

**FOR IMMEDIATE RELEASE**  
**December 4, 2012**

**COURT OF CHANCERY ANNOUNCES RULE CHANGES AND NEW  
DISCOVERY GUIDELINES**

The Court of Chancery will amend its Rules regarding discovery, effective January 1, 2013. Rules 26, 30, 34 and 45 will be updated to account for modern discovery demands and will bring the Court's rules in line with current practice. The amendments refer to discovery of "electronically stored information" ("ESI") in addition to "documents" and "tangible things," and explain how parties should respond to requests for ESI. These changes are consistent with similar amendments to the Federal Rules of Civil Procedure. Rule 26(c) also was revised to make clear that an out-of-state non-party from whom discovery is sought may move for a protective order in this state.

In addition to amendments to the Rules, the Court also has expanded its Guidelines for Practitioners, originally released in January 2012, to include guidelines regarding discovery. These guidelines explain the Court's expectations regarding parties' responsibility to confer early and often regarding discovery, including about electronic discovery procedures, the overall scope of discovery, preferred procedures for collection and review of discoverable material, including ESI, the privilege assertion process, and the role of Delaware counsel in the discovery process. The Court also developed guidelines for expedited discovery in advance of a preliminary injunction hearing. These new guidelines encourage communication among counsel and are intended to assist the Bar in developing reliable and transparent procedures for electronic discovery. The Court and its Rules Committee are hopeful that use of these guidelines will help avoid unnecessary and expensive disputes regarding the discovery process.

These guidelines were the product of an extended process involving a wide cross-section of distinguished practitioners who are members of the Court of Chancery Rules Committee. These members in turn sought input from their colleagues at their firms. Both the Court and the Rules Committee recognized how important the discovery process is to every case, and a substantial amount of time therefore was devoted to these subjects. In the Court's experience, if the discovery process goes well, cases usually proceed efficiently. If it goes awry, cases tend to get sidetracked in non-merits disputes and fractiousness grows. Gregory P. Williams, Chairman of the Court of Chancery Rules Committee, observed, "The Guidelines, including the newly released discovery Guidelines, are the result of a unique collaboration between the members of the Court and the Chancery Court Rules Committee, which is comprised of a group of attorneys who practice regularly in the Court. The Guidelines speak directly to what works well in Chancery litigation and what does not work so well. We are all indebted to the members of the Court for devoting their efforts to this project. The Guidelines are a 'must read' for anyone who practices in Chancery and should prove particularly valuable to newer members of the Bar."

The guidelines also reflect a consensus that the relevant technology is evolving rapidly and it is therefore unwise to mandate prematurely the across-the-board use of technologies that may become obsolete or that may be too costly to be used efficiently in specific cases. Kevin Brady, another member of the Rules Committee, commented, “The Guidelines and the changes to the rules reflect the increasing need for a flexible, creative and efficient framework for addressing ESI in discovery, especially in the areas of privilege and privilege logs. In today's digital world, with volume and costs skyrocketing, parties and their counsel on both sides need to cooperate and collaborate in a good faith and transparent way on issues associated with ESI very early in the case in order to craft a comprehensive discovery plan which not only minimizes the risk of significant and expensive problems later on but is proportionate to what is at stake in the litigation and addresses the mandate of Rule 1 - the ‘just, speedy and inexpensive determination of every proceeding.’”

The new discovery guidelines, and the Court’s existing guidelines for the preservation of ESI, have been incorporated into the Guidelines for Practitioners, so that members of the Bar will have one comprehensive set of guidelines to consult. The Court will hold a free continuing legal education seminar on Friday, December 7, 2012 to educate members of the Bar on the new discovery guidelines and Rule 5.1, which also goes into effect on January 1, 2013.

The discovery guidelines in separate form, the full Guidelines for Practitioners with the new discovery guidelines incorporated, and the new rules are available at <http://courts.delaware.gov/Chancery/index.stm>.

**FOR FURTHER INFORMATION, PLEASE CONTACT**  
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