

**COMMONWEALTH OF MASSACHUSETTS
HOUSING COURT DEPARTMENT
METRO SOUTH DIVISION**

SANDRA FROMMER,
Plaintiff

CIVIL ACTION NO. 26H82CV00041

v.

ERIKA MERRITT; UDR NYL DEALS GP LLC;
UDR, INC.; and LENOX FARMS LIMITED
PARTNERSHIP,
Defendants

**PLAINTIFF'S FIRST MOTION FOR RECONSIDERATION OF NONAPPEARANCE-BASED
DENIALS AND FOR DECISION OF PAPERS 5, 7, AND 11 ON THE WRITTEN
SUBMISSIONS, WITH INCORPORATED MEMORANDUM OF LAW**

**PAPER 5 STATUS CLARIFICATION REQUESTED — NO ORAL ARGUMENT
REQUESTED**

Plaintiff Sandra Frommer, appearing pro se and without waiving any objection to transfer, subject-matter jurisdiction, the completeness or accuracy of the transferred record, or the procedural posture reflected on this docket, respectfully moves under Mass. R. Civ. P. 54(b), Mass. R. Civ. P. 78, and the Court's inherent authority to reconsider interlocutory rulings. This is Plaintiff's first motion for reconsideration of the June 25, 2026 rulings.

Plaintiff uses the present caption, case number, and paper numbers solely because they are necessary to identify the filings as they presently appear in the receiving court's record. That use is not consent to the transfer from Suffolk Superior Court, acceptance of the Housing Court as the proper forum, or a concession that the present docket is complete, accurate, or properly attributed.

The requested relief is deliberately narrow. Plaintiff does not ask the Court to grant Papers 5, 7, or 11 because she was medically unable to participate on June 25. The Court may allow or deny each paper after considering the legal and factual grounds actually presented. Plaintiff asks only that the

nonappearance-based dispositions be vacated, that Paper 5's status be made explicit, and that each threshold paper receive a separate, express disposition after review of its written substance.

Plaintiff does not request oral argument. She expressly waives oral argument solely on this motion and Papers 5, 7, and 11 and consents to their determination on the written submissions. If the Court concludes that additional party input is necessary, Plaintiff requests a short written opposition-and-reply schedule rather than another oral hearing. This procedure eliminates the attendance issue while preserving Defendants' full opportunity to respond.

RELIEF REQUESTED

1. vacate the June 25, 2026 nonappearance-based denials of Papers 7 and 11;
2. clarify that Paper 5 remains pending or, to the extent the June 25 event notation was intended to deny Paper 5 for nonappearance or failure to prosecute, vacate that procedural denial;
3. restore Papers 5, 7, and 11 to, or maintain them in, pending status solely for adjudication of the threshold matters presented in those papers, without treating Plaintiff's use of this docket as consent to transfer;
4. submit Paper 5 first or contemporaneously with Papers 7 and 11 for determination on the existing written submissions under Mass. R. Civ. P. 78, without oral argument, or establish a short written opposition-and-reply schedule if supplementation is considered necessary;
5. enter a separate, express, and unambiguous written disposition of each paper after reviewing its written substance, identifying whether each paper is allowed or denied and whether the disposition rests on its substantive grounds or on a separately identified procedural ground;
6. consider Papers 23 through 25 and the finalized Certified English Translation and Translator's Certification submitted contemporaneously under separate impoundment procedures solely as corroboration of the reason for Plaintiff's June 25 nonappearance; and

7. at minimum, if the Court declines to vacate any June 25 ruling, enter an express order stating whether Paper 5 remains pending, was denied solely because of nonappearance or failure to prosecute, or was adjudicated on a separately stated substantive or procedural ground.

EXPRESS RESERVATION OF TRANSFER AND JURISDICTIONAL OBJECTIONS

This motion is not consent to the transfer from Suffolk Superior Court, acceptance of the Housing Court as the proper forum, acceptance of the completeness, accuracy, or attribution of the transferred record, or a request for adjudication of the underlying tort and statutory claims. Plaintiff seeks only a ruling on the threshold objections already asserted in Papers 5, 7, and 11. Mass. R. Civ. P. 11(b)(3) provides that an appearance does not, by itself, constitute a general appearance. Plaintiff's use of the present caption, docket number, and paper numbers is under express reservation and solely to identify the receiving court's current record. Her limited waiver of oral argument does not waive any transfer, subject-matter-jurisdiction, record-integrity, procedural, jury-trial, or appellate position asserted in Papers 5, 7, and 11.

MEMORANDUM OF LAW

I. RELEVANT PROCEDURAL HISTORY

Plaintiff commenced this action in Suffolk Superior Court as Civil Action No. 2584CV03086. It was entered in the Metro South Housing Court on February 12, 2026 as Civil Action No. 26H82CV00041. Plaintiff did not request or consent to the transfer and has consistently challenged the receiving court's authority, the scope of its subject-matter jurisdiction over the transferred claims, and the completeness and procedural integrity of the record transmitted from Superior Court.

On February 13, 2026, Plaintiff filed Paper 5, seeking retransfer to Suffolk Superior Court and a stay. Paper 5 challenges the transfer, the statutory scope of Housing Court jurisdiction over the transferred claims, and the completeness and procedural integrity of the transferred record. Plaintiff

thereafter filed Paper 7 on March 23, 2026 and Paper 11 on March 27, 2026 to preserve the originating action's procedural posture, obtain a ruling on the transfer objection, and correct or clarify docket matters.

The motions were ultimately scheduled for a virtual hearing on June 25, 2026. On June 24, Plaintiff filed Paper 17 requesting a continuance. The docket also reflects a communication received from Plaintiff on June 25. Plaintiff's medical condition materially prevented meaningful participation in the virtual hearing.

The Court denied the continuance and entered an event notation stating that the scheduled motions filed by Plaintiff were denied for failure to prosecute. Separate docket rulings expressly denied Papers 7 and 11 because Plaintiff did not appear. No separate June 25 order expressly identifies Paper 5 or states whether it remains pending, was included within the general event notation, or was adjudicated on its substantive grounds.

On June 26, Plaintiff filed Paper 23 seeking impoundment of the medical certificate and related materials, with the medical submissions reflected as Papers 24 and 25. Plaintiff contemporaneously submits the finalized Certified English Translation and Translator's Certification under separate impoundment procedures. No final judgment has entered. Plaintiff has not previously filed a motion for reconsideration of the June 25 rulings.

II. THE COURT HAS AUTHORITY TO RECONSIDER THE INTERLOCUTORY RULINGS

The June 25 rulings are interlocutory in nature and therefore remain subject to revision at any time before entry of final judgment. Mass. R. Civ. P. 54(b) recognizes that interlocutory orders may be revised before entry of final judgment. A trial judge retains authority to reconsider and correct an interlocutory ruling where justice so requires. See *Kauders v. Uber Technologies, Inc.*, 486 Mass. 557, 569 (2021); *Herbert A. Sullivan, Inc. v. Utica Mutual Insurance Co.*, 439 Mass. 387, 401 (2003).

The present motion does not ask the Court to revisit a reasoned merits determination. The June 25 dispositions rested on Plaintiff's absence from the hearing. The Court now has medical documentation corroborating the reason for that absence, an express waiver of oral argument, and a concrete written procedure for resolving the threshold papers without another hearing. Those materially developed circumstances support reconsideration of the procedural basis for the denials.

III. THE RECORD DOES NOT SUPPORT TREATING THE JUNE 25 NONAPPEARANCE AS ABANDONMENT

Plaintiff did not disappear from the litigation or consciously elect to abandon the pending motions. Before the hearing, she filed Paper 17 requesting a continuance and communicated her inability to participate. The following day, she filed medical materials and sought their impoundment. She now asks the Court to decide the threshold motions without waiting for her physical or virtual attendance. That prompt and continuous course of conduct is incompatible with abandonment, unreasonable delay, or an intentional failure to prosecute.

Massachusetts law strongly favors determination of cases on their merits and treats dismissal with prejudice as a drastic sanction that should be employed only in appropriate circumstances. See *Monahan v. Washburn*, 400 Mass. 126, 128–29 (1987); *Dewing v. J.B. Driscoll Insurance Agency*, 30 Mass. App. Ct. 467, 470–73 (1991). *Monahan* is particularly instructive because the Supreme Judicial Court emphasized the significance of a legitimate medical inability to appear, the absence of demonstrated prejudice, and the availability of less drastic alternatives. See 400 Mass. at 128–29. Similar equitable considerations include the promptness of the request for relief, the existence of a potentially meritorious position, the procedural posture of the case, whether the omission resulted from a deliberate litigation choice, the degree of prejudice to the opposing party, and whether the fault is fairly attributable to the litigant. See *Berube v. McKesson Wine & Spirits Co.*, 7 Mass. App. Ct. 426, 429–33 (1979).

The June 25 rulings did not dismiss the entire action, but they invoked failure to prosecute to dispose of threshold papers without reaching their substance. The rationale of *Monahan* and *Dewing* therefore applies in a measured way: reconsideration restores no substantive victory to Plaintiff and imposes no sanction on Defendants; it substitutes a readily available adjudicative procedure for procedural forfeiture based on one medically explained nonappearance.

IV. THE THRESHOLD PAPERS PRESENT QUESTIONS WORTHY OF JUDICIAL DETERMINATION

Paper 5 challenges the statutory authority for the transfer, the scope of Housing Court jurisdiction over the transferred claims, the completeness and integrity of the record transmitted from Suffolk Superior Court, and whether proceedings should be stayed pending resolution of those questions. Paper 7 requests recognition of the transferred action's procedural posture and an express ruling on Paper 5. Paper 11 seeks correction or clarification of docket attribution and related record-integrity matters. These are threshold questions concerning the proper tribunal and operative record, not collateral requests unrelated to the disposition of the case.

G. L. c. 185C, §§ 3 and 20 define the Housing Court's jurisdiction and the statutory conditions for transfer. Mass. R. Civ. P. 12(h)(3) requires the Court to address lack of subject-matter jurisdiction whenever it appears. Without asking the Court to prejudge the outcome, Papers 5, 7, and 11 raise material questions of law and record integrity that are worthy of judicial investigation and an express decision. See *Berube*, 7 Mass. App. Ct. at 433.

The Court may ultimately reject some or all of Plaintiff's arguments. But potential merit does not require certainty of success, and the existence of a genuine threshold controversy weighs against leaving those papers denied solely because of nonappearance. A separate ruling on their actual grounds will provide an intelligible trial-court record and permit meaningful review if review later becomes necessary.

V. WRITTEN DETERMINATION IS THE NARROW, PROPORTIONATE ALTERNATIVE

Mass. R. Civ. P. 78 authorizes the Court, in its discretion, to submit and determine motions without oral hearing and to require briefs in the form and within the time the Court directs. Plaintiff does not claim an entitlement to dictate the Court's procedure. She identifies written determination as the narrow, proportionate alternative that resolves the pending threshold issues while eliminating the attendance problem that produced the June 25 dispositions.

The substantive written submissions underlying Papers 5, 7, and 11 are already filed. Plaintiff now unequivocally waives oral argument on those papers. Defendants have notice of the motions and may rely on their existing submissions. If the Court considers the existing written record incomplete, a short written opposition-and-reply schedule will protect both sides, create a complete reviewable record, and avoid another oral hearing.

This request does not seek a predetermined result. The Court may allow or deny each paper after reviewing its actual legal and factual grounds. The critical distinction is between an express disposition after consideration of the paper and a denial based only on Plaintiff's medically explained absence. Once Plaintiff has waived oral argument and offered written supplementation, nonappearance is no longer a practical impediment to adjudication.

VI. PAPER 5 REQUIRES AN EXPRESS AND UNAMBIGUOUS DISPOSITION

The June 25 event notation can be read broadly, but the separately docketed rulings expressly identify Papers 7 and 11 and do not separately identify Paper 5. Paper 5 is the principal motion challenging transfer and seeking a stay. Its status therefore cannot remain uncertain while the case proceeds through pretrial management.

Mass. R. Civ. P. 79(a) requires maintenance of the civil docket and entry of the Court's orders. A clear record is especially important where Paper 5 presents the threshold issue of the proper tribunal and was framed to permit review of an express ruling. The Court should state whether Paper 5

remained pending or was encompassed within the June 25 notation; if it was procedurally denied, that denial should be vacated; and Paper 5 should then receive a separate written disposition after review of the grounds asserted in it.

VII. REQUESTING A RULING ON THRESHOLD OBJECTIONS DOES NOT ACCEPT THE TRANSFER OR THE PRESENT DOCKET

G. L. c. 185C, § 20 authorizes transfer only within the statutory framework governing Housing Court jurisdiction and, in the connected-actions context, addresses transfer with the papers relating to the actions. Papers 5, 7, and 11 contest whether the relevant statutory and procedural requirements were satisfied here. Mass. R. Civ. P. 12(h)(3) separately requires dismissal whenever lack of subject-matter jurisdiction appears, and Mass. R. Civ. P. 11(b)(3) confirms that an appearance does not, by itself, constitute a general appearance.

Plaintiff cannot obtain a ruling on the receiving court's authority, preserve the transfer issue for review, or seek retransfer without addressing the court in which the transferred action presently appears. That necessary act is not logically or legally an acceptance of the proposition being challenged. Likewise, using the current case number and paper numbers to identify the challenged record does not concede that the transfer was authorized or that the receiving docket is complete or accurate. Plaintiff seeks no ruling on the underlying tort and statutory claims through this motion and expressly preserves every transfer and jurisdictional position stated in Papers 5, 7, and 11.

VIII. THE REQUEST PROMOTES ORDERLY CASE MANAGEMENT AND CAUSES NO UNFAIR PREJUDICE

No final judgment has entered. Defendants have long had notice of the threshold motions. Written determination requires no immediate court event, imposes no material scheduling burden, and does not grant Plaintiff any substantive relief merely because of her medical condition. It determines only whether Papers 5, 7, and 11 should be allowed or denied on their actual grounds.

Resolving the proper forum, operative record, and status of Paper 5 before ordinary pretrial management avoids duplicative work and an uncertain appellate record. Paper 5 should be decided first or contemporaneously with Papers 7 and 11. Plaintiff is addressing the September 10, 2026 pretrial conference by separate motion so that this filing remains confined to reconsideration and written disposition of the threshold papers.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court vacate the nonappearance-based denials of Papers 7 and 11; clarify and, if necessary, vacate any procedural denial of Paper 5; restore or maintain Papers 5, 7, and 11 as pending threshold motions; decide Paper 5 first or contemporaneously with Papers 7 and 11 on the written submissions, with a written opposition-and-reply schedule if the Court considers supplementation necessary; and enter a separate written disposition identifying whether each paper is allowed or denied and the basis for that disposition. At minimum, the Court should enter an express order stating the status and basis of disposition of Paper 5. No oral argument is requested, and no request made here constitutes consent to transfer or acceptance of the present docket.

Respectfully submitted,

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/s/ Sandra Frommer

Sandra Frommer

Dated: July 14, 2026

CERTIFICATE OF SERVICE

I certify that on July 14, 2026, I served a true copy of the foregoing Plaintiff's Motion for Reconsideration with Incorporated Memorandum of Law upon counsel of record for

Lisa M. Gouveia, Esq. (*Counsel for Defendants*)
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Respectfully submitted,

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