

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

**IN RE: AMENDMENT TO COURT OF CHANCERY RULES, SECTION II,
RULE 5**

This 15th day of December 2014, IT IS HEREBY ORDERED that Court of Chancery Rules, Section II, Rule 5 shall be amended effective January 1st, 2015.

Rule 5 shall be amended as follows:

Rule 5. Service and filing of pleadings and other papers; appearance and withdrawal thereof.

(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~~each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(aa) Appearance: When; how made; withdrawal.— Except as otherwise provided by statute, a defendant may appear though a summons had not been served upon the defendant. Appearance may be made by the service and filing of notice thereof, or by the service or filing of any motion or pleading purporting to be responsive to or affecting the complaint. An appearance must bear the name of an individual attorney and not merely a firm name. No appearance shall be withdrawn except on written motion and order of the Court.

(b) Service of pleadings and papers: How made. —Whenever under these Rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party personally is ordered by the Court, or required by law. Service upon an attorney shall have the same force and effect as if made upon the party represented by that attorney. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney's or party's last known address or, if no address is known, by leaving it with the Register in Chancery. Delivery of a copy within this rule means: Handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(c) Same: Numerous defendants. —In any action in which there are unusually large numbers of defendants, the Court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or 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.— All papers after the complaint required to be served upon a party shall be filed with the Court within a reasonable time thereafter subject to the following provisions.

(1) All requests for discovery under Court of Chancery Rules 31, 33, 34, 35 and 36 and answers and responses shall be served upon other counsel or parties but shall not be filed with the Court. In lieu thereof, the party requesting discovery and the party serving responses thereto shall file with the Court a "Notice of Service" containing the following information:

_(a) a certification that a particular form of discovery or response was served on other counsel or opposing parties, and

_(b) the date and manner of service.

(2) The party responsible for service of the request for discovery and the party responsible for the response shall retain the originals and become the custodian of them. The party taking an oral deposition shall be custodian of the original; no copy shall be filed except pursuant to subparagraph (3). In cases involving out-of-state counsel, local counsel shall be the custodian.

(3) If depositions, interrogatories, requests for documents, requests for admission, answers or responses are to be used at trial or are necessary to a pretrial or post-trial motion, the verbatim portions thereof considered pertinent by the parties shall be filed with the Court when relied upon.

(4) When discovery not previously filed with the Court is needed for appeal purposes, the Court, on its own motion, on motion by any party or by stipulation of counsel, shall order the necessary material delivered by the custodian to the Court.

(5) The Court, on its own motion, on motion by any party or an application by a non-party, may order the custodian to file the original of any discovery document.

(6) When discovery materials are to be filed with the Court other than during trial, the filing party shall file the material together with a notice (a) stating in no more than one page, the reason for filing and (b) setting forth an itemized list of the material.

(7) It shall be the duty of the party on whose behalf a deposition was taken to make certain that the officer before whom it was taken has delivered the original transcript to such party. Unless otherwise ordered by the Court, any deposition which has been filed pursuant to this Rule may be unsealed by the Register in Chancery.

(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 Register in Chancery, except that the Court may permit the papers to be filed with it, in which event

it shall note thereon the filing date and transmit them to the office of the Register in Chancery.

(f) Proof of service of papers. —Unless otherwise ordered, no pleading or other paper, required by these Rules to be served by the party filing the paper, shall be filed unless the original thereof shall have endorsed thereon a receipt of service of a copy thereof by all parties required to be served or it shall be accompanied by affidavit showing that service has been made and how made or it shall be accompanied by a certificate of an attorney of record showing service has been made and how.

~~(e) Deleted.~~ (g) Notice by publication. Whenever by statute, rule or order of this Court notice by publication is required within this state, the party required to give notice shall cause to be published such notice in *The News Journal* or the *Delaware State News*. No other newspaper shall be used for publication of notices within this state unless, upon petition to the Court, good cause is shown to depart from this rule.