SAM GLASSCOCK III
VICE CHANCELLOR

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

April 10, 2013

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Re: *Gray v. Schaeffer*,
Civil Action No. 5273-VCG

Dear Counsel:

The litigants here are lawyers who briefly shared an office in Georgetown. The matter was filed on February 18, 2010, after the Defendant attempted to bar the Plaintiff from the office, and then called the police, representing to the police that he was in a "hostage situation."[1] The Police arrested the Plaintiff.[2] The initial Complaint sought tort damages and equitable relief; among other claims, the Plaintiff sought an accounting of the firm's revenues and a temporary restraining order allowing him to retrieve his legal files from the office.[3] The TRO request was heard, and granted, by then-Chancellor Chandler, who gave the Defendant "180 minutes" to comply, and shifted fees.[4] The Defendant's conduct was referred

[1] Compl. ¶ 19, Feb. 18, 2010.
[2] *Id.*
[3] *Id.* at 6.
[4] *Gray v. Schaeffer*, C.A. No. 5273-CC, 30:22-31:4 (Del. Ch. Feb. 19, 2010)(TRANSCRIPT).

to disciplinary counsel.[5] An Amended Complaint, asserting contractual allegations, was filed on March 11, 2010. Shortly thereafter, the matter went dormant for over a year. The Defendant then obtained new counsel, some discovery was filed, and the matter went dark again. In September of 2012, after many months without activity in the case, I asked my assistant to request a status update and scheduled an office conference, during which I suggested mediation and imposed a scheduling order. The parties mediated the matter, unsuccessfully, before a Master in Chancery. Yesterday, pursuant to the scheduling order, I granted the parties' cross-motions to amend the pleadings for a second time. In the Second Amended Complaint, the Plaintiff now seeks completely legal relief: damages for "breach of contract/unlawful ouster" and tortious interference with contract and business expectancy.[6] While the Second Amended Complaint still recites the TRO/injunctive relief request, that part of the case was resolved over two years ago before then-Chancellor Chandler. Similarly, while the Second Amended Complaint retains the language seeking an "accounting," the Complaint fails to assert a fiduciary relationship which might give rise to the equitable relief of accounting. The Complaint now recites only counts sounding in tort or contract, for which full relief is available at law.

[5] *Id.* at 28:11-14.
[6] Sec. Am. Compl. ¶¶ 31-48.

The Defendant's Second Amended Answer contains a counterclaim seeking damages for breach of contract and conversion.[7] Again, these claims sound in contract and tort, and can be fully resolved at law.

Since the only matters remaining in this case are legal, it is clear that I am divested of jurisdiction unless I exercise my discretion to retain the case under the "clean-up" doctrine.[8] Such discretion is exercised with litigants' and judicial economy in mind. Had I heard the TRO request, I would likely retain this matter. Had the parties pursued their rights with vigor, the matter would have been heard within a reasonable time after the expedited-relief portion of the case. The actual progress of this case, unfortunately, has not followed that template. The TRO was granted on February 19, 2010. It was only on April 9, 2010, that the parties submitted an order effectuating the February 19 ruling,[9] and only after much prodding from the Chancellor.[10] Subsequently, as I have related, forward progress became glacial. As a result, I have had no substantive involvement in this matter. While a scheduling order is in place, it is doubtful that the trial date can be retained due to the nature of the amendments to the pleadings. I see no advantages from the perspective of the Court or the parties to retaining what is now a purely legal dispute in Chancery: doing so would allow the tail of a two-year-old TRO—heard

[7] Sec. Am. Ans. ¶¶ 49-57.
[8] *See Getty Refining & Marketing v. Park Oil, Inc.*, 385 A.2d 147, 150 (Del. Ch. 1978), *aff'd*, 407 A.2d 533 (1979).
[9] *See* Parties' Stip. Order Following Hr'g on TRO 1, Apr. 9, 2010.
[10] Letter to Counsel 1, Apr. 7, 2010 (requesting a proposed order).

by another judge—to wag the contractual and tort-based dog that remains of this case. For these reasons, I decline to exercise my discretion to retain this matter. Because no basis for equity jurisdiction remains, this matter will be dismissed unless either party moves to transfer the case to Superior Court within 20 days under 10 *Del. C.*§ 1902.

IT IS SO ORDERED.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III