned in the wrong orientation, e.g., upside down or backwards;

(F) Documents scanned and filed that are unreadable or illegible;

(G) Documents filed in a fillable portable document format (PDF);

(H) Fees not paid on requested executions and citations;

(I) The document filed does not match the selected filing code type;

(J) The document is filed into the wrong case;

(K) The document contains the wrong or incomplete case caption;

(L) The document is filed with no case identification;

(M) The document was improperly scanned or uploaded;

(N) The party name, party address, or document name exceeds the number of allotted characters in the EFS;

(O) The filer added a party or participant that is not configured in the CMS or does not match the information in the case;

(P) A payment processing error occurred; and/or

(Q) A technical submission error occurred.

2. One Form of Action. — There shall be one form of action to be known as "civil action."

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

3. Commencement of Action. — A civil action is commenced by the filing of a complaint and all other required documents together with the 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) may deposit the complaint and all other required documents with said fee in the mail addressed to the clerk or file the documents at the clerk's office.

4. Process, Attachment, Trustee Process, Arrest. — (a) **Summons: Form.** The summons shall bear the Signature of the clerk, be under the seal or watermark of the court (which shall be generated by the CMS), identify the court and 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 the time within which the defendant must appear and defend and shall notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint. The court may allow a summons to be amended.

(b) **Summons: Issuance.** The summons, 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 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 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 and all other required documents at the clerk's office;

(B) If the complaint 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 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, 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 or by any person who is not a party and who is at least eighteen (18) years of age.

(d) **Waiver of Service; Duty to Save Costs of Service; Request to Waive.**

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

(2) An individual or corporation that is subject to service under subdivision (e)(1), (e)(3), or (f), and that receives notice of an action in the manner provided in this paragraph has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request:

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

(B) Shall be dispatched through the EFS, first-class mail, or other reliable means;

(C) Shall be accompanied by a copy of the complaint, Language Assistance Notice, and all other required documents and shall identify the court in which it has been filed;

(D) Shall inform the defendant of the consequences of compliance and of a failure to comply with the request;

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

(F) Shall allow the defendant a reasonable time to return the waiver to the plaintiff, which shall be at least thirty (30) days from the date on which the request is sent, or sixty (60) days from that date if the defendant is addressed outside the United States; and

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

The most current version of the notice and request is located on the Judiciary's website at *www.courts.ri.gov* under the heading of Public Resources, Forms. If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure is shown.

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

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

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

(e) **Summons: Personal Service.** The summons, 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 from whom a waiver has not been obtained and filed, other than an incompetent person, by delivering a copy of the summons, complaint, Language Assistance Notice, and all other required documents to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons, 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, complaint, Language Assistance Notice, and all other required documents upon such guardian or conservator and upon the incompetent person in the manner provided in paragraph (1) of this subdivision.

(3) Upon a public corporation, body, or authority or a private corporation, domestic or foreign, from which a waiver of service has not been obtained and filed, by delivering a copy of the summons, complaint, Language Assistance Notice, and all other required documents to an officer, director, manager, a managing or general agent, or by leaving a copy of the summons, 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, 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, complaint, Language Assistance Notice, and all other required documents to the attorney general or an assistant attorney general.

(f) **Service Outside State Within the United States; 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, complaint, Language Assistance Notice, and all other required documents to the individual personally by any disinterested person, or by mailing a copy of the summons,

complaint, and Language Assistance Notice to the individual by registered or certified mail, return receipt requested, or by express or overnight carrier with a signed receipt of delivery, 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, 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, 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.

(g) **Service Upon Individuals in a Foreign Country.** Unless otherwise provided by state or federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within the United States:

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

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

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

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

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

(i) Delivery to the individual personally of a copy of the summons, complaint, and Language Assistance Notice; or

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

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

(h) **Service Outside the State in Certain Actions.** Where service cannot with due diligence be made personally within the state, service of the summons,

complaint, Language Assistance Notice, and all other required documents may be made outside the state in the manner provided by subdivisions (f) and (g) 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.

(i) **Service by Publication.** Whenever in an action described in subdivision (h) 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.

(j) **Proof of Service.** If service is not waived, 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, 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 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.

(k) **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.

(l) **Summons: Time Limit for Service.** If service of the summons, complaint, Language Assistance Notice, and all other required documents is not made upon a defendant within one hundred and twenty (120) days after the commencement of the action the court upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This

subdivision does not apply to service in a foreign country pursuant to subdivision (g).

(m) **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) Bear the 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) Be directed to a duly authorized officer in accordance with Title 9, Chapter 5 (Writs, Summons, and Process) of the Rhode Island General Laws 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) *Writ of Attachment: Issuance.* The writ of attachment 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) *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, complaint, and Language Assistance Notice are served upon the defendant as provided in subdivisions (d) through (i) 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 hearing thereof. An attachment made after service of the summons, complaint, and Language Assistance Notice shall be made as provided in paragraph (6) of this subdivision.

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

(6) *Subsequent Attachment.* After service of the summons, complaint, and Language Assistance Notice 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 (i) 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) *Proof of Service.* Upon service of a writ of attachment and copy thereof, the person making the service shall make the proof of service as provided in subdivision (j) of this rule.

(n) **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, complaint, Language Assistance Notice, and all other required documents, and proof of service shall be made in the same manner as 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, 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.

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 motions for assessment of damages and pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(b) **Making Service.**

(1) Whenever under these rules service is required or permitted to made upon a party represented by an attorney, the service shall be made upon the attorney unless 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 if no one is in charge, leaving it in a conspicuous place in the office; 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 on mailing.

(C) Any other means ordered by the court.

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

(1) Interrogatories;

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

(3) Requests for admission;

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

(5) Notices of deposition; and

(6) Transcripts of depositions.

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

(e) **Filing With the Court Defined.** The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judicial officer may permit the papers to be filed with the judicial officer, in which event the judicial officer shall note 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.

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) 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;

(2) Upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; or

(3) Permit the act to be done by stipulation of the parties, but it may not exceed the time for taking any action under Rules 50(b), 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 ten (10) days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), opposing affidavits may be served no 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

7. Pleadings Allowed — Form of Motions. — (a) **Pleadings.** There shall be a complaint and an answer; a reply to a counterclaim noted as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a

third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer, or a third-party answer. A demand for a jury trial shall be a separate pleading.

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

(A) A motion to assign, which shall indicate the calendar to which assignment is desired;

(B) A motion to consolidate cases for trial;

(C) A motion to enlarge the time for permitting an action to be done under Rule 6(b)(2) after the expiration of the specified period;

(D) A motion for leave to serve third-party complaints under Rule 14;

(E) A motion to amend pleadings under Rule 15;

(F) A motion for an order for physical or mental examination under Rule 35;

(G) A motion under Rule 26 or Rule 37 to obtain a protective order, or to compel discovery; and

(H) A motion to attach wages or a notice of a nonwage attachment pursuant to Rule 69.

A motion to compel discovery or more responsive answers thereto shall specify the number of days for compliance.

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

(4) Any hearing required or permitted under these rules may be conducted in whole or in part by remote means on the Court's own initiative, or upon request by a party and at the Court's discretion. A Request for a Remote Hearing may be made:

(i) By the moving party at the time of filing the motion; and

(ii) By any non-moving parties within five (5) days of service of the motion.

A Request for Remote Hearing shall be accompanied by a short, concise statement of the grounds on which such request is based, except that no applicant shall be required to reveal health care information.

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

(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).

8. General Rules of Pleading. — (a) **Claims for Relief.** A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain:

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

(2) A demand for judgment for the relief the pleader seeks. In an action for personal injury, injury to property, or wrongful death, the pleading shall not state the amount claimed, but only that the amount is sufficient to establish the jurisdiction of the court.

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

(b) **Defenses; Form of Denials.** A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If 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 true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or the pleader may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, the pleader may do so by general denial subject to the obligations set forth in Rule 11. Denial of the authenticity or validity of a signature shall be by specific negative averment, and a general denial shall not put such signature in issue.

(c) **Affirmative Defenses.** In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of

frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) **Effect of Failure to Deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive 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 (1) or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

(f) **Construction of Pleadings.** All pleadings shall be so construed as to do substantial justice.

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.

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.

(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.

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 shall personally sign the pleading, motion, or other paper and state the self-represented litigant's address, email address (if electing to utilize the EFS), and telephone number.

Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by an affidavit. The signature of an attorney, self-represented litigant, or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry the pleading, motion, or other paper is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that the pleading, motion, or other paper is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. 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, the pleading, motion, or other paper shall be stricken. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed the pleading, motion, or other paper, a represented party, or both, any appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

12. Defenses and Objections — When and How Presented by Pleading or Motion — Motion for Judgment on Pleadings. — (a) **When Presented.**

(1) A defendant shall serve an answer:

(A) Within twenty (20) days after the service of the summons, complaint, Language Assistance Notice, and all other required documents upon the defendant, unless the court directs otherwise when service of process is made pursuant to an order of court. Where service upon a defendant is made by publication of an order of notice, a defendant shall serve an answer within twenty (20) days after the last publication of said order of notice, or

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

(2) 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 plaintiff

shall serve a reply to a counterclaim in the answer within twenty (20) days after service of the answer or, if a reply is ordered by the court, within twenty (20) days after service of the order, unless the order otherwise directs.

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

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

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

(b) **How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

(1) Lack of jurisdiction over the subject matter;

(2) Lack of jurisdiction over the person;

(3) Improper venue;

(4) Insufficiency of process;

(5) Insufficiency of service of process;

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

(7) 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 (1) or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such 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 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 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.

13. Counterclaim and Cross-claim. — (a) **Compulsory Counterclaims.** A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction, except that such a claim need not be so stated if at the time the action was commenced the claim was the subject of another pending action, or if the opposing party's claim is for damage arising out of the ownership, maintenance, operation, use, or control of a motor vehicle by the pleader.

(b) **Permissive Counterclaims.** A pleading may state as a counterclaim any claim against an opposing party.

(c) **Counterclaim Exceeding Opposing Claim.** A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) **Counterclaims in Appealed Actions.** When an action is entered in the Superior Court on appeal from a District Court the provisions of subdivision (a) of this rule shall not apply. Permissive counterclaims and cross-claims may be pleaded as in an original action in the Superior Court.

(e) **Counterclaim Maturing or Acquired After Pleading.** A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

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

(g) **Cross-claim Against Co-party.** A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-

claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) **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).

14. Third Party Practice. — (a) **When Defendant May Bring in Third Party.** At any time after commencement of the action a defending party, as a third party plaintiff, may cause a summons, complaint, Language Assistance Notice, and all required documents to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than ten (10) days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons, third-party complaint, Language Assistance Notice, and all other required documents hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may

proceed under this rule against any person not a party to the action that is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) **When Plaintiff May Bring in Third Party.** When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third-party to be brought in under circumstances which under this rule would entitle a defendant to do so.

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

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

15. Amended and Supplemental Pleadings. — (a) **Amendments.** A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend the pleading at any time within twenty (20) days after the pleading is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. 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. 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 thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the objecting party in maintaining the party's action or defense upon

the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) **Relation Back of Amendments.** 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 or adding a plaintiff or defendant or the naming of a party relates back if the foregoing provision is satisfied and within the period provided by Rule 4(1) for service of the summons, complaint, Language Assistance Notice, and all other required documents, the party against whom the amendment adds a plaintiff, or the added defendant:

(1) Has received such notice of the institution of the action that the party would not be prejudiced in maintaining a defense on the merits; and

(2) Knew or should have known that but for a mistake the action would have been brought by or against the plaintiff or defendant to be added.

(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.

16. Pre-Trial Procedure — Formulating Issues. — In any action the court may in its discretion direct the attorneys for the parties 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;

(5) Matters related to electronically stored information; and/or

(6) 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, issues relating to electronically stored information, 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.

Each judicial officer conducting jury trials may conduct a pre-trial conference upon the day of, and prior to, the commencement of such trial in accordance with the provisions of this rule.

IV. PARTIES

17. Parties Plaintiff and Defendant — Capacity. — (a) **Real Party in Interest.** Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute so provides, an action for the use and benefit of another shall be brought in the name of the state. An insurer who has paid all or part of a loss may sue in the name of the assured to whose right it is subrogated. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) **Capacity to Sue or Be Sued.** The capacity of an individual, including one acting in a representative capacity, and of a partnership or other unincorporated association to sue or be sued shall be determined by the law of this state. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized, unless some statute of this state provides to the contrary.

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

18. Joinder of Claims and Remedies. — (a) **Joinder of Claims.** A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable, as that party has against an opposing party.

(b) **Joinder of Remedies; Fraudulent Conveyances.** Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two (2) claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to the plaintiff without first having obtained a judgment establishing the claim for money. This rule shall not be applied in actions to recover for personal injury or property damage so as to permit the joinder of a liability or indemnity insurance carrier, unless such carrier is by law or contract liable to the person injured or damaged and is directly subject to suit to enforce such liability.

19. Joinder of Persons Needed for Just Adjudication. — (a) **Persons to Be Joined if Feasible.** A person who is subject to service of process shall be joined as a party in the action if:

(1) In the person's absence complete relief cannot be accorded among those already parties; or

(2) The person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may:

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

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

If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

(b) **Determination by Court Whenever Joinder Not Feasible.** If a person as described in subdivision (a)(1) and (2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or

those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; and fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

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

(d) **Exception of Class Actions.** This rule is subject to the provisions of Rule 23.

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 these persons 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 defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

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

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.

22. Interpleader. — Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to

the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

23. Class Actions. — (a) **Prerequisites to a Class Action.** One (1) or more members of a class may sue or be sued as representative parties on behalf of all only if:

(1) The class is so numerous that joinder of all members is impracticable;

(2) There are questions of law or fact common to the class;

(3) The claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) The representative parties will fairly and adequately protect the interests of the class.

(b) **Class Actions Maintainable.** An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

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

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

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

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

(3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) The interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and/or

(D) The difficulties likely to be encountered in the management of a classification.

(c) **Determination by Order Whether Class Action to Be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.**

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

(2) In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that:

(A) The court will exclude the member from the class if the member so requests by a specified date;

(B) The judgment, whether favorable or not, will include all members who do not request exclusion; and

(C) Any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

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

(d) **Orders in Conduct of Actions.** In the conduct of actions to which this rule applies, the court may make appropriate orders:

(1) Determining the course of proceedings or prescribing measures to prevent undue repetition or complications in the presentation of evidence or argument;

(2) Requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(3) Imposing conditions on the representative parties or on intervenors;

(4) Requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; and/or

(5) Dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

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

23.1. Derivative Actions by Shareholders. — In a derivative action brought by one (1) or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interest of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

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

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

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

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

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

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

(2) When an applicant's claim or defense and the main action have a question of law or fact in common.

When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement 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 serve the attorney general with a copy of the proceeding within such time to afford the attorney general an opportunity to intervene.

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 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.

(d) **Public Officers; Death or Separation From Office.**

(1) When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the public officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

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

V. DEPOSITIONS AND DISCOVERY

Introductory Notes on 1995 Amendments of the Discovery Rules

At the time the Rhode Island Superior Court Rules of Civil Procedure were adopted in 1966, the discovery rules, Rules 26-37, were patterned generally upon the corresponding Federal Rules of Civil Procedure. Departures from the federal model were based in part upon proposed changes to the federal discovery rules which had not yet been adopted. Rules 26-37 of the Superior Court Rules of Civil Procedure have not been amended significantly since 1966.

In 1970 Rules 26-37 of the Federal Rules of Civil Procedure were amended extensively. Those 1970 amendments made substantial changes in the federal discovery rules, some of them along lines already adopted in Rhode Island. Further, the 1970 amendments restructured the federal discovery rules.

The present amendments to the Superior Court civil rules are designed to accomplish two purposes. First, the structure of the discovery rules is brought into conformity with the corresponding federal rules. Second, the committee has examined each rule specifically, proposing adoption of some of the federal changes, proposing retention of some of the Rhode Island variations, and proposing some new modifications based on the committee's perception of the needs of the Superior Court in light of its experience with the rules. Explanation of specific rule changes recommended are found in the Committee Note following each rule amended. Explanation of the 1970 amendments to the Federal Rules relating to discovery are detailed by the Advisory Committee in 48 Federal Rules Decisions, beginning at page 487.

Failure to rearrange the rules would perpetuate confusion resulting from the differences in numbering between the Federal and Rhode Island rules, a difference which has existed since 1970. Below is a table indicating where the transferred provisions have been placed.

Table Showing Rearrangement of Rules

Existing Rule No.	*Proposed Rule No.*
26(a)	30(a)
26(c)	30(c)
26(d)	32(a)
26(e)	32(b)
26(f)	32(c)

30(a)	30(b), 26(d)
30(b)	26(c)
31(d)	26(c)
32(a)	32(e)(1)
32(b)	32(e)(2)
32(c)	32(e)(3)

26. General Provisions Governing Discovery; Duty of Disclosure. — (a) **Discovery Methods.**

(1) *In General.* 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.

(2) *Electronically Stored Information.*

(A) In these rules:

(i) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities; and

(ii) "Electronically stored information" means information stored in an electronic medium and is retrievable in perceivable format.

(B) If the parties so agree or if the court so orders upon motion by any party, all parties that have appeared in the proceeding shall confer concerning whether discovery of electronically stored information is reasonably likely to be sought in the proceeding. If discovery of electronically stored information is reasonably likely to be sought, the parties at the conference shall discuss:

(i) Any issues relating to preservation of the information;

(ii) The format in which each type of the information will be produced;

(iii) The period within which the information will be produced;

(iv) The method for asserting or preserving claims of privilege or of protection of the information as trial preparation materials, including whether such claims may be asserted after production;

(v) The method for asserting or preserving confidentiality and proprietary status of information relating to a party or a person not a party to the proceeding;

(vi) Whether allocation among the parties of the expense of production is appropriate; and

(vii) Any other issue relating to discovery of the information.

(C) If discovery of electronically stored information is reasonably likely to be sought, then:

(i) The parties shall develop and memorialize a proposed plan relating to discovery of the information; and

(ii) If the court so orders, submit to the court a written report that summarizes the plan and states the position of each party as to any issue about which they are unable to agree.

(D) The court may issue an order governing the discovery of electronically stored information pursuant to:

(i) A motion by a party seeking discovery of the information or by a party or person from which discovery of the information is sought;

(ii) A stipulation of the parties and of any person not a party from which discovery of the information is sought; or

(iii) The court's own motion, after reasonable notice to, and an opportunity to be heard from, the parties and any person not a party from which discovery of the information is sought.

(E) An order or plan governing discovery of electronically stored information may address:

(i) Whether discovery of the information is reasonably likely to be sought in the proceeding;

(ii) Preservation of the information;

(iii) The format in which each type of the information is to be produced;

(iv) The time within which the information is to be produced;

(v) The permissible scope of discovery of the information;

(vi) The method for asserting or preserving claims of privilege or of protection of the information as trial-preparation material after production;

(vii) The method for asserting or preserving confidentiality and the proprietary status of information relating to a party or a person not a party to the proceeding;

(viii) Allocation of the expense of production; and

(ix) Any other issue relating to discovery of the information.

(F) Any motion under Rule 26(a)(2) must include a certification that the movant has in good faith conferred or attempted to confer with the other party or parties in an effort to agree upon a plan relating to the discovery of electronically stored information without court action.

(b) **Discovery: Scope and Limits.** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

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

The frequency or extent of use of the discovery methods set forth in these rules shall be limited by the court if it determines that:

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

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

(C) The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

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

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

impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is:

(A) A written statement signed or otherwise adopted or approved by the person making it; or

(B) A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) *Trial Preparation: Experts.*

(A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, to state the substance of the facts and opinions to which the expert is expected to testify, and to summarize the grounds for each opinion. A party may, through a request for production pursuant to Rule 34, a request attached to a notice of deposition pursuant to Rule 30(b)(5), or subpoena duces tecum pursuant to Rule 45, require any other party to produce all documents and materials relied upon by a person whom the other party expects to call as an expert witness at trial in formulating that expert's opinion(s). If documents and materials are requested, the procedures of Rules 34 and 45, respectively, shall apply to the request.

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

Written reports are not required under this rule. However, to the extent an expert prepares a report that is disclosed, the provisions of subdivision (b)(3) of this rule protect drafts of any such report regardless of the form in which the draft is recorded.

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

(C) Unless manifest injustice would result:

(i) The court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subdivision; and

(ii) With respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(D) These rules protect communications between the party's attorney and any witness designated as an expert under these rules, regardless of the form of the communications, except to the extent that the communications:

(i) Relate to compensation for the expert's study or testimony;

(ii) Identify facts or data that the party's attorney provided and that the expert relied on in forming the opinions to be expressed; or

(iii) Identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(5) *Claims of Privilege or Protection of Trial Preparation Material.* 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.

(6) *Electronically Stored Information.*

(A) A party may object to discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or expense. In the party's objection, the party shall identify the reason for the undue burden or expense. On motion to compel discovery or for a protective order relating to the discovery of electronically stored information, a party objecting to

discovery under Rule 26(b)(6) bears the burden of showing that the information is from a source that is not reasonably accessible because of undue burden or expense.

(B) The court may order discovery of electronically stored information that is from a source that is not reasonably accessible because of undue burden or expense if the party requesting discovery shows that the likely benefit of the proposed discovery outweighs the likely burden or expense, taking into account the amount in controversy, the resources of the parties, the importance of the issues, and the importance of the requested discovery in resolving the issues.

(C) If the court orders discovery of electronically stored information under subsection (B), the court may set conditions for discovery of the information, including allocation of the expense of discovery.

(D) The court shall limit the frequency or extent of discovery of electronically stored information, even from a source that is reasonably accessible, if the court determines that:

(i) The information may be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) The discovery sought is unreasonably cumulative or duplicative;

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

(iv) The likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues, and the importance of the requested discovery in resolving the issues.

(7) *Claim of Privilege or Protection after Production of Electronically Stored Information.*

(A) If electronically stored information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for the claim.

(B) After being notified of a claim of privilege or of protection under subsection (A), a party shall immediately sequester the specified information and any copies it has and:

(i) Return or destroy the information and all copies and not use or disclose the information until the claim is resolved; or

(ii) Present the information to the court under seal for a determination of the claim and not otherwise use or disclose the information until the claim is resolved.

(C) If a party that received notice under subsection (B) disclosed the information subject to the notice before being notified, the party shall take reasonable steps to retrieve the information.

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

(1) That the disclosure or discovery not be had;

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

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

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

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

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

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

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

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

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

(e) **Supplementation of Responses.** A party who has responded to a request for discovery with a response that was complete when made is under 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).

(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.

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:

(1) The names and addresses of persons to be examined and the substance of the testimony which the party expects to elicit from each; and

(2) The reasons for perpetuating their testimony.

If the court finds that the perpetuation of the testimony is proper to avoid 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.

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;

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

(3) Pursuant to a letter of request (whether or not captioned a letter rogatory). A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in (here name the state, territory, or country)." Evidence obtained in a foreign country in response to a letter 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.

29. Stipulations Regarding the Taking of Depositions. — If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions.

30. Depositions Upon Oral Examination. — (a) **When Depositions May Be Taken; When Leave Required.**

(1) Any party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in

paragraph (2). The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(1), if the person to be examined is confined in prison or if, without the written stipulation of the parties:

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

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

(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.**

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

(2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by non-stenographic means.

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

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes:

(A) The officer's name and business address;

(B) The date, time, and place of the deposition;

(C) The name of the deponent;

(D) The administration of the oath or affirmation to the deponent; and

(E) An identification of all persons present.

If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(5) 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.

(c) **Examination and Cross-examination; Record of Examination; Oath; Objections.** Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the applicable Rhode Island Rules of Evidence except Rules 103 and 615. Subject to a contrary court order or agreement of the parties, no person whose presence at a deposition has been requested by any attorney of record or self-represented litigant shall be excluded from attending the deposition. However, attendance at depositions of persons other than the deposition officer (reporter), the witness, attorneys, and parties to the action shall not be permitted unless notice of same has been given to all attorneys of record and self-represented litigants at least forty-eight (48) hours before the deposition. The officer before whom the deposition is to be taken or, in a non-stenographic deposition, the examining attorney or 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 a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the county where the deposition is being taken may order the officer or examining attorney conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order or to obtain a ruling by telephone. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) **Review by Witness; Changes; Signing.** If requested by the deponent or a party before completion of the deposition, the deponent shall have thirty (30) days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate 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; 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 and that the 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.

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 the party and 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 that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the other party and that party's attorney in so attending, including reasonable attorney's fees.

31. Depositions Upon Written Questions. — (a) **Serving Questions; Notice.**

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

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(1), if the person to be examined is confined in prison or if, without the written stipulation of the parties, the person to be examined has already been deposed in the case.

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

(A) The name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; and

(B) The name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

(4) Within fourteen (14) days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within seven (7) days after being served with cross questions, a party may serve redirect questions upon all other parties. Within seven (7) days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) **Officer to Take Responses and Prepare Record.** A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(b), (c), (e), and (f) to take the testimony of the witness in response to the questions and to prepare, certify, and unless otherwise ordered by the court, to send the deposition to the examining attorney or self-represented litigant, who shall retain the transcript as provided in Rule 30(f)(1), attaching thereto the copy of the notice and the questions received by the officer.

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

32. Use of 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. On request of any party in a case tried before a jury, deposition testimony offered other than for impeachment purposes shall be presented in non-stenographic form, if available, unless the court for good cause orders otherwise.

(e) **Effect of Errors and Irregularities in Depositions.**

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

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

(3) *As to Taking of Deposition.*

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

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be

obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five (5) days after service of the last questions authorized.

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

33. Interrogatories to Parties. — (a) **Availability; Answers; Objections.** Any party may serve upon any 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 sixty (60) days after service of process upon the defendant, leave of court granted with or without notice must be first obtained.

Each interrogatory 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 the party's answers a party may serve specific written objections to particular interrogatories, stating the grounds on which the objections are based. The party shall answer to the extent the interrogatory is not objectionable. Failure to serve such objections within the time prescribed 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.

(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 extent permitted

by the Rhode Island Rules of Evidence. Interrogatories may be served before or after a deposition has been taken, and a deposition may be sought before or 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 may serve more than one (1) set of interrogatories upon another party provided 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) 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 subsequently obtain information which renders such answers incomplete or incorrect, amended answers shall be served within a reasonable time thereafter but not later than thirty (30) days prior to the day fixed for trial. Thereafter amendments may be allowed only on motion and upon such terms as the court may direct.

(d) **Option to Produce Business Records.** If the answer to an interrogatory may be derived or ascertained from the business records (including electronically stored information) 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.

34. Production of Documents, Electronically Stored Information, and Things; Entry Upon Land for Inspection for Other Purposes. — (a) **Scope.** Any party may serve on any other party a request within the scope of Rule 26(b):

(1) To produce and permit the party making the request, or someone acting on the 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, sound 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 format; or

(B) Any designated tangible thing.

(2) To permit entry upon designated land or other property possessed or controlled 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.

(b) **Procedure.**

(1) 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. The request shall set forth the items to be inspected, copied, tested, or sampled either by individual item or by category, and describe each item and category with reasonable particularity. A party requesting production of electronically stored information may specify the format in which each type of electronically stored information is to be produced. The request shall specify a reasonable time, place, and manner of making the inspection, copy, test, or sample.

(2) 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. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection, copying, testing, or sampling 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, copying, testing, or sampling permitted of the remaining parts. Any response to a request for production of any electronically stored information shall also state, with respect to each item or category in the request:

(A) That inspection, copying, testing, or sampling of the information will be permitted as requested; or

(B) Any objection to the request and the reasons for the objection.

(3) A party who produces documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(4) If a party responding to a request for production of electronically stored information objects to a specified format for producing the information, or if a format is not specified in the request, the responding party shall state in the response the format for production of each type of electronically stored information. Unless the parties otherwise agree or the court otherwise orders:

(A) If a request for production does not specify a format for producing a type of electronically stored information, the responding party shall produce the information in a format in which it is ordinarily maintained or in a format that is reasonably usable; and

(B) A party need not produce the same electronically stored information in more than one format.

(5) The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection, copying, testing, or sampling as requested.

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

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

(b) **Report of Examiner.**

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requesting party a copy of a detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnoses and

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

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

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

36. Requests for Admission. — (a) **Request for Admission.** A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. 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 matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney, 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.

(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 under this rule is for the purpose of the pending action only and is not an admission by the party for any other purpose nor may it be used against the party in any other proceeding except in a subsequent action between the same parties involving the same claim.

37. Failure to Make or Cooperate in Discovery: Sanctions. — (a) **Motion for Order Compelling Discovery.** A party, upon reasonable notice to other parties and

all persons affected thereby, may apply for an order compelling 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.

(D) Absent exceptional circumstances, the court may not impose sanctions on a party under these rules for failure to provide electronically stored information lost as a result of the routine, good faith operation of an electronic information system.

(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 punished as a contempt of court.

(2) *Other Consequences.* If a party or an officer, director, or managing agent of 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 or Rule 35, 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 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 designated matters in evidence;

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

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

(E) 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), (B), and (C) of this subdivision of this rule, unless the party failing to comply shows that the party 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 requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making such proof, including reasonable attorney's fees.

The court may 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 fails

(1) to appear before the officer who is to take the deposition, after being served with a proper notice, or

(2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or

(3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request,

the court 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.

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

38. Jury Trial of Right. — (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:

(1) Serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than ten (10) days after the service of the last pleading directed to such issue; and

(2) Filing the demand as required by Rule 5(d). Such demand may be indorsed upon a pleading of the party.

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

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

39. Trial by Jury or by the Court. — (a) **By Jury.** When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless:

(1) The parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury; or

(2) The court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the 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.

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 motion upon notice to the adverse parties.

Precedence shall be given to actions entitled thereto by statute. However, no motion to assign a case for trial shall be made within forty (40) days of service of summons, complaint, and Language Assistance Notice on all necessary parties.

(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.

41. Dismissal of Actions. — (a) **Voluntary Dismissal; Effect Thereof.**

(1) *By Plaintiff; By Stipulation.* Subject to the provisions of Rule 23(e), Rule 66(j), and 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, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of this or any other state or of the United States an action based on or including such claim.

(2) *By Order of Court.* Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant 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 or to proceed when the action is reached for trial. Notice that an action will be in order for dismissal on a day certain shall be served upon the plaintiff's attorney of record and upon the plaintiff if the plaintiff's address is known. If there is 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.

(3) *Effect.* Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision (b) and any dismissal not provided for in this rule,

other than a dismissal for lack of jurisdiction or for improper venue or for lack of an indispensable party, operates as an adjudication upon the merits.

(c) **Dismissal of Counterclaim, Cross-claim, or Third Party Claim.** The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, third party claim, or additional 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.

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, 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.** Subject to the provisions of Rule 38(a), the court in furtherance of convenience or to avoid prejudice or when separate trials will be conducive to expedition and economy, may order a separate trial in the county where the action is pending or in a different county of any claim, cross-claim, counterclaim, or third party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third party claims, or issues.

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, 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. The competency of a witness to testify shall be determined in like manner.

(b) **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.

(c) **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.

(d) **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.

(e) **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.

(f) **Order of Trial.**

(1) *Opening and Closing.* The party holding the burden of proof 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 is on the plaintiff and with respect to others it is on the defendant, the plaintiff shall open and close.

(3) *Probate Appeals.* On appeals from probate of a will, the party with the burden of proof shall open and close and shall be required, in putting in the case, only to submit the formal evidence of execution and capacity.

(g) **Withdrawal of Evidence.** Attorneys shall withdraw forthwith after the final disposition of cases, with the approval of the court, all books, papers, documents, plats, and things introduced in evidence and not required by statute, rule, or special order to remain on file, upon leaving copies thereof duly attested by the clerk, if the court shall so direct. If the same are not withdrawn within thirty (30) days the clerks shall not be required to preserve the same; but no original paper for 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.

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 the officer's 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 the officer's 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 is found to exist in the records of that office is admissible as evidence that the records of 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.

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

45. Subpoena. — (a) **Form; Issuance.**

(1) Every subpoena shall:

(A) Be issued by the clerk of court or a notary public or other officer authorized by statute;

(B) State the name of the court from which it is issued;

(C) State the title of the action, the name of the court in which it is pending, and its civil action number;

(D) Command each person to whom it is directed to attend and give testimony or to produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things in the possession,

custody, or control of that person or to permit inspection of premises at a time and place therein specified; and

(E) Set forth the text of subdivisions (c) and (d) of this rule.

A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A subpoena may specify the format in which electronically stored information is to be produced.

(2) A subpoena must issue as follows:

(A) For attendance at a trial or hearing, in the name of the court where the hearing or trial is to be held;

(B) For attendance at a deposition, in the name of the court in which the action is pending, stating the method for recording the testimony; and

(C) For production or inspection, if separate from a subpoena commanding a person's attendance, in the name of the court in which the action is pending.

(b) **Service.**

(1) A subpoena may be served by a duly authorized officer in accordance with Title 9, Chapter 5 (Writs, Summons, and Process) of the Rhode Island General Laws 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, if the person's attendance is commanded, by tendering to that person the fees for one (1) day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the state or any 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.

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

(c) **Protection of Persons Subject to Subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

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

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

(C) If a person responding to a subpoena for production of electronically stored information objects to a specified format for producing the information, or if a format is not specified in the subpoena, production by the person shall be in a format which is ordinarily maintained or one that is reasonably usable. A person need not produce the same electronically stored information in more than one (1) format.

(D)(i) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or expense. On motion to compel discovery or for a protective order, the person objecting to discovery bears the burden of showing that the information is from a source that is not reasonably accessible because of undue burden or expense.

(ii) The court may order discovery of electronically stored information that is from a source that is not reasonably accessible because of undue burden or expense if the party requesting discovery shows that the likely benefit of the proposed discovery outweighs the likely burden or expense, taking into account the amount in controversy, the resources of the parties, the importance of the issues, and the importance of the requested discovery in resolving the issues.

(iii) If the court orders such discovery, the court may set conditions for discovery of the information, including allocation of the expense of discovery.

(iv) The court shall limit the frequency or extent of discovery of electronically stored information, even from a source that is reasonably accessible, if the court determines that:

(I) The information may be obtained from some other source that is more convenient, less burdensome, or less expensive;

(II) The discovery sought is unreasonably cumulative or duplicative;

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

(IV) The likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues, and the importance of the requested discovery in resolving the issues.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) Fails to allow reasonable time for compliance;

(ii) Requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iii) Subjects a person to undue burden or expense.

(B) If a subpoena

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

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

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(C) If electronically stored information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for the claim. After being notified of a claim of privilege or of protection, a party shall immediately sequester the specified information, including any copies, and:

(i) Return or destroy the information and all copies and not use or disclose the information until the claim is resolved; or

(ii) Present the information to the court under seal for a determination of the claim and not otherwise use or disclose the information until the claim is resolved. If a party that received notice of a claim of privilege or of protection disclosed the information subject to the notice before being notified, the party shall take reasonable steps to retrieve the information.

(d) **Duties in Responding to Subpoena.**

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

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

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

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 the objection thereafter, but every part of such testimony thereafter introduced shall be deemed to have been duly objected to and the objection overruled.

47. Jurors. — (a) **Examination of Jurors.** The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their

attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper. The examination shall be conducted under oath if requested.

(b) **Alternate Jurors.** The court may direct that one (1) or (2) two jurors in addition to the regular panel be called and impanelled to sit as alternate jurors as provided by law.

48. Number of Jurors. — Unless the parties otherwise stipulate and the court approves, the court shall seat a jury of six (6) and the verdict shall be unanimous.

49. Special Verdicts and Interrogatories. — (a) **Special Verdicts.** The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written 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 the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

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

jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

(c) **Verdicts on Multiple Counts.** In cases tried by a jury on more than one (1) count, the court may require the jury to return a separate verdict as to each count.

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

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

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

(3) When a motion for judgment as a matter of law is made at the close of the evidence offered by an opponent, the court in lieu of granting the motion may order the claim involuntarily dismissed on such terms and conditions as are just, and the dismissal shall be without prejudice. In the absence of a motion, the court may take such action on its own initiative.

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

(c) **Conditional Rulings on Grant of Motion for Judgment as a Matter of Law.**

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

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

(d) **Denial of Motion for Judgment as a Matter of Law.** If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the Supreme Court concludes that the trial court erred in denying the motion for judgment.

51. Argument of Counsel — Instructions to Jury. — (a) **Time for Argument.** Counsel for each party shall be allowed one (1) hour for argument; in cases commenced in district courts the time shall be limited to forty (40) minutes. 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.

52. Findings by the Court; Judgment on Partial Findings. — (a) **Effect.** In all actions tried upon the facts without a jury or with an advisory jury, the court shall

find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Findings of 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 59 and subdivision (c) of this rule.

(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.

(c) **Judgment on Partial Findings.** If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule. In lieu of ordering judgment as a matter of law, the court, on motion or on its own initiative, may order the action dismissed without prejudice on such terms and conditions as are just.

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, 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. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain the report as security for 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 when an investigation of accounts is required or the issues are complicated; in an action to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

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

(d) **Proceedings.**

(1) *Meetings.* When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 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 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 for contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

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

(e) **Report.**

(1) *Contents and Filing.* The master shall prepare a report upon the matters submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with 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. Unless otherwise directed by the order of reference, the master shall serve a copy of the report on each party.

(2) *In Non-jury Actions.* In 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 the report or may reject it in whole or in part or may receive further evidence or may recommit 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 the master are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objection in point of law which may be made to the report.

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

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

VII. JUDGMENT

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 than one (1) claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one (1) or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

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

(d) **Costs.** Costs (including costs on depositions as provided for in Rule 54(e)) shall be allowed as of course to the prevailing party as provided by statute and by these rules unless the court otherwise specifically directs. Costs may be taxed by the clerk upon ten (10) days' notice by the prevailing party. 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. If no objection is filed, the clerk shall tax the costs in accordance with the law. If an objection is filed, said objection shall be heard by the court.

(e) **Costs on Depositions.** If objected to, the taxation of costs in the taking of depositions shall be subject to the discretion of the court. In case of such objection, 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.

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.

(2) *By the Court.* In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a guardian, guardian ad litem, or such other representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least ten (10) 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.), 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, a third party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

56. Summary Judgment. — (a) **For Claimant.** A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 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 the party's favor upon all or any part thereof.

(b) **For Defending Party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for 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, documents, electronically stored information, 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 matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) **Case Not Fully Adjudicated on Motion.** If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel 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 the 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 the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

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

(g) **Affidavits Made in Bad Faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to 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 the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

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.

58. Entry of Judgment. — (a) **After Trial or Hearing.** Subject to the provisions of Rule 54(b):

(1) 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 sign and enter the judgment without awaiting any direction by the court; or

(2) 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 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. 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 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.

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 for error of law occurring at the trial or for any of the reasons for which new trials have heretofore been granted 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 after the entry of the judgment.

(c) **Time for Serving Affidavits.** When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 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 of judgment the court of its own initiative may order a new trial for any reason for which it might

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

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

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) Mistake, inadvertence, surprise, or excusable neglect;

(2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) Fraud, misrepresentation, or other misconduct of an adverse party;

(4) The judgment is void;

(5) The judgment has been satisfied, released, or discharged, or a prior judgment upon which 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) 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. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

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.

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 has expired. Unless otherwise ordered by the court, 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 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 the court considers proper for the security of the rights of the adverse party.

(d) **Stay Upon Appeal.** When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court. The requirement of a supersedeas bond shall not apply to the State of Rhode Island in cases in which it is the appellant.

(e) **Stay of Judgment as to Multiple Claims or Multiple Parties.** When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may

stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

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

63. Inability of a Judicial Officer to Proceed. — If a trial or hearing has been commenced and the judicial officer is unable to proceed, 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

64. Replevin. — (a) **Issuance.** A plaintiff claiming the possession of goods and chattels wrongfully taken or detained shall proceed by complaint and summons in an action under these rules and in connection therewith may make a motion for issuance of a writ of replevin as provided by law, which shall be served along with the a summons, complaint, Language Assistance Notice, and all other required documents. The motion shall be granted only upon a showing that there is a probability of a judgment being rendered in favor of the plaintiff and that there is a substantial need for transfer of possession of the goods and chattels to the plaintiff pending adjudication of the claim. In lieu of ordering issuance of the writ of replevin the court may order the defendant to give security for satisfaction of any judgment which may be rendered in the action. A surety upon a bond or undertaking hereunder shall be subject to the provisions of Rule 65(c). A motion for issuance of a writ of replevin shall not be granted ex parte.

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

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

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; Notice; Hearing; Duration.** A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if:

(1) It clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition; and

(2) The applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance and shall expire by its terms within such time after entry, not to exceed ten (10) days, as the court fixes, unless within the time so fixed the order, for good cause shown, and after hearing of argument by the parties or attorneys, is extended for like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. On two (2) days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or

modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

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

(c) **Security.** Upon the issuance of a restraining order or 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 to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith send copies to the persons giving the security if their addresses are known.

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

(e) **Labor Disputes.** These rules are subject to any statutory provisions relating to temporary restraining orders or injunctions in actions involving labor disputes.

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 the business property or assets affected by such appointment; that facts be set forth justifying the appointment of a receiver and 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, 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 of the court such application shall not be again made to any other judicial officer unless there is a material change in circumstances. The judicial officer to whom such application was originally presented shall note the judicial officer's action in the case file containing such application.

(c) **Counsel to Receiver.** A receiver may employ such counsel as may be approved by the court upon written application by 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:

(1) Of counsel by a receiver when the receiver is a member of the Rhode Island bar; or

(2) 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:

(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 court by the receiver, unless otherwise ordered, every thirty (30) days, setting forth the financial condition of the receivership and, in case the receiver is operating the business, the receiver's recommendations as to its further continuance, and, if the receiver is not operating the 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 the creditor's or claimant's claim, which statement shall set out the address, the nature and amount of such claim and of any security or lien held by the creditor or claimant to which 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 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.

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 in said county. 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 Superior Court and indorsed "for deposit only" by the clerk of the court. Such funds shall be deposited in an account designated by the Supreme Court Director of Finance in the name of the Registry of the Superior 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.

(c) **Registry Fees.** 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.

68. Offer of Judgment; Payment into Court. —(a) **Offer of Judgment.** At any time more than ten (10) days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in 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 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) Accept the tender and have judgment for the party's costs:

(2) Reject the tender: or

(3) Accept the tender as part payment only and proceed with 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 interest or costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted, or accepted only as part payment, does not preclude a subsequent offer.

69. Execution, Supplementary Proceedings, Attachment and Trustee Process After Judgment. — (a) **Execution.** Process to enforce a judgment for the payment of money shall be a writ of execution unless the court directs otherwise. The procedure on execution, 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 a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules.

(b) **Citation in Supplementary Proceedings.**

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

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

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

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

JUDGMENT DEBTOR MUST APPEAR IN COURT" on the copy of the execution left with the judgment debtor.

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

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

(c) **Decree for Installment Payments.**

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

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

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

(d) **Contempt.** A refusal or willful failure to comply within the time stated in the decree shall be punishable as a contempt of court. If, as a result of contempt proceedings, the judgment debtor is imprisoned by order of the court, said

incarceration shall not operate to satisfy said judgment or bar any action to reach any assets, either at law or at equity.

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

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

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

(f) **Attachment of Wages After Judgment.** A writ of attachment to be served as a writ of garnishment of wages after the plaintiff's claim has been reduced to judgment in any civil action shall be issued, in the same action, only upon motion and notice to the defendant and an opportunity to be heard thereon and shall contain the date of the hearing, which shall be not less than ten (10) nor more than twenty-five (25) days after the date of the mailing of the notice. No wage attachment shall be served upon an employer until after the date of the hearing. However, a debtor's failure to object to said motion shall not be deemed as a waiver of any statutory exemptions available to said debtor, and a debtor may move at any time to amend or vacate an order of attachment. The granting of said motion shall relate only to current and identified wages, and recovery in post-judgment process shall be limited to the amount of the judgment plus actual costs expended and post-judgment statutory interest. If, after the time set for hearing, the motion is granted, then a writ of attachment may be served upon the employer, along with a completed copy of a notice to the employer setting forth the obligations of the employer. A writ of attachment so issued shall expire without prejudice unless served upon the employer within forty-five (45) days of its issuance, and no subsequent writ of attachment shall be issued in the same action without notice to the defendant and an opportunity for a hearing as provided herein.

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 some other person appointed by the court, and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for 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.

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

IX. APPEALS

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 Superior Court to the Supreme Court application for certification shall be made by motion served on every other party at least ten (10) 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 Superior 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 Superior Court to certify or vests in the Superior Court discretion with respect to certification.

73 –- 76. [Repealed.]

77. Superior Court and Clerks. — (a) **Superior Court Always Open.** Subject to law the Superior Court shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning process, and of making and directing all interlocutory motions, orders, and rules.

(b) **Trials and Hearings; Orders in Chambers.** All trials upon the merits shall be conducted in open court and so far as practicable in a regular court room. All other acts or proceedings may be done or conducted by a judicial officer 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 process after the commencement of a lawsuit, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; 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 make a note in the docket. Such notation 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 attorneys.

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

(e) **Transmittal of Papers.** When a matter has been duly set down for hearing in a county other than that in which the action is pending, 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.

When the court orders a change of venue such order shall include a direction to the clerk to 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 Orders.** Whenever a written order is required by the court, any interested party may file in the clerk's office an order carrying the same into effect with a Certificate of Service in accordance with Rule 1(b)(1)(B) that a copy has been sent to all the other parties. If only one (1) order is filed and no objection thereto be

filed within four (4) days thereafter, the clerk shall enter the order. If more than one (1) order is filed or if objection be filed within said four (4) days, the order shall be entered only by the court.

78. Stenographic Reports — Transcripts of Testimony. — Every party requesting a court reporter to transcribe testimony taken in court by the court reporter shall be required to pay for the transcript at a rate not to exceed three dollars ($3.00) per page for originals and one dollar and fifty cents ($1.50) per page for copies. 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 three dollars ($3.00) per page for originals and one dollar and fifty cents ($1.50) per page for copies 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.

79. Books and Records Kept by the Clerk and Entries Therein. — (a) **Civil Docket.** The clerk shall keep the civil docket and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket 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 demand or order in the docket.

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

(c) **Other Records of the Clerk.** The clerk shall also keep such records as may be required by law or by order of the judicial officers of the court.

X. SPECIAL RULES FOR CERTAIN ACTIONS

80. Review of Administrative Action. — (a) **Mode of Review.** When a statute provides for review by the Superior 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 and any other required documents 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 a demand for judgment for the relief the plaintiff seeks. 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

81. Applicability of Rules. — (a) **To What Proceedings Applicable.**

(1) These rules do not apply during the process and pleading stages to the following proceedings:

(A) Probate appeals;

(B) Proceedings in condemnation;

(C) Petitions for enforcement of mechanics' liens; and

(D) Statutory petitions for receiverships and for dissolution of corporations.

(2) These rules do not apply to the following proceedings:

(A) Assignments for benefit of creditors;

(B) Petitions for foreclosure of redemption of interests in land sold for nonpayment of taxes;

(C) Naturalization proceedings; and

(D) Prerogative writs except where governed by this rule or Rule 80.

(3) These rules do not apply to petitions for the writ of habeas corpus.

(b) **District Court Appeals — Repleading, Discovery, Claim of Trial by Jury.** Repleading is not required of either party in a civil action certified on appeal from a District Court unless the court so orders. Within ten (10) days after the action has been certified on appeal the plaintiff may serve an amended complaint to which the defendant shall respond under these rules. If there has been no repleading by the plaintiff within ten (10) days after certification on appeal, the defendant within an additional ten (10) days may present any additional defenses or counterclaims by motion or answer as provided in these rules. Thereafter amendments shall be permitted in accordance with these rules. In the absence of repleading all claims and defenses available to the parties in the District Court shall remain available on appeal. A party demanding a jury trial shall serve a demand therefor not later than ten (10) days after certification on appeal unless such demand was made in the District Court; a docket notation that the action is a jury case does not suffice.

The provisions of Rules 26 through 37, relative to discovery, shall not be applicable to actions certified on appeal from the District Court except upon order issued on notice and a showing that lack of discovery will result in an injustice or undue hardship. Material obtained by the use of discovery processes in the District Court may be used at the trial of such appeals to the same extent as if such discovery had taken place in this court pursuant to these rules.

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

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

82. Jurisdiction and Venue Unaffected. — These rules shall not be construed to extend or limit the jurisdiction of the Superior Court or the venue of actions therein.

83. Rules of Practice and Orders. — Rules of practice which may be adopted from time to time by a majority of the judicial officers of the Superior Court and administrative orders promulgated by the presiding justice 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 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.

84. Forms. — The forms 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.

85. Out-of-State Counsel. — 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 Superior Court unless granted leave to do so by the Superior Court or by the Supreme Court. Unless the Superior Court or the Supreme Court permits otherwise, any attorney who is granted such leave to practice before the Superior 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 Superior 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.

86. Effective Date. — These amended rules shall take effect on November 5, 2014. 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.

APPENDIX OF FORMS

1. The following forms located on the Judiciary's website at *www.courts.ri.gov* under the heading of Public Resources, Forms and are sufficient under the rules. They are limited in number. No attempt is made to furnish a manual of forms.

Affidavit and Request for Entry of Default
Application for Citation in Supplementary Proceedings
Arbitration — Arbitrator's Award
Arbitration — Court Annexed Arbitration Certificate
Arbitration — Rejection of Arbitrator's Award for Cases Certified to Arbitration After January 1, 2014
Arbitration — Rejection of Arbitrator's Award for Cases Certified to Arbitration Before January 1, 2014
Arbitration — Report of Arbitrator
Arbitration — Selection of Arbitrator
Business Calendar Case Opening Sheet
Coversheet for Application for Court Approval of Transfer of Structured Settlement Proceeds
Entry of Appearance — Civil
Judgment by Default Upon Application to Clerk
Language Assistance Notice — Cambodian
Language Assistance Notice— English
Language Assistance Notice — Portuguese
Language Assistance Notice — Spanish
Mechanics' Lien for Advertising
Mechanics' Lien Citation
Mediation Submission Form
Motion, Affidavit, and Order to Proceed in Forma Pauperis
Motion to Protect Non-public Information in a Case Filed Prior to Electronic Filing
Notice and Motion to Attach Wages and Defendant/Debtor's Objection to Wage Attachment
Notice of Appeal
Notice of Attachment (Not for Wages) and Defendant/Debtor's Objection to Notice of Attachment (Not for Wages)
Notice to Employer (Trustee-Garnishee)
Omnibus Calendar Assignment Form
Petition for Waiver of the Mandatory Electronic Filing Requirements
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
Request for Transcript
Stipulation
Subpoena — Civil
Writ of Attachment
Writ of Replevin

2. Except where otherwise indicated, each pleading, motion, and other paper should have a caption similar to that of the forms listed above. 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.

4. If a self-represented litigant, the signature, address, email address (if electing to utilize the EFS), and telephone number of the self-represented litigant are required in place of those of the attorney.