Rules of Civil Procedure for the Superior Court of the State of Delaware

I. Scope of Rules — One Form of Action

Rule 1. Scope and purpose of Rules.

These Rules shall govern the procedure in the Superior Court of the State of Delaware with the exceptions stated in Rule 81. They shall be construed, administered, and employed by the Court and the parties, to secure the just, speedy and inexpensive determination of every proceeding.

History.

Amended, effective Jan. 1, 1995; June 27, 2019, effective Aug. 1, 2019.

Rule 2. One form of action.

There shall be one form of action to be known as "civil action."

II. Commencement of Action; Service of Process, Pleadings, Motions and Orders; Deposit and Security for Costs

Rule 3. Commencement of action.

(a) *Complaint and praecipe.* Except amicable actions, an action is commenced by filing with the Prothonotary a complaint or, if required by statute, a petition or statement of claim, all hereafter to be referred to as a "complaint" and a praecipe directing the Prothonotary to issue the writ specified therein. Sufficient copies of the complaint shall be filed so that one copy can be served on each defendant as hereafter provided. An amicable action is commenced by filing an agreement specifying the matters agreed upon. Every newly filed complaint shall be accompanied by a Case Information Statement (CIS). The CIS form is used solely for administrative purposes and the information thereon has no legal effect on the action. If any party objects to the Related Cases listed by another party in the CIS, the objecting party shall separately file a written objection with the Prothonotary no later than ten days after the last responsive pleading is filed. Any nonobjecting party may respond in writing within five days to any such objection. The Prothonotary shall forward any objection to the Related Cases, along with any response thereto, to the Civil Administrative Judge. The Civil Administrative Judge may, with prior approval of the President Judge, reassign the case to a different judge.

(b) *Actions pursuant to 10 Del. C. § 3901.* In all actions upon bills, notes, bonds, or other instruments of writing for the payment of money, or for the recovery of book accounts, on foreign judgments and in all actions of scire facias on recognizances, judgments or mortgages, the plaintiff may make a specific notation upon the face of the complaint requiring the defendant or defendants to answer any or all allegations of the complaint by affidavit.

(c) *Appeals de novo.* When an appeal de novo is permitted by law, an action is commenced in the Superior Court by the appellant filing with the Prothonotary a praecipe within the time prescribed by statute for the filing of an appeal. If no time is prescribed by statute, the praecipe shall be filed within 15 days from the entry of the final judgment, order, or disposition from which an appeal is permitted by law. When the appellant is the party having the duty of filing the complaint or other first pleading on appeal, the appellant shall file such pleading with praecipe. When the appellee is the party having the duty of filing the complaint or other first pleading on appeal, the appellee shall serve a copy of such pleading within 20 days after service of the process on appeal, or if appellee has not been served, within 40 days after the date of the process, and thereafter the pleadings shall proceed as in other actions.

(d) *Record; stay.* The appellant shall file a certified copy of the record of the proceedings below, not including the evidence, within 10 days of the filing of the praecipe. Process shall not issue until the appellant has filed the record. There shall be no stay of execution or other proceedings below unless ordered by this court pursuant to Rule 62(c).

(e) *Deposit for costs.* The Prothonotary shall not file any paper or record or docket any proceeding until the required deposit for costs and fees has been made. Before any civil suit, action or other proceeding is instituted in the Superior Court, the Prothonotary shall demand and receive the sum of $125, as a deposit of guaranty for the payment of the fees and costs in the Prothonotary's office, and the Prothonotary shall apply the sum of $125 from time to time in payment of such fees and costs in that office. If the sum of $125 is expended in the payment of the fees and costs in the Prothonotary's office as the fees and costs accrue from time to time, the Prothonotary shall demand and receive a sufficient amount, which shall be necessary, in the Prothonotary's judgment, to defray the fees and costs for additional service or services before any such additional service or services shall be performed by the Prothonotary. This Rule shall not apply to any suit, action or other proceeding which is exempted by law from the requirement of a deposit for costs.

A deposit of not less than $750 shall be required in every case where a special jury is requested.

Before any third-party complaint is filed, the Prothonotary shall demand, and receive, from the party who filed it, the sum of $125 as a deposit of guaranty for the payment of the fees and costs in the Prothonotary's office arising out of the third-party complaint; and the Prothonotary shall apply the sum of $125 from time to time in payment of such fees and costs in that office. If the sum of $125 is expended in the payment of such fees and costs as they accrue from time to time, the Prothonotary shall demand and receive from the filing party a sufficient amount which shall be necessary, in the Prothonotary's judgment, to defray the fees and costs for additional services with respect to the third-party complaint before any additional services shall be performed by the Prothonotary.

(f) *Security for costs.* In every case in which the plaintiff is not at the time of filing the complaint a resident of the State, or being so, afterwards moves from the State, an order for security for costs may be entered upon motion after 5 days' notice to the plaintiff; in default of such security as provided in the order, the Court, on motion, may dismiss the complaint.

(g) *Application for deposit.* In any proceeding in this Court in which a party has deposited money as a guarantee for the payment of fees and costs in the Prothonotary's office, and it is thereafter finally determined that such party is entitled to recover such costs, the Prothonotary shall, for 60 days from the date of such determination, make demand for and make attempts to recover the costs from the party against whom they have been assessed, unless the Court otherwise orders. If such costs are received, the Prothonotary shall apply them to the extent necessary to pay any costs unpaid and remit the balance to the party who made the deposit. If such costs are not received, the Prothonotary shall, at the end of said period, notify the party who made the deposit that recovery has not been made, and, at the same time, remit any balance to the depositing party. The failure or inability of the Prothonotary to collect costs from the party against whom they have been assessed shall not constitute a waiver of the depositing party's right or the Prothonotary's right in its own behalf to attempt to recover the costs by appropriate proceedings.

(h) *Required expedited discovery in personal injury litigation.*

(1) In any action involving a claim for personal injuries, the plaintiff shall attach and file with the complaint the following:

(I) Answers to interrogatories appearing in Superior Court Civil Rule Form 30;

(II) Photocopies of existing documentary evidence relating to special damages (or, in lieu thereof, a brief sworn statement as to any item not included as to the reason of its nonavailability and a specific undertaking as to when it will be made available);

(III) In any case in which lost wages or salary is claimed, photocopies of pertinent portions of the income tax returns of the plaintiff or plaintiffs for the past 3 years either (a) as an exhibit to the complaint, or (b) contained in a sealed envelope, or (c) a sworn statement that the copies of the returns are in the plaintiff's possession or have been applied for and a specific undertaking to supply them forthwith and without further request when an appearance is made on behalf of the defendant.

(2) If a counterclaim, cross-claim, or third-party complaint for personal injuries is filed, the claimant shall be required to file with the claim that discovery which is required of a plaintiff in a claim for personal injuries.

(3) The prerequisites of Rule 3(h)(1) and (2) may for good cause shown be waived by an order of the Court.

History.

Amended, effective Apr. 1, 1953; Apr. 12, 1957; Feb. 9, 1962; May 28, 1962; Jan. 1, 1966; Oct. 15, 1980; Jan. 1, 1991; Oct. 3, 1991; Dec. 1, 1991; May 14, 1993; Feb. 1, 2001; Mar. 20, 2002; May 1, 2013.

Rule 4. Process.

(a) *Issuance of writs.* Upon the commencement of an action, the Prothonotary shall forthwith issue the process specified in the praecipe and shall deliver it for service to the sheriff of the county or counties specified in the praecipe or to a person especially appointed by the Court to serve it. The party requesting the issuance of process shall prepare a form thereof for signature by the Prothonotary under the seal of the Court. Blank forms shall be provided by the Prothonotary on request of a party. Upon direction of the plaintiff in the praecipe, separate or additional process shall issue against any defendants.

(b) *Attachment under Chapter 35, Title 10, Delaware Code.*

(1) The proof required for the issuance of a mesne writ of attachment under Chapter 35, Title 10, Delaware Code, will be satisfied by filing with the complaint an affidavit of plaintiff or some credible person setting forth the facts required by the applicable statute. In addition to the facts required by the applicable statute, such affidavit shall also state:

(A) As to each nonresident defendant whose appearance is sought to be compelled, that defendant's last known address or a statement that such address is unknown and cannot with due diligence be ascertained.

(B) The following information as to the property of each defendant sought to be seized:

(I) A reasonable description thereof.

(II) The estimated amount and value thereof.

(III) The nature of the defendant's title or interest therein, and if such title or interest be equitable in nature, the name of the holder of the legal title.

(IV) The source of affiant's information as to any of the items as to which the affidavit is made on information and belief.

(V) The reason for the omission of any of the required statements.

(2) *Bond required of plaintiff.* No mesne writ of attachment shall be issued until plaintiff, in such proceedings, shall give bond, in an amount and with surety to be approved by the Court out of which the writ is to be issued, conditioned that if the suit shall not be prosecuted with effect, or if the judgment rendered therein shall be in favor of a defendant, the plaintiff will pay any and all costs which may be awarded to a defendant, together with any and all damages, not exceeding the amount of the bond, which a defendant in the suit may have sustained by reason of such attachment; for this purpose, a bond executed by an approved surety company alone, without joinder of plaintiff, shall be deemed a compliance with the provisions of this Rule. In fixing the amount of such bond, the Court may consider the kind of property to be seized, the estimated value thereof, the possibility of loss to a defendant as the result of the seizure, and other relevant matters. No inferior court shall authorize the attachment of any property of an estimated value greater than the jurisdictional amount for which suit in such court may be brought.

(3) *Release of attached property.*

(A) Any nonresident defendant whose property shall have been seized upon a writ of foreign attachment and who shall have entered a general appearance in the cause may move for an order releasing such property or any part thereof from seizure. The Court shall then release such property forthwith unless the plaintiff shall satisfy the Court that because of other circumstances there is a reasonable possibility that such release may render it substantially less likely that plaintiff will obtain satisfaction of any judgment thereafter secured and in that event plaintiff shall also give bond with approved surety, in an amount at least equal to the current value of the property seized, conditioned that if the cause shall not be prosecuted with effect, or if judgment rendered therein shall be in favor of a defendant, the plaintiff will pay all damages, including costs, which such defendant may have sustained by reason of such seizure, not exceeding the amount of such bond.

(B) Any property seized under a mesne writ of attachment will be released from seizure, in whole or in part, upon defendant's furnishing such security for its release as is approved by the Court, conditioned for the payment of any judgment that may be recovered in the proceedings with costs, in an amount at least equal to the current value of the property to be released or the amount claimed in the suit, whichever is the lesser; provided, however, that the furnishing of such security shall not of itself constitute a general appearance.

(4) A writ of foreign attachment may issue against any individual or unincorporated association not an inhabitant of this State or against a foreign corporation, although joined as parties defendant with other nonresident or resident parties, with the same effect as if such nonresident defendant were the only defendant.

(5) Every mesne writ of attachment issued shall specify therein a reasonable description of the property to be seized, and the amount claimed by the plaintiff. The Prothonotary shall cause to be published a copy of such writ in a newspaper of general circulation in the county in which the writ is issued at least once within 20 days after the issuance of such writ. Within 7 days after the filing of the sheriff's return of a writ of mesne attachment, the Prothonotary shall, in addition to making the required publication, send by registered mail to every nonresident defendant whose appearance is sought to be compelled, at the address furnished by plaintiff, if such address is known, certified copies of the complaint, affidavit, writ and return filed in the case. No publication will be required if all defendants shall have been personally served prior to the time publication would otherwise take place, and no mailing will be required to any defendant who has been personally served.

(6) Except in cases of garnishment, if it appears from the description of the property to be seized that it is not susceptible of physical seizure within the State, the plaintiff shall upon institution of suit obtain from the Court an order, a certified copy of which shall be served with the writ, upon the person, persons or corporation having possession or custody of the property or control of its transfer, directing such person, persons or corporation to:

(A) Retain the property and recognize no transfer thereof until further order of the Court;

(B) Forthwith make a notation upon any records pertaining to the property that such property is held pursuant to the order of the Court; and

(C) Within 10 days after the date of such service, file a certificate under oath with the Prothonotary, specifying:

(I) Such defendant's property, if any, of which it has possession, custody or control, or control of its transfer;

(II) Whether the title or interest of each such defendant is legal or beneficial; and

(III) If legal, the name and address of the holder of any equitable or beneficial title or interest therein, if known, and, if beneficial, the name and address of the holder of the legal title thereto, if known.

(7) *Costs.* The plaintiff shall deposit with the Prothonotary an amount sufficient to defray the cost of publication in any case where such publication is required in addition to the usual deposit for costs, before a writ of foreign attachment will be issued.

(8) In any action commenced by mesne writ of attachment, the defendant shall serve the answer (and if the complaint contains a specific notation under Rule 3(b) requiring the defendant to answer any or all allegations of the complaint by affidavit an affidavit of defense), within 40 days after the date of the attachment of the property or the service of the writ upon a garnishee, as the case may be. After the expiration of such 40 day period, or after the defendant's appearance, whichever first occurs, the action shall proceed as in suits commenced by summons.

(9) If any attached property is of a perishable nature, or will cause undue expense in its keeping, the Court may order the attaching officer, on due notice, to sell the same, and retain the proceeds of sale, subject to the order of the Court. No property attached under a mesne writ of attachment or garnishment shall be sold except upon order of the Court, which order shall specify the notice required and all other pertinent matters relating to such sale.

(c) *Contents of writ: Generally.* The process shall bear the date of its issuance, be signed by the Prothonotary or one of the Deputy Prothonotaries, be under the seal of the Court, contain the name of the Court and the names of the parties, state the name of the official or other person to whom it is directed, the name and address of the plaintiff's attorney, if any, otherwise the plaintiff 's address, and the time within which these Rules require the defendant to appear and defend, and shall notify the defendant that in case of the failure to do so, judgment by default will be rendered against the defendant for the relief demanded in the complaint. When the complaint contains a specific notation under Rule 3(b) requiring the defendant to answer any or all allegations of the complaint by affidavit, the process shall also notify the defendant that unless an affidavit of defense, in conformity with the statute, shall be served by the defendant not later than the time for service of the answer, judgment by default will be rendered against the defendant for the amount specified in the complaint.

(1) *Summons.* The writ of summons shall be directed to the defendant.

(2) *Attachment.* The writ of attachment shall be directed to the person serving the writ and command that person to attach the defendant by all the defendant's real and personal property in the county to which the writ is issued and to summon defendant's garnishees to appear within 20 days after service of the writ to answer or plead and shall notify them that, on failure to do so, they may be compelled by attachment.

(3) *Capias ad respondendum.* The writ of capias shall be directed to the person serving the writ and command that person to arrest the defendant and produce the defendant in Court on or before the return day of the writ.

(d) *By whom served.* Service of process shall be made by the sheriff to whom the writ is directed, by a deputy or by some person specially appointed by the Court for that purpose, except that a subpoena may be served as provided in Rule 45.

(1) Except in cases governed by subsection (d)(2) of this Rule, no person shall be specially appointed by the Court to make service unless moving papers affirmatively demonstrate that:

(i) the Sheriff has made one return *non est inventus*; or,

(ii) it is necessary that service be accomplished after 10:00 p.m. on any weekday other than a holiday; or,

(iii) it is necessary that service be accomplished on a holiday or weekend; or,

(iv) some other exigent reason is shown why the Sheriff cannot or will not accomplish service.

Except in cases governed by subsection (d)(2) of this Rule, with respect to each filed motion, the Sheriff shall be served with notice of the motion and may offer reason as to why the Sheriff should not be disqualified from making service.

(2) In cases governed by 10 Del. C. § 3104, 10 Del. C. § 3112, and 10 Del. C. § 3114, special appointments to accomplish service upon the Secretary of State as required by these statutes may be made freely by the Court.

(e) *Process and complaint to be served together.* The process, complaint and affidavits, if any, shall be served together. The Prothonotary shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(f) *Service of process; how made.*

(1) *Summons.* Service of summons shall be made as follows:

(I) Upon an individual other than an infant or an incompetent person by delivering a copy of the summons, complaint and affidavit, to that individual personally or by leaving copies thereof at that individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering copies thereof to an agent authorized by appointment or by law to receive service of process.

(II)(a) Upon an infant of 18 years of age or more, in the same manner as upon an adult individual unless such infant has a guardian in this State; and if there is such a guardian, then upon such guardian in the same manner as upon an individual, if the guardian is an individual, or in the same manner as upon a corporation, if the guardian is a corporation.

(b) Upon an infant under the age of 18 years, if such infant has a guardian in this State, by service upon such guardian in the same manner as upon an individual, if the guardian is an individual, or in the same manner as upon a corporation, if the guardian is a corporation; and if there is no such guardian, by service in the same manner as upon an individual, upon an adult person with whom such infant resides or who has the infant's place of abode.

(c) Upon an incompetent person, if such person has a trustee or guardian in this State, by service upon such trustee or guardian, in the same manner as upon an individual, if the trustee or guardian is an individual; or in the same manner as upon a corporation, if such trustee or guardian is a corporation; and if there is no such trustee or guardian, by service in the same manner as upon an individual, upon an adult person with whom such incompetent person resides or who has the incompetent person's place of abode.

(d) As used herein, trustee or guardian refers to one appointed by the Court of competent jurisdiction in this State; provided, however, that a trustee or guardian duly appointed by a court of competent jurisdiction of another state may accept service and/or appear, upon filing proof of such appointment in the cause here pending.

(e) Upon an infant or incompetent person, not a resident of the State, in the same manner as upon a competent adult person who is not an inhabitant of or found within the State.

(III) Upon a domestic or foreign corporation or upon a partnership or unincorporated association which is subject to suit under common name by delivering copies of the summons, complaint and affidavit, if any, to an officer, a managing or general agent or to any other agent authorized by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(IV) Upon a municipal corporation or other governmental organization subject to suit by delivering a copy of the summons, complaint and affidavit, if any, to the chief executive officer thereof or by serving copies thereof in the manner prescribed by law for the service of summons upon such defendant.

(V) Upon a defendant of any class referred to in subsection (I) and (III) of this Rule, it is also sufficient if the summons, complaint and affidavit, if any, are served in the manner prescribed by any statute.

(VI) Whenever a statute, rule of court or an order of court provides for service of summons or of a notice or of an order in lieu of summons upon a party not an inhabitant of or found within the State, service shall be made under the circumstances and in the manner prescribed by the statute, rule or order.

(2) *Attachment.* Service of attachment or garnishee process shall be made in the same manner as provided in Rule 4(f), on those persons, firms or corporations subject to such service in this State. If garnishees are summoned upon a writ of mesne attachment, the person serving the writ shall leave with them a copy of the writ, the complaint and affidavit. If execution of the writ requires seizure of real or personal property, the sheriff shall levy thereon and make his return in the same manner as heretofore.

(3) *Capias.* The writ of capias shall be served as provided by statute. The person serving the writ shall deliver to the defendant a copy of the writ, complaint and affidavit.

(4) *Scire Facias.* In actions begun by scire facias, 2 returns without service of 2 consecutive writs, being the original writ and an alias writ, followed by a certification by the sheriff that he has posted a copy of the alias writ on the subject property and has mailed a copy of the alias writ by both certified mail, return receipt requested, and first class mail to the last known address (as stated in the praecipe) of the defendants, shall constitute legal and sufficient service.

Not later than ten (10) days following the filing of an action begun by scire facias, the plaintiff, or his counsel of record, shall send by certified mail, postage prepaid, return receipt requested, to holders of liens on the real estate which is the subject of such action who have acquired such liens at the time the action is filed and to tenants holding or possessing a leasehold estate for years or at will in such real estate, a notice consisting of a copy of the complaint and a written Notice to Lien Holders and Tenants of Filing of Action substantially similar to Form 36 Appendix of Forms (Superior Court). The notice shall be addressed to holders of liens at the address which appears upon the recorded or filed instrument creating the lien or upon the record of the lien, or to the counsel of record for the holder of the lien, or, if such addresses are not ascertainable from the public records, at the last known available or reasonably ascertainable address of the holders of such liens. The notice shall be addressed to tenants holding or possessing a leasehold estate for years or at will at the last known available or reasonably ascertainable address of such tenants, and in addition, the plaintiff or his counsel of record or a representative of the plaintiff or his counsel of record shall post such notice on the common entrance door or in a common area of any building or buildings on the real estate which is the subject of such action. No judgment shall be entered in such action unless the plaintiff or his counsel of record shall file with the Court proof of the mailing and posting of such notice which shall consist of the usual receipt given by the post office of mailing to the person mailing the certified article, the return receipt, or, in the case of an undelivered notice, the original returned envelope, and a copy of the Notice to Lien Holders and Tenants of Filing of Action mailed with such notice together with an affidavit made by plaintiff or his counsel of record or a representative of the plaintiff or his counsel of record specifying:

(i) The names and addresses of holders of liens and tenants holding or possessing a leasehold estate for years or at will in such real estate and the dates upon which the notice was mailed by certified mail to such lien holders and tenants;

(ii) That the copy of the Notice to Lien Holders and Tenants of Filing of Action attached to the affidavit is a true and correct copy of the Notice to Lien Holders and Tenants of Filing of Action mailed by certified mail;

(iii) That the notice was posted on the common entrance door or in a common area of any building or buildings on the real estate which is the subject of the action and the date of such posting;

(iv) That the receipt obtained at the time of mailing by the person mailing the envelope containing the notice is the receipt filed with the affidavit;

(v) That the return receipt obtained at the time of delivery of the envelope containing the notice is the return receipt filed with the affidavit;

(vi) The date upon which the envelope containing any undelivered notice was returned to the sender; and

(vii) If the identity or address of any lien holders and tenants cannot be reasonably ascertained, a description of the reasonably diligent efforts that were made by plaintiff or his counsel to ascertain such identity or address and that plaintiff or his counsel of record caused a copy of the Notice to Lien Holders and Tenants (but not Exhibit "A" to such Notice) to be published once in a newspaper of general circulation in the County which is the venue of such action. Notice given to lien holders and tenants holding or possessing a leasehold estate for years or at will in accordance with this paragraph shall be sufficient notice to such parties in lieu of joinder of such parties as a defendant.

(5) *Ejectment.* Not later than ten (10) days following the filing of an action begun in ejectment under a lease of an interest in real estate, which lease or a notice or memorandum of which has been recorded in the Office of the Recorder of Deeds, the plaintiff, or his counsel of record, shall send by certified mail, postage prepaid, return receipt requested, to holders of liens on the real estate (including but not limited to liens on the leasehold interest of the lessee), which is the subject of such action, who have acquired such liens at the time the action is filed and to tenants holding or possessing a leasehold estate for years or at will in such real estate (other than the parties to the ejectment action; hereafter "Non-party Tenants"), a notice consisting of a copy of the complaint and a written Notice to Lien Holders and Non-party Tenants of Filing of Action substantially similar to Form 36 Appendix of Forms (Superior Court). The notice shall be addressed to holders of liens at the address which appears upon the recorded or filed instrument creating the lien or upon the record of the lien, or to the counsel of record for the holder of the lien, or, if such addresses are not ascertainable from the public records, at the last known available or reasonably ascertainable address of the holders of such liens. The notice shall be addressed to Non-party Tenants at the last known available or reasonably ascertainable address of such Non-party Tenants, and in addition, the plaintiff or his counsel of record or a representative of the plaintiff or his counsel of record shall post such notice on the common entrance door or in a common area of any building or buildings on the real estate which is the subject of such action. No judgment shall be entered in such action unless the plaintiff or his counsel of record shall file with the Court proof of the mailing and posting of such notice which shall consist of the usual receipt given by the post office of mailing to the persona mailing the certified article, the return receipt, or, in the case of an undelivered notice, the original returned envelope, and a copy of the Notice to Lien Holds and Non-party Tenants of Filing of Action mailed with such notice together with an affidavit made by plaintiff or his counsel of record or a representative of the plaintiff or his counsel of record specifying:

(i) The names and addresses of holders of liens and Non-party Tenants in such real estate and the dates upon which the notice was mailed by certified mail to such lien holders and Non-party Tenants;

(ii) That the copy of the Notice to Lien Holders and Non-party Tenants of Filing of Action attached to the affidavit is a true and correct copy of the Notice to Lien Holders and Non-party Tenants of Filing of Action mailed by certified mail;

(iii) That the notice was posted on the common entrance door or in a common area of any building or buildings on the real estate which is the subject of the action and the date of such posting;

(iv) That the receipt obtained at the time of mailing by the person mailing the envelope containing the notice is the receipt filed with the affidavit;

(v) That the return receipt obtained at the time of delivery of the envelope containing the notice is the return receipt filed with the affidavit;

(vi) The date upon which the envelope containing any undelivered notice was returned to the sender; and

(vii) If the identity or address of any lien holders and Non-party Tenants cannot be reasonably ascertained, a description of the reasonably diligent efforts that were made by plaintiff or his counsel to ascertain such identity or address and that plaintiff or his counsel of record caused a copy of the Notice to Lien Holders and Non-party Tenants (but not Exhibit "A" to such Notice) to be published once in a newspaper of general circulation in the County which is the venue of such action. Notice given to lien holders and Non-party Tenants in accordance with this paragraph shall be sufficient notice to such parties in lieu of joinder of such parties as a defendant.

(6) *Service of original process other than summons, attachment, capias or scire facias.* Service of original process other than summons, attachment, capias or scire facias, shall be made as provided by statute or order of court.

(g) *Return of process.* Original process, whether an original, alias or pluries writ shall be returnable 20 days after the issuance of the writ, except that in actions for mandamus the Court may, upon application for cause shown, direct that the writ be returnable in a shorter time. The person serving the process shall make return thereof to the Court promptly after service and in any event on the return day thereof. Process which cannot be served before the return day thereof shall be returned on the return day and such return shall set forth the reasons why service could not be had. If service is made by a person other than by an officer or his deputy his return shall be verified. Failure to make a return or proof of service shall not affect the validity of service.

(h) *Actions in which service of process is secured pursuant to 10 Del. C. § 3104, § 3112 or § 3113.* In an action in which the plaintiff serves process pursuant to 10 Del. C. § 3104, § 3112 or § 3113, the defendant's return receipt and the affidavit of the plaintiff or the plaintiff's attorney of the defendant's nonresidence and the sending of a copy of the complaint with the notice required by the statute shall be filed as an amendment to the complaint within 10 days of the receiving by the plaintiff or the plaintiff's attorney of the defendant's return receipt; provided, however, that the amendment shall not be served upon the parties in accordance with the provisions of Rule 5(a).

(i) *Amendment of process.* At any time in its discretion and upon such terms as it deems just, the Court may allow any process or return of proof of service to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(j) *Summons: Time limit for service.* If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion.

(k) *Service in actions for judgment by confession or execution thereon.* Action for judgment by confession or execution thereon shall comply with Rules 58.1, 58.2, and 58.3.

History.

Amended, effective May 11, 1950; May 1, 1956; July 28, 1959; June 23, 1960; March 1, 1961; May 14, 1962; Nov. 15, 1962; Jan. 1, 1966; April 12, 1967; July 1, 1970; Jan. 1, 1972; July 15, 1981; Feb. 3, 1986; Feb. 1, 1990; Jan. 1, 1991; June 1, 1991; Nov. 1, 1993; Dec. 1, 1993; Nov. 12, 1997; Feb. 1, 2001; Aug. 1, 2004; Aug. 5, 2010.

Rule 5. Service and filing of pleadings and other papers.

(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 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)(1) *Appearance: When; how made; withdrawal.* Except as otherwise provided by statute, a defendant may appear although a summons has 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, except that appearance for purpose of satisfying a judgment, when appearance may be made by notation thereof on the judgment docket.

An attorney may withdraw the attorney's appearance without obtaining the court's permission when the attorney is attorney for the plaintiff on a judgment entered on a warrant of attorney, or where such withdrawal will leave a member of the Delaware Bar appearing as attorney of record for the party. Otherwise, no appearance shall be withdrawn except on order of the Court.

In certiorari proceedings, the defendant in error shall appear within 20 days after service of the citation upon the defendant, or if no service is effected, then within 40 days after the date of the citation.

(2) *Appearance of garnishee: When; how made.* Any garnishee duly summoned (either on mesne writ of attachment or execution process) shall serve upon plaintiff a verified answer within 20 days after service of process, which shall specify what goods, chattels, rights, credits, money or effects of a defendant, if any, the garnishee has in its possession or custody. Within 10 days after service of such answer, plaintiff may serve exceptions thereto, and the proceedings on the issues thus raised shall be had as in actions commenced by summons. If no exceptions are filed by plaintiff to garnishee's answer within the 10 day period as aforesaid, a delivery to the sheriff of the property set forth in the answer by the garnishee, or so much of it as shall satisfy plaintiff's demand, shall be a complete discharge of the garnishee in the proceedings, and the sheriff shall make a suitable supplemental return on the writ showing the property which has been delivered to the sheriff by the garnishee, and shall hold such property subject to the order of the Court. Unless the garnishee delivers such property to the sheriff within 5 days after the expiration of the 10 day period for plaintiff's exceptions, if any, the sheriff shall on the order of the court physically seize any property subject to seizure, and with respect to any property set forth in the answer, which is not seized or delivered to the sheriff, the plaintiff on motion may have personal judgment entered against garnishee in favor of plaintiff in an amount equal to the value of the property of defendant in garnishee's custody or possession, or the amount of the plaintiff's judgment, whichever is less, with interest and costs. Before the sheriff shall serve any writ of attachment, the sheriff shall receive from the plaintiff the sum of $20 for each party to be summoned as garnishee (except as to garnishment covered by the terms of 10 Del. C. § 4913) and said sum shall be delivered to each garnishee when the summons is served; the return on the writ of garnishment will show the garnishee fee paid, which will be taxed as costs in the case; no garnishee will be required to answer without first having received the garnishee fee as aforesaid.

(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. 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 Prothonotary. 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.

(1) In any action involving a claim for personal injuries, the defendant shall file and serve with the answer, answers to the interrogatories appearing in Superior Court Rules Form 30.

(2) If a counterclaim, cross-claim, or third-party complaint for personal injuries is filed, the defendant in such claims shall file with the answer that discovery which is required of a defendant in personal injury litigation.

(3) The prerequisites of Rule 5(b)(1) may for good cause shown be waived by Order of the Court.

(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 Superior Court Civil 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 Prothonotary.

(e) *Filing with the Court defined.* The filing of papers with the Court as required by these Rules shall be made by filing them with the Prothonotary, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the Prothonotary. Papers may be filed by facsimile transmission or electronically if permitted by these Rules, by administrative order, or by a judge.

(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.

(g) *Sealing of Court records.*

(1) Except as otherwise provided by statute or rule, including this Rule 5(g) and Rule 26(c), all pleadings and other papers of any nature filed with the Prothonotary, including briefs, appendices, letters, deposition transcripts and exhibits, answers to interrogatories and requests for admissions, responses to requests for production or certificates and exhibits thereto ("Court Records"), shall become a part of the public record of the proceedings before this Court.

(2) Court Records or portions thereof shall not be placed under seal unless and except to the extent that the person seeking the sealing thereof shall have first obtained, for good cause shown, an order of this Court specifying those Court Records, categories of Court Records, or portions thereof which shall be placed under seal; provided, however, the Court may, in its discretion, receive and review any document *in camera* without public disclosure thereof and, in connection with any such review, may determine whether good cause exists for the sealing of such documents; and provided further that, unless the Court orders otherwise, the parties shall file within 30 days redacted public versions of any Court Record where only a portion thereof is to be placed under seal.

(3) The provisions of paragraph (2) of this Rule 5(g) notwithstanding, the Court may, in its discretion, by appropriate order, authorize any person to designate Court Records to be placed under seal pending a judicial determination of the specific Court Records, categories, or portions thereof to which such restriction on public access shall continue to apply.

(4) Any person who objects to the continued restriction on public access to any Court Record placed under seal pursuant to paragraphs (2) or (3) of this Rule 5(g) shall give written notice of his or her objection to the person who designated the Court Record for filing under seal and shall file such written notice with the Court. To the extent that any person seeks to continue the restriction on public access to such Court Record, he or she shall serve and file an application within 7 days after receipt of such written notice setting forth the grounds for such continued restriction and requesting a judicial determination whether good cause exists therefor. In such circumstances, the Court shall promptly make such a determination.

(5) The Prothonotary shall promptly unseal any Court Record in the absence of timely compliance with the provisions of this Rule 5(g), if applicable. In addition, 30 days after final judgment has been entered without any appeal having been taken therefrom, the Prothonotary shall send a notice, return receipt requested, to any person who designated a Court Record to be placed under seal that such Court Record shall be released from confidential treatment if required to be kept by the Prothonotary or, if not required to be kept, returned to the person at the person's expense or destroyed, as such person may elect, unless that person makes application to the Court within 30 days after notice from the Prothonotary for further confidential treatment for good cause shown.

History.

Amended, effective June 23, 1960; Mar. 1, 1961; Jan. 1, 1965; Nov. 2, 1966; July 1, 1970; June 1, 1981; Jan. 1, 1989; Jan. 1, 1991; June 1, 1991; Dec. 1, 1991; Dec. 1, 1993; Jan. 1, 1997.

Rule 6. Time.

(a) *Computation.* In computing any period of time prescribed or allowed by these Rules, by order of court, or by statute, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, or other legal holiday, or other day on which the office of the Prothonotary is closed, in which event the period shall run until the end of the next day on which the office of the Prothonotary is open. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation. As used in this rule, "legal holidays" shall be those days provided by statute or appointed by the Governor or the Chief Justice of the State of Delaware.

(b) *Enlargement.* When by these Rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the Court for 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 Rules 50(b), 52(b) [omitted], 59(b), (d) and (e), 60(b), except to the extent and under the conditions stated in them.

(c) *Unaffected by expiration of term.* [Repealed.]

(d) *For motions — Affidavits.* A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 2 days before the time specified for the hearing, unless a different period is fixed by these Rules or by order of the Court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), opposing affidavits may be served not later than 1 day before the hearing, unless the Court permits them to be served at some other time.

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

History.

Amended, effective May 11, 1950; Jan. 1, 1965; May 31, 1965; Oct. 15, 1980; Jan. 1, 1991; Sept. 4, 2014.

III. Pleadings and Motions

Rule 7. Pleadings allowed; form of motions.

(a) *Pleadings.* There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is served under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the Court may order a reply to an answer or a third-party answer.

(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 made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. A motion or other paper shall be filed without backer.

(2) The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these Rules.

(3) All motions shall be signed in accordance with Rule 11.

(c) *Demurrers, pleas, etc., abolished.* Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

(d) *Size of pleadings, motions and other papers.* Pleadings, motions and other papers shall be typewritten upon opaque, unglazed, white paper approximately 81/2″ x 11″ in size.

History.

Amended, effective Jan. 1, 1965; Mar. 1, 1983; Nov. 1, 1984; Jan. 2, 1985; Jan. 1, 1991.

Rule 8. General rules of pleading.

(a) *Claims for relief.* A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which the party deems itself entitled. Relief in the alternative or of several different types may be demanded.

(b) *Defenses; form of denials.* A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denial shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(c) *Affirmative defenses.* In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) *Effect of failure to deny.* Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(dd) *Allegations admitted unless denied by affidavit.* The existence of a corporation or of a partnership, the signatures on an instrument upon which an action is brought and a copy of which is filed with the complaint in conformity with the statute, and the agency of an operator of a motor vehicle, shall in all cases be taken to be admitted unless the same is or are denied by affidavit, served with the answer as provided by statute.

(e) *Pleading to be concise and direct — Consistency.*

(1) Each averment of a pleading shall be simple, concise and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative, and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. The party may also state as many separate claims or defenses as the party has regardless of consistency. All statements shall be made subject to the obligations set forth in Rule 11.

(f) *Construction of pleadings.* All pleadings shall be so construed as to do substantial justice.

History.

Amended, effective Jan. 1, 1991.

Rule 9. Pleading special matters.

(a) *Capacity.* It is not necessary to allege the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party, or the capacity of any party to sue or be sued, or the authority of a party to sue or be sued in a representative capacity, the party shall do so by specific negative averment, supported by affidavit when required by Rule 8(dd), which negative averment shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) *Fraud, negligence, mistake, condition of mind.* In all averments of fraud, negligence or mistake, the circumstances constituting fraud, negligence or mistake shall be stated with particularity. Malice, intent, knowledge and other condition of mind of a person may be averred generally.

(c) *Conditions precedent.* In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) *Official document or act.* In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) *Judgment.* In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) *Time and place.* For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) *Damages.* A pleading, whether a complaint, counterclaim, cross-claim or a third-party claim, which prays for unliquidated money damages, shall demand damages generally without specifying the amount, except when items of special damage are claimed, they shall be specifically stated. Upon service of a written request by another party, the party serving such pleading shall, within 10 days after service thereof, serve on the requesting party a written statement of the amount of damages claimed; such statement shall not be filed except on order of the Court.

History.

Amended, effective June 23, 1960; Oct. 4, 1961; Jan. 1, 1991.

Rule 10. Form of pleadings.

(a) *Caption: Names of parties.* Every pleading shall contain a caption setting forth the name of the Court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, except as provided in subparagraph (e) of this Rule, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) *Paragraphs: Separate statements.* All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) *Adoption by reference: Exhibits.* Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(d) *Form of papers.* Pleadings or other papers to be filed shall be plainly written or printed and backed, and, if materially defaced by erasures or interlineations, shall not be received by the Prothonotary without a Judge's order.

(e) No complaint may be filed under a pseudonym without prior Court approval or unless accompanied by a motion seeking approval. A petition or motion seeking approval to proceed by pseudonym must be accompanied by an affidavit stating specific facts explaining why anonymity of the party is necessary and facts sufficient to overcome the presumption of public access to the identities of litigants. Such petition or motion may be filed under seal.

History.

Amended, effective Jan. 1, 1955; July 1, 1970; May 1, 2013.

Rule 11. Signing of pleadings, motions, and other papers: Representations to Court, sanctions.

(a) *Signature.* Every pleading, motion, and other paper shall be signed by at least 1 attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by statute or rule, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless it is corrected promptly after the omission of the signature is called to the attention of the attorney or party.

(b) *Representations to Court.* By representing to the Court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, —

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) *Sanctions.* If, after notice and a reasonable opportunity to respond, the Court determines that subdivision (b) has been violated, the Court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) *How initiated.*

(A) *By motion.* A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the Court unless, within 21 days after service of the motion (or such other period as the Court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the Court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) *On Court's initiative.* On its own initiative, the Court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) *Nature of sanction: Limitations.* A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a non monetary nature, an order to pay a penalty into Court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the Court's initiative unless the Court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) *Order.* When imposing sanctions, the Court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) *Inapplicability to discovery.* Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

History.

Amended, effective Nov. 1, 1984; Nov. 1, 1989; Jan. 1, 1991; Jan. 1, 1995.

Rule 12. Defenses and objections — When and how presented — By pleading or motion — Motion for judgment on pleadings.

(a) *When presented in actions other than certiorari, ditch returns, mechanics' liens, appeals under Rule 3(c), and actions in which writs of attachment and capias are used.* A defendant shall serve an answer within 20 days after service of process, complaint and affidavit, if any, upon that defendant, unless the Court directs otherwise when service of process is made pursuant to Rule 4(f)(1)(VI). If a defendant appears before service is made upon that defendant, that defendant shall serve an answer within 20 days after appearance. If the plaintiff has made a specific notation upon the face of the complaint under Rule 3(b) requiring the defendant to answer any or all allegations of the complaint by affidavit and in actions of scire facias on mechanics' liens, the defendant shall, not later than the time for serving the answer, serve either an affidavit of defense in conformity with the statute or a motion that judgment be refused notwithstanding the plaintiff's complaint or, in mechanics' liens, notwithstanding the statement of claim or the complaint. A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the Court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this Rule alters these periods as follows, unless a different time is fixed by order of the Court:

(1) If the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the Court's action.

(2) If the Court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(3) If, under 10 Del. C. § 3901, a party serving a cross-claim, counterclaim or third-party claim could require that any or all allegations of the cross-claim, counterclaim or third-party claim be answered by affidavit, if such claim had been the subject of a separate action, the party may make a specific notation upon the face of such pleading pursuant to Rule 3(b) that any or all allegations of that

pleading must be answered by affidavit. If such a notation is made, the party served shall, within 20 days after service, either move that judgment be refused notwithstanding the cross-claim, counterclaim or third-party claim, or serve with the pleading an affidavit of defense in conformity with the statute.

(aa1) *Certiorari; exceptions or causes of diminution; when presented.* On the return to a certiorari, the plaintiff in error shall serve exceptions or causes of diminution within 10 days after the filing of the record.

(aa2) *Objections to ditch returns; when presented.* Objections to ditch returns shall be filed within 10 days after the filing of the return and supported by affidavit, where the objections are based upon facts not appearing from the record.

(aa3) *Exceptions to mechanics' liens; when filed.* After a statement of claim has been filed, exceptions thereto may be filed at any time not later than 20 days after service.

(aa4) *When presented in appeals under Rule 3(c).* When appellant is the party having the duty of filing the complaint or other first pleading in an appeal under Rule 3(c), the appellee shall serve appellee's pleading within 20 days after service of process on appeal, or if the appellee has not been served, within 40 days after date of process.

(aa5) *Answers in attachments; when filed.* A defendant shall serve an answer (and, if the complaint contains a specific notation under Rule 3(b) requiring the defendant to answer any or all allegations of the complaint by affidavit, an affidavit of defense) within 20 days after appearance.

(aa6) *Answers in capias; when filed.* Defendant shall serve an answer (and, if the complaint contains a specific notation under Rule 3(b) requiring the defendant to answer any or all allegations of the complaint by affidavit, an affidavit of defense) within 20 days after discharge on bail.

(b) *How presented.* Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) Lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which an adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleadings to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) *Motion for judgment on the pleadings.* After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) *Preliminary hearings.* The defenses specifically enumerated (1)-(7) in subdivision (b) of this Rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this Rule, shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.

(e) *Motion for a more definite statement.* If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is

not obeyed within 10 days after notice of the order, or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) *Motion to strike.* Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

(g) *Consolidation of defenses in motion.* A party who makes a motion under this Rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this Rule but omits therefrom any defense or objection then available to the party which this Rule permits to be raised by the motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) *Waiver or preservation of certain defenses.*

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this Rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.

History.

Amended, effective Oct. 15, 1954; May 1, 1956; March 1, 1961; Jan. 1, 1967; Jan. 1, 1991; Feb. 1, 2001.

Rule 13. Counterclaim and cross-claim.

(a) *Compulsory counterclaims.* A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the Court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon the claim by attachment or other process by which the Court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule.

(b) *Permissive counterclaims.* A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) *Counterclaim exceeding opposing claim.* A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Omitted.

(e) *Counterclaim maturing or acquired after pleading.* A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the Court, be presented as a counterclaim by supplemental pleading.

(f) *Omitted counterclaim.* When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

(g) *Cross-claim against coparty.* A pleading may state as a cross-claim any claim by one party against a coparty arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein, or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) *Joinder of additional parties.* Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(i) *Separate trials; separate judgments.* If the Court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the Court has jurisdiction to so do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

History.

Amended, effective Jan. 1, 1965; Jan. 1, 1967; Jan. 1, 1991.

Rule 14. Third-party practice.

(a) *When defendant may bring in third party.* At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 10 days after serving the original answer. Otherwise, the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against a third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant shall thereupon assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim and for its severance or separate trial. A third-party defendant may proceed under this Rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) *When plaintiff may bring in third party.* When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under the circumstances which under this Rule would entitle a defendant to do so.

History.

Amended, effective Jan. 1, 1965; Jan. 1, 1967; Jan. 1, 1991.

Rule 15. Amended and supplemental pleadings.

(a) *Amendments.* A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20

days after it is served. Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the Court otherwise orders.

(aa) *Form of amendments.* A party serving an amended pleading shall indicate plainly in the amended pleading in what respect the amendment differs from the pleading which it amends.

(b) *Amendments to conform to the evidence.* When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence.

(c) *Relation back of amendments.* An amendment of a pleading relates back to the date of the original pleading when

(1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or

(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by statute or these Rules for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

(d) *Supplemental pleadings.* Upon motion of a party the Court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the Court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

History.

Amended, effective Jan. 1, 1965; Jan. 1, 1967; Jan. 1, 1991; Dec. 1, 1993.

Rule 16. Pretrial conferences; scheduling; management.

(a) *Pretrial conferences; objectives.* In any action, the Court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as:

(1) Expediting the disposition of the action;

(2) Establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) Discouraging wasteful pretrial activity;

(4) Improving the quality of the trial through more thorough preparation; and

(5) Facilitating the settlement of the case.

(b) *Scheduling and planning.* Except in categories of actions identified in this rule or any specific action exempted by the Court as inappropriate, the Court shall, at a time deemed appropriate by the Court, enter a scheduling order that either establishes or limits the time:

(1) To join other parties and to amend the pleadings;

(2) To file and hear motions;

(3) To complete discovery.

(4) To engage in compulsory alternative dispute resolution ("ADR"), the format of which is to be agreed upon by the parties. Such ADR may include, but shall not be limited to, non-binding or, if agreed to by the parties, binding arbitration, mediation or neutral case assessment. If the parties cannot agree on the format of ADR, the default format shall be mediation unless otherwise ordered by the Court.

(a) In the event the parties cannot agree on an ADR Practitioner, they shall file a joint motion with the Court within thirty (30) days of the issuance of the scheduling order requesting that the Court appoint an ADR Practitioner for the parties. The Court may impose sanctions upon a party or both parties if it determines that the parties have not attempted to agree upon an ADR Practitioner in good faith.

(b) The parties shall pay the ADR Practitioner in accordance with the allocation and amount of fees established by the ADR Practitioner and agreed to by the parties or ordered by the Court. The ADR Practitioner may apply to the Court for sanctions against any party who fails to comply with the terms of engagement established by the ADR Practitioner and agreed to by the parties including, but not limited to, dismissal of the action or default judgment.

(c) The ADR Practitioner may not be called as a witness in any aspect of the litigation, or in any proceeding relating to the litigation in which the ADR Practitioner served, unless ordered by the Court. In addition, all ADR Practitioners, when serving as an arbitrator, mediator or neutral assessor, shall be immune from civil liability for, or resulting from, any act or omission done or made while engaged in ADR, unless an act or omission was made or done in bad faith, with malicious intent, or in a manner exhibiting a wilful, wanton disregard of the rights, safety, or property of another. Each ADR Practitioner shall remain bound by any confidentiality agreement signed by the parties and the ADR Practitioner as part of the ADR.

(d) All memoranda, work products, and other materials contained in the case files of an ADR Practitioner or the Court related to the mediation are confidential. Any communication made in or in connection with the mediation which relates to the controversy being mediated, whether made to the ADR Practitioner or a party, or to any person made at a mediation conference, is confidential. The mediation agreement shall be confidential unless the parties otherwise agree in writing. Confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding except:

(i) Where all parties to the mediation agree in writing to waive the confidentiality;

(ii) In any action between the ADR Practitioner and a party to the mediation for damages arising out of the mediation; or

(iii) Statements, memoranda, materials, or other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the mediation conference.

(e) If a mediation is not successful, no party may use statements made during the mediation or memoranda, materials or other tangible evidence prepared for the mediation at any point in the litigation in any way, including, without limitation, to impeach the testimony of any witness.

(f) The following definitions apply to this rule:

(i) "Arbitration" is a process by which a neutral arbitrator hears both sides of a controversy and renders a fair decision based on the facts and the law. If the parties stipulate in writing the decision shall be binding, in which instance the case is removed from the Court's docket.

(ii) "Mediation" is a process by which a mediator facilitates the parties in reaching a mutually acceptable resolution of a controversy. It includes all contacts between the mediator and any party or parties until a resolution is agreed to, the parties discharge the mediator, or the mediator determines that the parties cannot agree.

(iii) "Neutral case assessment" is a process by which an experienced neutral assessor gives a non-binding, reasoned oral or written evaluation of a controversy, on its merits, to the parties. The neutral assessor may use mediation and/or arbitration techniques to aid the parties in reaching a settlement.

(iv) "ADR Practitioner" shall include the arbitrator, mediator, neutral case assessor or any other Practitioner engaged by the parties to facilitate ADR.

(g) The compulsory ADR set forth in this rule shall not apply to the following civil actions, unless otherwise ordered by the Court: matters subject to Superior Court Rules 23 and 81(a), replevin, foreign or domestic attachment, statutory penalty and mortgage foreclosure actions, and *in forma pauperis* actions.

(5)(a) *Scheduling order deadlines.*

(i) A party, upon reasonable notice to other parties and all persons affected thereby, who proposes a change to a deadline contained in a scheduling order entered by the Court in accordance with this Rule shall make an application to the Court for such a change pursuant to Rule 7(b) or by written stipulation and order. Subsection (i) shall not apply to deadlines that are not contained in the scheduling order.

(ii) The Court may be promptly notified if a party does not comply with a deadline contained in a scheduling order. The Court may be notified by any party through a motion to compel, a proposal to amend the scheduling order or a request for a conference. A party may avail itself of any Rule of this Court (including but not limited to Rule 37) for a party's failure to comply with a deadline contained in a scheduling order.

(iii) Unless manifest injustice would result, a party's failure to promptly notify the Court of another party's failure to comply with a deadline contained in a scheduling order may result in a waiver of that party's right to contest any late filings by the offending party from that time forward.

(iv) This Rule shall not prevent the Court, upon motion or its own initiative, from making any orders to enforce compliance with a scheduling order.

(b) Any other deadlines or protocols appropriate in the circumstances of the case including, but not limited to, appropriate sanctions for failure to meet the deadlines and requirements established by the scheduling order to include, in the Court's discretion, dismissal of the action or default judgment.

The scheduling order may also include:

(6) The date, or dates for conferences before trial, a final pretrial conference, and trial; and

(7) Any other matters appropriate in the circumstances of the case.

(c) *Subjects to be discussed at pretrial conferences.* The participants at any conference under this Rule may consider and take action with respect to:

(1) The formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the Court on the admissibility of evidence;

(4) The avoidance of unnecessary proof and of cumulative evidence;

(5) The identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(6) The advisability of referring matters to a master;

(7) The possibility of settlement or the use of extra-judicial procedures to resolve the dispute;

(8) The form and substance of the pretrial order;

(9) The disposition of pending motions;

(10) The need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and

(11) Such other matters as may aid in the disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

(d) *Final pretrial conference.* A final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at this conference shall formulate a plan for trial, including the presentation of a pretrial stipulation which substantially complies with the pretrial stipulation form approved by this Court. *See* Form 46. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(e) *Pretrial orders.* After any conference held pursuant to this Rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

(f) *Sanctions.* If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party, or both, to pay the reasonable expenses incurred because of any noncompliance with this Rule, including attorneys' fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

History.

Amended, effective Sept. 4, 1984; Jan. 1, 1987; Jan. 1, 1988; June 1, 1990; Jan. 1, 1991; Oct. 1, 1997; Feb. 5, 2008; Jan. 1, 2012; Sept. 4, 2014.

Rule 16.1. Mandatory non-binding arbitration.

(a) *Actions subject to mandatory non-binding arbitration ("MNA").* Notwithstanding and in addition to the ADR provisions contained in Rule 16, all civil actions, except those actions listed in subsection (b) hereof, in which (1) trial is available; (2) monetary damages are sought; (3) any nonmonetary claims are nominal; and (4) counsel for claimant has made an election on the Civil Case Information Sheet for

mandatory non-binding arbitration (hereinafter "MNA"), are subject to mandatory non-binding arbitration. The jurisdictional authority of the arbitrator for any case in which such election has been made shall be limited to fifty thousand dollars ($50,000), exclusive of costs and interest.

(b) *Civil actions not subject to MNA*. The following civil actions shall not be referred to MNA but the parties may stipulate to a form of ADR:

(1) An action involving a matter listed in Superior Court Civil Rules 23 and 81(a);

(2) A replevin, declaratory judgment, foreign or domestic attachment, interpleader, summary proceedings, or mortgage foreclosure action;

(3) Any *in forma pauperis* action where the claims are substantially non-monetary; or

(4) An action to enforce a statutory penalty.

(c) *Definition — Arbitration.* Arbitration is a process by which a qualified neutral individual ("arbitrator") hears all sides of a controversy and renders a fair decision based on the evidence and the law. If the parties stipulate in writing, the decision shall be binding.

(d) *Filing requirements.* Each plaintiff filing an action subject to MNA and each defendant filing a responsive pleading and/or motion shall simultaneously file the interrogatories and sworn statements required by Civil Rule 3(h) and 5(b), subject to the following conditions:

(1) In an action in which counsel for plaintiff(s), or a plaintiff, if unrepresented, certifies to the Court that a potential defendant(s) cannot be ascertained at the time of the filing of the complaint, the case shall not be subject to MNA until ninety (90) days after the filing of all initial responsive pleadings, during which ninety (90) day period any party may conduct discovery limited to the identity of a potential defendant(s); (*See* Form 33.)

(2) All parties alleging personal injuries must file a responsive and complete answer to Form 30 Interrogatory Number 7, if applicable, and all defendants must file a responsive and complete answer to Form 30 Interrogatory Number 6. Parties are under a continuing obligation to update these answers as additional information becomes known.

(3) All parties alleging personal injuries shall provide to the defending party(s) a medical authorization which complies with HIPPA requirements within five (5) days of the filing of the Answer to the Complaint. Such parties shall also provide, upon request, such additional authorizations which are required to obtain records. The defendant shall notify all other parties of the receipt of all records and shall provide copies of all such records to the party who has alleged the personal injuries. The defendant shall also provide copies to all other parties upon request. All parties who receive copies of the records, except for the party(s) alleging the personal injuries, shall pay a pro-rated share of the costs incurred to obtain and reproduce the records.

(4) The party alleging personal injuries shall, within five (5) days of the entry of appearance by the defendant, serve Defendant with all medical records and reports required by Superior Court Civil Rule 3(h).

(5) All expert witness reports in existence at the time of the filing of the Complaint, upon which a party intends to rely at the arbitration, shall be provided to opposing party(s) within five (5) days after service of the Answer under Superior Court Civil Rule 5(b). Expert reports received thereafter, upon which either party intends to rely at the arbitration, shall be provided to the opposing party(s) within five (5) days of receipt.

(e) *Discovery.*

(1) The defendant may issue subpoenas *duces tecum* pursuant to Superior Court Civil Rule 45 for records of health care providers who have provided medical care or services to the party alleging personal injuries. The defendant shall notify all other parties of the receipt of all records and shall provide copies of all such records to the party who has alleged the personal injuries. The defendant shall also provide copies to all other parties upon request and all parties who request copies of records shall pay a pro-rated share of the cost incurred to obtain and reproduce the records.

(2) Defendant(s) may not request a medical examination of the plaintiff prior to the arbitration hearing, but may have a medical records review performed.

(f) *Selection of the arbitrator.* The Parties shall confer and select an arbitrator within twenty (20) days of the filing of the close of all initial pleadings by the parties. Unless otherwise ordered by the Court, if an arbitrator is not selected within twenty (20) days, the parties may not utilize arbitration under this Rule. Counsel must confer as to arbitrators in good faith following the filing of the initial pleadings.

(g) *Motions.* The arbitrator shall hear and decide all motions filed by the parties related to the case except:

(1) All case dispositive motions, which, subject to subsection (o), are stayed until after the arbitration has been held;

(2) Motions to compel a party to comply with the selection of an arbitrator or the scheduling of arbitration; and

(3) Motions for relief pursuant to subsections (k) and (o) of this Rule.

(h) *Scheduling.*

(1) Unless otherwise ordered by the Court, an arbitration shall be held within one hundred twenty (120) days of the close of all initial pleadings by the parties.

(2) A Case Scheduling Order will be issued by the assigned Judge in accordance with that Judge's preferences. At the Court's discretion, a conference may be held to arrange for the trial date and, if arbitration has not taken place, the parties will provide a written status report as to when the arbitration will take place. Subject to the Court's discretion, failure to proceed to arbitration within one hundred twenty (120) days of the close of all initial pleadings, shall not prevent the assignment of a trial date.

(i) *Ethics.* Arbitrators shall follow the Delaware Lawyers' Rules of Professional Conduct and shall follow Canon 3(C)(1) of the Delaware Judges' Code of Judicial Conduct.

(j) *Compensation.*

(1) Unless otherwise stipulated in advance by the parties, the arbitrator appointed, except nonretired members of the State Judiciary, shall receive compensation from the parties for services for a minimum of three (3) hours of hearing time at a reasonable rate set by the arbitrator. Each party shall pay that party's share of the total MNA fee in advance of the hearing. It is the obligation of each attorney, or any party appearing pro se, to timely pay any arbitrator's fee when billed. Any attorney who refuses or neglects to pay the arbitrator's fee, after second notice, may be subject to a loss of civil case filing privileges. (See Civil Rule 77(h)(E)).

(2) An arbitrator who certifies that he or she has performed services in excess of three (3) hours may receive additional compensation from the parties for such additional time, provided that the arbitrator provides the terms for additional compensation to the parties in writing in advance of the hearing and all parties agree to those terms. Fee agreements will be enforced by the Court upon a Motion filed by the arbitrator.

(k) *The arbitration hearing.* Unless otherwise ordered by the Court, the arbitration shall be scheduled and completed as soon as practicable and within the time allowed for conducting MNA by these Rules. Written guidelines setting forth the arbitration procedures, forms and frequently asked questions will be available on the Court's website prior to the effective date.

(1) Unless the date of the hearing is agreed upon by all parties, the arbitrator shall give at least ten (10) days written notice of the hearing to all parties.

(2) The arbitrator, in the arbitrator's discretion, may schedule an informal preliminary conference with the parties.

(3) The arbitration may proceed in the absence of any party who fails to appear, after notice, but an award of damages shall not be based solely upon the failure of a party to appear.

(4) The Rules of this Court may be used to compel the attendance of witnesses and production of documents.

(5) Unless waived by all parties, the testimony shall be under oath or affirmation, administered by a notary public.

(6) The Delaware Uniform Rules of Evidence shall be used as a guide to the admissibility of evidence. Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be delivered to the arbitrator and all parties at least ten (10) days prior to the hearing. Any party that fails to deliver all exhibits at least (10) days prior to the date set for hearing forfeits any right to costs allowable under this Rule. The arbitrator shall consider such exhibits without formal proof, unless the arbitrator and the parties have been notified at least five (5) days prior to the hearing that an adverse party intends to raise an issue concerning the authenticity of the exhibit. The arbitrator may refuse to receive into evidence any exhibit, a copy or photograph of which has not been delivered to an adverse party as provided herein. The arbitrator, in his or her discretion, may view or inspect exhibits or the locus involved in the action either with or without the parties and/or their attorneys.

(7) A party at its expense may, with at least ten (10) days prior written notice to the arbitrator and adverse party, have a recording or transcript made of the arbitration hearing.

(8) An arbitrator, in his or her discretion, may limit testimony in the arbitration hearing.

(9) An arbitrator, in his or her discretion, may adjourn the hearing for not more than ten (10) days.

(10) Each party and each attorney, unless excused by the arbitrator, shall appear and participate in the arbitration hearing.

(A) A party, who without being excused, fails to appear at an arbitration hearing shall not be entitled to demand a trial de novo, except upon payment of the total arbitrator's fee and all Court costs incurred by all parties to date.

(B) Failure to appear and participate without just cause by any person whose attendance is required shall subject the offender to sanctions under Superior Court Civil Rule 37(d).

(*l*) *Arbitrator's order.* The arbitrator shall certify as part of the order that he or she has not examined and is not familiar with the amount of insurance coverage, unless such was necessary for the arbitration decision, and is not disqualified under Canon 3(C)(1) of the Delaware Judge's Code of Judicial Conduct. In addition:

(1) The arbitrator shall electronically file the original written arbitration order, or notice with the Prothonotary with copies to each party within five (5) days following the close of the arbitration hearing.

(2) The arbitration order shall be entered as an order of judgment by any judge of the Court, upon motion of a party, after the time for requesting a trial de novo has expired. A judgment so entered shall have the same force and effect of a judgment of the Court in a civil action, but shall not be subject to appeal.

(m) *Time for arbitration hearing and appeal-trial de novo.* Within twenty (20) days after the electronic filing of the arbitration order any party may electronically file a written demand for a trial de novo. A demand for a trial de novo is the sole remedy of any party in any action subject to arbitration under this Rule.

(1) Any right of trial by jury shall be preserved inviolate. The stay of motions and discovery provided by this Rule shall automatically terminate upon the service and filing of a demand for trial de novo or the placement of the case upon the Court's trial calendar following the expiration of the time allowed for MNA. The time for responses to motions and discovery shall commence upon the date of the filing of the demand for trial de novo or the placement of the case upon the Court's trial calendar following the expiration of the time allowed for MNA.

(2) Participation by the parties in an arbitration pursuant to this Rule also constitutes compliance with the ADR requirements of Rule 16. In any case not arbitrated, either within the time allowed by this

Rule or within the time allowed by the Court, the parties must comply with the ADR provisions of Rule 16.

(3) At the trial de novo, the Court shall not admit evidence that there has been an arbitration proceeding, the nature or amount of the order, nor consider any other matter concerning the conduct or outcome of the arbitration proceeding, except recorded testimony taken at the arbitration hearing may be used in the same manner as testimony taken at a deposition.

(4) If the party who demands a trial de novo fails to obtain a verdict from the jury or judgment from the Court, exclusive of interests and costs, more favorable to the party than the arbitrator's order, that party shall be assessed the costs of arbitration, and the arbitrator's total compensation. In addition:

(A) If the plaintiff obtains a verdict from the jury or judgment from the Court equal to or more favorable than the arbitrator's order, and the defendant demanded a trial de novo, interest on the amount of the arbitrator's award shall be payable in accordance with the interest provisions of 6 Del. C. § 2301(a) beginning with the date of the order.

(B) If the defendant obtains a defense verdict or a verdict from the jury or judgment from the Court equal to or more favorable than the arbitrator's order, and the plaintiff demanded a trial de novo, the defendant shall be awarded costs, as described in Superior Court Civil Rule 68, incurred after the date of the arbitrator's order.

(5) An election to participate in an arbitration under this Rule shall not be considered for any purpose, other than as specifically provided under this Rule.

(n) *Judgments.* In the event that no request for trial de novo is timely filed and a judge upon motion has entered an order of judgment, the Prothonotary shall record the order of judgment in the proper docket and judgment index.

(o) *Motions for relief and enforcement.* Subject to the other Civil Rules, any party subject to this Rule may file with the Court a motion for relief from or to enforce compliance with any part of this Rule, in part or in its entirety, for good cause shown including, but not limited to, motions to compel, motions to bypass arbitration, motions requesting additional discovery, and motions to enlarge the time allowed for conducting arbitration. No motion for enlargement of time for the trial date may be filed by a party subject to this Rule.

(p) *Collateral estoppel.* Awards entered pursuant to arbitration proceedings under this Rule shall not have collateral estoppel effect in any other judicial proceedings.

(q) *MNA civil immunity.* All arbitrators shall be immune from civil liability for, or resulting from, any act or omission done or made while engaged in MNA, unless an act or omission was made or done in bad faith, with malicious intent, or in a manner exhibiting a willful, wanton disregard of the rights, safety, or property of another. No arbitrator shall be compelled to give testimony in any subsequent proceeding in connection with any hearing or conference over which the arbitrator presided, unless so directed by the Court.

History.

Added, Dec. 7, 2017, effective Jan. 1, 2018.

Rule 16.2. [Deleted].

IV. Parties

Rule 17. Parties plaintiff and defendant; capacity.

(a) *Real party in interest.* Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Omitted.

(c) *Infants or incompetent persons.* Whenever an infant or incompetent person has a representative, such as a general guardian, trustee, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The Court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

History.

Amended, effective Jan. 1, 1967; Jan. 1, 1991.

Rule 18. Joinder of claims and remedies.

(a) *Joinder of claims.* A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims as the party has against an opposing party.

(b) Omitted.

History.

Amended, effective Jan. 1, 1970; Jan. 1, 1991.

Rule 19. Joinder of persons needed for just adjudication.

(a) *Persons to be joined if feasible.* A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the Court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

(b) *Determination by Court whenever joinder not feasible.* If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the Court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the Court include: First, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties;

second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) *Pleading reasons for nonjoinder.* A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

History.

Amended, effective Jan. 1, 1967; Jan. 1, 1991.

Rule 20. Permissive joinder of parties.

(a) *Permissive joinder.* All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) *Separate trials.* The Court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

History.

Amended, effective Jan. 1, 1967; Jan. 1, 1991.

Rule 21. Misjoinder and nonjoinder of parties.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the Court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Rule 22. Interpleader.

(1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this Rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(2) The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by the statute but actions thereunder shall be conducted in accordance with these Rules.

History.

Amended, effective Jan. 1, 1991.

Rule 23. Class actions.

(a) *Requisites to class action.* One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) *Class actions maintainable.* An action may be maintained as a class action if the prerequisites of paragraph (a) are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of:

(A) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) The Court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matter pertinent to the findings include:

(A) The interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) The desirability or undesirability of concentrating the litigation of the claims in the particular forum;

(D) The difficulties likely to be encountered in the management of a class action.

(c) *Determination by order whether class action to be maintained; notice; judgment; actions conducted partially as class actions.*

(1) As soon as practicable after the commencement of an action brought as a class action, the Court shall determine by order whether it is to be so maintained. An order under this paragraph may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under paragraph (b)(3), the Court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that:

(A) The Court will exclude him from the class if he so requests by a specified date;

(B) The judgment, whether favorable or not, will include all members who do not request exclusion; and

(C) Any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under paragraph (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the Court finds to be members of the class. The judgment in an action maintained as a class action under paragraph (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in paragraph (c)(2) was directed, and who have not requested exclusion, and whom the Court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) *Orders in conduct of actions.* In the conduct of actions to which this rule applies, the Court may make appropriate orders: (1) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the Court directs to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) *Dismissal or compromise.* 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.

History.

Added, effective Sept. 30, 1994.

Rule 24. Intervention.

(a) *Intervention of right.* Upon timely application anyone shall be permitted to intervene in an action: (1) When a statute confers an unconditional right to intervene; or (2) when an applicant claims an interest relating to the property or transaction which is the subject matter of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) *Permissive intervention.* Upon timely application, anyone may be permitted to intervene in an action: (1) When a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion, the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of existing parties.

(c) *Procedure.* A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

History.

Amended, effective Jan. 1, 1965; Jan. 1, 1967; Jan. 1, 1991.

Rule 25. Substitution of parties.

(a) *Death.*

(1) If a party dies and the claim is not thereby extinguished, the Court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any county. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party in all cases except those in which an application for an interlocutory appeal has been made.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) *Incompetency.* If a party becomes incompetent, the Court upon motion served as provided in subsection (a) of this Rule may allow the action to be continued by or against the party's representative.

(c) *Transfer of interest.* In case of any transfer of interest, the action may be continued by or against the original party, unless the Court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this Rule.

(d) *Public officers; death or separation from office.*

(1) When an officer of the State of Delaware, a county, city or other governmental agency is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When an officer of the State of Delaware, county, city or other governmental agency sues or is sued in an official capacity, the officer may be described as a party by an official title rather than by name; but the court may require that the officer's name be added.

History.

Amended, effective July 1, 1970; Oct. 15, 1980; Jan. 1, 1991.

V. Depositions and Discovery

Rule 26. General provisions governing discovery.

(a) *Discovery methods.* Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents

or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) *Discovery scope and limits.* Unless otherwise limited by order of the Court in accordance with these rules, the scope of discovery is as follows:

(1) *In general.* Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, including the existence, description, nature, custody, condition and location of any documents, electronically stored information (ESI), or tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial.

The frequency or extent of use of the discovery methods set forth in paragraph (a) shall be limited by the Court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery sought is not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. The Court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).[1]

(2) *Insurance agreements.* A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) *Trial preparation: Materials.* Subject to the provisions of subdivision (b)(4) of this Rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this Rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering the discovery of such materials when the required showing has been made, the Court shall protect against

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[1]Comment: The 2019 amendment to Delaware Superior Court Rule 26(b)(1) follows the Federal Rules of Civil Procedure in confirming that relevance is the touchstone for discovery. Under this standard, relevant evidence is discoverable, even if it may not be admissible. The 2019 amendment removes the qualification about the information appearing "reasonably calculated to lead to the discovery of admissible evidence." As the comments to Federal Rule of Civil Procedure 26(b)(1) explain, this phrase "has been used by some, incorrectly, to define the scope of discovery." To avoid this implication, the drafters of the federal rules removed the language and replaced it with the direct statement that information within the scope of discovery need not be admissible in evidence to be discoverable.Subject to other considerations, such as privilege and proportionality, all relevant evidence is discoverable, whether or not it is admissible. This clarification is not intended to change the scope of available discovery under the Delaware rules. The scope of discovery remains "broad and far-reaching...." , 2004 WL 1238443, at *1 (Del. Ch. May 26, 2004) (citation omitted); see also , 2017 WL 3727019, (Del. Super. Aug. 30, 2017 at *6; , 687 A.2d 573, 1996 WL 742818, at *2 (Del. Dec. 20, 1996) (Table) (noting that the "discovery rules are to be afforded broad and liberal treatment"); "[T]he spirit of Rule 26(b) calls for all relevant information, however remote, to be brought out for inspection not only by the opposing party but also for the benefit of the Court ...." , 1981 WL 15479, at *2 (Del. Ch. Nov. 9, 1981). Relevance "must be viewed liberally," and discovery into relevant matters should be permitted if there is "any possibility that the discovery will lead to relevant evidence." , 1980 WL 268060, at *4 (Del. Ch. Oct. 24, 1980); see also , Inc., 2017 WL 5128979, at *4 (Del. Super. Oct. 27, 2017) (as a general rule, information sought in discovery is considered relevant "if there is any possibility that the information sought may be relevant to the subject matter of the action." (citations omitted).

disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the party making it and contemporaneously recorded.

(4) *Trial preparation: Experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this Rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Upon motion, the Court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this Rule, concerning fees and expenses as the Court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the Court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this Rule; and (ii) with respect to discovery obtained under subdivision (b)(4)(A)(ii) of this Rule the Court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this Rule the Court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) *Protection for draft reports or disclosures.* Rule 26(b)(3) protects drafts of any report or disclosure required under Rule 26 regardless of the form in which a draft is recorded.

(6) *Protection of communication between a party's attorney and expert witnesses.* Rule 26 protects communications between the party's attorney and any witness required to provide an opinion under Rule 26(b)(4) regardless of the form of the communications, except to the extent that communications:

(i) relate to compensation for the expert study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(7) *Claims of privilege or protection of trial material.* When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(c) *Protective orders.* Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the Court or alternatively, on matters relating to a deposition taken outside the State of Delaware, a court in the state where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place or the allocation of expenses; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the Court; (6) that a deposition after being sealed be opened only by order of the Court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court. A party has standing to move for a protective order with respect to discovery directed at a non-party on the basis of annoyance, embarrassment, oppression, or undue burden or expense that the moving party will bear. A non-party from another state from whom discovery is sought always may move for a protective order from the court in the state where discovery is sought or, alternatively, from this Court provided the non-party agrees to be bound by the decision of this Court as to the discovery in question.

If the motion for a protective order is denied in whole or in part, the Court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) *Sequence and timing of discovery.* Unless the Court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired except as follows:

(1) A party is under a duty seasonably to supplement the response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (A) the party knows that the response was incorrect when made, or (B) the party knows that the response although correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(f) *Discovery conference.* At any time after commencement of an action the Court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The Court shall do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any limitations proposed to be placed on discovery;

(4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and each party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections

or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Following the discovery conference, the Court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the Court may combine the discovery conference with a pretrial conference authorized by Rule 16.

(g) *Signing of discovery requests, responses, and objections.* Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (1) Consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the Court, upon motion, or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

History.

Amended, effective July 1, 1970; Nov. 1, 1984; Jan. 1, 1991; Dec. 1, 1997; Sept. 4, 2014; Oct. 1, 2015; June 27, 2019, effective Aug. 1, 2019.

Rule 27. Deposition before action or pending appeal.

Omitted.

Rule 28. Persons before whom depositions may be taken.

(a) *Within the United States.* Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken (1) before an officer authorized to administer oaths by the laws of the place where the examination is held, or (2) before a person appointed by the Court in which the action is pending. A person so appointed has power to administer oaths and take testimony. The term "officer" as used in Rules 30, 31 and 32 includes a person appointed by the Court or designated by the parties under Rule 29.

(b) *In foreign countries.* Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or convention, or (2) pursuant to a letter of request (whether or not captioned a letter rogatory), or (3) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States, or (4) before a person commissioned by the Court, and a person so commissioned shall have the power by virtue of the commission to administer any

necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in (here name the country)." When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these Rules.

(c) *Disqualification for interest.* No depositions shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

(d) *Designation of officers.* The officers referred to in paragraphs (a) and (b) hereof may be designated in notices or commissions either by name or descriptive title and letters of request may be addressed "To the Appropriate Authority in (here name the state or country)."

History.

Amended, effective Jan. 1, 1965; June 1, 1981; Jan. 1, 1991; Jan. 1, 1995.

Rule 29. Stipulations regarding discovery procedure.

Unless the Court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these Rules for other methods of discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may be made only with the approval of the Court.

History.

Amended, effective July 1, 1970.

Rule 30. Depositions upon oral examination.

(a) *When depositions may be taken.* After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant, except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if a special notice is given as provided in subdivision (b)(2) of this Rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the Court prescribes.

(b) *Notice of examination: General requirements; special notice; method of recording; production of documents and things; deposition of organization.*

(1) A party desiring to take the deposition of a person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. The party taking the deposition shall state in the notice the method by which

the testimony shall be recorded. Unless the Court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by nonstenographic means.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the State of Delaware and will be unavailable for examination unless the person's deposition is taken before expiration of the 30 day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

(3) The Court may for cause shown enlarge or shorten the time for taking the deposition.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date, time, and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the party's notice name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these Rules.

(7) The parties may stipulate in writing or the Court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this Rule and Rules 28(a), 37(a)(1), 37(b)(1) [omitted] and 45(d), a deposition taken by such means is taken in the jurisdiction and at the place where the deponent is to answer questions.

(c) *Examination and cross-examination; record of examination; oath; objections.* Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Delaware Uniform Rules of Evidence, except Rules 103 and 615. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subdivision (b)(4) of this Rule.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings, shall be noted by the officer upon the record of the deposition; but the evidence shall proceed with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) *Schedule and duration; motion to terminate or limit examination.*

(1) From the commencement until the conclusion of a deposition, including any recesses or continuances thereof of less than five calendar days, the attorney(s) for the deponent shall not: (A) consult or confer with the deponent regarding the substance of the testimony already given or anticipated to be given except for the purpose of conferring on whether to assert a privilege against testifying or on how to comply with a court order, or (B) suggest to the deponent the manner in which any question should be answered. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the Court, or to present a motion under paragraph (d)(3).

(2) By order, the court may limit the time permitted for the conduct of a deposition, but shall allow additional time consistent with Rule 26(b)(2) if needed for a fair examination of the deponent or if the deponent or another party impedes or delays the examination. If the Court finds such an impediment, delay or other conduct that has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any party as a result thereof.

(3) At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted or defended in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party, the Court in which the action is pending or a Court of competent jurisdiction in the state where the deposition is being taken may order: (A) that examination cease forthwith; (B) that the scope and manner of the taking of the deposition be limited as provided in Rule 26(c); or (C) such other relief as the Court reasonably deems to be appropriate. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the Court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) *Submission to witness; changes; signing.* When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days after the date when the reporter notifies the witness and counsel by mail of the availability for examination by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 32(d) the Court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) *Certification by officer; exhibits, copies; notice of filing.*

(1) The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. The certification shall be in writing and accompany the record of the deposition. Unless otherwise ordered by the Court, the officer shall securely seal the deposition in an envelope or package indorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly transmit it to the attorney who arranged for the transcript or recording, who shall store it under conditions that will protect it against loss, destruction, tampering or deterioration.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them, the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the Court, pending final disposition of the case.

(2) Unless otherwise ordered by the Court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges thereof, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) *Failure to attend or to serve subpoena; expenses.*

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the Court may order the party giving the notice to pay such other party the reasonable expenses incurred by the party and that party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of the deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the Court may order the party giving the notice to pay such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(h) *Counsel fees on taking depositions; depositions more than 150 miles distant.* In the case of a proposed deposition upon oral examination at a place more than 150 miles from the courthouse where the action was commenced, the Court may order or impose as a condition of denying a motion to vacate notice thereof, that the applicant shall pay the expense of the attendance of one attorney for the adversary party or parties, at the place where the deposition is to be taken, including reasonable counsel fees, which amounts shall be paid or secured prior to such examination. The amount paid by such applicant to the applicant's adversary on account of attorney's fees and expenses may be a taxable disbursement in the event that the applicant recovers costs of the action.

(i) *Depositions for use before the Industrial Accident Board.* Any party to a proceeding before the Industrial Accident Board may apply to the Superior Court for an order to provide for obtaining evidence outside of the State of Delaware for use in hearings before the Board. The application shall be by petition, presented upon notice, showing good cause for obtaining evidence by deposition for use in such proceeding. The procedure for obtaining such evidence shall conform to these Rules insofar as may be practicable.

(j) *Deposition of Court employees.* The deposition of employees of the Superior Court, in which inquiry is to be made concerning the performance of their official duties, may be taken only by leave of court on such terms as the Court prescribes. For purposes of this Rule, Court employees shall include: Judges' secretaries; court reporters; bailiffs; employees of the Presentence Office; the Court Administrator and the Administrator's staff; employees of the Case Scheduling Office; and employees of the Prothonotary.

History.

Amended, effective July 1, 1970; Feb. 1, 1979; June 1, 1981; Jan. 1, 1991; Jan. 1, 1995.

Rule 31. Depositions upon written questions.

(a) *Serving questions; notice.* After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the Court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a

public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within 14 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 7 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, upon all other parties. The Court may for cause shown enlarge or shorten the time.

(b) *Officer to take responses and prepare record.* A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e) and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

(c) *Notice of filing.* When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

History.

Amended, effective July 1, 1970; Jan. 1, 1991; Jan. 1995; Oct. 26, 1995.

Rule 32. Use of depositions in court proceedings.

(a) *Use of depositions.* At the trial or upon hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness, or for other purposes permitted by the Delaware Uniform Rules of Evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Court finds: (A) That the witness is dead; or (B) that the witness is out of the State of Delaware, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

A deposition taken without leave of court pursuant to a notice under Rule 30(b)(2) shall not be used against a party who demonstrates that, when served with the notice, it was unable through the exercise of diligence to obtain counsel to represent it at the taking of the deposition; nor shall a deposition be used against a party who, having received less than 11 days notice of a deposition, has promptly upon receiving such notice filed a motion for a protective order under Rule 26(c)(2) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or of any state and

another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Delaware Uniform Rules of Evidence.

(b) *Objections to admissibility.* Subject to the provisions of Rule 28(b) and paragraph (d)(3) of this Rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) *Effect of taking or using depositions.* [Repealed.]

(d) *Effect of errors and irregularities in depositions.*

(1) *As to notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) *As to disqualification of officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) *As to taking of deposition.*

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) *As to completion and return of depositions.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(e) *Form of presentation.* Except as otherwise directed by the Court, a party offering deposition testimony pursuant to this rule may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the Court with a transcript of the portions so offered.

History.

Amended, effective July 1, 1970; June 1, 1981; Jan. 1, 1991; Jan. 1, 1995.

Rule 33. Interrogatories to parties.

(a) *Availability.* Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each interrogatory shall be restated as numbered and shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The Court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

Interrogatory answers filed pursuant to Rules 3(h)(1)(I) and 5(d)(1) need not be answered under oath by a party if the answers are signed by the attorney making them. If a party elects to file answers signed by the attorney, sworn answers signed by a party shall be filed within 30 days of the date when the answers signed by the attorney are filed.

All interrogatories as served shall contain a reasonable amount of blank space after the question to permit the insertion of the answer.

(b) *Answers and objections.*

(1) Each interrogatory shall be restated as numbered and shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for the objection and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The Court may allow a shorter or longer time.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the Court for good cause shown.

(5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(c) *Scope; use at trial.* Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(d) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

History.

Amended, effective July 1, 1970; June 1, 1981; Jan. 1, 1991; Jan. 1, 1995; Nov. 12, 1997.

Rule 34. Production of documents and things and entry upon land for inspection and other purposes.

(a) *Scope.* Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purposes of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) *Procedure.* The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The Court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated with specificity. An objection must state whether the responding party is withholding or intends to withhold any responsive materials on the basis of that objection, and the responding party is under a duty to supplement its response to the extent it subsequently determines that it will withhold any responsive material on the basis of an objection. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection 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 request.

Unless the document request expressly requires that the documents must be produced for inspection, the responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection, in which case the production must then be completed no later than the time for inspection specified in the request, another reasonable time specified in the response, or as otherwise agreed between the requesting and responding parties.

(c) *Persons not parties.* A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided by Rule 45.

(d) *Request for production of documents or electronically stored information.* Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information: A party may state in its request the form for producing documents or electronically stored information. If a party so states, the responding party must produce electronically stored information in the form requested. If a request does not specify a form for producing documents or electronically stored information, or if the form specified is unreasonable, a party must produce it in a form or forms in which it is ordinarily maintained or in which it is reasonably usable. Absent a showing of good cause, a party need not produce the same documents or electronically stored information in more than one form.

History.

Amended, effective July 1, 1970; June 1, 1981; Jan. 1, 1991; Dec. 1, 1993; Oct. 21, 1994, effective Jan. 1, 1995; June 27, 2019, effective Aug. 1, 2019.

Rule 35. Physical and mental examinations of persons.

(a) *Order for examination.* When the mental or physical condition (including the blood group) of a party or of a person in the custody or under the legal control of a party, is in controversy, the Court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) *Report of examiner.*

(1) If requested by the party against whom an order is made under Super. Ct. Civ. R. 35(a) or the person examined, the party causing the examination to be made shall deliver to the requesting party a copy of the detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that the party is unable to obtain it. The Court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the Court may exclude the examiner's testimony if offered at trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other Rule.

History.

Amended, effective Dec. 1, 1993.

Rule 36. Requests for admission.

(a) *Request for admission.* A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney, but, unless the Court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon the defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is

requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

Each request for admission shall be restated as numbered and shall be answered separately and fully in writing.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Court determines that an objection is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. The Court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) *Effect of admission.* Any matter admitted under this Rule is conclusively established unless the Court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the Court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the Court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

History.

Amended, effective July 1, 1970; Jan. 1, 1991.

Rule 37. Failure to make discovery: Sanctions.

(a) *Motion for order compelling discovery.* A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) *Appropriate court.* An application for an order to a party may be made to the Court, or, alternatively, on matters relating to a deposition taken outside the State of Delaware, to a court in the state where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to a court in the state where the deposition is being taken.

(2) *Motion.* If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to produce documents or ESI, or fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) *Evasive or incomplete answer or response.* For purposes of this subdivision an evasive or incomplete answer or response is to be treated as a failure to answer or respond.

(4) *Expenses and sanctions.*

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the Court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or

both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the Court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the Court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the Court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the Court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) *Failure to comply with order.*

(1) Omitted.

(2) *Sanctions by Court.* If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this Rule or Rule 35, the Court may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that that party is unable to produce such person for examination.

(F) *Rule 37. Failure to preserve ESI.* If ESI that should have been preserved in the reasonable anticipation of or actual notice of imminent litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from loss of information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted recklessly or with the intent to deprive another party of the information's use in the litigation, may, among other things: (A) presume that the lost information was unfavorable to the party; (B) instruct the jury that it may or must presume the information was unfavorable to the party; or (C) dismiss the action or enter a default judgment.

In lieu of any of the foregoing orders or in addition thereto, the Court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable

expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) *Expenses on failure to admit.* If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the Court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The Court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) *Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.* If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the Court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this Rule. In lieu of any order or in addition thereto, the Court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this paragraph may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

(e) *Presentation of motions.* All motions which are filed pursuant to Rule 26(c), 26(d) or 37 of the Superior Court Civil Rules, with the exception of motions filed during the pendency of an oral deposition, shall be presented to the Court as follows:

(1) No motion shall be filed pursuant to Rule 26(c), 26(d) or 37 of the Superior Court Civil Rules, and no such motion shall be accepted by the Prothonotary, unless such motion shall include a certification by the moving party detailing the dates, time spent, and method of communication in attempting to reach agreement on the subject of the motion with the other party or parties and the results, if any, of such communication, provided that the certification shall not be required for motions filed pursuant to Rule 37(d) of the Superior Court Civil Rules.

(2) The motion shall be filed at least 10 days prior to the date noticed for presentation of the motion to the Court. The motion shall not exceed 4 pages of letter size paper (81/2″ x 11″) and shall contain all authorities and facts which the moving party desires to bring to the attention of the Court.

(3) At least 4 days prior to the date noticed for presentation of the motion, if any other party to the action desires to oppose or take any position with respect to the motion, such party shall file a responsive pleading which shall not exceed 4 pages of letter size paper (81/2″ x 11″). The responsive pleading shall contain all authorities and facts which the responding party desires to present to the Court. Failure to file a responsive pleading shall constitute a waiver of any opposition to the motion.

(4) There shall be no written reply to the responsive pleading to the motion.

(5) There shall be no further briefing on any motion filed pursuant to Rule 26(c), 26(d) or 37 of the Superior Court Civil Rules, except upon order of the Court for good cause shown at oral argument.

(6) Oral argument on any motion filed pursuant to Rule 26(c), 26(d) or 37 of the Superior Court Civil Rules shall be limited to no more than a total of 15 minutes which time shall be divided equally. At the argument any party may apply for further briefing and the Court shall rule on the application at that time.

(7) Whenever possible, the Court shall decide the motion at the oral argument. The Court hearing the oral argument may reserve decision or in the Court's discretion may schedule such further proceedings as the Court shall deem necessary.

(8) If the attorney for the moving party or an attorney for a party opposing the motion filed pursuant to Rule 26(c), 26(d) or 37 of the Superior Court Civil Rules shall fail to appear at the oral argument on said motion, the motion shall be summarily denied or granted as the case may be and an attorney's fee in an amount not less than $100 shall be assessed against the nonappearing attorney. The sum shall be paid to the Prothonotary and the Prothonotary shall promptly forward it to the appearing party. The Prothonotary shall not accept further filings of any type in the action from the attorney who did not appear until the attorney's fee is paid.

(f) *Failure to participate in the framing of a discovery plan.* If a party or a party's attorney fails to participate in good faith in the framing of a discovery plan by agreement as required by Rule 26(f), the Court may, after opportunity for hearing, require such party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

History.

Amended, effective July 1, 1970; May 1, 1982; Mar. 1, 1983; July 1, 1984; Jan. 1, 1991; Jan. 1, 1995; Feb. 1, 2002; June 27, 2019, effective Aug. 1, 2019.

VI. Trials

Rule 38. Jury trial of right.

(a) *Right preserved.* The right to trial by jury shall be as heretofore.

(b) *Demand.* Any party may demand a trial by jury of an issued triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.

(bb) *Demand for jury on pleadings: Where.* Where a demand for a trial by jury in endorsed on a pleading, as provided in Rule 38(b) of these Rules, it shall be typed or written on the first page of the pleading, immediately following the caption of the case.

(c) *Same: Specification of issues.* In the demand a party may specify the issues which the party wishes so tried; otherwise, the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the Court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) *Demand for a jury of 12.* In the demand for a trial by jury a party may further specify that the party demands trial by a jury of 12 persons; otherwise, the party shall be deemed to have consented to trial by a jury of 6 persons. A demand for trial by a jury of 12 persons shall be deemed to apply to all triable issues for which any party demands trial by jury as provided in Rules 38(b) and (c) of these Rules. If a party in the demand for trial by jury does not demand trial by jury of 12 persons, any other party within 10 days after service of the demand for trial by jury or within such lesser time as the Court may order, may serve a demand for trial by a jury of 12 persons.

(e) *Waiver.* The failure of a party to serve a demand for trial by jury as required by this Rule and to file it as required by Rule 5(d) constitutes a waiver by the party of trial by jury. The failure of a party to demand trial by a jury of 12 persons as required by this Rule and to file it as required by Rule 5(d) likewise constitutes a waiver by the party of the right to a jury of 12 persons. A demand for trial by jury made as

herein provided may not be withdrawn without the consent of the parties. Withdrawal of a demand for trial by a jury of 12 persons shall be governed by Rule 48 of these Rules.

History.

Amended, effective May 1, 1972; Jan. 1, 1991.

Rule 39. Trial by jury or by the Court.

(a) *By jury of 12.* When trial by a jury of 12 persons has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action (12). The trial of all issues demanded for trial by jury by any party shall then be by a jury of 12 persons, unless (1) the parties or their attorneys of record, by written stipulation filed with the Court or by an oral stipulation made in open court and entered in the record, consent to trial by the Court sitting without a jury or (2) the Court upon motion or of its own initiative finds a right of trial by jury of some or all of those issues does not exist.

(aa) *By jury of 6.* When trial by a jury of 6 persons has been consented to as provided in Rule 38, the action shall be designated upon the docket as a jury action (6). The trial of all issues demanded for trial by jury shall be by a jury of 6 persons unless (1) the parties or their attorneys of record, by written stipulation filed with the Court or by an oral stipulation made in open court and entered in the record, consent to trial by the Court sitting without a jury or (2) the Court upon or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist; but, notwithstanding the failure of a party to demand trial by a jury of 12 persons, the Court in its discretion upon motion may order a trial by a jury of 12 persons of all issues for which trial by jury has been demanded and a right of trial by jury exists.

(b) *By the Court.* Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the Court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the Court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) *Advisory jury and trial by consent.* In all actions not triable of right by a jury the Court upon motion or of its own initiative may try any issue with an advisory jury or, except in actions when a statute provides for trial without a jury, the Court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

History.

Amended, effective May 1, 1972.

Rule 40. Assignment of judges; special juries; continuances.

(a) *Assignment of judges.* The President Judge of the Superior Court is designated Assignment Judge for the Superior Court with authority to assign and designate the several judges who shall hold said courts or either of them in the several counties of the State for any designated period of time or for the hearing of any 1 or more designated causes. Upon motion by any party to any cause to the President Judge of the Superior Court, and for good cause shown, the President Judge may designate any judge of the Superior Court for the hearing of any or all proceedings in the cause.

(b) *Special juries.* Application for a special jury shall be made at or before the marking of the case for trial. A party who has applied for a special jury may withdraw such application and have the case tried by the general jury, provided that the granting of such withdrawal will not unduly prejudice or inconvenience an opposing party. Special juries shall be selected in accordance with the plan for the selection of special juries, which shall be filed and available for inspection in the offices of the prothonotaries for each county.

(c) *Continuance: Absence of material witness.* Every motion for continuance upon the ground of the absence of, or unavailability of, a material witness shall be filed as soon as said absence or unavailability

becomes known and shall be accompanied by an affidavit on behalf of the party applying therefor, setting forth the facts which the party expects to prove by such witness, the efforts made to procure the witness' attendance, and the date when the absence or unavailability of the witness became known. If it be stipulated by the opposite party that the witness if called would testify as set forth in the affidavit, the Court, in its discretion, may refuse the motion, and under such circumstances, the affidavit may be offered in evidence at trial.

History.

Amended, effective June 30, 1954; Oct. 15, 1980; May 1, 1982; Jan. 1, 1983; Jan. 1, 1991.

Rule 41. Dismissal of actions.

(a) *Voluntary dismissal: Effect thereof.*

(1) *By plaintiff; by stipulation.* Subject to payment of costs and the provisions of Rule 23(e), an action may be dismissed by the plaintiff without order of court (I) except in replevin, by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment whichever first occurs or (II) by filing a stipulation of dismissal signed by all the parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

(2) *By order of court.* Except as provided in paragraph (1) of this subdivision of this Rule, an action shall not be dismissed at the plaintiff's instance save upon order of the Court and upon such terms and conditions as the Court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the Court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) *Involuntary dismissal: Effect thereof.* For failure of the plaintiff to prosecute or to comply with these Rules, or any order of Court, a defendant may move for dismissal of an action or of any claim against the defendant. After the plaintiff in an action tried by the Court without a jury, has completed the presentation of plaintiff's evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The Court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. Unless the Court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this Rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(c) *Dismissal of counterclaim, cross-claim or third-party claim.* The provisions of this Rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this Rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) *Costs of previously dismissed action.* If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the Court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

(e) *Upon notice of the Court.* The Court may order an action dismissed, sua sponte, upon notice of the Court, for failure of a party diligently to prosecute the action, for failure to comply with any rule, statute, or order of the Court, or for any other reason deemed by the Court to be appropriate. In the event that the Court shall conclude, sua sponte, that dismissal upon any of the foregoing grounds appears appropriate, the procedure for such dismissal shall be as follows: The Prothonotary shall forward to the party a notice directing that the party show cause why the action should not be dismissed for the reasons stated in the

notice. The notice shall direct the party to respond within fifteen (15) days from the date of the notice. After consideration of such response, the Court shall enter an order dismissing the action or maintaining jurisdiction of the case. If a response is not filed within the time allowed, the dismissal shall be deemed to be unopposed. If the Court is satisfied that the action should be dismissed, it shall enter an order of dismissal. Upon entry of any order of dismissal, the Court shall specify the terms thereof including provision for payment of costs. In the case of any action which has been pending in this Court for more than six (6) months without any proceedings having been taken therein during that six (6) months, the Prothonotary shall mail, after the expiration of the six (6) months, to the parties a notice notifying them that the action will be dismissed by the Court for want of prosecution if no proceedings are taken therein within thirty (30) days. If no proceedings are taken in the action within a period of thirty (30) days after the mailing of such notice, it shall thereupon be dismissed by the Court as of course for want of prosecution.

(f) *Without prior notice.* The Court may order a complaint, petition or appeal dismissed, sua sponte, without notice, notwithstanding the provisions of subsection (e) of this Rule, when such complaint, petition or appeal manifestly fails on its face to invoke the jurisdiction of the Court and where the Court concludes, in the exercise of its discretion, that the giving of notice would serve no meaningful purpose and that any response would be of no avail.

(g) *Dormant docket — Bankruptcy.* When the Court is advised that a party has filed a bankruptcy petition, the action shall be stayed. The Prothonotary shall remove the action from the active docket to the dormant docket. All parties for whom an appearance has been entered, either by counsel or *pro se*, shall be notified of the date of the transfer to the dormant docket. Twenty-four months after the transfer, the action shall be dismissed without further notice unless, prior to the expiration of the twenty-four month period, a party seeks to extend the period, for good cause shown.

> Actions pending on the effective date of this rule and stayed due to bankruptcy shall be transferred to the dormant docket. The Prothonotary shall notify all parties for whom an appearance has been entered, either by counsel or *pro se*, of the date of the transfer to the dormant docket. Twelve months after the transfer, the action shall be dismissed without further notice unless, prior to the expiration of the twelve month period, a party seeks to extend the period, for good cause shown.

History.

Amended effective Jan. 1, 1965; Jan. 1, 1967; Jan. 1, 1991; June 15, 1993; Aug. 1, 1996; Nov. 12, 1997; May 1, 1998; Aug. 18, 2000.

Rule 42. Consolidation: Separate trials.

(a) *Consolidation.* When actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) *Separate trials.* The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

History.

Amended, effective Jan. 1, 1967.

Rule 42.1. Opening statements by attorneys.

In jury trials, the attorney for the plaintiff may make an opening address. The attorney for the defendant may make an opening address either before any testimony is taken on behalf of the plaintiff or at the close of plaintiff's testimony and before any testimony is offered on behalf of the defendant.

Rule 43. Taking of testimony; conferences during trial.

(a) *Form.* In every trial, the testimony of witnesses shall be taken in open court, unless otherwise provided by statute, by the Delaware Uniform Rules of Evidence, by these rules, or by order for cause. The Court may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location.

(b) *Conferences during trial.* All sidebar conferences and chambers conferences during trial shall be recorded unless the trial judge determines, in advance, that neither evidentiary nor substantive issues are involved.

(c) *Affirmation in lieu of oath.* Whenever under these Rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(d) *Evidence on motions.* When a motion is based on facts not appearing of record the Court may hear the matter on affidavits presented by the respective parties, but the Court may direct that the matter be heard wholly or partly on oral testimony or deposition.

(e) *Interpreters.* The Court may appoint an interpreter of its own selection and may fix reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the Court may direct, and may be taxed ultimately as costs, in the discretion of the Court.

History.

Amended, effective Jan. 1, 1967; May 1, 1984; Jan. 1, 1991; Apr. 4, 1997.

Rule 44. Proof of official records.

(a) *Authentication.*

(1) *Domestic.* An official record kept within the United States, or any state, district, or commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.

(2) *Foreign.* A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the Court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and

the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) *Lack of record.* A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records, designated by the statement, authenticated as provided in subdivision (a)(1) of this Rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this Rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) *Other proof.* This Rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

History.

Amended, effective Jan. 1, 1967; Jan. 1, 1991; Dec. 1, 1993.

Rule 44.1. Determination of foreign law.

A party who intends to raise an issue concerning the law of a foreign country shall give notice in the party's pleadings or other reasonable written notice. The Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Delaware Rules of Evidence. The Court's determination shall be treated as a ruling on a question of law.

History.

Added, effective Jan. 1, 1967; amended, effective Jan. 1, 1991.

Rule 45. Subpoena.

(a) *Form; issuance.*

(1) Every subpoena shall

(A) state the name of the Court and the county from which it is issued; and

(B) state the title of the action, the name of the court in which it is pending, and its civil action number; and

(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), (d), and (e) of this rule.

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.

(2) A subpoena shall issue from the county in which the action is pending. If the action is pending in another court, a subpoena for attendance at a deposition shall issue from the county in which the deposition is to be taken or, if separate from a subpoena commanding the attendance of a person, a subpoena for production or inspection shall issue from the county in which the production or inspection is to be made.

(3) The Prothonotary shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. A Delaware attorney, as an officer of the Court, may also issue and sign a subpoena.

(b) *Service.*

(1) A subpoena may be served by the Sheriff or by any 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).

(2) Proof of service when necessary shall be made by filing with the Prothonotary of the county from which the subpoena issued a statement of the date and manner of service and of 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 shall enforce this duty and 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. 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 the 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 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

the Court 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.

(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,

(d) *Duties 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) *Contempt.* Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of court.

History.

Amended, effective Nov. 18, 1970; Oct. 15, 1980; Feb. 1, 1990, Jan. 1, 1991; June 1, 1991; July 1, 1995.

Rule 46. Exceptions unnecessary.

Formal exceptions to rulings or orders of the Court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the Court is made or sought, makes known to the Court the action which the party desires the Court to take or the party's objection to the action of the Court and the party's grounds therefor; and if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

History.

Amended, effective Jan. 1, 1991.

Rule 47. Jurors.

(a) *Examination on voir dire.* In jury trials, the Court alone shall examine all jurors on the Voir Dire unless it shall otherwise direct. When the Court examines, either attorney may request the Court to examine the jurors as to certain matters, and the Court may do so if in its opinion such matters are the proper subject of inquiry. Voir Dire examination of the jury panel concerning contact with prospective witnesses shall be freely granted. All questions proposed by an attorney to be used in Voir Dire examination shall be submitted in writing to the Court prior to commencement of the drawing of the jury.

(b) *Alternate jurors.* The Court may direct that not more than 6 jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to 1 peremptory challenge in addition to those otherwise allowed by law if 1 or 2 alternate jurors are to be impanelled, 2 peremptory challenges if 3 or 4 alternate jurors are to be impanelled, and 3 peremptory challenges if 5 or 6 alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

(c) *Peremptory challenges.* Each party shall be entitled to 3 peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purposes of making challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly. For good cause, the court may grant the parties such additional peremptory challenges as the court, in its discretion, deems appropriate. A request for additional challenges shall be made before commencement of the drawing of the jury or at such earlier time as ordered by the court.

(d) *Challenges, where parties are multiple.* [Repealed].

History.

Amended, effective Jan. 1, 1967; March 5, 1974; Oct. 13, 1976; Oct. 15, 1992.

Rule 48. Juries of less than 12 — Majority verdict.

The parties may stipulate that the jury shall consist of any number less than 12 or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

Rule 49. Special verdicts and interrogatories.

(a) *Special verdicts.* The Court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event, the Court may submit to the jury written questions susceptible of categorical or other brief answer, or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The Court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the Court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand, the Court may make such finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) *General verdict accompanied by answer to interrogatories.* The Court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The Court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the Court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the Court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the Court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

History.

Amended, effective Jan. 1, 1965; Jan. 1, 1991.

Rule 50. Judgment as a matter of law in actions tried by jury; alternative motion for new trial; conditional rulings.

(a) *Judgment as a matter of law.*

(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the Court may determine the issue against the party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

(2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

(b) *Renewal of motion for judgment after trial; alternative motion for new trial.* Whenever a motion for a judgment as a matter of law made at the close of all the evidence is denied or for any reason is not granted, the Court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed by service and filing not later than 10 days after entry of judgment. A motion for a new trial under Rule 59 may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested in the alternative. If a verdict was returned, the Court may, in disposing of the renewed motion, allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned, the Court may, in disposing of the renewed motion, direct the entry of judgment as a matter of law or may order a new trial.

(c) *Same: Conditional rulings on grant of motion for judgment as a matter of law.*

(1) If the renewed motion for judgment as a matter of law is granted, the Court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) The party against whom judgment as a matter of law has been rendered may serve a motion for a new trial pursuant to Rule 59 not later than 10 days after entry of the judgment.

(d) *Same: Denial of motion for judgment as a matter of law.* If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

History.

Amended, effective Jan. 1, 1965; Jan. 1, 1991; Dec. 1, 1993; Jan. 1, 1995.

Rule 51. Instructions to jury; objection.

At the close of the evidence or at such earlier time as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the requests. The Court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. The Court may instruct the jury before or after the arguments are completed and such other times, including prior to the introduction of evidence, as the Court may desire. No party may assign as error the giving or the failure to give an instruction unless a party objects thereto before or at the time set by the Court immediately after the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the party's objection. Opportunity shall be given to make the objection out of the hearing of the jury.

History.

Amended, effective Jan. 1, 1965; Jan. 1, 1991; Dec. 6, 1995.

Rule 52. Findings by the Court.

Omitted.

Rule 53. Masters.

Omitted.

VII. Judgment

Rule 54. Judgment; costs.

(a) *Definition.* "Judgment" as used in these Rules includes any order from which a writ of error or an appeal lies.

(b) *Judgment upon multiple claims.* When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, the Court may direct the entry of a final judgment upon one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims, or parties and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Omitted.

(d) *Costs.* Except when express provision therefor is made either in a statute or in these Rules or in the Rules of the Supreme Court, costs shall be allowed as of course to the prevailing party upon application to the Court within ten (10) days of the entry of final judgment unless the Court otherwise directs.

(e) *Unnecessary costs.* If at any time during the progress of an action it appears to the Court that the amount claimed is exorbitant so that the opposite party is put to unnecessary expense in giving bond, or if any party unnecessarily swells the record or otherwise causes unnecessary expense, the Court may, in its discretion, order such unnecessary expense to be taxed against the party causing the same, without regard to the outcome of the action.

(f) *Court reporter fees.* The fees paid court reporters for the Court's copy of transcripts of depositions shall not be taxable costs unless introduced into evidence. Fees for other copies of such transcripts shall not be taxable costs. The production and playback costs associated with any videotape deposition may also be taxable as costs if the video deposition is introduced into evidence.

(g) *Witness fees.* Witness fees for those testifying on deposition shall be the same as statutory witness fees for testifying in Court and such fees shall be taxable as costs if the deposition is introduced into evidence.

(h) *Expert witness fees.* Fees for expert witnesses testifying on deposition shall be taxed as costs pursuant to 10 Del. C. 8906 only where the deposition is introduced into evidence.

(i) *Attorney fees.* No appearance fees for attorneys will be permitted or taxed as costs in any action or cause in the Superior Court.

History.

Amended, effective July 28, 1959; July 1, 1970; Oct. 15, 1980; Oct. 1, 1993; Oct. 26, 1995; Nov. 12, 1997; May 19, 1999, effective July 1, 1999.

Rule 54.1. Fees for the prothonotary.

Repealed, effective July 1, 1988.

Rule 55. Default judgments.

(a) Omitted.

(b) *Judgment.* Except as otherwise provided in paragraph (bb1), (bb2) and (bb3) of this Rule, when a party against whom a judgment for affirmative relief is sought, has failed to appear, plead or otherwise defend as provided by these Rules, and that fact is made to appear, judgment by default may be entered as follows:

(1) *By the Prothonotary.* When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the Prothonotary upon written direction of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has failed to appear in accordance with these Rules unless the defendant is an infant or incompetent person. When a party is entitled to have the Prothonotary enter judgment by default pursuant to this paragraph, the party shall submit with the party's direction to the Prothonotary to enter judgment a statement showing the principal amount due, which shall not exceed the amount demanded in the complaint, giving credit for any payments and showing the amounts and dates thereof, and a computation of interest to the date of judgment, to which statement shall be appended an affidavit of the party or the party's attorney stating: (1) That the party against whom judgment is sought is not an infant or an incompetent person; (2) that the party has made default in appearance in the action; and (3) that the amount shown by the statement is justly due and owing and that no part thereof has been paid. The Prothonotary shall thereupon enter judgment for principal, interest and costs.

(2) *By the Court.* In all other cases, the party entitled to a judgment by default shall apply to the Court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a guardian, trustee or other representative. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the Court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the Court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute.

(bb1) *Judgments for want of appearance in actions begun by capias.* Judgments for want of appearance shall be given as provided by statute.

(bb2) *Judgments in appeals under Rule 3(c).* When an appellee having the duty of serving the complaint or other first pleading fails to do so as required by Rule 3(c), judgment shall be entered against appellee for failure to plead. When an appellee having the duty of serving a responsive pleading fails to do so as required by Rule 12(aa4), judgment by default may be entered as provided in paragraph (b) hereof.

(bb3) *Judgments for want of appearance in actions for judgment by confession.* Judgments for want of appearance in actions for judgment by confession shall be given as provided by Rules 58.1, 58.2, and 58.3.

(c) *Setting aside default judgment.* The Court may set aside a judgment by default in accordance with Rule 60(b).

(d) *Plaintiffs, counterclaimants and cross-claimants.* The provisions of this Rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim.

History.

Amended, effective March 1, 1961; Jan. 1, 1972; Jan. 1, 1991; Nov. 12, 1997.

Rule 56. Summary judgment.

(a) *For claimant.* A party seeking to recover upon a claim, counterclaim, or crossclaim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment and at any time prior to the marking of the case for trial, move, with or without supporting affidavits, for a summary judgment in the party's favor upon all or any part thereof, subject to provisions of Rule 56(bb).

(b) *For defending party.* A party against whom a claim, counterclaim or crossclaim is asserted or a declaratory judgment is sought may, at any time, move, with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof, subject to the provisions of Rule 56(bb).

(bb) The limitation of time for the filing of motions for summary judgments in accordance with Rule 56(a) and Rule 56(b) shall not prohibit the filing of a motion for summary judgment by any party when, as a result of a pretrial conference, in the opinion of the Court, the filing of such motion is desirable. This Rule shall not affect in any way the provisions of Rule 12(b) and Rule 12(c) with respect to motions for summary judgment.

(c) *Motion and proceedings thereon.* The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) *Case not fully adjudicated on motion.* If on motion under this Rule, judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) *Form of affidavits; further testimony; defense required.* Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The Court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or affidavits. When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) *When affidavits are unavailable.* Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the Court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or make such other order as is just.

(g) *Affidavits made in bad faith.* Should it appear to the satisfaction of the Court at any time that any of the affidavits presented pursuant to this Rule are presented in bad faith, or solely for the purpose of delay, the Court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(h) *Cross motions.* Where the parties have filed cross motions for summary judgment and have not presented argument to the Court that there is an issue of fact material to the disposition of either motion, the Court shall deem the motions to be the equivalent of a stipulation for decision on the merits based on the record submitted with the motions.

History.

Amended, effective May 11, 1950; July 28, 1959; Jan. 1, 1965; Jan. 1, 1991; July 1, 2005.

Rule 57. Declaratory judgments.

The procedure for obtaining a declaratory judgment pursuant to the statute of this State shall be in accordance with these Rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided by Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The Court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Rule 58. Entry of judgment.

Subject to the provisions of Rule 54(b):

(1) *General verdict.* Upon a general verdict of a jury, or upon a decision by the Court that the party shall recover only a sum certain or costs or that all relief shall be denied, the Prothonotary, unless the Court otherwise orders, shall forthwith enter the judgment in the judgment docket without awaiting any direction by the Court;

(2) *Other verdicts.* Upon a decision by the Court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the Court shall promptly approve the form of the judgment and the Prothonotary shall thereupon enter it in the judgment docket.

(3) *Judgment.* A judgment is effective only when so set forth and when entered. Entry of the judgment shall not be delayed for the taxing of costs. Attorneys shall not submit forms of judgment except upon direction of the Court, and these directions shall not be given as a matter of course.

History.

Amended, effective May 28, 1962; Jan. 1, 1965; Jan. 1, 1966; Jan. 1, 1972.

Rule 58A. Entry of judgment by confession and execution thereon.

Transferred.

Rule 58B. Entry of judgment by confession in open court.

Transferred.

Rule 58C. Judgments by confession entered prior to July 9, 1971.

Transferred.

Rule 58.1. Entry of judgment by confession and execution thereon.

Judgments by confession as authorized by 10 Del. Code, § 2306 shall be entered by the Prothonotary provided that before entering such judgment the following procedure is followed:

(a) The plaintiff shall lodge with the Prothonotary:

(1) A praecipe in the following form signed by the person exercising the warrant of attorney:

Please commence proceedings pursuant to Rule 58.1 to confess judgment on behalf of (Plaintiff) against (Debtor's Name) of (Address) for $(Real Debt) and $ ..... accrued interest to date together with interest thereon at ....% per annum from plus attorney's fees of $..... and costs of $ .....

Date: ....

Person exercising warrant

of attorney

(2) The original document authorizing confession of judgment together with a completely legible photocopy for the Prothonotary and each debtor against whom judgment is requested.

(3) In the case of a debtor who was a nonresident at the time of the execution of the document, the plaintiff shall also file the affidavit required by 10 Del. Code § 2306(c) together with a completely legible photocopy for the Prothonotary and each debtor named therein.

(4) A completed notice letter as required by 10 Del. Code § 2306(b) for each debtor against whom judgment is requested together with a copy of each notice letter for the Prothonotary and a preaddressed, stamped, certified mail, return receipt envelope for each debtor against whom judgment is requested. Each certified return receipt shall provide for its return after service to the person exercising the warrant of attorney and each envelope shall give the address of the person exercising the warrant as the return addressee.

(b) The Prothonotary shall return the original document authorizing the confession of judgment and, if applicable, the original affidavit required by 10 Del. Code § 2306(c) to the plaintiff presenting it and file the copy or copies as the authority for commencing the procedure set forth in this Rule.

(c) The Prothonotary shall record the time of lodging and docket the case in the judgment docket book together with a notation of the tentative nature of the entry. Subsequently, the Prothonotary shall make a notation of the mailing and publication dates as provided for in paragraphs (d) and (e).

(d) The notice letter required by paragraph (a)(4) shall be mailed by the Prothonotary to each debtor by certified mail, return receipt requested, together with a copy of the instrument authorizing confession of judgment and, where applicable, a copy of the affidavit required by 10 Del. Code § 2306(c). The notice letter, on a form supplied by the Prothonotary, shall contain the following information:

(1) Plaintiff intends to obtain court judgment against debtor in the Superior Court of the State of Delaware based on the enclosed document for the following amounts:

Principal	____ ,
Accrued Interest	____ ,
Attorney's Fees	____ ,
Plus Interest and Costs	____ ,

(2) That the plaintiff alleges debtor has waived debtor's rights to notice and hearing prior to the entry of judgment against debtor.

(3) That the entry of such a court judgment will result in a lien against all debtor's real estate and the means, in default of payment, whereby the sheriff can levy against debtor's personal property and real estate and ultimately sell at public auction debtor's personal property and real estate for credit against the debt.

(4) That in default of payment in appropriate cases, the sheriff may seize some portion of debtor's wages for credit against the debt.

(5) That debtor may appear in Court, giving an address for said Court, on the second motion day following the date on which said notice letter was mailed, or any specified motion day subsequent thereto, at which time debtor may object to the entry of judgment and a hearing will be scheduled by the Court. At said hearing, the plaintiff will be required to prove that the debtor has effectively waived debtor's rights to notice and a hearing prior to the entry of judgment.

(6) That the debtor is not required to appear but if debtor fails to do so, judgment will be entered by default.

(e) When service is effected by certified mail, the person exercising the warrant of attorney shall file the return receipt with the Prothonotary.

(f) If the certified mail sent pursuant to paragraph (d) is returned undelivered, the person exercising the warrant of attorney shall notify the Prothonotary accordingly in writing and service shall be accomplished by the Prothonotary by publication of the notice provided for in paragraph (a)(4) once per week for 2 weeks in a newspaper of general circulation in the county in which the instrument is to be recorded. If the residence of the debtor is other than the county in which the judgment is sought to be entered, then publication shall also be made once per week for 2 weeks in a newspaper of general circulation in the county in this State in which the debtor resides or is last known to have resided. The notice shall include the date of the motion day on which debtor must appear, which day shall be the second motion day following the last publication.

(g)(1) Motion day shall be at the time designated for civil motions.

(2) Judgment shall be entered against a debtor who fails to appear after service as provided for herein.

(3) If the debtor appears, a hearing date will be scheduled by the Court. At said hearing the burden shall be on the plaintiff to prove that debtor effectively waived debtor's right to notice and a hearing prior to the entry of judgment against debtor. Costs are to be assessed against the plaintiff if plaintiff fails in the proof. Costs are to be assessed against the debtor if judgment is entered against debtor.

(4) When a judgment is obtained pursuant to this rule, a notation to that effect shall then be entered in the judgment docket records and indices and said judgment shall be final to the same extent as a judgment entered after trial. The lien of said judgment shall relate back to the time of its original docketing.

(h) The following procedure must be complied with prior to the issuance of the first writ of execution on a confessed judgment:

(1) The judgment creditor shall file the following with the Prothonotary:

(I) A praecipe requesting the particular execution writ.

(II) A notice letter as required by 10 Del. Code § 2306(j) for each debtor against whom execution is requested together with a copy of each notice letter for the Prothonotary and a preaddressed, stamped, certified mail, return receipt envelope for each debtor against whom execution is requested. Each certified return receipt shall provide for its return after service to the judgment creditor and each envelope shall give the address of the judgment creditor as the return addressee.

(2) The Prothonotary shall record the time of the filing of the praecipe. Subsequently, the Prothonotary shall make a notation in the execution docket of the mailing and publication dates as provided for in paragraph (h)(3) and (h)(5).

(3) The notice letter required by paragraph (h)(1)(II) shall be mailed by the Prothonotary to each debtor by certified mail, return receipt requested. The notice letter, on a form supplied by the Prothonotary, shall contain the following information:

(I) Judgment creditor has requested the Superior Court to issue a writ of execution against debtor based on the confessed judgment entered on a certain date.

(II) A writ of execution can be used to attach wages in appropriate cases and seize debtor's personal property and real estate and ultimately sell them for credit against the debt.

(III) That debtor may appear in Court, giving an address for said Court, on the second motion day following the date on which said notice letter was mailed, or any specified motion day subsequent thereto, at which time debtor may object to the issuance of the execution process and a hearing will be scheduled by the Court, at which hearing the debtor may raise any appropriate defenses.

(IV) That debtor is not required to appear but if debtor fails to do so, a warning that the writ of execution sought by the judgment creditor and other subsequent writs will be issued whereby the sheriff could attach debtor's wages in appropriate cases, or seize debtor's personal property and real estate and ultimately sell them for credit against the debt.

(V) That the judgment creditor is claiming the debtor owes $ ..... plus accrued interest of $ ..... to the date of judgment plus interest at the legal rate from the date of judgment plus attorney's fees of $ ..... plus costs.

(VI) That if the debtor has any questions about these matters debtor should consult a lawyer immediately.

(4) When service is effected by certified mail, the plaintiff shall file the return receipt with the Prothonotary.

(5) If the certified mail sent pursuant to paragraph (h)(3) is returned undelivered, the judgment creditor shall notify the Prothonotary accordingly in writing and service shall be accomplished by the Prothonotary by publication of the notice provided for in paragraph (h)(1)(II) once per week for 2 weeks in a newspaper of general circulation in the county in which execution is to occur. If the residence of the debtor is other than the county in which execution is sought, then publication shall also be made once per week for 2 weeks in a newspaper of general circulation in the county in this State in which the debtor resides or is last known to have resided. The notice shall include the date of the motion on which debtor must appear, which day shall be the second motion day following the last publication.

(6)(I) The writ of execution requested and any appropriate writ thereafter shall issue against a debtor who fails to appear after service as provided for herein.

(II) If the debtor appears, a hearing date will be scheduled by the Court.

(III) At the conclusion of the hearing, the Court shall make such orders as are appropriate including the assessment of costs.

History.

Added, effective Jan. 1, 1972; amended, effective July 1, 1976; Dec. 6, 1976; Jan. 1, 1991.

Rule 58.2. Entry of judgment by confession in open court.

(a) A judgment by confession may be entered in open court by the Superior Court either for money due or to become due, or to secure the obligee against a money contingent liability, or both, on the application by the obligee or assignee of a bond, note or other obligation containing a warrant for an attorney-at-law or other person to confess judgment.

(b) Application for the entry of judgment by confession in open court shall be as follows:

(1) The plaintiff may appear at any motion day as described by Rule 58.1(g)(1), together with the defendant obligor.

(2) A court reporter shall make a record of the proceedings.

(3) The plaintiff shall provide the Court with the following:

(I) A praecipe in the form prescribed by Rule 58.1(a)(1).

(II) The original document authorizing confession of judgment, together with a completely legible photocopy for the Prothonotary and each defendant obligor against whom judgment is requested.

(4) The plaintiff shall prove:

(I) The genuineness of the obligation, the signature of the defendant obligor against whom judgment is sought and the identity of the defendant obligor appearing in the Court.

(II) The defendant obligor has effectively waived obligor's constitutional rights concerning the entry of judgment and the right to execution thereon.

(5) The Court shall make such orders as are appropriate including the assessments of costs. Any judgment entered shall be final to the same extent as a judgment entered after a trial.

(c) Execution on judgments confessed hereunder shall be as provided for in Rule 58.1(h).

History.

Added, effective Jan. 1, 1972; amended, effective July 1, 1976; Jan. 1, 1991.

Rule 58.3. Judgments by confession entered prior to July 9, 1971.

The following procedure must be complied with prior to the issuance of the first writ of execution on a confessed judgment entered prior to July 9, 1971:

(a) The judgment creditor shall file the following with the Prothonotary:

(1) A praecipe requesting the particular execution writ.

(2) A notice letter as required by 10 Del. Code § 2306(f) for each debtor against whom execution is requested together with a copy of each notice letter for the Prothonotary and a preaddressed, stamped, certified mail, return receipt envelope for each debtor against whom execution is requested. Each certified return receipt shall provide for its return after service to the judgment creditor and each envelope shall give the address of the judgment creditor as the return addressee.

(b) The Prothonotary shall record the time of the filing of the praecipe. Subsequently, the Prothonotary shall make a notation in the execution docket of the mailing and publication dates as hereinafter provided in paragraphs (c) and (e).

(c) The notice letter required by paragraph (a)(2) shall be mailed by the Prothonotary to each debtor by certified mail, return receipt requested. The notice letter, on a form supplied by the Prothonotary, shall contain the following information:

(1) Judgment creditor has requested the Superior Court to issue a writ of execution against debtor based on the confessed judgment entered on a certain date.

(2) That the judgment creditor is claiming the debtor owes $ ..... plus accrued interest of $ ..... to the date of judgment plus interest at the legal rate from the date of judgment plus attorney's fees of $ ..... plus costs.

(3) That the judgment creditor alleges debtor waived debtor's rights to notice and a hearing prior to the entry of judgment against debtor.

(4) That the entry of the court judgment has resulted in a lien against all of debtor's real estate and the means whereby the sheriff, with the writ of execution which has been requested, can levy against debtor's personal property and real estate and ultimately sell at public auction debtor's personal property and real estate for credit against the debt.

(5) A writ of execution can be used to attach wages in appropriate cases.

(6) That debtor may appear in Court, giving an address for said Court, on the second motion day following the date on which said notice letter was mailed, or any specified motion day subsequent thereto, at which time debtor may object to the judgment having been entered and/or to the issuance of the execution process. If debtor objects, the Court shall commence the procedure for a hearing. At said hearing, the judgment creditor will be required to prove that the debtor effectively waived debtor's rights to notice and a hearing prior to the entry of judgment and the debtor may raise any appropriate defenses.

(7) That debtor is not required to appear but if debtor fails to do so, a warning that the writ of execution sought by the judgment creditor and other subsequent writs will be issued whereby the sheriff could attach debtor's wages in appropriate cases, or seize debtor's personal property and real estate and ultimately sell them for credit against the debt.

(8) That if the debtor has any questions about these matters debtor should consult a lawyer immediately.

(d) When service is effected by certified mail, the plaintiff shall file the return receipt with the Prothonotary.

(e) If the certified mail sent pursuant to paragraph (c) is returned undelivered, the judgment creditor shall notify the Prothonotary accordingly in writing and service shall be accomplished by the Prothonotary by publication of the notice provided for in paragraph (c) once per week for 2 weeks in a newspaper of general circulation in the county in which execution is to occur. If the residence of the debtor is other than the county in which execution is sought, then publication shall also be made once per week for 2 weeks in a newspaper of general circulation in the county in which the debtor is last known to have resided. The notice shall include the date of the motion day on which debtor must appear, which day shall be the second motion day following the last publication.

(f)(1) Motion day shall be at the time designated for civil motions.

(2) The writ of execution requested and any appropriate writ thereafter shall issue against a debtor who fails to appear after service as provided for herein.

(3) If the debtor appears to contest the judgment and/or the issuance of the execution process at the appropriate motion day:

(I) Debtor's appearance shall be noted and a record made of debtor's address where service can be made.

(II) In the case of a nonresident, the nonresident's appearance shall be noted and a record made of the nonresident's mailing address. The nonresident's appearance shall constitute the appointment of the Prothonotary as the nonresident's agent to receive service. The Prothonotary shall immediately forward to the debtor by certified mail, return receipt requested, at the address given by the debtor, all service received by the Prothonotary.

(III) Within 10 days after the motion day at which the judgment and/or execution is contested, the judgment creditor shall file a complaint alleging the effectiveness of the debtor's waiver of debtor's right to notice and a hearing prior to the entry of judgment against debtor, the existence of the debt, and such other matters as may be appropriate.

(IV) For resident debtors, service of the complaint shall be as provided for in Rule 4. In the case of nonresident debtors, service shall be made by filing the original complaint and one copy for each debtor with the Prothonotary.

(V) Each debtor shall respond as provided for by the Rules of this Court and thereafter the issues shall be joined on the question of the indebtedness and the question of whether there was an effective waiver of notice and an opportunity to be heard prior to judgment having been entered against the debtor.

(VI) If the debtor prevails on the issue of waiver and the issue of the entire indebtedness, the judgment shall be stricken by the Prothonotary.

(VII) If the debtor prevails on the issue of waiver and the judgment creditor prevails on the issue of the indebtedness or any part thereof, the original judgment shall be valid to the extent of the indebtedness determined by the Court and with respect to that indebtedness, the lien of the judgment shall relate back to the date of the original entry.

(VIII) If the judgment creditor prevails on the issue of waiver and on the issue of the indebtedness or any part thereof, the original judgment, to the extent of the indebtedness determined by the Court, shall be valid.

(IX) If the judgment creditor prevails on the issue of waiver and the debtor prevails on the issue of the entire indebtedness, the judgment shall be stricken or satisfied as the case may be.

(X) If the judgment creditor fails to appear at the appropriate motion day or fails to file a complaint as provided for herein, the judgment shall be stricken.

(XI) The Court shall make such orders as are appropriate including orders relating to the issuance of execution process and the assessment of costs.

History.

Added, effective Jan. 1, 1972; amended, effective July 1, 1976; Jan. 1, 1991.

Rule 59. New trials and rearguments.

(a) *Grounds.* A new trial may be granted as to all or any of the parties and on all or part of the issues in an action in which there has been a trial for any of the reasons for which new trials have heretofore been granted in the Superior Court. On a motion for a new trial in an action tried without a jury, the Court may

open the judgment, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) *Time and procedure for motion.* The motion for a new trial shall be served and filed not later than 10 days after the entry of judgment, or the rendition of the verdict, if pursuant to Rule 58, the Court has directed that the judgment shall not be entered forthwith upon the verdict, the motion to be accompanied by a brief and affidavit, if any. The motion shall briefly and distinctly state the grounds therefor.

If the motion is not accompanied by affidavits, the opposing party, within 10 days after service of such motion, may serve and file a short answer to each ground asserted in the motion, accompanied by a brief, if the opposing party desires to file one.

If the motion is accompanied by affidavits, the opposing party has 10 days after such service within which to serve and file that party's answer and opposing affidavits and brief, if any; this period may be extended for an additional period not exceeding 10 days either by the Court for good cause shown or by the parties by written stipulation. Reply affidavits and brief may be served and filed within 10 days after service of the opposing affidavits and briefs; this period may be extended for an additional period not exceeding 10 days, either by the Court for good cause shown or by the parties by written stipulation.

The Court shall determine from the motion, answer, affidavits and briefs, whether a new trial shall be granted or denied or whether there shall be oral argument on the motion. A copy of the motion, answer, affidavits and briefs shall be furnished forthwith by the respective parties serving them to the Judge involved.

(c) *On initiative of Court.* Not later than 10 days after entry of judgment the Court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the Court shall specify in the order the grounds therefor.

(d) *Motion to alter or amend a judgment.* A motion to alter or amend the judgment shall be served and filed not later than 10 days after entry of the judgment.

(e) *Reargument.* A motion for reargument shall be served and filed within 5 days after the filing of the Court's opinion or decision. The motion shall briefly and distinctly state the grounds therefor. Within 5 days after service of such motion, the opposing party may serve and file a brief answer to each ground asserted in the motion. The Court will determine from the motion and answer whether reargument will be granted. A copy of the motion and answer shall be furnished forthwith by the respective parties serving them to the Judge involved.

History.

Amended, effective Mar. 17, 1958; Jan. 1, 1966; Jan. 1, 1967; July 1, 1970; Jan. 1, 1991.

Rule 60. Relief from judgment or order.

(a) *Clerical mistakes.* Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party and after such notice, if any, as the Court orders.

(b) *Mistake; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.* On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective

application; or (6) any other reason justifying relief from the operation of the judgment. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. This Rule does not limit the power of a Court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to grant any relief provided by statute, or to set aside a judgment for fraud upon the Court, or to deal with judgments by confession as provided by law. Writs of coram nobis, coram vobis, and audita querela are abolished, and the procedure for obtaining relief from judgments shall be by motion as prescribed in these Rules or by an independent action.

History.

Amended, effective Jan. 1, 1991.

Rule 61. Harmless error.

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 62. Stays by trial court and on appeal.

(a) *Automatic stay.* Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry.

(b) *Stay on motion for new trial or for judgment.* In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59 or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50.

(c) *Stay and supersedeas on appeal from lower court.* In any civil action in which an appeal is taken from a lower court to the Superior Court the Superior Court may, upon motion of the appellant, stay execution on the judgment appealed from and may as a condition of such stay require the appellant to post a supersedeas bond with surety or a cash deposit. The amount of such supersedeas bond or cash deposit shall be sufficient to pay the amount of the judgment appealed from plus interest and court costs.

(d) *Supersedeas or stay pending appeal.* Supersedeas, and stay pending appeal, and supersedeas, stay and cost bonds shall be governed by Article IV, Section 24 of the Constitution of the State of Delaware and by Supreme Court Rule 32.

(e) Omitted.

(f) *Stay according to statute.* A judgment debtor is entitled to a stay of execution where such stay is accorded by statute.

(g) Omitted.

(h) *Stay of judgment as to multiple claims or multiple parties.* When a Court has ordered a final judgment under the conditions stated in Rule 54(b), the Court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

History.

Amended, effective July 1, 1970; Oct. 15, 1980; Jan. 1, 1991; Oct. 3, 1991.

Rule 63. Inability of a judge to proceed.

If a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. In a hearing or trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

History.

Amended, effective Jan. 1, 1991; Dec. 1, 1993.

VIII. Provisional and Final Remedies and Special Proceedings

Rule 64. Seizure of persons or property.

(a) *Generally.* At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of compelling appearance or securing satisfaction of a judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the statute.

(b) Repealed.

(c) *Motion by defendant for discharge on common bail.* Upon the serving of a motion by a defendant for discharge on common bail, the Court shall issue a rule fixing a time for hearing the motion. Unless at or before the time fixed for the hearing, the plaintiff shall file an affidavit to hold to special bail, the defendant shall be discharged upon common bail. Upon the filing by plaintiff of an affidavit to hold to special bail, the Court after hearing the parties may make such order as it deems proper.

(d) *Special bail; notice of justification.* In all cases of taking special bail by the Prothonotary, reasonable notice of justification shall be given to the opposite party or his attorney.

History.

Amended, effective Mar. 1, 1961.

Rule 64.1. Orders for hearing or rules to show cause.

(a) Except where a rule to show cause is required by statute, any matter of the type heretofore brought before the Court by rule to show cause shall be initiated by motion after a complaint or petition has been filed and may be presented ex parte with respect to any person who has not appeared in the case.

The order shall set forth the time of the hearing, the time for serving and filing notice of intention to appear at the hearing, and shall direct service of the motion and order upon the person named in the motion, and may require the filing of an answer or responsive pleading and/or personal attendance at the hearing.

A copy of the motion and order shall be served upon the person named in the order in the manner provided for service of summons. The order may, upon appropriate showing, provide for notice by publication.

(b) A rule to show cause may be issued only where required by statute. An order for a rule to show cause shall set forth the return date and time thereof, and shall require the respondent to answer or otherwise plead at or before the return date and time. The order shall also state whether or not a hearing upon the rule will be held at the return date and time and, if not, what action the Court contemplates will be taken.

History.

Added, effective Feb. 28, 1963; amended, effective Apr. 15, 1978.

Rule 65. Injunctions.

Omitted.

Rule 65.1. Security: Proceedings against sureties.

Whenever these Rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the Court and irrevocably appoints the Prothonotary as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Prothonotary, who shall forthwith mail copies to the sureties if their addresses are known.

History.

Added, effective Jan. 1, 1967; amended, effective Jan. 1, 1991.

Rule 66. Receivers appointed by federal courts.

Omitted.

Rule 67. Deposit in Court.

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of Court, may deposit with the Court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. The party making the deposit shall serve the order permitting deposit on the Prothonotary. Money paid into court under this rule shall be withdrawn only upon order of the Court. The fund shall be deposited in an interest-bearing account or invested in an interest-bearing instrument approved by the Court.

History.

Amended, effective Nov. 1, 1984.

Rule 68. Offer of judgment.

At any time more than 10 days before the trial begins a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the

offer and notice of acceptance together with proof of service thereof and thereupon the Clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

History.

Amended, effective Jan. 1, 1967; Jan. 1, 1991.

Rule 69. Execution.

(a) *In general.* Except as herein provided the procedure on execution shall be as heretofore. An execution may be issued upon a judgment in a civil action at any time after such judgment was entered or rendered during the period that such judgment would constitute a lien upon the real property of the judgment debtor. The fictitious writ of vice comes or v.c. is hereby abolished.

(aa) *Proceedings supplementary to judgment or execution.* In aid of the judgment or execution, the judgment creditor or the judgment creditor's successor in interest when that interest appears of record, may take discovery by deposition, interrogatories and requests for production, in the manner provided in these Rules.

(b) *Execution on judgments obtained by confession.* Execution on judgments obtained by confession shall be in accordance with Rules 58.1, 58.2 and 58.3.

(c) *Security for stay of execution in certain cases; form; effect.* In actions in which judgment shall be rendered by default for failure to file an affidavit of defense in a proceeding to enforce a mechanic's lien or in a proceeding in which the complaint or other pleading contains a specific notation under Rule 3(b) or Rule 12(a)(3) requiring the defendant to answer any or all allegations of the complaint or other pleading by affidavit, for any default as provided in Rule 55 and in which the other party shall be entitled to a stay of execution upon the giving of security, such security shall be given within 20 days after the day of entering judgment and shall be signed by the surety or sureties, to be approved by the Prothonotary, shall be entered of record, shall have the force and effect of a judgment and shall be substantially in the following form:

''I ..... , (or 'we'..... if there be more than one) being approved by the Prothonotary, become bound unto the said ..... , the plaintiff, for the payment of the above judgment, with interest and costs, at the expiration of six months from the date of said judgment.''

Security given pursuant to this Rule shall supersede any execution previously issued.

(d) *Return of sheriff's sales of real estate; when.* Return of sheriff's sales of real estate shall be made on the third Monday of the month succeeding the date of the sale and applications to set aside such sales shall be made on or before the first Thursday succeeding said return date, and all such sales not objected to on or before the first Thursday, shall on the first Friday, be confirmed as a matter of course.

(e) *Rules for writs of possession; service.* A rule for a writ of possession shall be served in the same manner as a summons is served under Rule 4(f)(1). If service in such manner cannot be made, the rule shall be served by affixing a copy to the main door of the dwelling or other chief building upon the premises at least 6 days before the return day of the rule.

(f) *Sheriff; proceeds of sales.* The sheriff or other officer executing any writ, order or process, under which real or personal property shall be sold, shall endorse upon such writ, order or process an itemized statement of the application of the proceeds received from such sale.

(g) *Notice of sheriff's sales of real estate.* No sheriff's sale of real estate shall be held unless at least seven (7) days before the sale the plaintiff or his counsel of record shall send by certified mail, return receipt requested to (1) holders of liens on the real estate which is the subject of such sale who have acquired such liens at least thirty (30) days prior to the sheriff's sale; (2) to tenants holding or possessing a leasehold estate for years or at will in such real estate who have acquired such estate at least thirty (30) days prior to the sheriff's sale; (3) to record owners acquiring title to such real estate (terre tenants) at least thirty (30) days prior to the sheriff's sale; and (4) to persons having an equitable or legal interest of record, including an interest pursuant to a judicial sale or a statutory sale pursuant to § 8771 et seq. of Title 9 at least thirty (30) days prior to such sale a notice consisting of a Notice to Lien Holders, Tenants, Record Owners and Persons Having an Interest of Sheriff's Sale of Real Estate substantially similar to Form 37 Appendix of Forms (Superior Court) and a copy of the advertisement of the sale posted in accordance with § 4973 of Title 10. The notice shall be addressed to holders of liens at the address which appears upon the recorded or filed instrument creating the lien or upon the record of the lien, or to the counsel of record for the holder of the lien, or if such addresses are not ascertainable from the public records, at the last known available or reasonably ascertainable address of the holders of such liens. The notice shall be addressed to tenants holding or possessing a leasehold estate for years or at will at the last known available or reasonably ascertainable address of such tenants, and in addition, the plaintiff or his counsel of record or a representative of the plaintiff or his counsel of record shall post such notice on the common entrance door or in a common area of any building or buildings on the real estate which is the subject of such action. The notice shall be addressed to terre tenants at the last known available or reasonably ascertainable address of such terre tenants. The notice shall be addressed to persons having an equitable or legal interest of record at the last known available or reasonably ascertainable address of such person, and in the case of persons acquiring an interest pursuant to a judicial sale or a statutory sale, at the address of such person given to the sheriff conducting the sale. No sheriff's sale shall be held in such action unless the plaintiff or his counsel of record or a representative of the plaintiff or his counsel of record shall file with the Court and deliver to the sheriff conducting the sale a copy of proof of the mailing and posting of such notice which shall consist of the usual receipt given by the post office of mailing to the person mailing the certified article and a copy of the Notice to Lien Holders, Tenants, Record Owners and Persons Having an Interest mailed with such notice together with an affidavit made by plaintiff or his counsel of record specifying:

(i) The dates upon which the notice was mailed by certified mail;

(ii) That the copy of the Notice to Lien Holders, Tenants, Record Owners and Persons Having an Interest attached to the affidavit is a true and correct copy of the notice mailed by certified mail;

(iii) That the notice was posted on the common entrance door or in a common area of any building or buildings on the real estate which is the subject of the action and the date of such posting;

(iv) That the receipt obtained at the time of mailing by the person mailing the envelope containing the notice is the receipt filed with the affidavit; and

(v) If the identity or address of any lien holders, tenants, terre tenants and persons having an equitable or legal interest of record cannot be reasonably ascertained, a description of the reasonably diligent efforts that were made to ascertain such identity or address.

History.

Amended, effective July 12, 1962; Mar. 3, 1966; Jan. 1, 1972; July 1, 1976; Feb. 1, 1983; Jan. 1, 1991; Oct. 26, 1995; Feb. 1, 2001; June 1, 2009.

Rule 70. Judgment for specific acts; vesting title.

Omitted.

Rule 71. Process in behalf of and against persons not parties.

Omitted.

Rule 71A. Condemnation of property.

Transferred.

History.

Added, effective July 20, 1962.

Rule 71.1. Condemnation of property.

In a condemnation proceeding instituted by a public agency, such as an agency of the State, a county, a municipality or a school district, an order of possession of the property to be taken shall be entered forthwith, pursuant to 10 Del. C. § 6110(a), upon 10 days' written notice of intent to present such order, to be given to the property owner or his attorney of record, supported by an affidavit of necessity executed by the chief administrative officer of the condemning agency, unless the property owner by affidavits, depositions, and/or verified answer shall show good cause why such order of possession should not be entered forthwith. Any hearing on the issue of good cause shall be held without delay and on such affidavits, depositions, and/or verified answer. Disposition of the issue of good cause shall be made by the Court without delay.

This Rule shall be applicable solely to the condemnation proceedings brought by such public agencies.

In all such condemnation proceedings the burden shall be upon the property owner to overcome the presumption of regularity and the prima facie case of necessity for a public use presented by the institution of such proceeding.

Nothing herein contained shall affect the power of the Court, in its discretion, to enter an order of possession ex parte and without notice, as is provided by 10 Del. C. § 6110(a), upon proper cause being shown by the public agency.

History.

Added, effective July 20, 1962.

Rule 71.2. Medical malpractice.

(a) *In general.* This rule is applicable to all cases commenced in this Court alleging health care malpractice within the meaning of 18 Del. C. Chapter 68. To the extent practicable this rule shall be construed consistently with all other civil rules of this Court. Where there is a conflict between the provisions of this rule and other rules of this Court in a proceeding commenced pursuant to 18 Del. C. Chapter 68 the provisions of this rule shall govern. The requirements contained in this rule may be changed by the Court for good cause shown or by agreement among the parties subject to approval by the Court.

(b) *Demand for review panel hearing.* A party may file a demand to convene a malpractice review panel at any time subsequent to entry of appearance by all defendants who have been served and after a reasonable time for discovery unless otherwise stipulated to by the parties or ordered by the Court.

> If a party files a motion for summary judgment, any other party that desires a malpractice review panel must file a demand to convene within 10 days after the filing of the opening brief in support of the motion for summary judgment, at which time the summary judgment proceedings may be stayed pending the review panel's decision.

The parties may agree that certain issues may be decided by summary judgment (for example, statute of limitations) and other issues reserved for the panel. If the parties are unable to agree, the Court will determine which matters are to be decided. Once a demand to convene a malpractice review panel has been filed, no party may move for summary judgment or dismissal unless otherwise stipulated to by the parties or ordered by the Court.

If the Court rules that any matter raised in the pleadings is barred as a matter of law, then neither party may thereafter submit any issue that was so barred to the malpractice review panel.

Once a case has been pre-tried before the Court and scheduled for trial, no party may file a demand to convene a malpractice review panel unless stipulated to or ordered by the Court.

(c) *Motion for review of panel opinion.* Any party who files a motion for review of a malpractice panel opinion pursuant to 18 Del. C. § 6812 shall simultaneously certify to the Prothonotary and the panel reporter those portions of the panel record to be considered by this Court. Within 5 days of the receipt of such certification any other party to the proceeding shall certify in the same manner any additional portions of the panel record to be considered by this Court. The moving party shall file any brief in support of the motion for review within 20 days of receipt of the panel record from the panel reporter; any other party shall file any answering brief within 20 days of receipt of movant's brief. Thereafter the Court shall decide the motion for review based upon the record before it and without oral argument unless the Court so orders. There shall be no remand of the matter to the panel following decision on a motion for review unless, on application of a party, the Court finds that (1) on its face the panel decision does not conform to the requirements of 18 Del. C. § 6811, or (2) there was an irregularity or impropriety in the review panel proceedings that substantially impaired the integrity of the review panel proceedings. A party who files a motion for review shall bear the cost of preparing the certified transcript of the panel proceedings, such costs to be taxable at the conclusion of the case pursuant to Rule 54(d).

(d) *Submission of panel opinion to jury.* In the event the case is tried before a jury, and on application of a party, any malpractice review panel opinion that has been rendered in the matter will be read under appropriate instructions by the Court and the opinion shall then be introduced into evidence as the first exhibit of the moving party.

History.

Added, effective May 1, 1982.

Rule 71.3. Forfeitures pursuant to 16 Del. C. § 4784.

(a) *Notification of seizure.* Notification of seizure pursuant to 16 Del. C. § 4784(j) shall be made within 60 days of the date of seizure. In addition to the notification of seizure required by 16 Del. C. § 4784(j), should any known party having a possessory interest in the seized property be incarcerated, the State shall send notification of seizure by first class mail sent to the correctional facility in which said party is confined. In all such cases, the notification shall consist of:

(1) A description of the seized property,

(2) The person or persons seized from,

(3) The seizing agency,

(4) The time and place where the seizure took place, and,

(5) A statement that persons claiming an interest in said property may seek to have it returned pursuant to Superior Court Civil Rule 71.3(c) by filing a petition with the Superior Court in the County in which the property was seized no later than 45 days after the date of the notice, to establish: (1) that they have a lawful possessory interest in the seized property; and (2) the property was unlawfully seized or not subject to forfeiture under 16 Del. C. § 4784.

(b) *Application for forfeiture.* At any time after the expiration of 45 days from the date of the last notice required by 16 Del. C. § 4784(j) and paragraph (a) of this Rule, the State may obtain an order from the

Superior Court forfeiting property seized pursuant to 16 Del. C. § 4784 by filing, costs prepaid, an application in rem with the Superior Court sitting in the County in which the property was seized. Such application, which shall be under oath, shall set forth the following:

(1) A description of the property to be forfeited;

(2) The date of the seizure of such property;

(3) Proof of the mailing and publication of the notice required by 16 Del. C. § 4784(j) and an affidavit of mailing the notification required by paragraph (a) of this Rule; and

(4) A statement that no petition for the return of such property has been filed.

Applications for forfeiture may be consolidated under one application provided that each separate article can be identified.

(c) *Petition for the return of property.* An owner or interest holder may seek the return of property seized by the State pursuant to 16 Del. C. § 4784 by filing, costs prepaid, a civil petition, with the Superior Court sitting in the County in which the property was seized no later than 45 days after the date of the notice required by 16 Del. C. § 4784(j) measured from the date of mailing or the date of publication whichever shall be later. Such petition which must be signed by the owner or interest holder, under oath, and which must be served on the Attorney General, shall set forth the following:

(1) The name and address of the claimant;

(2) A description of the property sought to be returned;

(3) The nature and extent of the claimant's possessory interest in the property;

(4) The date, identity of the transferor, and circumstances of the claimant's acquisition of the interest in the property;

(5) The specific provisions of 16 Del. C. § 4784 relied on in asserting that it is not subject to forfeiture; and

(6) All essential facts supporting each assertion.

If the petition is not timely filed, the State may proceed as provided in paragraph (b) above.

(d) *Trial.*

(1) Except where a jury trial is demanded pursuant to Rule 38(b), unless otherwise ordered, no later than 90 days following the filing of the petition, the Court shall hold a non-jury trial at which the claimant shall have the burden of proving, by a preponderance of the evidence, a lawful possessory interest in the seized property and that the property was unlawfully seized or is not subject to forfeiture under 16 Del. C. § 4784.

(2) If the Court determines that the property is subject to forfeiture, it shall also determine whether any lawful lienholder who has filed a timely petition had knowledge, or reasonably should have had knowledge, of such intended unlawful use. If the Court shall find such knowledge, then the lienholder's rights, title and interest to the property shall likewise be deemed forfeited. If the Court does not find such knowledge and the property is otherwise subject to forfeiture, it shall be forfeited and the person into whose custody the property is given shall either pay the outstanding indebtedness secured by such lawful lien and keep the property or deliver the property to the said lienholder.

(3) If a trial by jury is demanded, the Case Scheduling Office shall set a trial date as may be available. At such a trial, the jury shall make those determinations required by the Court under subparagraphs (1) and (2) above, based upon a preponderance of the evidence.

(e) *Ex parte orders.* The Court may issue at the request of the State ex parte any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought. Process for seizure of

said property shall issue only upon a showing of probable cause, and the application therefore and the issuance, execution, and return thereof shall be subject to the provisions of 16 Del. C. § 4784.

(f) *Effect of conviction, acquittal or dismissal.*

(1) A defendant convicted in any criminal proceeding is precluded from later denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding brought pursuant to this Rule, regardless of the pendency of an appeal from that conviction.

(2) An acquittal or dismissal in a criminal proceeding does not preclude civil proceedings under this Rule.

(g) *Interests of third parties.* If the property is declared forfeited in accordance with subdivisions (b) or (d) of this Rule, the Court shall require public notice of the forfeiture for a period of not less than thirty (30) days, with direct notice to such parties as the Court deems appropriate. Any person, other than those who received notification of seizure pursuant to paragraph (a) of this Rule, who claims an interest in said property may appear and assert such interest in a manner and within such time as the Court may direct in said notice. If the Court is satisfied that said party has asserted a legitimate interest in said property and that said party had no knowledge or reasonably should not have had such knowledge of the intended unlawful use to which the property had been put, the Court shall protect said interest in any final disposition of the property on such terms and conditions as the Court deems just.

History.

Added, effective May 1, 1991.

IX. Appeals

Rule 72. Appeals from certain commissioners, boards and courts.

(a) *Application of Rule.* This Rule shall apply to appeals to the Superior Court from all commissions, boards, hearing officers under the Personnel Rules for Non-Judicial Employees, or courts from which an appeal may at any time lie to the Superior Court to be tried or heard on the record made below.

(b) *How taken.* When an appeal is permitted by law, a party may appeal by filing a notice of appeal with the Prothonotary of the appropriate county within the time prescribed by statute. If no time is prescribed by statute, the notice of appeal shall be filed within 15 days from entry of the final judgment, order, or disposition from which an appeal is permitted by law.

(c) *Notice of appeal.* The notice of appeal shall specify the parties taking the appeal, shall designate the order, award, determination, or decree, or part thereof appealed from; shall state the grounds of the appeal; shall name the Court to which the appeal is taken; shall name all necessary parties, if any, to the appeal; and shall be signed by the attorney for the appellants. In appeals from the Industrial Accident Board, where the claimant accepts part of the award while appealing the remainder of the award, the notice of appeal must specify that portion of the award accepted. In the absence of a cross-appeal as to the accepted portion of the award, that portion is deemed "due" and subject to a proper demand under 19 Del. C. § 1103.

At the same time that the appeal is filed, appellant shall mail copies of the notice of appeal to all parties to the appeal and to the proceeding below, and file a certificate of such mailing together with the notice of appeal with the Prothonotary. No notice of appeal need be given to the party or parties taking the appeal. The notification of a party shall be given by mailing a copy of the notice of appeal to the party's attorney of record or, if the party is not represented by an attorney, then to the party at the party's last known address, and such notification is sufficient notwithstanding the death of the party or of the party's attorney prior to the giving of the notification.

(d) *Docket entries.* The Prothonotary shall note in the appropriate docket the certificate of mailing and include the names of the parties to whom notices of appeal and citations have been mailed, the date of mailing, the names of the papers in which citations have been published, the dates of such publications, and the dates when citations for the record issued and were returned.

(e) *Citation for record.* Upon the filing of the notice of appeal, the Prothonotary shall forthwith issue a citation of the Commissioners, board or court from which the appeal is taken, which citation shall be served upon the custodian of the records thereof. The citation shall direct such custodian to send to the Superior Court of the county out of which the citation has issued, together with the citation, within 20 days from service thereof, a certified copy of the record of the proceedings below, including a typewritten copy of the evidence. It shall not be necessary to include a typewritten copy of the evidence as a part of the record if all parties having an interest in the outcome of the appeal shall file with the commissioners, board or court from which the appeal is taken, within 10 days from the filing of said notice of appeal, a written stipulation that the evidence may be omitted as part of the record, in which case the stipulation shall be included as a part of the record; provided that any Judge of the Superior Court may at any time thereafter order a typewritten copy of the evidence to be filed as a part of the record at any time during the pendency of the appeal.

(f) *Bond of nonresident appellant.* Any appellant who is a nonresident of this State may be required, upon motion in writing of any appellee and proof to the satisfaction of the Court of such nonresidence, by affidavit or otherwise, to give security for costs by a certain day, and in default thereof the appeal of such nonresident appellant may be dismissed.

(g) *Procedure for handling appeals.* Appeals shall be heard and determined by the Superior Court from the record of proceedings below, except as may be otherwise expressly provided by statute. The Prothonotary shall give all parties written notice of the date of the filing of the record of the proceedings below. The appellant's brief shall be served and filed 20 days after the date of said filing of such record as provided in Rule 72(e). The appellee's answering brief shall be served and filed 20 days thereafter. The appellant shall serve and file the reply brief, if any, not later than 10 days thereafter. If appropriate, the assigned judge shall schedule the case for argument.

(h) *Cross-appeals.* Any party may cross-appeal from any judgment or order from which an appeal lies to the Superior Court to be tried or heard on the record made below. A notice of cross-appeal shall be filed within 10 days after the date on which the first notice of appeal was filed. The notice of cross-appeal shall designate the decree, judgment or order, or part thereof, sought to be reviewed. It shall be docketed under the same number as the main appeal, without payment of a filing fee. The caption of a cross-appeal shall be substantially in the following form:

A.B., Plaintiff (or Defendant) below,)

Appellee and Cross-Appellant,)

v.) v.

C.D., Defendant (or Plaintiff) below,)

Appellant and Cross-Appellee.)

(i) *Dismissal.* At any time before filing of the appellee's brief, an appellant may dismiss his appeal voluntarily by serving a notice of dismissal upon the other parties to the appeal, by filing the same with the Prothonotary and paying the costs. Otherwise, a voluntary dismissal may be made only upon stipulation of all parties to the proceeding and with the approval of the Court.

The Court may order an appeal dismissed, sua sponte, or upon a motion to dismiss by any party. Dismissal may be ordered for untimely filing of an appeal, for appealing an unappealable interlocutory order, for failure of a party diligently to prosecute the appeal, for failure to comply with any rule, statute, or order of the Court or for any other reason deemed by the Court to be appropriate. In the event that the Court shall conclude, sua sponte, that dismissal is appropriate, the Prothonotary shall forward to the appellant a notice directing that he show cause why the appeal should not be

dismissed for the reasons stated in the notice. The notice shall direct the appellant to respond within 10 days after receipt of the notice. After consideration of such response, the Court shall enter an order dismissing the appeal or maintaining jurisdiction of the case. If a response is not filed within the time allowed, the dismissal shall be deemed to be unopposed. If the Court is satisfied that the appeal should be dismissed it shall enter an order of dismissal. Upon entry of any order of dismissal, the Court shall specify the terms thereof including provision for payment of cost.

History.

Amended, effective April 25, 1950; Sept. 15, 1952; Jan. 1, 1966; July 1, 1970; July 1, 1976; Feb. 1, 1979; Oct. 15, 1980; Mar. 31, 1982; May 8, 1984; Sept. 4, 1990; Jan. 1, 1991; Sept. 21, 1994; Mar. 1, 2002; July 1, 2016.

Rule 72.1. Expedited procedure for appeals on the record.

Deleted.

Rule 73. Preparation of transcript on appeal to the Supreme Court.

In any case in which an appeal is commenced under Supreme Court Rule 7, it shall be the duty of the attorney for each of the parties thereto to comply with Supreme Court Rule 9(e)(ii) — (iv) relating to designation of the record. It shall be the duty of the court reporter, upon timely receipt of a direction to prepare a transcript under Supreme Court Rule 9(e), to comply with the procedures set forth therein.

In any case in which the testimony or other pertinent matter has not been stenographically recorded, and in any case where the parties have entered into a stipulation as to the substance of testimony or other proceedings as provided by the Rules of the Supreme Court, the parties and the trial court shall comply with Supreme Court Rule 9(g).

History.

Added, effective Oct. 15, 1980.

Rule 74. Interlocutory appeals to the Supreme Court.

Appeals from interlocutory orders of the Superior Court shall be upon such terms and conditions and in accordance with the procedures set forth in Supreme Court Rule 42.

History.

Added, effective Oct. 15, 1980.

Rule 75. Certification of questions of law to the Supreme Court.

Certification of questions of law shall be governed by Supreme Court Rule 41. A party filing a petition requesting the Superior Court to certify a question of law of the Supreme Court shall set forth therein facts and issues at such length and with such clarity as to enable the Superior Court to make a finding necessary to warrant a certification under the terms and conditions of Supreme Court Rule 41. There shall be attached to such petition a proposed form of certification substantially in the form set forth in Official Form K of the Rules of the Supreme Court. In the event the Superior Court enters an order of certification, the petitioner shall file with the Prothonotary the copies necessary to conform to the requirements of Supreme Court Rule 41. The Prothonotary shall, within 5 days of the filing of such certification, file with the Clerk of the Supreme Court 6 certified copies thereof.

History.

Amended, effective Sept. 15, 1952; Oct. 15, 1980.

Rule 76. Supreme Court mandate.

In any case where the judgment of the Superior Court shall have been reversed or modified, or in any case where further proceedings are necessary, an appropriate order shall be prepared by prevailing counsel and submitted to the Court. If the decision of the Supreme Court includes a remand for a determination by the Superior Court, the preparation and submission of said order, along with any other appropriate action, shall be done at such times and in such a manner so as to enable the Superior Court to comply with the requirements of Supreme Court Rule 19(c).

History.

Amended, effective Oct. 15, 1980; Aug. 22, 1994.

X. The Superior Court; Prothonotaries

Rule 77. Superior Courts; Prothonotaries, records and exhibits, fees.

(a) *Superior Court always open.* The Superior Court shall be deemed always open for the purpose of the transaction of business. Each term shall continue until the formal opening by the Court of the next succeeding term.

(b) *Trials and hearings; orders in chambers.* All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the Prothonotary or other court officials within the discretion of the judge.

(c) Omitted.

(d) *Notice of orders of judgments.* Immediately upon the entry of an order of judgment, the Prothonotary shall serve a notice of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these Rules; but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the Prothonotary does not affect the time to appeal or relieve or authorize the Court to relieve a party for failure to appeal within the time allowed.

(e) *Duties of Prothonotary.*

(1) *Court attendance.* The Prothonotary, a Deputy or Clerk, shall attend the Court in person.

(2) *Dockets.* The continuance, foreign and domestic attachment, mechanic's lien, judgment and other dockets shall be kept by the Prothonotary. The index to each continuance, foreign attachment, mechanic's lien and judgment docket shall be both direct and indirect. All dockets may be maintained in an electronic form.

(3) *Docketing appeals de novo.* Where on appeal the action is tried de novo, no appeal shall be entered by the Prothonotary on his docket until a certified transcript of the record shall be filed with the Prothonotary.

(4) *Notice of amendment of Rules.* The Prothonotary shall give to all members of the Bar of this Court notice of any amendment to these Rules within 10 days from the adoption thereof.

(5) *Transmission of the record upon appeal to the Supreme Court.* The Prothonotary shall comply with the procedures set forth in Supreme Court Rule 9 pertaining to the transmission of the record to the Clerk of the Supreme Court.

(f) *Records and exhibits.*

(1) *Custody of.* The Prothonotary shall have custody of the records and papers of the Court. The Prothonotary shall not permit any original record, paper or exhibit to be taken from the courtroom or from the Prothonotary's office except at the direction of the Court or as provided by statute or by these Rules or by Rules of the Supreme Court.

(2) *Removal of exhibits.* Exhibits shall not be removed prior to the time provided in these Rules except on motion or stipulation and order of the Court.

(3) *Disposition of exhibits.* After the final determination of a cause by the Court and the expiration of the period for filing a notice of appeal, if no notice of appeal has been filed, all exhibits shall be removed by the party who introduced them. If not so removed, the Prothonotary shall notify the parties by mail to remove them forthwith; and if they are not removed within 15 days from the date of mailing said notice, the Prothonotary may obtain an order of the Court for their disposition.

(4) *Stenographic notes.* The stenographers of Superior Court in all civil matters before the Court shall retain the stenographic notes in a place designated by the Court for a period of 10 years from the date of said notes. After such time, the stenographers are directed to destroy said notes unless the Court, or any judge thereof, has prescribed a longer period of time in a particular case. Stenographic notes of all civil matter shall be presumed to be destroyed after 10 years.

(g) *Opinions to be dated.* Each written opinion (including letter opinions) shall bear two dates immediately under the caption of the case:

(1) The date of the last oral argument, or brief filed, or other final submission of the case for decision; and

(2) The date of the filing of the opinion or order.

(h) *Fees.*

A. All filing fees shall be non-refundable and shall cover costs, except Sheriff's service, which shall be paid separately by the moving party to the Sheriff.

B. The filing fee shall cover the first fifty (50) filings of an action. An additional fee of $245.00 shall be paid after each increment of fifty (50) filings is recorded.

C. A request for a trial date shall be accompanied by a nonrefundable fee of $150.00 paid by the requesting party.

D. Fees do not include advertising costs which shall be billed directly to the filing party.

E. The Prothonotary may refuse any filing for which the fees set forth in the rule have not been paid. Whoever neglects or refuses to pay the fees set forth in this rule for any service or services performed, for 10 days after demand in writing by the officer to whom such fees are due, shall be fined $25.00 in addition to the fees due. The Prothonotary may refuse any filing from an attorney who fails, after second notice, to pay outstanding fees. It shall be the obligation of the attorney to pay timely any court costs or fees incurred by his client.

F. The fees of Superior Court for the services specified shall be as follows:

COMPLAINTS

Complaints for Damages	$200.00
Condemnations	200.00
Ejectments	200.00
Justice of the Peace Court Appeals	200.00
Automobile Arbitration Appeals	200.00
Declaratory Judgments	200.00
Foreign Judgments	200.00
Replevins	200.00
Foreign Attachments	200.00
Domestic Attachments	200.00
Interpleaders	200.00
Transfers from Court of Chancery	200.00
Removals from Court of Common Pleas	200.00
Amicable Actions	200.00
Complex Commercial Litigation Division	$250.00

COMPLAINTS SUBJECT TO SUMMARY PROCEEDINGS FOR COMMERCIAL DISPUTES

The filing fee for complaints subject to Summary Proceedings for Commercial Disputes shall be .005 times the amount in controversy, but not less than $200.00 nor more than $5,000.

MECHANIC'S LIENS & MORTGAGES

Mortgages	$200.00
Mechanic's Liens	200.00

INVOLUNTARY COMMITMENTS

Involuntary Commitments	N/C

APPEALS

Industrial Accident Board	N/C
Unemployment Insurance Appeal Board	N/C
Public Service Commission	$200.00
Motor Vehicle	200.00
All Other Administrative Agencies	200.00
Court of Common Pleas	200.00
Certiorari	200.00

MISCELLANEOUS PETITIONS

Complaints Requesting Orders	$ 75.00
i.e. Return of Property, Subpoena Requests, Release of Surplus Funds from Sale of Property, etc.	
Expungement of Criminal Record	75.00
Habeas Corpus	N/C
Mandamus	200.00
Prohibition	200.00
Judgment or Mortgage Complaints	200.00
i.e. To extend, renew, satisfy, vacate, set aside, etc.	
Appointment of Attorney	N/C
Road Resolution	20.00
Tax Ditch, plus advertising costs	200.00
Possession of Property	50.00

Quo Warranto	200.00
Forma Pauperis	N/C
Recording Bonds of Office	10.00
Recount of Vote	200.00
Road Vacation	200.00

JUDGMENTS

Transfers from Other State & District Court	$50.00
i.e. Justice of the Peace, Court of Common Pleas, Family Court, U.S. District Court, Chancery Court	
Administrative Agency	25.00
i.e. Department of Labor, Division of Revenue, etc. Entering a judgment in Judgment Docket, except when confessed under warrant of attorney	
Rule 58.1 Confession Judgment	200.00
Rule 58.3 Execution of Judgment	50.00
Foreign Judgment (10 Del. C. § 4781)	65.00
City & County Monitions Tax Lien	50.00
Testatum (to transfer Judgment to another County)	15.00
Petition for Sheriff's Deed	25.00
Judgment marked to the use of another party	15.00
Power of Attorney for Prothonotary to satisfy judgment	25.00
Abstract of Judgment from Justice of the Peace	10.00
Demolition Lien	20.00
Racketeering-Influenced/Corrupt Organization (RICO)	N/C

EXECUTIONS

Each Writ	$65.00

i.e. Initial writ, alias, and any writ thereafter including, but not limited to fieri facias, venditioni exponas, levari facias, order of sale, writ of possession.

MISCELLANEOUS SERVICES

Notary Certificate	$ 5.00
New Notary Commission	20.00
Renewal of Notary Commission	10.00
Bad Check Processing Charge	35.00
Registration of Fictitious Name or Business Name	25.00
Preparation of Appeal to Supreme Court	100.00
Certificate of Abatement	15.00
Certified copy of any document (not to exceed 3 pages without additional copy charge)	15.00
Exemplified copy of any document (not to exceed 3 pages without additional copy charge)	25.00
Subpoena issued by Prothonotary	10.00
Presigned numbered subpoenas	N/C
Closed Case retrieval fee	25.00
Closed Case retrieval fee (expedited)	50.00
Jury Panel Listing	50.00
Request for Trial Date or Pretrial Conference	150.00
Notary Fee	7.50

The cost for Special Juries shall be as stated in the

Plan for Special Juries

MEDIATION

When a Superior Court Commissioner serves as a mediator, the fee for mediation services shall be a minimum of two (2) hours at the rate of $150 per hour of hearing time. Each party shall pay the party's share to the Prothonotary within twenty (20) days of notice of the appointment of the Commissioner as a mediator. It is the obligation of each attorney, or any party appearing pro se, to timely pay the costs of ADR and any additional mediation fee when billed. The Court may impose sanctions against any party who fails to timely pay any fee required by this rule. The fee shall be deposited in the General Fund.

NON-FEE CHARGES

Copy Charge (maximum per page)	$2.00
Copy Charge — transmitted by facsimile machine (maximum per page)	8.00

* * *

The Court may order parties to pay other costs such as postage, printing, advertising, and lodging/meals for jurors.

G. In addition to all other fees, the Prothonotary shall collect a Court Security Assessment of $10.00 upon all initial civil case filings for which the filing fee is $200.00 or greater.

H. All other fees for services not provided for in this Rule shall be approved by the President Judge of Superior Court.

I. Any funds on deposit for a civil case pending on June 30, 1988 will be considered to be the amount of court costs to be charged for any court services performed beginning on July 1, 1988 and continuing until final disposition of that case, subject to the provision for an additional assessment if the number of filings exceeds 40 filings. Any party requesting a refund for a disposed case which was filed prior to July 1, 1988 may do so by filing a petition with the Court within 10 days of the date of final disposition. In those cases where a refund is requested, costs will be assessed, including those costs incurred after July 1, 1988 based on the fee schedule in effect on June 30, 1988.

J. The Superior Court Administrator shall conduct an annual evaluation of this Rule and will submit any recommended changes to this Rule to the Judges of Superior Court.

An original of this order shall be filed with the Prothonotary for each county.

History.

Amended, effective Sept. 9, 1957; Jan. 1, 1965; July 1, 1970; Jan. 1, 1972; Oct. 1, 1975; May 23, 1977; Oct. 15, 1980; Sept. 1, 1983; July 1, 1988; Sept. 1, 1989; Jan. 1, 1991; Apr. 1, 1992; Apr. 1, 1994; Oct. 26, 1995; May 1, 1998; July 1, 2001; Feb. 1, 2002; Jan. 1, 2003; Jan. 23, 2003; Sept. 1, 2003; Dec. 1, 2007; Aug. 9, 2010; Sept. 1, 2015; Oct. 1, 2015; Aug. 10, 2018, effective Aug. 15, 2018.

Rule 78. Motion days; arguments.

(a) *Motion days.* Unless otherwise ordered by the Court, motions shall be held by the Court as follows:

(1) *New Castle County.* Motions in cases assigned to a Judge shall be presented as directed by the Judge. All other motions shall be presented to the Court on Fridays at 1:30 p.m.

(2) *Kent County.* Motions in cases assigned to a Judge shall be presented as directed by the Judge. All other motions, except motions assigned to a Commissioner, shall be presented to the Court on Fridays at 11 a.m. Motions assigned to a Commissioner shall be heard on Thursday at 2:00 p.m.

(3) *Sussex County.* Motions in cases assigned to a Judge shall be presented on the 1st and 3rd Fridays of each month at 11:00 a.m.

(b) *Motions.* Motions shall not exceed 6 pages in length on paper approximately $8^1/_2$ inches by 11 inches in size. Responses in opposition to any motion shall be filed no later than four days prior to the hearing on the motion and shall not exceed 6 pages in length on paper approximately $8^1/_2$ inches by 11 inches in size. All motions and responses must be double spaced and typeset in Times New Roman 14-point type with two spaces between sentences. Case names shall be italicized or underlined. Footnotes shall be single-spaced and typeset in Times New Roman 12-point type with two spaces between sentences.

(c) *Oral argument.* There will be no oral argument unless scheduled by the Court, except as may be otherwise expressly provided by statute or rule.

(d) *Scheduling.* Arguments scheduled will be scheduled as to date and time by the assigned judge.

History.

Amended, effective Oct. 15, 1954; Sept. 9, 1957; Jan. 1, 1965; Mar. 31, 1982; May 1, 1982; July 1, 1984; Oct. 6, 1989; Jan. 22, 1996; Feb. 1, 2002; Sept. 4, 2014.

Rule 79. Books and records kept by the Prothonotary.

(a) *Docket.* The Prothonotary shall keep a docket containing all civil actions filed and each action shall be assigned a consecutive file number. The file number of each action shall be noted on the folio of the docket wherein the first entry of the action is made. All pleadings, motions, briefs and other papers filed with the Prothonotary, all process issued and returns made thereon, all appearances, orders, verdicts and judgments shall be noted chronologically in the docket on the folio assigned to the action. Such notation shall be brief, but shall show the nature of the paper filed or writ issued and the substance of each order of the Court and of each return of execution of process. The notation of an order or judgment shall include the date the notation is made.

(b) *Notation of judicial action.* The Prothonotary shall make appropriate docket entries noting briefly judicial action in every matter whenever it occurs. Such entry shall include the following:

(1) Oral Argument: The date, the name of the Judge and the subject matter.

(2) Trial: The date, the name of the Judge and the elapsed trial time.

(3) Verdict or Judgment: The date and the name of the Judge.

(4) Opinions: The date of filing, the subject matter, the name of the Judge and the fact, if it be a fact, that the opinion was filed without oral argument.

(c) *Other books and records of the Prothonotary.* The Prothonotary shall also keep such other books and records as may be required from time to time by the judges of the Superior Court or the Superior Court administrator.

History.

Formerly Rule 80, added, effective Jan. 1, 1955; renumbered 79, effective Jan. 1, 1965; amended, effective Jan. 1, 1991; Nov. 12, 1997.

Rule 79.1. Electronic filing.

(a) The electronic filing of documents in the Superior Court of the State of Delaware shall be referred to as "eFile" or "eFiling".

(b) When the President Judge of the Superior Court determines that it is appropriate for any civil case, or category of cases, to follow the procedures for eFiling, the President Judge shall designate it as an eFile case or category of cases.

(c) The President Judge shall establish administrative procedures for the eFiling of documents.

(d) A technology surcharge of $1.25 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.

(e) No Delaware lawyer shall authorize anyone to eFile on that lawyer's behalf, other than an employee of his/her law firm or service provider retained to assist in eFiling.

(f) No person shall utilize, or allow another person to utilize, the password of another in connection with any eFiling.

(g) The eFiling of a document by a lawyer, or by another under the authorization of a lawyer, shall constitute a signature of that lawyer under Superior Court Civil Rule 11.

(h) All eFilings must be signed by a member of the Delaware Bar or party not represented by an attorney in accordance with the eFile administrative procedures.

(i) Unless otherwise ordered, the electronic service of a document, in accordance with the eFile administrative procedures, shall be considered service under Superior Court Civil Rule 5.

History.

Added, effective July 1, 1991; amended, Dec. 17, 1992, effective Oct. 15, 1992; amended effective Jan. 1, 2003; amended Dec. 9, 2015, effective Jan. 1, 2016.

Rule 80. Seal.

The Court's seal shall contain the words "SUPERIOR COURT" on the upper arc of the circle and the words "STATE OF DELAWARE" on the lower arc. This language shall encircle arms similar to those appearing on the Great Seal of the State. The Prothonotary is authorized to affix the seal to such documents as, under the practice heretofore prevailing, may be appropriate.

History.

Adopted, Mar. 16, 2000, effective July 1, 2000.

XI. General Provisions

Rule 81. Applicability in special proceedings.

(a) In the following matters the procedure shall conform to these Rules so far as practicable and to the extent that this will not contravene any applicable statute; otherwise, the procedure in such matters shall remain as heretofore:

Boundaries

Change of name

Condemnation and eminent domain

Contested elections

Ditches

Dower

Drainage

Ejectment

Escheat

Extinguishment of ground rent

Habeas corpus

Insolvency

Mandamus

Mills

Prohibition

Quo warranto

Satisfaction of mortgages and judgments

Waste

Wrecks

(b) Repealed.

(c) Repealed.

History.

Amended, effective March 5, 1948; May 14, 1962; Oct. 15, 1980; Jan. 1, 1991.

Rule 82. Jurisdiction and venue unaffected.

These Rules shall not be construed to extend or limit the jurisdiction of the Superior Court or to affect the venue of actions therein.

Rule 83. Rules by district courts.

Omitted.

Rule 84. Forms.

Omitted.

Rule 85. Title.

These rules may be known and cited as the Superior Court Rules of Civil Procedure.

History.

Amended, effective Jan. 1, 1991.

Rule 86. Effective date.

These Rules will take effect on January 1, 1948, that being 6 months after their promulgation, pursuant to the provisions of 34 Laws of Del., Chap. 226, pp. 531, 532; Rev. Code of Del. (1935) Sec. 4643.

They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the Court their application in a particular action pending when the Rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

Effective date of amendments. These amendments[1.] are adopted and shall take effect on January 1, 1965. They govern all proceedings in actions brought after they take effect and also further proceedings in actions then pending, except to the extent that in the opinion of the Court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

These amendments[2.] are adopted and shall take effect on January 1, 1991. They govern all proceedings and actions brought after they take effect and also all further proceedings in actions then pending except to the extent that in the opinion of the Court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies. (Amended, effective Jan. 1, 1965; Jan. 1, 1991.)

Rule 87. Assignment of causes to Family Court.

(a) *Certificate; contents.* The assignment or transfer of causes and matters by the Superior Court to the Family Court of the State of Delaware, under the respective statutes, shall be by certificate of one or more of the judges of the Superior Court. The certificate shall set forth the names of the parties, the nature of the cause or matter, and the issue or issues to be ultimately determined, and shall specify what matters and issues are to be heard, tried, and determined by the lower court. The certificate shall also direct the Prothonotary forthwith to deliver to the Clerk of the Family Court the certificate, together with such of the original pleadings and exhibits, or true and correct copies thereof, as the Superior Court shall direct.

[1.] Civil Rules 5(a), 6, 7(a), 13(a), 14(a), 15(d), 24(c), 26(e), 28(b), 30(f)(1), 41(b), 49(b), 50, 51, 56(c)(e), 58, 77(d), 78-80 and Criminal Rules 16, 30(a) and 39.

[2.] Civil Rules 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 16.1, 17, 18, 19, 20, 22, 24, 25, 26, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 43, 44, 44.1, 45, 46, 49, 50, 51, 55, 56, 58.1, 58.2, 58.3, 59, 60, 62, 63, 65.1, 68, 69, 72, 77, 79, 81, 85, 86, 87, 88, 90.1, 112, 114, 116, 117, 118, 120, 121, 122, 123.

(b), (c) Repealed.

History.

Added, effective June 30, 1954; amended, effective Jan. 1, 1991.

Rule 87.1. Assignment of cases to the Court of Common Pleas.

The assignment or transfer of cases by the Superior Court to the Court of Common Pleas, under Title 10, Chapter 13 of the Delaware Code, shall be by a certificate signed by a Judge of the Superior Court. The certificate shall include the caption of the case and shall direct the Prothonotary to deliver to the Clerk of the Court of Common Pleas the certificate, together with such of the original pleadings and exhibits, or true and correct copies thereof, as this Court shall direct.

History.

Added, effective Mar. 15, 1979.

Rule 88. Allowance of attorney's fee.

In every case in which the Court has appointed an attorney to represent one or more of the parties, or where one of the parties is without funds to pay an attorney, the Court shall require such party, or the attorney, or both, to make an affidavit or submit a letter, as the Court may direct, stating the amount which has been received, or will be received, for that purpose from any other source, before making an allowance to the attorney for the attorney's services.

History.

Added, effective June 30, 1954; amended, effective Jan. 1, 1991.

Rule 89. Appointment of counsel for State officers and employees.

Appointment of counsel for State officials and employees, under 60 Del. Laws, c. 474, is governed by Supreme Court Rule 68.

History.

Added, effective Feb. 22, 1977; amended, effective Oct. 15, 1980.

Rule 90. Attorneys.

(a) *Requirement.* Except as provided in Rule 90.1, only members of the Bar of the Supreme Court of this State currently entitled to practice in that Court who maintain an office in Delaware for the practice of law shall be entitled to practice as an attorney in this Court.

(b) *Withdrawal.* Except as permitted by order of the Court, no attorney may withdraw and all appearing attorneys are required to continue as such and to perform the duties of counsel imposed by law, by the Delaware Lawyer's Rules of Professional Conduct, and the Rules of this Court. Withdrawal of an attorney ordinarily will not be considered as permissible ground for delay and relief under these Rules.

(c) *Agreements between attorneys.* Agreements between attorneys will not be considered by the Court unless they are in writing and filed with the Prothonotary or stated on the record in the presence of the Court.

History.

Added, effective June 1, 1977; amended, effective Mar. 1, 1987; Nov. 1, 1989.

Rule 90.1. Admission pro hac vice.

(a) Attorneys who are not members of the Delaware Bar may be admitted pro hac vice in the discretion of the Court, and such admission shall be made only upon written motion by a member of the Delaware Bar who maintains an office in this State for the practice of law ("Delaware Counsel"). Application for admission pro hac vice must be made separately before each Court in which admission is sought. The admission of an attorney pro hac vice shall not relieve the moving attorney from responsibility to comply with any Rule or order of the Court.

(b) Any attorney seeking admission pro hac vice shall certify the following in a statement attached to the motion:

(i) That the attorney is a member in good standing of the Bar of another state;

(ii) That the attorney shall be bound by the Delaware Lawyers' Rules of Professional Conduct and has reviewed the Statement of Principles of Lawyer Conduct;

(iii) That the attorney and all attorneys of the attorney's firm who directly or indirectly provide services to the party or cause at issue shall be bound by all Rules of the Court;

(iv) That the attorney has consented to the appointment of the Prothonotary as agent upon whom service of process may be made for all actions, including disciplinary actions, that may arise out of the practice of law under this Rule and any activities related thereto;

(v) The civil action number or criminal identification number and presiding judge in every action in any court of record of Delaware in which the attorney has appeared in the preceding 12 months.

(vi) That a payment for the pro hac vice admission assessment determined by the Delaware Supreme Court is attached to be deposited with the Prothonotary. The pro hac vice admission assessment shall be $375 in calendar year 2015, $400 in calendar year 2016, and thereafter increased annually by the rate of inflation as determined by the Delaware Supreme Court. If the case in which the pro hac vice admission continues into a subsequent calendar year after the year of admission, such assessment shall be deemed an annual assessment to be renewed and be payable on January 1 of each subsequent year and be deemed delinquent if not paid by February 1 of each subsequent year. There shall be no pro rata apportionment of the pro hac vice admission fee. A notice that a pro hac vice admission may be subject to renewal shall be mailed to Delaware counsel by the Court Administrator of the Delaware Supreme Court. It shall be the duty of Delaware counsel to complete the notice stating whether the case in which the pro hac vice admission was granted remains open and to supervise the remittance of the renewal assessment if the case in which the pro hac vice admission was granted remains open;

(vii) Whether the applying attorney has been disbarred or suspended or is the subject of pending disciplinary proceedings in any jurisdiction where the applying attorney has been admitted generally, pro hac vice, or in any other way; and

(viii) The identification of all states or other jurisdictions in which the applying attorney has at any time been admitted generally.

(c) The Prothonotary shall cause the pro hac vice admission assessment to be deposited in the Supreme Court registration fund for distribution as the Supreme Court directs.

(d) Delaware Counsel for any party shall appear in the action in which the motion for admission pro hac vice is filed and shall sign or receive service of all notices, orders, pleadings, or other papers filed in the action, and shall attend all proceedings before the Court, Prothonotary, or other officers of the Court, unless excused by the Court. Attendance of Delaware Counsel at depositions shall not be required unless ordered by the Court.

(e) Withdrawal of attorneys admitted pro hac vice shall be governed by the provisions of Rule 90(b). The Court may revoke a pro hac vice admission sua sponte or upon the motion of a party, if it determines, after a hearing or other meaningful opportunity to respond, the continued admission pro hac vice to be inappropriate or inadvisable.

(f) The motion and certificate described in subsections (a) and (b) of this Rule shall be filed as soon as reasonably possible, and they shall be filed no later than the date of the first appearance of the attorney who seeks admission pro hac vice before the Court or the Prothonotary in the matter for which admission is sought.

(g) In exercising its discretion in ruling on a motion for admission pro hac vice, the Court shall also consider whether, in light of the nature and extent of the practice in the State of Delaware of the attorney seeking admission, that attorney is, in effect, practicing as a Delaware Counsel without complying with the Delaware requirements for admission to the Bar. In its consideration of this aspect of the motion, the Court may weigh the number of other admissions to practice sought and/or obtained by this attorney from Delaware courts, the question of whether or not the attorney in fact maintains an office in Delaware although the attorney is not admitted to practice in Delaware courts, and other relevant factors.

(h) The Delaware Counsel filing a motion pro hac vice for the admission of an attorney not a member of the Delaware Bar shall certify that the Delaware attorney finds the applicant to be a reputable and competent attorney and is in a position to recommend the applicant's admission.

(i) A signed copy of the entire pro hac vice motion shall be transmitted by the Prothonotary to the Court Administrator of the Delaware Supreme Court as promptly as possible, but in no event later than the last business day of the month in which it was signed, for disposition pursuant to Supreme Court Rule 71. The Court Administrator of the Delaware Supreme Court shall provide a copy to Disciplinary Counsel who shall be responsible for contacting Delaware counsel if the information contained in said copy is incomplete.

History.

Added, effective Mar. 1, 1987; amended, effective Jan. 1, 1991; June 1, 1992; Sept. 28, 1995; amended Aug. 7, 2002, effective July 1, 2002; amended May 11, 2009, effective July 1, 2009; amended Jan. 30. 2015, effective Feb. 1, 2015.

Rule 91-99

Omitted.

XII. Divorce and Annulment

Rule 100. Divorce and annulment.

Repealed, effective Oct. 23, 1972.

Rule 101. Process.

Repealed, effective Oct. 15, 1980.

Rule 102. Sheriffs to whom writs shall be issued.

Repealed, effective Oct. 23, 1972.

Rule 103. Mailing of petition.

Repealed, effective Oct. 23, 1972.

Rule 104. Answer in contested divorce.

Repealed, effective Oct. 23, 1972.

Rule 104A. Regular trial days.

Transferred.

Rule 104.1. Regular trial days.

Repealed, effective Oct. 15, 1980.

Rule 105. Necessity of payment of costs.

Repealed, effective Oct. 15, 1980.

XIII. Miscellaneous Provisions

Rule 106. Removal of causes from Court of Common Pleas.

When a case has been removed to this Court from the Court of Common Pleas, the case shall proceed without further process as though a complaint had been served under these Rules on the date when the process was served.

Rule 107. Briefs.

(a) *Number.* The original and a copy of all briefs shall be filed with the Prothonotary in the county in which the case is pending, and the Prothonotary shall deliver the original of each brief to the appropriate Judge; if more than one Judge is sitting at the argument of a case, a sufficient number of copies shall be filed for delivery to each additional Judge. A copy of every letter from counsel to the Court containing argument shall be sent to the Prothonotary for filing in the cause.

(b) *Type of print for briefs, motions and other papers.* All briefs must be double spaced and typeset in Times New Roman 14-point font with two spaces between sentences. Case names shall be italicized or underlined. Footnotes shall be single-spaced and typeset in Times New Roman 14-point font with two spaces between sentences.

(c) *Time of filing.* Brief schedules shall be ordered by the Court, and extensions of time for filing briefs will not be authorized, whether or not consent of other parties is obtained, unless the Court enters an order upon a showing of good cause for such enlargement.

(d) *Form.* The covers of all briefs shall contain the following information:

(1)a. The name of this Court.

b. The title of the case and its number in this Court.

c. The names of counsel for party submitting the brief with the office addresses of such counsel resident outside the State.

(2) All typewritten briefs shall be upon paper approximately 81/2 inches by 11 inches in size and shall be bound on the left margin.

(3) The Court may require briefs to be printed and may in its discretion allow the actual cost of printing to be taxed as costs in the case. All printed briefs shall be upon pages approximately 61/8 inches by 91/4 inches and shall be bound on the left margin.

(4) The following shall be the form of citations:

a. *Reported Opinions.* The style of citation shall be as set forth in THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION, with no reference to State Reporter Systems or other parallel citations. For example:

244 A.2d 85 (Del. 1968).

244 A.2d 89 (Del. Ch. 1968).

244 A.2d 80 (Del. Super. Ct. 1968).

b. *Unreported Opinions.* The style of citation shall be any of the three alternatives set forth below:

LEXIS Citation Form: 1998 Del. LEXIS 179 (Del. Supr.).

OR

WESTLAW Citation Form: 1998 WL 280361 (Del. Supr.).

OR

Delaware Citation Form: *Fox v. Fox,* Del. Supr., No. 510, 1997, Berger, J. (May 14, 1998).

c. *Other Authority.* The style of citation to any other type of authority, including but not limited to statutes, books, and articles, shall be as set forth in THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION.

(e) *Contents.* All briefs shall contain the following matter arranged in the following order:

(1) A table of contents or index.

(2) A table of citations arranged alphabetically and indicating the pages of the brief on which each cited authority appears.

(3) In the first brief of each party, a statement of the case, including a statement of the nature of the proceedings and a concise chronological statement, in narrative form, of all relevant facts with page references to the transcript of testimony, if any, and to any pleadings and exhibits.

(4) A statement of the questions involved.

(5) Argument, divided into sections under appropriate headings, one section to be devoted to each of the questions involved.

(f) *Failure or neglect to file briefs or discovery material.* If any brief, memorandum, deposition, affidavit, or any other paper which is or should be a part of a case pending in this Court, is not served and filed within the time and in the manner required by these Rules or in accordance with any order of the Court or stipulation of counsel, the Court may, in its discretion, dismiss the proceeding if the plaintiff is in default, consider the motion as abandoned, or summarily deny or grant the motion, such as the situation may present itself, or take such other action as it deems necessary to expedite the disposition of the case. Upon the showing of good cause in writing, the Court may permit late filing of any of the aforesaid papers and pursuant to a written rule or order. This Rule shall not be deemed to affect any other Rule or Rules of the Court specifically providing for the time in which to file motions to which there may be attached briefs, affidavits and/or memoranda. (Cf. Civil Rule 59)

If motions to compel compliance with existing orders or stipulations are granted or if upon application by the Case Scheduling Office an order compelling compliance issues, after an opportunity for hearing in either situation, the Court shall require the party, person or attorney advising the same whose conduct necessitated the motion, to pay to the other party the reasonable expenses in obtaining and/or attending the motion to compel including attorney's fees, unless the Court finds the delay was justified or other circumstances make the award of expenses unjust.

(g) If an unreported or memorandum opinion unavailable on either Westlaw or Lexis is cited, a copy thereof shall be attached to the brief, and the case number in which it was filed shall be stated. If the opinion does not contain a sufficient statement of the facts to demonstrate its pertinency to the pending argument, a statement of the facts shall also be attached to the brief. If the citation is first made in a reply brief, the opposing party may discuss the opinion at oral argument or, upon application made at oral argument, may be given the opportunity to do so in writing.

(h) *Length of briefs.*

(1) *Type-volume limitation.* Without leave of Court, an opening or answering brief shall not exceed 8,000 words and no reply brief shall exceed 5,500 words, exclusive of appendix. In the calculation of words, the material required by paragraphs (e)(1) and (2) of this rule is excluded and the material required by paragraphs (e)(3) through (5) of this rule is included.

(2) *Certificate of compliance.*

(A) Any brief subject to Rule 107(h)(1) must include a certificate of compliance by counsel or an unrepresented party that the brief complies with the typeface requirement of Rule 107(b) and the type-volume limitation of Rule 107(h)(1). The person preparing the certificate must state the number of words in the brief, and may rely on the word count of the word processing program used to prepare the brief.

(B) Form 48 is a suggested form of a certificate of compliance. Use of Form 48 is sufficient to meet the requirements of paragraph (h)(2)(A) of this rule.

(3) *Page limitations for parties without access to word processing.* Without leave of Court, an opening brief or answering brief shall not exceed 40 pages and a reply brief shall not exceed 25 pages, exclusive of appendix. In the calculation of pages, the material required by paragraphs (e)(1) and (2) of this rule is excluded and the material required by paragraphs (e)(3) through (5) of this rule is included.

(i) *Briefing on dispositive motions.* When briefing a dispositive motion, parties may utilize the briefing guidelines set forth in this Rule when permitted to do so under the terms of the Civil Case Management Plan in effect in the pertinent county, in compliance with any Standing Order for actions proceeding in the Complex Commercial Litigation Division, or when granted leave of Court to do so. Unless otherwise ordered, the responsive papers shall be in the form adopted by the moving party; i.e., if the moving party files a motion accompanied by a brief the responsive paper should be a brief.

(j) *Appendix.* A party may submit an appendix of documents or testimony from the factual record supporting the party's position. An appendix should not duplicate record materials already provided by an opposing party.

History.

Amended effective Jan. 1, 1955; April 4, 1963; Nov. 14, 1968; Oct. 1, 1979; Oct. 15, 1980; Jan. 13, 1984; Sept. 4, 1990; July 28, 2000, effective Aug. 1, 2000; Aug. 7, 2002; Feb. 5, 2008, effective Mar. 1, 2008; Sept. 4, 2014; Oct. 1, 2015; June, 28, 2017, effective July 15, 2017.

Rule 108. Sureties.

(a) *Surety companies.* Each surety company shall, in the month of January in each year, file with the Prothonotary of the Superior Court, in each county in which such surety company is engaged in business, a power of attorney authorizing the execution of bonds by the attorney in fact designated in said power of attorney, before the Courts shall accept or approve such company as surety. Nothing herein contained shall prohibit the execution by a surety company of any bond within this State by its proper officers as required by law.

(b) *Attorneys and other officers.* No attorney, or other officer of this Court, shall be taken, directly or indirectly, as special bail or surety in any case pending in, or appealed to, this Court. This prohibition shall also apply to any agent, employee, member of the immediate family of any such attorney or court officer, or any corporation in which such attorney or court officer owns a controlling interest. This prohibition shall not apply to any bond in which the attorney, court officer, agent, employee or family member, as above defined, may be the principal. The phrase "member of the immediate family" shall include the spouse, father, mother, father-in-law, mother-in-law, son, daughter, brother, sister, brother-in-law or sister-in-law or any such attorney or court officer.

History.

Amended, effective Oct. 15, 1980.

Rule 109. Board of Canvass proceedings.

A complaint asking that the Board of Canvass exercise its powers under 15 Del. C. § 5702 shall be in a writing under oath filed not later than 12:00 noon on the day on which the Board convenes, unless prior thereto the Board shall extend said time, and shall state the following:

(1) The name of the candidate on whose behalf the complaint is filed.

(2) The office sought by such candidate.

(3) The election district or districts involved.

(4) The specific facts upon which the complaint is based, including:

(a) The fraud or mistake stated with particularity.

(b) The number of votes affected by such fraud or mistake.

(c) Whether or not the number of votes affected by such fraud or mistake affects the result of the election. If fraud or mistake in other election districts is likewise relied upon to affect the result of the election, the names of such districts shall be stated.

(5) Whether the facts are averred upon the deponent's personal knowledge or upon information and belief; and if the facts are averred on information and belief, the name, address and official connection, if any, with the election of all persons known to the one signing the affidavit to have personal knowledge of the specific facts constituting the averred fraud or mistake.

A complaint may be withdrawn only with the permission of the Board.

History.

Added effective April 1, 1963; amended July 28, 2000, effective Aug. 1, 2000.

Rule 110. Condemnation cases; designation of proposed commissioners and formation of calendar.

(a) Unless otherwise ordered, the plaintiff in each condemnation case, within 30 days after the filing of the complaint, shall submit to the senior term Judge then sitting in the county an order in blank (with copies attached for each party) whereby the Court may designate the proposed condemnation commissioners and the date for striking such commissioners, pursuant to 10 Delaware Code § 6108.

(b) The order as executed will call for the prompt striking of the proposed commissioners either on a day certain or on a day to be agreed upon by the parties, but not later than 20 days after the date of the order. The striking will be so scheduled as to allow a reasonable time between the naming and the striking of the commissioners.

(c) The Prothonotary will mail a copy of the order to each party or to the counsel for each party which has appeared through counsel.

(d) After the proposed commissioners have been stricken as provided in the order, the Prothonotary will add the case to the trial calendar of pending condemnation cases for the next following term of Court.

History.

Added, effective Sept. 16, 1963.

Rule 111. Proceeding for an order for the destruction of material in connection with a public health emergency.

(a) In any proceeding seeking destruction of material or property pursuant to 16 Del. C. § 508(c) or 20 Del. C. § 3134, the petition shall be filed with the Prothonotary in the county where the material or property is located.

(b) Prior to filing the petition, petitioner shall schedule with the Court a time and date for a hearing on the petition; such schedule shall allow for at least 5 days notice of the filing of the petition.

(c) The petition shall be verified and shall set forth:

(1) The identity of the petitioner and facts concerning the petitioner's legal authority to bring the action;

(2) A description sufficient to identify the particular material or property at issue including its current location and/or custodian;

(3) Information concerning the need for the destruction of the material or property including the nature of the potential or existing public health emergency and the danger presented by the material or property;

(4) The identity of the owner(s) of the material or property and the identity of all persons or entities reasonably believed to have or claim an interest in the material or property.

(d) The petition shall have annexed thereto an affidavit showing that notice of the time, place and purpose of the hearing, together with a copy of the petition, has been given to the owners and all persons and entities reasonably believed to have or claim an interest in the material or property, and showing the time and method of such notice.

(e) The petition shall have annexed thereto a proposed order.

(f) The court shall hold a hearing on the petition as set forth in the notice or at such other time and place as the court may order.

(g) At the hearing, the court may consider any objections to the proposed order filed prior to the hearing or presented at the hearing. The court may receive evidence at the hearing.

(h) The court may issue a final order granting or denying relief, or may issue an interim order providing for custody and control of the property or material, with such restrictions and conditions as are determined appropriate, pending further proceedings as ordered by the court.

History.

Added effective Feb. 1, 2003.

Rule 112. Proceedings in forma pauperis.

(a) Where a party seeks to commence, prosecute or defend any civil action or civil appeal without prepayment of fees and costs, the party shall apply to the Court to proceed *in forma pauperis*. The application shall be accompanied by an affidavit in such form as the Court requires stating sufficient facts as to enable the Court to act upon the application. The Court may, in its discretion, hold a hearing on the question of indigency. The Court may enter an order waiving all fees and costs or order fees and costs to be paid in accordance with a payment schedule. In any action in which a claim for damages is asserted by a party seeking the benefit of this rule, the Prothonotary shall, before entering a dismissal of the claim or satisfaction of any judgment entered therein, require payment of accrued court costs from any party for whose benefit this rule has been applied, if the party has recovered a judgment in the proceedings or received any funds in settlement thereof. A party and the party's attorney of record shall file appropriate affidavits in the event a claim is sought to be dismissed without settlement or recovery.

(b) In the event that the Court denies the application of a party to proceed *in forma pauperis*, the Court will send notice of the denial of the application to the applicant. The notice shall state the amount of the filing fee required and shall state a date certain, which is not less than fifteen (15) days from the date of the notice, by which the fee must be paid in order to avoid dismissal of the action.

History.

Added, effective Mar. 1, 1976; amended, effective Feb. 1, 1979; Jan. 1, 1991; Aug. 1, 1996; Oct. 2, 1997.

XIV. Masters

Rule 113. Appointment; removal.

The Court shall have authority in any case pending in the Superior Court to appoint a Master pro hac vice in such case. The appointment of a Master shall be complete and effective when an order for the same is signed by the Court. Any Master may be removed at the pleasure of the Court.

History.

Added, effective Jan. 1, 1988.

Rule 114. Duties and powers.

The Master shall regulate all the proceedings in every hearing before the Master upon every order of reference. The Master shall have full authority to administer all oaths in the discharge of the Master's official duties; to examine the parties and witnesses in the cause upon oath touching all matters contained in the order of reference; to summon and enforce the attendance of witnesses; to require the production of

all books, papers, writings, vouchers and other documents applicable thereto; to cause such evidence to be taken down in writing; to order the examination of other witnesses to be taken under a commission to be issued upon the Master's certificate from the office of the Prothonotary, or by deposition; to certify to testimony taken; to direct the mode in which the matters requiring evidence shall be proved before the Master; to grant adjournments and extensions of time; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before the Master which the Master may deem necessary and proper, subject at all times to the revision and control of the Court.

History.

Added, effective Jan. 1, 1988; amended, effective Jan. 1, 1991.

Rule 115. Witnesses; documents.

Witnesses may be summoned to appear before the Master by subpoena in the usual form, which shall be issued by the Prothonotary requiring the attendance of the witnesses at the time and place specified. The Master may also compel the production by witnesses, including parties to the cause, of books, papers and documents to be used as evidence before him by subpoena issued as in this rule provided. If any witness shall disobey such subpoena, it shall be deemed a contempt of the Court, which being certified to said Prothonotary's office by the Master, an attachment shall thereupon be issued returnable before the Court.

Witnesses shall be allowed for attendance the same compensation as for attendance in court.

History.

Added, effective Jan. 1, 1988.

Rule 116. Testimony taken and certified.

Oral examination shall be taken by a stenographer selected by the Master, and sworn by the Master faithfully and truly to take stenographically and to reproduce in manuscript, or typewriting, the testimony given. In such case the Master shall accompany the testimony with the Master's certificate that it was taken in the Master's immediate presence and hearing by a stenographer sworn as above required and that the Master believes the evidence to be accurately stated as given. The Master shall fix the compensation of such stenographer subject to the approval of the Court.

History.

Added, effective Jan. 1, 1988; amended, effective Jan. 1, 1991.

Rule 117. Objections to testimony; hearing thereon.

The Master shall have full power to pass upon all questions of competency of witnesses and admissibility of testimony, and shall note the Master's ruling upon each objection. When the Master has ruled that a witness or party shall answer a given question, it shall be the duty of such witness or party to answer in the same manner as if such witness or party had been so directed by the Court; and in case the Master shall hold that any question is irrelevant or immaterial, the same shall not be answered.

When an objection is taken and overruled, it is unnecessary for the objecting party to except thereto. The party objecting must state specifically the grounds of such objection. After the testimony and evidence before the Master is closed, and before the Master makes a report thereon, any party who has made an objection during the proceedings before the Master which has been overruled, may bring such objections before the Court, and if the Court shall sustain the rulings of the Master, the Master shall immediately proceed to make a report on the testimony and evidence submitted to the Master. The same procedure shall apply in favor of a party aggrieved by the refusal of the Master to admit evidence. If any of the

objections to the rulings of the Master shall be sustained, the Master shall proceed to take such further testimony as the Court may direct, and shall disregard in making up the Master's report such testimony as the Court may rule to be irrelevant or immaterial.

History.

Added, effective Jan. 1, 1988; amended, effective Jan. 1, 1991.

Rule 118. Persons who may be examined; burden of proof on exceptions to claim.

The Master shall be at liberty to examine any party, or any creditor, or other person making claims before the Master, either upon written interrogatories, or orally, or in both modes, as the nature of the case may appear to the Master to require, and for this purpose may by subpoena compel the attendance before the Master of such party, creditor or other person.

When exceptions are taken to claims filed by claimants to a fund, the burden of proof shall be on the claimant to establish the claim as filed, and the claimant will not be permitted to prove any items not embraced within such filed claim, except by order of the Master for good cause shown.

History.

Added, effective Jan. 1, 1988; amended, effective Jan. 1, 1991.

Rule 119. Time for taking testimony.

Where the order of reference specifies the time to begin taking testimony before the Master, and also the time for closing proofs, the Master shall have no power to extend the time beyond the day named in the order, but when a matter is referred to a Master to examine and report upon, and the order of reference does not specify any time to begin taking testimony or for closing proofs, the Master shall, as soon as practicable, assign a time and place to hear the parties, give reasonable notice to all persons interested, and proceed with all reasonable diligence in every such reference. Any party in interest shall be at liberty to apply to the Court for an order that the Master speed the proceedings and certify to the Court the reasons for any delay.

History.

Added, effective Jan. 1, 1988.

Rule 120. Limiting time for taking testimony.

The Master may in the Master's discretion fix a day within which any party shall close the party's proofs, which time the Master may in the exercise of discretion for good cause shown extend for such reasonable time as justice may require; and in case the parties shall not close their proofs within the time limited by the Master, the Master shall proceed with the hearings and report upon the testimony and evidence that may have been submitted to the Master without waiting for further evidence or testimony from the party so failing to close their proofs within the time limited.

History.

Added, effective Jan. 1, 1988; amended, effective Jan. 1, 1991.

Rule 121. Minutes of proceedings to be kept.

The Master shall keep minutes of all proceedings before the Master, therein noting appearances of attorneys and adjournments, times of hearings and such other matters as may show the manner of executing the reference.

History.

Added, effective Jan. 1, 1988; amended, effective Jan. 1, 1991.

Rule 122. Master's report; action by Court.

(a) *Report after Master has heard live testimony.* As soon as the Master is ready to file a report, the Master shall, before filing it, submit a copy thereof to each party for the party's inspection and any party may submit exceptions thereto in writing within the time set therefor by the Master. Such exceptions shall first be heard by the Master who shall be at liberty to amend the draft report. A final report shall then be filed by the Master consisting of the Master's draft report as amended.

The Master's final report shall be filed in the office of the Prothonotary, who shall give notice thereof to the parties interested. Exceptions shall be filed within 10 days after notice of the filing of the final report has been mailed to the attorneys.

The only permitted exceptions to the final report are those exceptions which were filed to the draft report and disallowed, plus exceptions to any change from the draft report made in the final report.

Any party may request the Court for a hearing on the final report and the exceptions thereto.

After the hearing, the Court may make such order as shall be appropriate.

(b) *Report where Master has not heard live testimony.* As soon as the Master is ready to file a report, the Master shall, before filing it, submit a copy thereof to each party for the party's inspection and any party may submit exceptions thereto in writing within the time set therefor by the Master. Such exceptions shall first be heard by the Master who shall be at liberty to amend the draft report. A final report shall then be filed by the Master consisting of the Master's draft report as amended.

The Master's final report shall be filed in the office of the Prothonotary, who shall give notice thereof to the parties interested. Exceptions shall be filed within 10 days after notice of the filing of the final report has been mailed to the attorneys.

The only permitted exceptions to the final report are those exceptions which were filed to the draft report and disallowed, plus exceptions to any changes from the draft report made in the final report.

After considering the final draft and exceptions, the Court may make such order as shall be appropriate.

(c) *Standard of review.* A report by a Master is subject to review by the Court *de novo*. Such *de novo* review may be on the record in whole or in part.

History.

Added effective Jan. 1, 1988; amended effective Jan. 1, 1991; June 1, 1997; amended May 26, 2000, effective June 1, 2000.

Rule 123. Inspection of documents.

Where, by any decree or order of the Court, or subpoena issued by the Prothonotary, books, papers or writings are directed to be produced before the Master for the purpose of such decree or order, it shall be in the discretion of the Master to determine what books, papers, or writings are to be produced, and when and for how long they are to be left in the Master's office; and in case the Master shall not deem it necessary that such books, papers or writings should be left or deposited in the Master's office, then the

Master may give directions for the inspection thereof by the parties requiring the same at such time and in such place and manner as the Master shall deem expedient.

History.

Added, effective Jan. 1, 1988; amended, effective Jan. 1, 1991.

XV. Rules Governing Actions Subject to Summary Proceedings for Commercial Disputes

Rule 124. Scope of rules.

(a) These rules shall govern the procedure in the Superior Court (hereinafter the "Court") of the State of Delaware in actions subject to Summary Proceedings for Commercial Disputes, herein referred to as "Summary Proceedings."

(b) Any matter within the subject matter jurisdiction of the Superior Court, excluding claims asserting personal, physical or mental injury, wherein the amount in controversy exceeds one hundred thousand dollars as to at least one party, exclusive of interest and costs shall be subject to expedited proceedings under these Rules when the parties (at least one of which is a Delaware citizen, corporation or other business entity) have consented, by written agreement or stipulation. Neither punitive damages nor a jury trial shall be available under these Rules.

(c) The Court may, at its discretion, to the extent judicial resources are available, entertain actions under these Rules wherein the amount in controversy does not exceed one hundred thousand dollars. Application to proceed under these Rules in such actions shall be made by written motion to the President Judge of the Superior Court or his designee.

(d) To the extent they are not inconsistent with Rules 124 through 131, the remaining Superior Court civil rules shall apply to Summary Proceedings.

History.

Added, effective Apr. 1, 1994; amended, effective Apr. 1, 1998.

Rule 125. Commencement of action.

(a) *Complaint.*

(1) Summary Proceedings are commenced by filing with the Court, and serving, a complaint. Sufficient copies shall be filed so that one copy is available for service on each defendant as hereafter provided, unless the Court orders otherwise.

(2) The complaint and the requisite accompanying documents shall be sent, via next-day delivery, to either a person identified in the applicable agreement between the parties to receive notice of Summary Proceedings or, absent such specification, to each defendant's principal place of business or residence. The plaintiff shall provide to the Prothonotary pre-addressed and prepaid envelope(s) sufficient to accomplish the next-day delivery required by this paragraph. Evidence of receipt shall be filed with the Prothonotary.

(3) The complaint must state prominently on the first page that Summary Proceedings are requested. The complaint also must contain a statement of the amount in controversy exclusive of interest and costs, a statement that one of the parties is a Delaware citizen, corporation or other business entity,

and a statement that the defendant has agreed to submit to the Court's jurisdiction for Summary Proceedings. A copy of the portion of the document evidencing the agreement to submit to jurisdiction shall be attached to the complaint.

(b) *Transfer and conversion.*

(1) With the consent of the transferor court, if required by that court, an action pending in any court of the State of Delaware or any other jurisdiction which could have been brought initially as a Summary Proceeding may be transferred to the Superior Court, or converted to a Summary Proceeding if already pending in the Superior Court, by consent of the parties thereto.

(2) Within 15 days of transfer or conversion, the Court shall hold a conference at which time a schedule for the remainder of the action shall be established that will conform as closely as feasible to these Rules. Unless cause not to do so is shown, the record from any prior proceedings shall be incorporated into the record of the Summary Proceeding.

(c) *Filing fee.* The Prothonotary shall not file any paper or record or docket any proceeding under these Rules until the required filing fee has been paid. The filing fee shall be subject to the provisions relating to taxing of costs under Rule 54.

History.

Added, effective Apr. 1, 1994.

Rule 125.1. Summary proceedings for Commercial Disputes Panel.

(a) Summary proceedings actions shall be assigned by the President Judge to a Judge of the Summary Proceedings for Commercial Disputes Panel (hereinafter the "Panel"). The Panel shall be appointed by the President Judge from the Judges of the Superior Court.

(b) A current list identifying the Judges of the Panel shall be maintained in the Prothonotary's Office and shall be provided to members of the public upon request.

History.

Added, effective Apr. 1, 1998.

Rule 126. Responses to the complaint.

(a) *Answer.* A defendant shall serve an answer together with any compulsory counterclaims within thirty days after service of the complaint.

(b) *Counterclaims, cross-claims and third-party claims.* A plaintiff shall serve a reply to any counterclaim within twenty days after service of the counterclaim. Any answer or reply to a counterclaim shall be accompanied by a list of persons consulted, or relied upon, in connection with preparation of the answer or reply. Cross-claims, permissive counterclaims and third-party claims are not permitted absent agreement of all parties. Cross-claims, counterclaims and third-party claims, if any, are subject to the provisions of Rules 124 through 131.

(c) *Motions to dismiss.* A party may, in lieu of an answer, respond to a complaint or counterclaim by moving to dismiss. A motion to dismiss and accompanying brief must be served within thirty days after service of the complaint upon the defendant. A motion to dismiss a counterclaim and accompanying brief must be served within twenty days after service of the counterclaim. An answering brief in opposition to a motion to dismiss is due within fifteen days after service of the motion and accompanying brief. A reply brief in support of the motion to dismiss is due within ten days after service of the answering brief. The opening and answering briefs shall be limited to twenty-five pages, and the reply brief shall be limited to ten pages. Within thirty days after the filing of the final reply brief on all motions to dismiss, if no oral

argument occurs, or within thirty days of oral argument if oral argument occurs, the Court will either render to the parties its decision on such motions or will provide to the parties an estimate of when such decision will be rendered. Such additional time shall not normally exceed an additional thirty days unless the assigned judge shall have filed a certification pursuant to Rule 130(d). If a motion to dismiss a claim is denied, an answer to that claim shall be filed within ten days of such denial.

History.

Added, effective Apr. 1, 1994.

Rule 127. Depositions and discovery.

(a) *Required expedited discovery.* Within seven days of filing of the answer, a plaintiff shall serve upon the answering defendant a copy of each document in the possession of plaintiff that plaintiff intends to rely upon at trial, a list of witnesses that plaintiff intends to call at trial and a list of all persons consulted or relied upon in connection with preparation of the complaint. Within thirty days of the filing of the answer, the answering defendant shall provide to all other parties a list of witnesses it intends to call at trial and all documents in its possession that it intends to rely upon at trial. A plaintiff against whom a counterclaim has been asserted shall serve upon the defendant asserting the counterclaim, within thirty days after such plaintiff receives from the defendant asserting the counterclaim the materials referred to in the preceding sentence, a list of witnesses it intends to call at trial in opposition to the counterclaim, all documents in its possession that it intends to rely upon at trial in opposition to the counterclaim and all persons consulted or relied upon in connection with preparation of the reply to the counterclaim.

(b) *Interrogatories.* Any party may serve upon any other party up to ten written interrogatories (with any sub-part to be counted as a separate interrogatory) within thirty days after the filing of the last answer. Responses are due within twenty days after service of the interrogatories.

(c) *Document requests.* Any party may serve on any other party a request to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents, said request to be served within thirty days after filing of the last answer. The response to a document request is due within thirty days after service of the document request and must include production of the documents at that time for inspection and copying.

(d) *Depositions.* Any party may serve on any other party a notice of up to four depositions to begin no sooner than seven days from service of the deposition notice and subsequent to the filing of all answers. A party may also take the deposition of any person on the other party's witness list, as well as the deposition of all affiants designated under Rule 129. The first deposition notice by a party shall be served not later than sixty days after the filing of the last answer. All depositions to be taken by a party are to be scheduled and completed within 120 days of the filing of the last answer.

(e) *Request for admissions.* Any party may serve upon any other party up to ten requests for admission (with any sub-part to be counted as a separate request for admission) within thirty days of the filing of the last answer. Responses are due within twenty days after service.

(f) *Supplementation of discovery.* Parties are obligated to supplement promptly their witness list, the documents they intend to rely upon at trial and their discovery responses under this Rule.

(g) *Discovery disputes.* Discovery disputes, at the Court's option, may be addressed by a Master at the expense of the parties or by the Court.

(h) *Completion of fact discovery.* Unless otherwise ordered by the Court, all fact discovery, except for discovery contemplated by Rule 129, shall be completed within 180 days after the filing of the last answer.

(i) *Completion of expert discovery.* Unless otherwise ordered by the Court, all discovery with respect to expert witnesses, except for discovery contemplated by Rule 129, shall be completed within 60 days after completion of the fact discovery pursuant to subsection (h) of this Rule.

History.

Added, effective Apr. 1, 1994; amended, effective Nov. 12, 1997; Apr. 1, 2003.

Rule 128. Summary judgment.

There shall be no motions for summary judgment in Summary Proceedings.

History.

Added, effective Apr. 1, 1994.

Rule 129. Optional briefing procedure.

(a) If the parties notify the court within seven days after the close of discovery that the parties have agreed to forego witnesses at the trial of the case, the parties may submit briefs and appendices in support of their cause as follows:

(1) Plaintiff's Brief — thirty days following close of discovery;

(2) Defendant's Answering Brief — within thirty days after service of plaintiff's brief; and

(3) Plaintiff's Reply Brief — within fifteen days of service after Defendant's Answering Brief.

(b) The briefs must cite to the applicable portions of the record. Affidavits may be used but all affiants must be identified prior to the close of discovery and must, at the option of any other party, be produced for deposition within two weeks from the date discovery would otherwise close. The Court shall make factual findings based upon the record presented by the parties.

History.

Added, effective Apr. 1, 1994.

Rule 130. Trial.

(a) *Submissions without witnesses.* If the parties elect to forego witnesses at trial and submit briefs pursuant to Rule 129, trial shall consist of oral argument, or submission on briefs if oral argument is waived by the parties with the consent of the Court, to be scheduled and held by the Court within one week of the close of briefing pursuant to Rule 129.

(b) *Witnesses.* If the parties elect to present live witnesses at trial, the trial shall be scheduled to begin between thirty and sixty days after the close of discovery. Within thirty days after the close of discovery, the parties shall provide the Court with an agreed upon pre-trial order. The pre-trial order shall include a summary of the claims or defenses of each party, a list of the witnesses each party expects to introduce at trial, a list of the exhibits each party intends to introduce at trial and any objections thereto, a description of any other evidentiary disputes, a statement of facts not in dispute and a statement of disputed issues of fact. Absent contrary Court order, the trial shall be limited to five days, which shall be allocated equitably between the parties. Within ten days of the close of trial, each party shall file a post-trial brief including proposed findings of fact and conclusions of law. Each brief shall not exceed fifty pages.

(c) *Decision after trial.* Within thirty days after the filing of the final brief, if no oral argument occurs, or within thirty days of argument if oral argument occurs, the Court will either render to the parties its decision after trial or will provide the parties an estimate of when the decision will be rendered. Such additional time shall not normally exceed an additional thirty days unless the assigned judge shall have filed a certification pursuant to Rule 130(d).

(d) *Extensions.* The schedule for trial or decision after trial or on motion to dismiss shall not be extended unless the assigned judge certifies that:

(1) The demands of the case and its complexity make the schedule under this Rule incompatible with serving the ends of justice; or

(2) The trial cannot reasonably be held or the decision rendered within such time because of the complexity of the case or the number or complexity of pending criminal cases.

History.

Added, effective Apr. 1, 1994; amended, effective Apr. 1, 2003.

Rule 131. Application to Court for modification of Rules.

These Rules, other than Rules 129 and 130, may be modified by agreement of all parties with the approval of the Court.

History.

Added, effective Apr. 1, 1994.

Rule 132. Commissioners.

(a) Each Commissioner shall have all powers and duties conferred or imposed upon Commissioners by law, by the Rules of Civil Procedure for the Superior Court, and by Administrative Directive of the President Judge, including, but not limited to:

(1) The power to administer oaths and affirmations, and to take acknowledgments, affidavits, and depositions;

(2) The power to serve as a special master or master *pro hac vice*;

(3) *Non case-dispositive matters.* The power to conduct non case-dispositive hearings, including evidentiary hearings, and the power to hear and determine any pretrial or other non case-dispositive matter pending before the Court.

(i) The Commissioner shall file an order under subparagraph (3) with the Prothonotary, and shall mail copies forthwith to all parties. It shall not be necessary for the Commissioner to include proposed findings of fact and recommendations in any order under this subparagraph.

(ii) Within 10 days after filing of a Commissioner's order under subparagraph (3), any party may serve and file written objections to the Commissioner's order which set forth with particularity the basis for the objections. The written objections shall be entitled "Motion for Reconsideration of Commissioner's Order." A copy of the written objections shall be served on the other party, or the other party's attorney, if the other party is represented. The other party shall then have 10 days from service upon that party of the written objections to file and serve a written response to the written objections.

(iii) The party filing written objections to a Commissioner's order shall cause a transcript of the proceedings before the Commissioner to be prepared, served, and filed unless, subject to the approval of a judge, all parties agree to a statement of facts.

(iv) A judge may reconsider any hearing or pretrial matter under subparagraph (3) only where it has been shown on the record that the Commissioner's order is based upon findings of fact that are clearly erroneous, or is contrary to law, or is an abuse of discretion.

(v) Orders entered under this subparagraph shall be effective immediately, and no motion for reconsideration of a Commissioner's order shall stay execution of the order unless such stay shall be specifically ordered by a judge.

(4) *Case-dispositive matters.* The power to conduct case-dispositive hearings, including case-dispositive evidentiary hearings, mental hearings under Title 16 Del. C., ch. 50, a motion for judgment on the pleadings, for summary judgment, to dismiss for failure to state a claim upon which relief can be granted, and involuntarily to dismiss an action, and to submit to a judge of this Court proposed findings of fact and recommendations for the disposition, by a judge, of any such case-dispositive matter.

(i) The Commissioner shall file proposed findings of fact and recommendations under subparagraph (4) with the Prothonotary and shall mail copies forthwith to all parties, or to a party's attorney if the party is represented.

(ii) Within 10 days after filing of a Commissioner's proposed findings and recommendations under subparagraph (4), any party may serve and file written objections to the Commissioner's order which set forth with particularity the basis for the objections. The written objections shall be entitled "Appeal from Commissioner's Findings of Fact and Recommendations." A copy of the written objections shall be served on the other party, or the other party's attorney, if the other party is represented. The other party shall then have 10 days from service upon that party of the written objections to file and serve a written response to the written objections.

(iii) The party filing written objections to a Commissioner's order shall cause a transcript of the proceedings before the Commissioner to be prepared, served, and filed unless, subject to the approval of a judge, all parties agree to a statement of facts.

(iv) A judge of the Court shall make a *de novo* determination of those portions of the report or specified proposed findings of fact or recommendations to which an objection is made. A judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Commissioner. A judge may also receive further evidence or recommit the matter to the Commissioner with instructions.

(v) Notwithstanding any provision of this subchapter to the contrary, any order entered by a Commissioner in a mental hearing pursuant to 16 Del. C., ch. 50 shall be effective immediately unless and until a judge should otherwise reject or modify the order.

(b) A party seeking reconsideration of an order of a Commissioner under subparagraph (3) or appealing the findings of fact and recommendations of a Commissioner under subparagraph (4) who fails to comply with the provisions of this rule may be subject to dismissal of said motion for reconsideration or appeal.

(c) The time periods specified in this Rule may be shortened or enlarged, for good cause, by a judge.

(d) A Commissioner may be assigned such additional duties and powers by the President Judge, or the President Judge's designee, as are not inconsistent with the Constitution and laws of the State of Delaware, with the Civil Rules of the Superior Court or with an Administrative Directive of the President Judge.

History.

Added, effective Oct. 21, 1994.

Rule 133. Single-transaction guardianship; settlement of tort claims for disabled person.

(a) In a settlement of a single-transaction matter arising out of a tort claim for a person with a disability, including persons under the age of 18, the Court may, in its discretion, enter an order:

(1) approving the settlement;

(2) approving the disbursement of funds for the payment of the expenses of prosecuting the tort claim, subrogation claims and unpaid obligations of the person with a disability associated with the tort claim;

(3) in matters involving settlement of tort claim(s) for persons under the age of 18 involving property or funds the gross amount of which is $25,000 or less, inclusive of costs and attorney's fees, approving the deposit of the net settlement funds in a Uniform Transfer to Minor Act ("UTMA") account for the benefit of the minor without the need to appoint a guardian for the minor's property;

(4) in matters involving settlement of tort claim(s) for persons under the age of 18 involving property or funds the gross amount of which is in excess of $25,000, inclusive of costs and attorney's fees:

(i) approving the placement of the net settlement funds in a court-approved annuity or structured financial instrument for the benefit of the minor without the need to appoint a guardian for the minor's property; or

(ii) approving the placement of no greater than $25,000 of the net settlement funds in a UTMA account, with the balance of the net settlement funds to be placed in a court-approved annuity or structured financial instrument for the benefit of the minor without the need to appoint a guardian for the minor's property; or

(5) appointing a guardian of the property of the person with a disability to be derived from the settlement, subject to the following:

(i) if the person with a disability is less than 18 years of age, settlement funds which are placed in a UTMA account of no greater than $25,000, a court-approved annuity, or a structured financial instrument for the benefit of the person, may be excluded from guardianship property; and

(ii) if the petition to authorize the tort settlement proposes that all net settlement funds be placed in a manner qualifying for approval under (a)(3) or (a)(4) of this rule, a guardian for the property will be appointed only upon good cause shown, in the best interests of the minor, for the purpose of protecting the estate and maximizing benefits available to the minor, including public benefits.

(b) Upon entry of an order pursuant to subsection (a)(5), jurisdiction shall be transferred to the Court of Chancery for administration of the guardianship property pursuant to Chapter 39, Title 12 of the Delaware Code.

(c) Any annuity or structured financial instrument approved under this rule shall provide for payment of funds to the minor no earlier than the date the minor reaches majority, and shall prohibit the encumbrance, liquidation, sale, or other transfer of the policy before such time. Unless otherwise ordered, proof of the annuity or structured financial instrument shall be filed within 60 days of the entry of the order approving the settlement.

(d) A petition to authorize settlement of a tort claim for a person with a disability shall be accompanied by medical reports, affidavits or other evidence satisfactory to the Court and, in the absence of such evidence, the Court may require oral testimony. For settlements meeting the criteria of (a)(3) of this rule, the Court will decide petitions to authorize the settlement on the papers submitted unless otherwise ordered by the Court. All other petitions to authorize settlement shall be heard in open court, with the person with a disability present, unless otherwise ordered.

History.

Added, Feb. 14, 1996, effective Jan. 15, 1996; amended, effective Sept. 4, 2014.

XVI. Rules Governing Mediation and Arbitration Proceedings for Business Disputes

Rule 134. Scope of Rules for Mediation.

(a) These rules shall govern the procedure in mediation proceedings for business disputes pursuant to 10 Del. C. § 546.

(b) In the case of disputes involving solely a claim for monetary damages, a matter will be eligible for mediation only if the amount in controversy exceeds one hundred thousand dollars.

(c) The parties with the consent of the Mediator may change any of these mediation rules by agreement.

(d) *Definitions.*

(1) "Mediation" means the process by which a mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution and includes all contacts between the Mediator and any party or parties, until such time as a resolution is agreed to by the parties or the parties discharge the Mediator.

(2) "Mediator" means a judge or commissioner sitting permanently in the Court.

(3) "Mediation conference" means the process, which may consist of one or more meetings or conferences, pursuant to which the Mediator assists the parties in seeking a mutually acceptable resolution of their dispute through discussion and negotiation.

(4) "Consent to Mediate" means a written or oral agreement to engage in mediation in the Superior Court. Provided that the parties and the amount in controversy meet the eligibility requirements in 10 Del. C. § 546, a consent to mediate is acceptable if it contains the following language: "The parties agree that any dispute arising under this agreement shall be mediated in the Superior Court of the State of Delaware, pursuant to 10 Del. C. § 546."

History.

Added, effective Aug. 9, 2011.

Rule 135. Commencement of Mediation.

(a) *Petition.*

(1) Mediation is commenced by submitting to the Prothonotary a petition for mediation (hereinafter a "petition") and the filing fee specified by the Prothonotary. The petition must be signed by Delaware counsel, as defined in Rule 90.1 (a). Sufficient copies shall be submitted so that one copy is available for delivery to each party as hereafter provided, unless the court directs otherwise.

(2) The petition shall be sent by the Prothonotary, via next day delivery, to either a person specified in the applicable agreement between the parties to receive notice of the petition or, absent such specification, to each party's principal place of business or residence. The petitioning party shall provide the Prothonotary with addresses of each party.

(3) The petition will identify the issues to be mediated and specify the method by which the parties shall attempt to resolve the issues. The petition must also contain a statement that all parties have consented to mediation by agreement or stipulation, that the Superior Court would have subject matter jurisdiction to adjudicate the business dispute, that at least one party is a business entity, that at least one party is a business entity formed or organized under the laws of Delaware or having its principle place of business in Delaware, or that the business dispute is governed by Delaware law, and that no party is a consumer with respect to the dispute. In the case of disputes involving solely a claim for monetary damages, the petition must contain a statement of the amount in controversy.

(4) *Confidentially.* The petition and any supporting documents are considered confidential and not of public record. The Prothonotary will not include the petition as part of the public docketing system.

(b) *Appointment of the Mediator.* Upon receipt of a petition, the Court will appoint a Mediator.

(c) *Date, Time, and Place of Mediation.* The Mediator will set the date, time, and place of the mediation conference within 15 days following receipt of the petition. The mediation conference generally will occur no later than 60 days following receipt of the petition.

(d) *Submission of Documents.* There shall be no formal discovery in connection with mediation proceeding under these Rules. The Mediator may request parties to exchange or provide to the Mediator documents or other materials necessary to understand the dispute or facilitate a settlement. The parties may agree to exchange any documents or other material in the possession of the other that may facilitate a settlement.

History.

Added, effective Aug. 9, 2011.

Rule 136. Mediation Conference.

(a) *Participation.* At least one representative of each party with an interest in the issue or issues to be mediated and with authority to resolve the matter must participate in the mediation conference. Delaware counsel, as defined in Rule 90.1(a), shall also attend the mediation conference on behalf of each party.

(b) *Confidentially.* Mediation conferences are private proceedings such that only parties and their representatives may attend, unless all parties agree otherwise. A Mediator may not be compelled to testify in any judicial or administrative proceeding concerning any matter relating to service as a mediator. All memoranda and work product contained in the case files of a mediator are confidential. Any communication made in or in connection with the mediation that relates to the controversy being mediated, whether made to the mediator or a party, or to any person if made at a mediation conference, is confidential. Such confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding with the following exceptions:

(1) Where all parties to the mediation agree in writing to waive the confidentiality, or

(2) Where the confidential materials and communications consist or statements, memoranda, materials, and other tangible evidence otherwise subject to discovery, which were not prepared specifically for use in the mediation conference. A mediation agreement, however, shall not be confidential unless the parties otherwise agree in writing.

(c) *Civil Immunity.* Mediators shall be immune from civil liability for or resulting from any act or omission done or made in connection with efforts to assist or facilitate a mediation, unless the act or omission was made or done in bad faith, with malicious intent, or in a manner exhibiting a willful, wanton disregard of the rights, safety, or property of another.

(d) *Mediation Agreement.* If the parties involved in the mediation proceedings reach agreement with regard to the issues identified in the petition, their agreement shall be reduced to writing and signed by the parties and the Mediator. The agreement shall set forth the terms of the resolution of the issues and the future responsibility of each party.

(e) *Termination of Mediation Conference.*

(1) The Mediator shall officially terminate the mediation conference if the parties are unable to agree. The termination shall be without prejudice to either party in any other proceeding. The Mediator shall have no authority to make or impose any adjudication, sanction, or penalty upon the parties. No party shall be bound by anything said or done at the mediation proceeding unless an agreement is reached.

(2) The Mediator is ineligible to adjudicate any subsequent litigation arising from the issues identified in the petition.

(f) *Compensation for Mediation.* The Court will be compensated by the parties to the mediation in accordance with the schedule of fees maintained by the Prothonotary.

History.

Added, effective Aug. 9, 2011.

Rule 137. Arbitration.

(a) These rules shall govern the procedure in arbitration proceedings for business disputes pursuant to 10 Del. C. § 546.

(b) In the case of business disputes involving solely a claim for monetary damages, a matter will be eligible for arbitration only if the amount in controversy exceeds one-hundred thousand dollars.

(c) The parties with the consent of the Arbitrator may change any of these arbitration rules by agreement and/or adopt additional rules. Except to the extent inconsistent with these rules, or as modified by the Arbitrator or the parties, Superior Court Rules 26 through 37 shall apply to the Arbitration proceeding.

(d) *Definitions.*

(1) "Arbitration" means the voluntary submission of a dispute to an Arbitrator for final and binding determination and includes all contracts between the Arbitrator and any party or parties, until such time as a final decision is rendered or the parties discharge the Arbitrator.[1.]

(2) "Arbitrator" means a judge or commissioner sitting permanently in the Court. Absent agreement of the parties, the Arbitrator shall not have served as the Mediator in a mediation of the dispute under the Superior Court Rules.

(3) "Preliminary conference" means a telephonic conference with the parties and/or their attorneys or other representatives.

(i) to obtain additional information about the nature of the dispute and the anticipated length of hearing and scheduling,

(ii) to obtain conflicts statements from the parties, and

(iii) to consider with the parties whether mediation or other non-adjudicative methods of dispute resolution might be appropriate.

(4) "Preliminary Hearing" means a telephonic conference with the parties and/or their attorneys or other representatives to consider, without limitation:

(i) service of statements of claims, damages and defenses, a statement of the legal issues asserted by each party and positions with respect thereto, and any legal authorities upon which the parties rely,

(ii) stipulations of fact,

(iii) the scope of discovery,

(iv) exchanging and pre-marking of exhibits for the hearing,

(v) the identification and availability of witnesses, including experts, and such matters with respect to witnesses, including their qualifications and expected testimony as may be appropriate,

(vi) whether, and to what extent, any sworn statements and/or depositions may be introduced,

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[1.] Arbitrate has previously been defined as "a process by which a neutral arbitrator hears both sides of a controversy and renders a fair decision based on the law. If the parties stipulate in writing, the decision shall be binding. Arbitration may be mandatory or by agreement." Super. Ct. Civ. R. 16. Because this definition fails to encapsulate the "voluntariness" required by House Bill 433, the Court of Chancery rule is closer to the legislative intent.

(vii) the length of hearing,

(viii) whether a stenographic or other official record of the proceedings shall be maintained,

(ix) the possibility of mediation or other non-adjudicative methods or dispute resolution, and

(x) the procedure for the issuance of subpoenas.

(5) "Scheduling order" means the order of the Arbitrator setting forth the pre-hearing activities and the hearing procedures that will govern the arbitration.

(6) "Arbitration hearing" means the proceeding, which may take place over a number of days, pursuant to which the petitioner presents evidence to support its claim and the respondent presents evidence to support its defense, and witnesses for each party shall submit to questions from the Arbitrator and the adverse party, subject to the discretion of the Arbitrator to vary this procedure so long as parties are treated equally and each party has the right to be heard and is given a fair opportunity to present its case.

(7) "Consent to Arbitrate," means a written or oral agreement to engage in arbitration in the Superior Court and shall constitute consent to these rules. Provided that the parties and the amount in controversy meet the eligibility requirements in 10 Del. C. § 546, which apply to the arbitration of business disputes, a consent to arbitrate is acceptable if it contains the following language: "The parties agree that any dispute arising under this agreement shall be arbitrated in the Superior Court of the State of Delaware, pursuant to 10 Del. C. § 546."

History.

Added, effective Aug. 9, 2011.

Rule 138. Commencement of Arbitration.

(a) *Petition.*

(1) Arbitration is commenced by submitting to the Prothonotary a petition for arbitration (hereinafter a "petition") and the filing fee specified by the Prothonotary. The petition must be signed by Delaware counsel, as defined in 90.1(a). Sufficient copies shall be submitted so that one copy is available for delivery to each party as hereafter provided, unless the Court directs otherwise.

(2) The petition shall be sent by the Prothonotary, via next business-day delivery, to either a person specified in the applicable agreement between the parties to receive notice of the petition or, absent such specification, to each party's principle place of business or residence. The petitioning party shall provide the Prothonotary with addresses of each party.

(3) The petition shall contain a statement setting forth the nature of the dispute, the names and addresses of all other parties, the claims and the remedy sought. The petition must also contain a statement that all parties have consented to arbitration by agreement or stipulation, that the Superior Court would have subject matter jurisdiction to adjudicate the business dispute, that at least one party is a business entity, that at least one party is a business entity formed or organized under the laws of Delaware or having its principle place of business in Delaware, or the business dispute is governed by Delaware law, and that no party is a consumer with respect to the dispute. In the case of business disputes involving solely a claim for monetary damages, the petition must contain a statement of the amount in controversy.

(4) *Confidentiality.* The Prothonotary will not include the petition as part of the public docketing system. The petition and any supporting documents are considered confidential and not of public record until such time, if any, as the proceedings are the subject of an appeal. In the case of an appeal, the record shall be filed by the parties with the Supreme Court in accordance with its Rules, and to the extent applicable, the Rules of this Court.

(b) *Appointment of the Arbitrator.* Upon receipt of a petition, the Court will appoint an Arbitrator.

(c) *Preliminary Conference.* The Arbitrator will contact the parties' counsel to set the date and time of the preliminary conference, which shall occur within 10 days after the commencement of the arbitration, unless the parties and the Arbitrator agree, pursuant to Rule 137(c)[2.] , to extend that time.

(d) *Preliminary Hearing.* The preliminary hearing shall take place as soon as practicable after the preliminary conference. The Arbitrator shall issue a scheduling order promptly after the preliminary hearing.

(e) *Date, Time, and Place of Arbitration.* The Arbitrator will set the date, time, and place of the arbitration hearing at the preliminary hearing. The arbitration hearing generally will occur no later than 90 days following receipt of the petition.

(f) *Exchange of Information.* There shall be pre-hearing exchange of information necessary and appropriate for the parties to prepare for the arbitration hearing and to enable the Arbitrator to understand the dispute, unless the parties agree, with the approval of the Arbitrator, to forego pre-hearing exchange of information. The parties shall, in the first instance, attempt to agree on pre-hearing exchange of information, which may include depositions, and shall present any agreement to the Arbitrator for approval at the preliminary hearing or as soon thereafter as possible. The Arbitrator may require additional exchange of information between and among the parties, or additional submission of information to the Arbitrator. If the parties are unable to agree, they shall present the dispute to the Arbitrator who shall direct such pre-hearing exchange of information as he/she deems necessary and appropriate.

History.

Added, effective Aug. 9, 2011.

Rule 139. Arbitration Hearing.

(a) *Participation.* At least one representative of each party with an interest in the issue or issues to be arbitrated and with authority to resolve the matter must participate in the arbitration hearing. Delaware counsel, as defined in Rule 90.1(a), shall also attend the arbitration hearing on behalf of each party.

(b) *Confidentiality.* Arbitration hearings are private proceedings such that only parties and their representatives may attend, unless all parties agree otherwise. An Arbitrator may not be compelled to testify in any judicial or administrative proceeding concerning any matter relating to service as an Arbitrator. All memoranda and work product contained in the case files of an Arbitrator are confidential. Any communication made in or in connection with the arbitration that relates to the controversy being arbitrated, whether made to the Arbitrator or a party, or to any person if made at an arbitration hearing, is confidential.

(1) Such confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding with the following exceptions:

(a) where all parties to the arbitration agree in writing to waive the confidentiality, or

(b) where the confidential materials and communications consist of statements, memoranda, materials, and other tangible evidence otherwise subject to discovery, which were not prepared specifically for use in the arbitration hearing.

(c) *Civil Immunity.* Arbitrators shall be immune from civil liability for or resulting from any act or omission done or made in connection with the Arbitration, unless the act or omission was made or done in bad faith, with malicious intent, or in a manner exhibiting a willful, wanton disregard of the rights, safety, or property of another.

[2.] Rule 137(c) as referenced in the proposed rules, not the current Superior Court Rule 4(c).

(d) *Mediation Option.* The parties may agree at any stage of the arbitration process to submit the dispute to the Court for mediation. The judge or commissioner assigned to mediate the dispute may not be the Arbitrator unless the parties agree.

(e) *Settlement Option.* The parties may agree, at any stage of the arbitration process, to seek the assistance of the Arbitrator in reaching settlement with regard to the issues identified in the petition prior to a final decision from the Arbitrator. Any settlement agreement shall be reduced to writing and signed by the parties and the Arbitrator. The agreement shall set forth the terms of the resolution of the issues and the future responsibility of each party.

(f) *Remedy and Relief.*

(1) *Award.* The Arbitrator may grant any remedy or relief that the Arbitrator deems just and equitable and within the scope of any applicable agreement of the parties.

(2) In addition to a final award, the Arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders and awards.

(3) Upon the granting of a final award, a final judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree.

(4) The Arbitrator is ineligible to adjudicate any subsequent litigation arising from the issues identified in the petition.

(g) *Costs for Arbitration.* Costs for filing and per-day (or partial day) fees shall be assessed in accordance with a schedule to be maintained by the Prothonotary.

History.

Added, effective Aug. 9, 2011.

Rule 140. Historical Society of the Superior Court of Delaware.

(a) There shall be a Historical Society of the Superior Court of Delaware ("Society"). Its purpose shall be to preserve the history of the Delaware Superior Court, its members, and its administration of justice in Delaware and to educate and inform others periodically about such matters.

(b) The society shall consist of the present judges of the Superior Court and such others members of the Delaware bench and bar as may from time to time be designated by the President Judge, with the concurrence of a majority of the Judges.

History.

Added, effective Sept. 4, 2014.

Appendix of Forms.

For court forms associated with this rule set, see: http://courts.delaware.gov/forms/.

Index follows Rules.

INDEX TO RULES OF CIVIL PROCEDURE FOR THE SUPERIOR COURT OF THE STATE OF DELAWARE