

COMMONWEALTH OF MASSACHUSETTS

At the Supreme Judicial Court holden at Boston within and for said Commonwealth on the twenty-second day of May, in the year two thousand and eighteen:

present,

<u>HON. RALPH D. GANTS</u>)	Chief Justice
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<u>HON. BARBARA A. LENK</u>)	
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<u>HON. FRANK M. GAZIANO</u>)	Justices
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<u>HON. DAVID A. LOWY</u>)	
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<u>HON. KIMBERLY S. BUDD</u>)	
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<u>HON. ELSPETH B. CYPHER</u>)	
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<u>HON. SCOTT L. KAFKER</u>)	

ORDERED: That the Massachusetts Rules of Civil Procedure adopted by order dated July 13, 1973, as amended, to take effect on July 1, 1974, are hereby amended as follows:

Rule 8.1 By inserting the new Rule 8.1, attached hereto.

Rule 55.1 By inserting the new Rule 55.1, attached hereto.

The amendments accomplished by this order shall take effect on January 1, 2019, for cases commenced after that date.

ORDERED:

<u>RALPH D. GANTS</u>)	Chief Justice
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<u>BARBARA A. LENK</u>)	
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<u>FRANK M. GAZIANO</u>)	Justices
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<u>DAVID A. LOWY</u>)	
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<u>KIMBERLY S. BUDD</u>)	
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<u>ELSPETH B. CYPHER</u>)	
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<u>SCOTT L. KAFKER</u>)	

SPECIAL REQUIREMENTS FOR CERTAIN CONSUMER DEBTS

- (a) Definitions. As used in this rule, the following definitions shall apply:
- (1) “Action” means a proceeding where the plaintiff seeks to collect a debt incurred pursuant to a revolving credit agreement.
 - (2) “Charge-off” means the treatment of a receivable balance as a loss or expense because payment is unlikely.
 - (3) “Debt” means any obligation or alleged obligation to pay money arising out of a transaction in which the money, personal property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes. Debt shall not include obligations to pay money arising out of a loan secured by real property.
 - (4) “Original creditor” means the person or entity first owed the debt.
 - (5) “Revolving credit agreement” means an agreement pursuant to which the consumer may purchase, at retail, goods or services or merchandise certificates on credit from time to time and under the terms of which a finance charge is to be computed in relation to the consumer’s balance from time to time.
- (b) Special requirements. In any action as defined in subdivision (a)(1) of this rule involving a debt as defined in (a)(3), the plaintiff shall file simultaneously with the complaint the affidavits, documentation, and certification provided for in subdivisions (c)-(f) of this rule. The affidavits, documentation, and certification shall be served on the defendant with the complaint.
- (c) Affidavit regarding debt. An affidavit disclosing the following information with particularity:
- (1) The name, position, and employer of the affiant;
 - (2) The name of the current owner of the debt;
 - (3) The name of the original creditor, including the name under which the original creditor did business with the defendant, if different;
 - (4) For debt arising from a credit card sponsored or co-sponsored by a retailer, the name of the sponsoring or co-sponsoring retailer;
 - (5) The last four digits of the account number(s) assigned by the original creditor;
 - (6) The amount and date of the defendant’s last payment, if any, or a representation by the affiant that no payment has been made;
 - (7) The date of charge-off;
 - (8) The amount of the debt on the date of charge-off;
 - (9) For the portion of the debt incurred after the date of charge-off, an itemization of the debt (broken down by principal, interest, fees, or other charges) and the method of calculating such principal, interest, fees, or other charges;
 - (10) A chronological listing of the names of all prior owners of the debt and the date of each transfer of ownership of the debt, beginning with the original creditor; and

- (11) An attestation that the affiant personally reviewed records sufficient to establish the information requested in this subdivision (c).
- (d) Affidavit providing documentation of debt. An affidavit with legible copies of the following documents:
 - (1) Documents establishing the existence, amount, and terms and conditions applicable to the debt, including:
 - (A) A document provided to the defendant before the date of charge-off demonstrating the defendant incurred the debt and the amount owed;
 - (B) Documents establishing the terms and conditions applicable to the debt;
 - (C) The written document, if any, signed by the defendant evidencing the defendant's agreement to the terms and conditions described in the documents in (d)(1)(B) or, if a signed copy of such document is not within the possession, custody, or control of the plaintiff, documents evidencing the defendant's acceptance of such terms and conditions (which may include the most recent monthly statement reflecting a purchase, payment, or balance transfer authorized by the defendant before the date of charge-off); and
 - (2) Each bill of sale, assignment, or other document evidencing the transfer of ownership of the debt, beginning with the original creditor. Such documentation must include a specific reference to the defendant or the defendant's account number.
- (e) Affidavit regarding address verification. An affidavit stating that the defendant's residential address has been verified within three months prior to the commencement of the action by at least one of the following methods:
 - (1) Receipt of correspondence from the defendant with that return address or other verification from the defendant within the three-month period that such address is current;
 - (2) Certified mail receipt signed by the defendant with that address within the three-month period; or
 - (3) Sending a letter by first-class mail to that address for the defendant that has not been returned to sender by the postal service, and verifying the same address as current using a paid subscriber-based commercial online database and, if available, either a municipal record, such as a street list or tax records, or a state motor vehicle registry.

The affidavit shall describe the verification method(s) used and the date(s) of the verification. If any database or municipal or state record(s) used shows more than one address for the defendant during the last 12 months, the plaintiff shall state the basis for selecting the address(es) to be used for service. Documents reflecting such verification shall be attached.

- (f) Statute of limitations certification. A certification from the plaintiff or counsel for the plaintiff stating:
 - (1) Whether the terms and conditions applicable to the debt included a choice of law or limitations provision, and, if so, what such provision(s) stated;
 - (2) The statute or other law establishing the limitations period, if any; and

- (3) That, based on reasonable inquiry, the applicable limitations period has not expired.

MASS. R. CIV. P. 55.1

**SPECIAL REQUIREMENTS FOR DEFAULTS
AND DEFAULT JUDGMENTS FOR CERTAIN CONSUMER DEBTS**

(a) Applicability. In addition to the requirements of Rule 55, the provisions of this rule shall apply to the entry of default for failure to appear or otherwise defend and to the entry of judgment after default in all actions subject to the requirements of Rule 8.1.

(b) Default.

(1) Affidavit required. When requesting a default, or upon request of the clerk for the purpose of entering a default, counsel for the plaintiff shall sign, serve, and file an affidavit stating that (i) counsel has personally reviewed the documentation filed and served pursuant to Rule 8.1; (ii) the documentation meets all requirements of Rule 8.1(c)-(f) (with any exceptions specifically stated); and (iii) the documentation establishes the plaintiff's entitlement to judgment in the amount claimed by the plaintiff. A self-represented plaintiff shall sign, serve, and file an affidavit with the same content. In entering a default, the clerk may rely upon the affidavit.

(2) Non-entry of default. If the plaintiff has not complied with the requirements of Rule 8.1 and subdivision (b)(1) of this rule, the clerk shall not enter a default against the defendant and shall so notify the parties. The court shall dismiss the complaint without prejudice on or after the 30th day after the date of notice by the clerk unless the plaintiff shows cause, with notice to the defendant, why the complaint should not be dismissed.

(c) Judgment. No default judgment against the defendant shall enter unless the clerk (if under Rule 55(b)(1)) or court (if under Rule 55(b)(2)) determines that the documentation filed and served by the plaintiff pursuant to Rule 8.1 and the affidavit pursuant to subdivision (b)(1) of this rule establish the plaintiff's entitlement to judgment in the amount claimed by the plaintiff. In entering a default judgment, the clerk or court may rely upon the affidavit pursuant to subdivision (b)(1) of this rule.

(d) Service. The plaintiff's request for entry of default judgment must be served on the defendant in accordance with Rule 5(b). The plaintiff must file proof of service of the request with the clerk or court. If service is to be made by mailing the request to the defendant's residential address, the plaintiff shall, within three months prior to the request, reverify the defendant's current residential address and shall file a new address verification affidavit pursuant to Rule 8.1(e).