

ADMINISTRATIVE DIRECTIVE NO. 117

This 1st day of April, 1998,

IT APPEARS TO THE COURT:

(1) Over four years ago Governor Thomas R. Carper established a Commission on Major Commercial Litigation Reform (the "Commission") for the purpose of formulating a summary procedure for resolving business disputes;

(2) In 1993 the Commission recommended a procedure for expediting resolution of business disputes;

(3) In 1994, the Delaware General Assembly and the Governor endorsed the recommendation of the Commission as an important public policy initiative by adopting Senate Joint Resolution No. 28 (the "Joint Resolution");

(4) Article IV, § 13, of the Constitution of the State of Delaware provides that the Chief Justice, with the approval of a majority of the Justices of the Supreme Court, shall have the power to adopt rules for the administration of justice and the conduct of the business of the courts of this State;

(5) Subject to the supervisory responsibility of the Chief Justice and the Supreme Court, the Superior Court and the Court of Chancery are empowered to adopt rules of pleading, practice, and procedure in those Courts;

(6) The Judiciary has supported the Governor's initiative and the Joint Resolution implementing the same by Administrative Directive No. 96 dated February 28, 1994 and Interim Superior Court Rules Governing Summary Proceedings for Commercial Disputes ("Summary Proceedings"), effective April 1, 1994;

(7) The Judiciary's experience in the past four years since the adoption of the Summary Proceedings has shown that:

(a) The Superior Court has had significant increased filings (both in numbers and complexity) in many areas leading to the need for two new judgeships in that Court.

(b) The Court of Chancery has had significant increased filings (both in numbers and complexity) in many areas of its traditional corporate and other equitable jurisdiction, including business disputes where equitable relief is involved.

(c) It is understood that any action filed in Superior Court under the Summary Procedures Rules necessarily would implicate relief that traditionally could be filed only in the law courts and not courts of equity.

DELAWARE SUPREME COURT

(d) The Superior Court, the Court of Chancery and the Supreme Court have demonstrated the flexibility and the skill necessary to handle matters within their respective jurisdictions on an expedited basis.

(e) There has been almost no use of the Summary Proceedings under the Interim Rules, suggesting in part that those Rules need to be made permanent and modified.

(f) The Summary Proceedings Rules continue to be a viable option for expeditious handling of commercial disputes at law, and the Rules should be modified and made permanent.

(g) Mediation has become increasingly important in both the Court of Chancery (as a matter of practice) and Superior Court (under its Rule 16.2) in handling commercial disputes and other cases, and the use of mediation procedures should be intensified in both courts.

NOW, THEREFORE, IT IS DIRECTED, with the unanimous approval of the Justices of the Supreme Court (Del. Const., art. IV, § 13), that:

(A) The Judiciary further implements the Joint Resolution by adopting Administrative Directive No. 117 (which supersedes Administrative Directive No. 96) and new Rules of the Superior Court and the Court of Chancery.

(B) The Superior Court has reviewed its Rules and proposed amendments to the Interim Rules governing Summary Procedures (in the form set forth in Attachment A) making the same permanent and making certain modifications.

(C) The Superior Court's Rules referred to above have been reviewed by the Supreme Court in accordance with customary practice, and such Rules shall become effective April 1, 1998, without objection by the Supreme Court.

(D) Pursuant to Order of the President Judge dated April 1, 1998, filed with the Prothonotary of each County, summary proceedings under the new Superior Court Rules shall be individually assigned to judges drawn from a panel of the following Superior Court Judges:

President Judge Henry duPont Ridgely
Resident Judge Vincent A. Bifferato
Judge John E. Babiarz, Jr.
Judge William T. Quillen

(E) It is recognized that the President Judge may at any time add to or modify this designation and that the Chief Justice, pursuant to Del. Const., art. IV, § 13, may designate the Chancellor or a Vice Chancellor to a particular case or to the Superior Court Summary Proceedings panel if necessary to provide sufficient judicial personnel to handle any unexpected workload problems.

DELAWARE SUPREME COURT

(F) The Court of Chancery has reviewed its Rules and proposed a new Rule (in the form set forth in Attachment B) to govern mediation of commercial and other disputes within the jurisdiction of that Court

(G) The Court of Chancery Rule referred to above has been reviewed by the Supreme Court in accordance with customary practice, and such Rule shall become effective on or before April 1, 1998, without objection by the Supreme Court.

(H) All final judgments resulting from proceedings under the Summary Procedure Rules and expedited commercial disputes within the jurisdiction of the Court of Chancery which shall have been properly appealed to the Supreme Court may be expedited in the Supreme Court in accordance with the existing rules and practice of the Supreme Court in expedited matters.

(I) The acceptance and handling of cases pursuant to this Administrative Directive and the Summary Procedure Rules shall be managed in such a manner that other cases shall not be substantially delayed or prejudiced as a consequence of the operation of this Administrative Directive and the Summary Procedure Rules.

(J) Administrative Directive No. 96 dated February 28, 1994, and the Guidelines attached thereto as Attachment B, are hereby superseded.

(K) The Clerk of the Supreme Court shall forthwith transmit to the Prothonotary in each of the counties a certified copy of this Directive.

E. Norman Veasey
CHIEF JUSTICE

Attachments

cc: The Honorable Thomas R. Carper
The Honorable Joseph T. Walsh
The Honorable Randy J. Holland
The Honorable Maurice A. Hartnett, III
The Honorable Carolyn Berger
Members of Judicial Conference
Mr. Lowell L. Groundland
Court Administrators
Clerk of Supreme Court

ATTACHMENT A

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

**ORDER AMENDING PART XV. AND
RULE 124 AND ADOPTING RULE 125.1 OF THE
SUPERIOR COURT RULES OF CIVIL PROCEDURE**

This 31st day of March, 1998, **IT IS ORDERED** that:

- (1) Part XV. of the Superior Court Civil Rules is amended by deleting the word "INTERIM" as it appears in the title.
- (2) Superior Court Civil Rule 124(b) is amended by deleting the word "million" as it appears therein and by inserting "hundred thousand" in lieu thereof.
- (3) Superior Court Civil Rule 124(c) is amended by deleting the word "million" as it appears therein and by inserting "hundred thousand" in lieu thereof.
- (4) The Superior Court Civil Rules are amended by adding a new Rule 125.1 as follows:

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.
- (5) These amendments shall be effective April 1, 1998.
 - (6) An original of this Order shall be filed with the Prothonotary of each county.

ATTACHMENT B

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

**ORDER AMENDING PART XV. BY ADDING A NEW
RULE 174 OF THE RULES OF THE COURT OF CHANCERY**

This 31st day of March, 1998, IT IS ORDERED that:

Part XV. of the Rules of the Court of Chancery is hereby amended by adding a new Rule 174 as follows:

Rule 174. Voluntary Mediation in the Court of Chancery

The Chancellor or Vice Chancellor presiding in a case, with the consent of the parties, may refer any case or issue in a case to any other judge or master sitting permanently in the Court of Chancery, who has no involvement in the case, or to a designated mediator for voluntary mediation. Cases may be referred to voluntary mediation at any stage during the proceedings. Voluntary mediation is intended to provide the parties convenient access to dispute resolution proceedings that are fair, confidential, effective, inexpensive, and expeditious.

(a) *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 of the controversy 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 (i) a judge or master sitting permanently in the Court of Chancery, or (ii) an impartial person appointed by the Court or selected by agreement of the parties to a controversy to assist them in mediation ("a designated mediator"). A person is not eligible to serve as a designated mediator under this rule until the person has been a member of the Delaware Bar for 5 years, completed at least 25 hours of training in conflict resolution techniques, and has been certified pursuant to guidelines promulgated by the Chancellor. If authorized by the Chancellor, conflict resolution technique training for designated mediators may be provided in conjunction with training conducted pursuant to Superior Court Rule 16.2(g). A current listing of all persons eligible to serve as designated mediators pursuant to this Rule shall be maintained as a public record in the office of the Register in Chancery.

(3) "Mediation conference" means that 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.

(b) *Participation*

Once mediation has been elected, 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.

(c) *Written Consent to Mediation*

Prior to the commencement of the mediation conference, the parties to a controversy shall enter into a written consent that identifies the issues to be mediated and specifies the methods by which the parties shall attempt to resolve the issues.

Confidentiality

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, work product, and other materials 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) 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.

Civil Immunity

Designated mediators shall be immune from civil liability for or resulting from any act or omission done or made while engaged in 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.

Termination of Mediation Conference

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 conference unless an agreement is reached.

Mediation Agreement

If the parties involved in the mediation conference reach agreement with regard to the issues identified in the consent to mediation, 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. The agreement will be binding on all parties to it and, upon filing by the mediator, will become part of the Court record. If the parties choose to keep the terms of the agreement confidential, a Stipulation of Dismissal may be filed in the alternative.

Designated Mediator's Compensation

Designated mediators will be compensated by the parties to the mediation in a manner consistent with the compensation of an ADR specialist pursuant to 6 *Del C.* § 7713, and there shall be consultation and agreement among the parties and the designated mediator as to compensation before mediation commences.

Stay of Pending Litigation

Cases referred to mediation pursuant to this Rule may be stayed in the discretion of the Court pending the conclusion of the mediation process.

(2) This amendment to the Rules of the Court of Chancery shall become effective April 1, 1998.

(3) An original of this Order shall be filed with the Register in Chancery of each county.