IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: AMENDMENTS TO
COURT OF CHANCERY RULE 3, RULE 4, RULE 5(g)(7), RULE 5(g)(8), RULE 7, RULE 15(aaa), RULE 23, RULE 23.1, RULE 45, RULE 79.1, RULE 170(c)(ii), and RULE 173

This 4th day of January, 2006, IT IS HEREBY ORDERED that Court of Chancery Rule 3(bb) is amended by deleting subparagraph (4) in its entirety and substituting the following language which is effective January 1, 2006.

Rule 3. Commencement of action.

(bb) *Court fees or charges.*

(4) VETERANS CASES; PUBLIC GUARDIAN CASES; INSURANCE COMMISSIONER CASES; ATTORNEY GENERAL ON BEHALF OF THE DELAWARE DEPARTMENT OF JUSTICE.

No charge.

IT IS FURTHER ORDERED that Court of Chancery Rule 4 shall be amended by deleting subparagraphs (a), (c) and (dc)(2)(a) in their entirety and substituting the following language which is effective February 1, 2006.

Rule 4. Process.

(a) *Summons; issuance*. Upon commencement of an action the plaintiff may present a summons to the Register in Chancery for signature and seal. If the summons is in proper form, the Register in Chancery shall sign, seal and issue it to the plaintiff for service on the defendant. A summons, or a copy of the summons if addressed to multiple defendants, shall be issued for each defendant to be served.

(c) *By Whom Served.* Service of summons may be effected by any person who is not a party and who is at least 18 years of age. At the request of the plaintiff, the Court may direct that service be effected by the sheriff, the sheriff's deputy or by another person specially appointed by the Court for that purpose.

(dc)(2)(a) If the summons presented by the plaintiff applying for service pursuant to 10 *Del. C.* § 3114 is in proper form, the Register in Chancery shall sign, seal and issue it to the plaintiff for service upon the registered agent of the corporation upon whose governing board the nonresident serves or has served, or, if the corporation has no registered agent, upon the Secretary of State. The plaintiff shall file a return of service forthwith after effectuation of said service.

IT IS FURTHER ORDERED that Court of Chancery Rule 5 shall be amended by deleting subparagraph 5(g)(7) in its entirety and substituting the following language which is effective February 1, 2006.

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

Rule 5(g)(7). The Register in Chancery shall promptly unseal any document or brief or letter in the absence of timely compliance with the provisions of this Rule 5(g).

IT IS FURTHER ORDERED that Court of Chancery Rule 5 shall be amended by adding subparagraph 5(g)(8) which is effective February 1, 2006.

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

Rule 5(g)(8). Notwithstanding any provision of this Rule 5(g), any order permitting or requiring a document, brief or letter to be filed or remain filed under seal (the "Sealing Order") shall expire three years after the final disposition of the action in which the Sealing Order was entered, and any document, brief, or letter filed under seal pursuant to the Sealing Order shall become a part of the public record. Notwithstanding anything to the contrary in this Rule 5(g)(8), the time within which the Sealing Order shall expire may be extended by the Court for good cause shown.

IT IS FURTHER ORDERED that Court of Chancery Rule 6 shall be amended by deleting subparagraphs (b), (c), (d) and (e) in their entirety and substituting the following language which is effective February 1, 2006.

Rule 6. Time.

(b) *Enlargement.* When by these Rules, by a notice given thereunder, by prior agreement of the parties, or by order of Court an act is required or allowed to be done at or within a specified time, the Court for good cause shown may, at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rule 59(b), (d), or (e), except to the extent and under the conditions stated in them.

(c) Repealed.

(d) Repealed.

(e) *Additional time after service by mail or by e-File.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after being served and service is made by mail or by e-Filing, 3 days shall be added to the prescribed period. The additional 3-day period applies only to acts taken by participants and does not apply to actions taken by the Court.

IT IS FURTHER ORDERED that Court of Chancery Rule 7 shall be amended by deleting subparagraph (b)(1) in its entirety and substituting the following language which is effective February 1, 2006.

Rule 7. Pleadings allowed; form of motions.

(b) *Motions and other papers.* (1) An application to the Court for an order shall be by motion which, unless made during a hearing or trial, shall be in writing, shall state with particularity the grounds therefor, and shall set forth clearly in the motion the relief sought. The party making the application shall not file a separate notice of motion. The party making the application or any other interested party may submit a proposed form of order.

IT IS FURTHER ORDERED that Court of Chancery Rule 15(aaa) shall be amended by deleting subparagraph (aaa) in its entirety and substituting the following language which is effective February 1, 2006.

Rule 15. Amended and supplemental pleadings.

(aaa) Notwithstanding subsection (a) of this Rule, a party that wishes to respond to a motion to dismiss under Rules 12(b)(6) or 23.1 by amending its pleading must file an amended complaint, or a motion to amend in conformity with this Rule, no later than the time such party's answering brief in response to either of the foregoing motions is due to be filed. In the event a party fails to timely file an amended complaint or motion to amend under this subsection (aaa) and the

Court thereafter concludes that the complaint should be dismissed under Rule 12(b)(6) or 23.1, such dismissal shall be with prejudice (and in the case of complaints brought pursuant to Rules 23 or 23.1 with prejudice to the named plaintiffs only) unless the Court, for good cause shown, shall find that dismissal with prejudice would not be just under all the circumstances. Rules 41(a), 23(e) and 23.1 shall be construed so as to give effect to this subsection (aaa).

IT IS FURTHER ORDERED that Court of Chancery Rule 23 shall be amended by deleting subparagraph (e) in its entirety and substituting the following language which is effective February 1, 2006.

Rule 23. Class actions.

(e) *Dismissal or compromise.* Subject to the provisions of Rule 15(aaa), a class action shall not be dismissed or compromised without the approval of the Court, and notice by mail, publication or otherwise of the proposed dismissal or compromise shall be given to all members of the class in such manner as the Court directs; except that if the dismissal is to be without prejudice to the class or with prejudice to the plaintiff only, then such dismissal shall be ordered without notice thereof if there is a showing that no compensation in any form has passed directly or indirectly from any of the defendants to the plaintiff or plaintiff's attorney and that no promise to give any such compensation has been made.

IT IS FURTHER ORDERED that Court of Chancery Rule 23.1 shall be amended by deleting it in its entirety and substituting the following language which is effective February 1, 2006.

Rule 23.1. Derivative actions by shareholders.

In a derivative action brought by 1 or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall allege that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and the reasons for the plaintiff's failure to obtain the action or for not making the effort. Subject to the provisions of Rule 15(aaa), the action shall not be dismissed or compromised without the approval of the Court, and notice by mail, publication or otherwise of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the Court directs; except that if the dismissal is to be without prejudice or with prejudice to the plaintiff only, then such dismissal shall be ordered without notice thereof if there is a showing that no compensation in any form has passed directly or indirectly from

any of the defendants to the plaintiff or plaintiff's attorney and that no promise to give any such compensation has been made.

IT IS FURTHER ORDERED that Court of Chancery Rule 45 shall be amended by deleting it in its entirety and substituting the following language which is effective February 1, 2006.

RULE 45. SUBPOENA

(a) *Form; issuance.*

(1) Every subpoena shall

(A) state the name of the Court;

(B) state the title of the action and its civil action number;

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) set forth the text of subdivisions (c) and (d) of this rule.

(2) A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately.

(3) The Register in Chancery shall issue a subpoena, or a subpoena for the production of documentary evidence, signed but otherwise in blank, to a

party requesting it, who shall fill it in before service. A member of the Delaware bar may issue and sign a subpoena as an officer of the Court.

(b) *Service*. A subpoena may be served by the sheriff, by the sheriff's deputy or by any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person. Prior notice of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b). Proof of service shall be made by filing with the Register of the county by which the subpoena is issued a statement of the date and manner of service and the names of the persons served, certified by the person who made the service.

(c) *Protection of persons subject to subpoenas*.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and may impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things or inspection of

premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court on behalf of which the subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iii) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court on behalf of which the subpoena was issued may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the Court may order appearance or production only upon specified conditions.

(d) *Duty in responding to subpoena*.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the

documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(e) *Enforcement*. Failure by any person without adequate excuse to obey a subpoena served upon the person may be deemed a contempt. The attendance of witnesses at depositions and the production by them of designated documents or tangible things elsewhere than in the State of Delaware may be compelled or enforced by whatever means are available under the laws of the place where the examination is to be held.

IT IS FURTHER ORDERED that Court of Chancery Rule 79.1 shall be amended by deleting subparagraphs (d) and (i) in their entirety and substituting the following language which is effective February 1, 2006.

Rule 79.1. Electronic Filing.

(d) A technology surcharge of 50 cents per document shall be assessed in each eFile case for the purpose of a fund to operate the eFiling system. The Court shall expend the funds solely for the purpose of operating and maintaining the eFiling system. The technology fee is not imposed on filings by the Department of Justice or by indigent parties or their counsel.

(i) Unless otherwise ordered, the electronic service of a document, in accordance with the eFile administrative procedures, shall be considered service under Court of Chancery Rule 5. Service by electronic means shall be treated in

the same manner as service by mail for the purpose of adding 3 days to the prescribed period to respond, as set forth in Rule 6(e).

IT IS FURTHER ORDERED that Court of Chancery Rule 170(c)(ii) shall be amended by deleting the words "Statement of Principles of Lawyer Conduct" and replacing those words with "Principles of Professionalism for Delaware Lawyers."

IT IS FURTHER ORDERED that Court of Chancery Rule 173 shall be amended by deleting it in its entirety and substituting the following language which is effective February 1, 2006.

Rule 173. Application for argument or trial; procedure; emergency applications.

(a) Argument or Trial Date. An application for argument on any aspect of a pending matter, for a hearing on a pending motion or application, or for a trial date may be made to the Court by any party. Prior to the assignment of a case to a member of the Court, applications may be made by calling or writing the Chancellor or filing a motion with the Register in Chancery. Following the assignment of a case to a member of the Court, applications may be made by calling or writing the member of the Court to whom the case has been assigned or filing a motion with the Register in Chancery. If circumstances permit, the party making the application shall give notice to all other interested parties before or at the same time as the application is made. The party making the application or any

interested party may request a scheduling conference to address the application. The party making the application shall promptly advise all other interested parties of all dates and times obtained.

(b) Emergency Applications. An emergency application shall be made in the first instance to the member of the Court to whom the matter is assigned. In the event such member of the Court is unavailable, the emergency application shall be made to the Chancellor. In the event the Chancellor is unavailable, the emergency application may be made to such member of the Court as the situation dictates.

_____
William B. Chandler III

Respectfully advised:

_____
Stephen P. Lamb

_____
Leo E. Strine, Jr.

_____
John W. Noble

_____
Donald F. Parsons, Jr.