

BEST PRACTICES AND PROCEDURES FOR E-FILING/FILING WITH THE REGISTER IN CHANCERY IN THE COURT OF CHANCERY

Updated: July 26, 2023

Contents

I. General File And ServeXpress (“FSX”) Provisions..... 4

All filings in Civil Actions in the Court of Chancery must be electronically filed through File & ServExpress by an attorney licensed to practice in Delaware. If you have not yet retained Delaware counsel or are self-represented (pro se), please contact the Register in Chancery at 302-255-0544 for guidance on alternate methods for submitting filings to the Court of Chancery. Self-represented persons would also find guidance on our website by reviewing the Civil Action Pro Se/SRL Quick Reference Guide for Filing. ... 4

| | | |
|------|--|----|
| (1) | Registration for eFiling | 4 |
| (2) | Filing Fees..... | 4 |
| (3) | Filing Documents..... | 5 |
| (4) | Form of Documents Electronically Filed | 6 |
| (5) | Title of Documents on File and ServeXpress | 8 |
| (6) | The Register in Chancery Review..... | 8 |
| (7) | Linking (Filing Subsequent Related Documents) | 9 |
| (8) | Time of eFiling and Service..... | 10 |
| (9) | Public Access to the Docket..... | 10 |
| (10) | Case Names and Parties | 11 |
| (11) | Complaint (Petition) (Court of Chancery Rule 3)..... | 12 |
| (12) | Amended Complaint (Court of Chancery Rule 15(aa)) | 13 |
| (13) | Answer: To Complaint, Counterclaim And Crossclaim (Court of Chancery Rule 10)..... | 13 |
| (14) | Document Type Withdrawal | 14 |
| (15) | Affidavit (General)..... | 14 |
| (16) | Affidavit Of Mailing | 14 |

II. Special Process Servers..... 15

| | | |
|-----|--------------------------|----|
| (1) | Registration | 15 |
| (2) | Instruction letter | 15 |

III. Guardianships..... 16

| | | |
|-----|-------------------------------------|----|
| (1) | Final Order | 16 |
| i. | Co-guardians | 16 |
| (2) | Guardianship Accounts | 16 |
| (3) | Physician’s Affidavit..... | 17 |
| (4) | Real Estate..... | 17 |
| (5) | Routine Guardianship Hearings | 17 |

| | |
|---|-----------|
| IV. In Forma Pauperis Financial Eligibility Guidelines | 17 |
| (1) Poverty level | 17 |
| (2) Non-inmate applications | 18 |
| (3) Inmate applications | 19 |
| (4) Denied application to proceed <i>in forma pauperis</i> | 20 |
| i. If the application to proceed in forma pauperis is denied, the Register in Chancery shall notify the applicant that: | 20 |
| (5) Miscellaneous..... | 20 |
| V. Deed Restriction Cases (Under 10 Del. C. § 348) | 21 |
| (1) Filing under 10 Del. C. § 348..... | 21 |
| Filing under 10 Del. C. § 348 provides expedited procedure for suits to avoid improper enforcement of deed covenants or restrictions, but the parties must follow proper procedure to receive such treatment ... | 21 |
| (2) Eligibility for Expedition | 21 |
| Only cases brought by homeowners associations or individual homeowners and/or lot owners in subdivisions are eligible for expedition under the following circumstances: | 21 |
| (3) Certification of Eligibility Forms..... | 21 |
| A complaint explaining the nature of the dispute and requesting appropriate relief should be filed with the required certification of eligibility form certifying that the case is eligible for the expedited statutory procedure. (The Certification of Eligibility Forms are on the Court of Chancery website under ‘forms’.) | 21 |
| (4) Statutory Procedures | 22 |
| (5) Counsel Requirements | 22 |
| VI. Other Recommended Practices | 22 |
| (1) Appeal (Court of Chancery Rule 72) | 22 |
| (2) Appendix..... | 23 |
| (3) Commission (Court of Chancery Rule 28)..... | 23 |
| (4) Granted Commission..... | 24 |
| (5) Compendium..... | 25 |
| (6) Confidentiality (Court of Chancery Rule 5.1)..... | 25 |
| (7) Consolidation | 25 |
| (8) Declarations (Unsworn) | 26 |
| (9) Deposition (Notice Of)..... | 26 |
| (10) Discovery (Interrogatories, Requests for Production, etc.)..... | 27 |
| (11) Dismissal (Court of Chancery Rule 41) | 27 |
| (12) Entry Of Appearance (Court of Chancery Rule 5(aa)) | 27 |
| (13) Interrogatories | 28 |
| (14) Letter | 28 |
| (15) Memorandum (Court of Chancery Rule 171) | 29 |
| (16) Motion..... | 29 |

| | | |
|------|---|----|
| (17) | Notice Of Service..... | 29 |
| (18) | Praecipe (for Service of a Writ) | 30 |
| (19) | Pro Hac Vice (Court of Chancery Rule 170) | 30 |
| (20) | Proposed Order | 31 |
| (21) | Statement Pursuant To Court Of Chancery Rule 4(dc)..... | 31 |
| (22) | Status Reports | 32 |
| (23) | Stipulation | 32 |
| (24) | Substitution Of Counsel (Delaware Counsel) | 33 |
| (25) | Subpoena (Court of Chancery Rule 45) | 33 |
| (26) | Summons (Court of Chancery Rule 4)..... | 34 |
| (27) | Supplemental Information Form (Case Information Sheet)..... | 36 |
| (28) | Supplemental Submissions (Memoranda, Briefing, Letters, Etc.) | 36 |
| (29) | Verification/Verified Petition (Court of Chancery Rule 3)..... | 37 |
| (30) | Word-Count Limits (Court of Chancery Rule 171(f)) | 38 |

I. General File And ServeXpress (“FSX”) Provisions

All filings in Civil Actions in the Court of Chancery must be electronically filed through File & ServeXpress by an attorney licensed to practice in Delaware. If you have not yet retained Delaware counsel or are self-represented (pro se), please contact the Register in Chancery at 302-255-0544 for guidance on alternate methods for submitting filings to the Court of Chancery. Self-represented persons would also find guidance on our website by reviewing the Civil Action Pro Se/SRL Quick Reference Guide for Filing.

(1) Registration for eFiling

- i. Any Delaware attorney/law firm intending to use eFiling must register with File & ServeXpress™ at:
<https://www.fileandservexpress.com/>
- ii. Attorneys must fax an entry of appearance to the Register in Chancery’s Office to be loaded by court staff for all civil miscellaneous (“C.M.”) cases. It is the obligation of registered users to maintain proper delivery information within the File & Serve Xpress system. Parties or attorneys who register to use eFiling shall notify File & ServeXpress within ten (10) days of any change in firm name, delivery address, fax number, or e-mail address. Law firms should not load themselves to Case and Party Management in File and ServeXpress in Court of Chancery civil action cases. Instead, they must file the appropriate document (such as an Entry of Appearance). See Entry of Appearance in the Best Practices section of this document.

(2) Filing Fees

- i. There are several parts to the fee structure for eFiling. These fees will be billed through File & ServeXpress using the billing arrangements established during the registration process. The parts are:
 - a. The routine filing fee and court costs for various pleadings (*See* Court of Chancery Rule 3).
 - b. A court technology fee of \$1.25 per document (Rule 79.1).
 - c. The security assessment fee of \$10 per initiating filing.
 - d. File & ServeXpress fees.
 - e. Pro Hac Vice Fees (Rule 170(c)(vi)), technology mediation only dispute filing fees (Rules 93-95).

- ii. The fees imposed under Court of Chancery Rules 174 and 93-95 (the “Rules”) are to be paid directly to the Register in Chancery and will not be included in the File & ServeXpress billing process.

(3) Filing Documents

- i. As provided in Rule 79.1, each document that must be filed under the Rules shall be eFiled unless otherwise ordered by the Court, except that:
 - a. Paper courtesy copies of pleadings, briefs, and other documents should be delivered to the presiding judge as provided in the Court of Chancery’s Guidelines for Persons Litigating in the Court of Chancery, available at <https://courts.delaware.gov/chancery/guidelines.aspx>
 - b. Descriptive exhibits such as survey maps, building plans, or videos that cannot be scanned due to size or format shall in the first instance be converted into a format that can be efiled onto the Court’s docket. These items will not be submitted to the Register in Chancery in their original format for storage because the Court’s entire docket is electronic with no paper or hard copy filed. If the descriptive exhibits cannot be converted effectively to a format that can be efiled onto the Court’s docket, the party would seek leave from Chambers by submitting an application and proposed order for permission to provide conventionally the items to all parties/counsel and Chambers. Once the order is granted, the submitting party shall eFile notice of the submission and serve all parties with such notice, including a Certificate of Service. The Notice will be called a Notice of Conventional Filing, and it will detail what items were given, to whom they were given, and in what form (such as video).
 - c. Supporting documentation for guardianship accountings, such as bank statements, receipts, and cancelled checks, should be delivered in paper copy directly to the Register in Chancery assigned to the case. A complete courtesy copy of the accounting is due in the Register in Chancery within 48 hours of the accounting being efiled.
 - d. For persons who do not have Delaware counsel, or are Pro se/Self-Represented: All filings in civil actions in the Court

of Chancery must be electronically filed through File & ServeXpress by an attorney licensed to practice in Delaware. If you have not yet retained Delaware counsel or are Pro Se/Self-Represented, please contact the Register in Chancery at 302-255-0544 for guidance on alternate methods for submitting filings to the Court of Chancery. Self-Represented persons would also find guidance on our website by reviewing the Civil Action Pro Se/SRL Quick Reference Guide for Filing. Pro se persons may mail their documents for processing to the Register in Chancery in the county where their assigned judge is located or may be taken in person to the Register in Chancery closest to them. All new-case guardianship filings requesting a fee waiver (*In Forma Pauperis*) must be filed in paper form at the Register in Chancery office nearest the filer, and not electronically filed. The papers filed must contain a completed and notarized Application to Proceed *In Forma Pauperis* AND the completed petition and any other required new-case paperwork. See IV. *In Forma Pauperis* Financial Eligibility Guidelines for additional information.

- e. Entities cannot appear in the Court of Chancery pro se. All entities must be represented by a licensed Delaware attorney.
- ii. Exhibits
 - a. An Exhibit cannot be scanned/uploaded with an Affidavit, Proposed Order, Motion, Complaint, or any other document; it must be uploaded separately.
 - b. Exhibits filed as confidential or under seal pursuant to Court of Chancery Rule 5.1(c)(2) should have the required under seal cover page in each scan/upload. (See Confidentiality).
 - c. Special Instructions-Trial exhibits are NOT accepted onto the docket sheet. If there is a Pre-Trial Brief uploaded with trial exhibits, the brief may be rejected by the reviewing clerk because trial exhibits are not admitted as evidence until the day of trial. (Please contact the Register in Chancery for a time to deliver trial exhibits to the Chambers, Registers in Chancery, or Court Reporters' offices.)

(4) Form of Documents Electronically Filed

- i. Format
 - a. Each electronically filed document shall be filed in Word, TIFF, or .PDF format, except that each electronically filed brief, and proposed order shall be filed in editable Word format. To the extent practicable, each document shall be formatted in accordance with the applicable rules governing formatting of paper documents, pursuant to Rule 10(d), and in such other and further format as the Register in Chancery may require from time to time.
 - 1. Any Word or TIFF file will automatically be converted to .PDF format by File & ServeXpress, but the original format also will be available for downloading.
 - 2. The official record of the court is the .PDF version.
 - 3. All documents governed under Court of Chancery Rule 171(f) must adhere to the described word limits; and, the filer should show the total number of words on a document by placing ‘Words:’ beneath the signature line or signature block, and thereby stating the number of words in the document.
 - b. The size of any eFiled document shall not exceed 10 megabytes.
 - c. The size of any eFiled transaction shall not exceed 35 megabytes.
- ii. Brief (Court of Chancery Rule 171)
 - a. All Briefs must include a Table of Contents and Table of Authorities.
 - b. Pursuant to the Operating Procedures all Briefs and Memoranda shall be filed in editable Word format.
 - c. Times New Roman 14-point font should be used for the entire text including footnotes.
 - d. Word limits for all Briefs are shown in Court of Chancery Rule 171(f)(1).
 - e. In the signature block, the phrase “Words:” followed by the number of words in the brief should be recorded.
 - f. If the Brief is filed pursuant to a briefing schedule, it must be linked to the granted Order and to any Briefs filed before it.

If there is NOT a briefing schedule on the docket, then it should be document type “Brief,” NOT “Opening/Answering/Reply” Brief.

- iii. Certificate of Service (Court of Chancery Rule 5(f))
 - a. A document stating (in a short paragraph) that certain information was sent to the opposing side (i.e. Motions, Affidavit, etc.), pursuant to Chancery Court Rule 5(f).
 - b. It should be signed by the Delaware attorney of record or the pro se party, and include the names, firm affiliations (if any), and addresses of those served, along with identifying the items served and how served. Only the attorney signature and Bar ID number are required at the signature line.
 - c. It cannot say, “Sent to all counsel.” However, the attorney can attach a list stating to whom the documents were sent.
 - d. It may be uploaded with any document (except for any type of Proposed Order), but the document title must reflect that.
 - e. The Certificate of Service must list the name and address of the opposing attorney to whom the documents were sent.
 - f. A Certificate of Service cannot be filed by itself; it can only be submitted if accompanying a pleading, appendix, affidavit, etc.
 - g. The Certificate of Service is not needed with any documents for a new case until after the Summons has been returned. Although proof of service may be required in instances of expedition.

(5) Title of Documents on File and ServeXpress

- i. The title of each electronically filed document shall include:
 - a. Party or parties filing the document;
 - b. Descriptive title of the document;
 - c. Party or parties against whom relief, if any, is sought; and
 - d. Description of the relief sought (*e.g.* Defendant ABC Corporation’s Motion for Summary Judgment against Plaintiff Jones).

(6) The Register in Chancery Review

The Register in Chancery will review the documents for accuracy before accepting them onto the docket. The Register's office will verify the following:

- i. Documents are uploaded correctly.
- ii. Proper document type is selected, so the correct fee is applied.
- iii. Document title matches the caption per the Court's Operating Procedures. Who is filing (name of plaintiff/defendant), to whom it is going (name of plaintiff/defendant), what the document is, and what it is regarding (e.g. Defendant ABC Corporation's Motion for Summary Judgment against Plaintiff Jones).
- iv. Case number(s) on documents match case number(s) on File & ServeXpress (single case number, or multi-case).
- v. Attorney signature (hand-signed, or if it is an electronic signature, /s/ must be typed before the name), Bar ID #, attorney's full address, telephone number, email address, pursuant to Court of Chancery Rule 79.1
- vi. The filing should be linked properly. All filings after the new-case filing must be linked to related items on the case docket per Operating Procedures.
- vii. Certificate of Service, CC or Notice of Service, as necessary.
- viii. Document is in editable format as required.
- ix. Document is in correct font per Amended Court of Chancery Rule 10.

NOTE: This is not an exhaustive list of everything the clerk reviews in an e-filing. It is only meant to bring to your attention the main reasons a filing is rejected.

(7) Linking (Filing Subsequent Related Documents)

- i. All electronically filed documents in a transaction relating to a single pleading or paper shall be "electronically stapled" using the "main" and "supporting" functionality of the eFiling system. Pleadings seeking judicial action such as a proposed order shall be scanned/uploaded separately as supporting documents. In this way, multiple related documents, although scanned/uploaded separately, are logically connected together and identified as a single transaction. For example, an Opening Brief would be filed as a "main" document with the Transmittal Affidavit, Exhibits, Proposed

Order and Certificate of Service filed as “supporting” documents, having scanned/uploaded each document separately.

- ii. All eFiled documents, papers, or pleadings directly relating to a previously filed document, paper, or pleading shall be linked to the previously filed document, paper, or pleading using the “linked to” feature in the File & Serve system.
- iii. Failure to properly link documents will result in rejection of the filing by the Register in Chancery, as will failure to properly use the “main” and “supporting” document features, as described herein.

(8) Time of eFiling and Service

- i. Please refer to Court of Chancery Rule 79.2 regarding the deadline for all documents filed and served electronically.
- ii. An eFiled document is deemed served under Court of Chancery Rule 5(b) only upon selection of parties to be served and submission according to the File & ServeXpress procedures. The electronic service of a pleading or other document in the File & Serve system is considered valid and effective service on all parties and shall have the same legal effect as conventional service of an original paper or document. The filing party may conventionally serve a paper copy of an electronically filed document on parties not subscribing to the File & Serve system or may select the proper options in File & Serve to serve non-subscribing parties via facsimile or U.S. Mail. The associated filing receipt will list the parties selected for service and give proof of date, time, and method of service. A Certificate of Service remains required under Court of Chancery Rule 5(f). See Certificate of Service in this document.

(9) Public Access to the Docket

- i. The Register in Chancery (or its designee) in each county shall make a public access terminal available to interested parties to allow access to the Court’s electronic case record in all eFiled cases, subject to the Court’s rules regarding confidential filings under Rule 5.1, and subject to the rules regarding the confidentiality of civil miscellaneous actions (see Court of Chancery Rule 90).
- ii. Documents filed in civil actions that should receive confidential

treatment under Rule 5.1 shall be identified as “Sealed, electronic” in the File & ServeXpress system. These documents will be segregated from any transmission of case history filings, to ensure the integrity of such documents beyond those who are a party to the case. A party that is not served with a Confidential, electronic document will not be able to open or view the document on the File & ServeXpress system. See Confidentiality.

- iii. Copies of documents may be viewed and printed by the public at the Public Access Terminals located in the three Counties. Or, copies made from the Court’s electronic case records may be printed by the Register in Chancery’s office for persons who are out-of-state. Copying fees will be charged in accordance with Rule 3(bb).
- iv. Certified copies of documents require fees to be paid under Court of Chancery Rule 3(bb). If the document is an Order, make sure there is a granted Order showing on the docket. If the law firm is sending over a signed Order for certification, they must include the judge’s electronic signature page, or the documents will be returned to the runner without being processed.
- v. Cases prior to October 2003 may be in archives or on microfilm. Files can be retrieved from Archives upon request. Civil Miscellaneous cases are confidential in their entirety even after they are closed. Only parties to the Civil Miscellaneous case would have access to a file and should contact the Register in Chancery for instructions. Archives and microfilm fees are required to be paid, and they vary depending on the size of the file requested per Court of Chancery Rule 3(bb). Some older case files are held on microfilm at the Register in Chancery and can be retrieved without any request to archives. Persons interested in retrieving cases from archives or microfilm should call the Register in Chancery in the county in which the appointed judicial officer was based. If unknown, contact the closest Register in Chancery for further assistance. The Register in Chancery has limited resources for research and anyone with an extensive or complex research project may need to hire a private researcher to search the records.

(10) Case Names and Parties

- i. The guardianship case name is loaded as follows:

IMO: Last Name, First name

- ii. The trust case name is loaded as follows:
TUA or TUW: the name of the trust
- iii. The civil action case names are loaded as follows:
 - a. First Name Last Name, Plaintiff v. First Name Last Name, Defendant (et.al. if applicable)
 - b. Any In Re or IMO caption, such as estates, property addresses, trusts, corporations, LLC should be loaded as In RE The Estate of John Doe
- iv. All parties in interest must be loaded to the File and ServeXpress party list during the new-case filing using the Add a Party/Add Attorney feature.

(11) Complaint (Petition) (Court of Chancery Rule 3)

- i. There must be full caption and full attorney signature block.
- ii. The Supplemental Information Form is required to be filed with the Complaint. (See Supplemental Information Form.)
- iii. All Complaints or originating Petitions must be accompanied by a notarized verification statement from EACH plaintiff or petitioning party.
- iv. Failure to have notarized verification statement(s) submitted with the complaint will cause the new case filing to be rejected.
- v. If a person is making the verification on behalf of a corporation, the verification must clearly state what title/position an individual holds in a corporation.
- vi. The verification(s) must be uploaded separately from the complaint and be filed as document type “Verification to Complaint.” The document title must state the name of the person making the verification, and who they are making it on behalf of, if applicable. All documents must be uploaded and scanned separately when efiled.
- vii. When filing an Unsworn Declaration in place of a Verification to Complaint, select document type “Verification to Complaint”. Otherwise, use document type “Declaration”. (See Declarations Unsworn).

viii. Failure to file as prescribed herein may be grounds for rejecting the entire filing.

(12) Amended Complaint (Court of Chancery Rule 15(aa))

- i. A new Supplemental Information Form is not needed.
- ii. The blackline or redline version must be uploaded separately as an exhibit, and it must state black or red line in the document title. The Amended Complaint will be rejected if there is no Black or Redline version uploaded as an exhibit.
- iii. A filing fee is charged every time an Amended Complaint is filed.
- iv. The proposed amended pleading should be included in the Motion to Amend transaction as an exhibit.
- v. Amended pleadings must be filed as a separate, subsequent docket entry or transaction after an order to amend pleadings is granted by the Court.
- vi. Document type “Amended Complaint” must be used and has an additional filing fee attached.
- vii. There must be a notarized Verification for each plaintiff/petitioner filed as “Verification to Complaint”, which must be scanned/uploaded separately. To be clear, the black/redline version must be included ANY time an amended complaint is filed (with the motion to file and in the subsequent transaction filing.)

(13) Answer: To Complaint, Counterclaim And Crossclaim (Court of Chancery Rule 10)

- i. Pursuant to Chancery Court Rule 10(b), an Answer should repeat the allegations of the pleading to which it is responding and then set forth the response below each such allegation.
- ii. In other words, restate what the Complaint, Counterclaim or Crossclaim said by numbered paragraphs, then put your answer below each.
- iii. All counsel in the signature block must be loaded to the party list on File and ServeXpress during the transaction using the ‘add a party/add attorney feature’. Failure to do so will cause the entire filing to be rejected.

- iv. Counsel may also file an Entry of Appearance in the transaction for clarity.

(14) Document Type Withdrawal

- i. The document type Withdrawal should only be used when withdrawing a previously filed document or request filed with the Court.
- ii. The new filing requesting the withdrawal of previously filed items should be linked to the related items on the docket that are being withdrawn.
- iii. This document type of Withdrawal should not be used when counsel wishes to withdraw their appearance. A Motion and Proposed Order is required for a withdrawal of counsel appearance in a matter under Court of Chancery Rule 5(aa).

(15) Affidavit (General)

- i. An affidavit must be hand-signed before a Notary Public and dated, except for certain civil miscellaneous documents which do not require notarization (Court of Chancery Rule 178B).
- ii. Each affidavit must be uploaded individually and be accompanied by a Certificate of Service.
- iii. Affidavits filed by Delaware attorneys must include the full attorney signature block, including Bar ID number.
- iv. A Delaware attorney can act as the notary, pursuant to [29 Del. C. § 4323](#) which must be cited, and Bar ID number must be included.

(16) Affidavit Of Mailing

- i. Mailings pursuant to 10 Del. C. 3104 and/or for proof of service of scheduled hearing events require an Affidavit of Mailing.
- ii. The Affidavit of Mailing should be signed by Delaware counsel and include the full signature block, Bar ID number and be notarized.
- iii. Efiled as a main, stand-alone document, the document type is “Affidavit”.
- iv. The summons or Order scheduling a hearing date, green cards,

mailing receipts and/or Certificate of Service should all be scanned/uploaded separately. They serve as supporting documents and are e-filed as “Exhibits”, except the scanned/uploaded summons would be document type “Summons”.

II. Special Process Servers

The following uniform procedure applies to all persons serving process for Court of Chancery matters.

(1) Registration

- i. All persons, other than the Sheriff, wishing to serve process for Court of Chancery matters must be registered with the Court. This registration will be renewable annually on May 1 of each year.
 - a. Individuals wishing to become designated as special process servers must complete the Application of Individual Seeking Designation as Special Process Server and accompanying certification, in the form available on the forms section of the court’s website.
 - b. The Applicant, or the company or law firm that employs them, must pay an annual registration fee of \$300 and an annual renewal fee of \$300, plus \$50 per person for each person the applicant seeks to register as a special process server.
 - c. Payment may be remitted by check to the Register in Chancery.
 - d. When issuing service, a copy of the approved Application for Designation of a Special Process Server must be carried by the process server demonstrating authorization by the Court.

(2) Instruction letter

- i. Motions and proposed orders for appointment of a special process server are no longer necessary and will not be accepted.
- ii. In each case in which a lawyer or party wishes the Register in Chancery to prepare a summons, a letter of instruction should be filed with the Register in Chancery. The letter of instruction should identify the Court approved special process server and cite the statute regarding proper service. In addition, if service by mail is permitted in the statute selected, the letter of instructions must state what type of mailing (certified or registered), and

whether return receipt or adult signature is requested/required.

- iii. In all cases, parties may choose to forego use of a special process server, and instead may file a praecipe and use the Sheriff to serve process.

III. Guardianships

(1) Final Order

- i. Co-guardians

When co-guardians are appointed by the Court, unless the parties specify otherwise, the Final Order of the Court shall state that “[Name inserted] and [name inserted], acting jointly or individually, are hereby appointed co-guardians of the person and property of [name of person with a disability inserted].”

- ii. Notification of Death

The guardian must notify the Register’s Office within ten (10) days of the death of the person with a disability. The guardian is still required to file a Petition to Terminate (with either a Small Estate Affidavit or Short Certificate from the Register of Wills) and a final accounting unless accountings were previously waived.

- iii. Certificate of Guardianship

The Register’s office can issue a Certificate of Guardianship attesting to the valid status of the Guardian’s appointment. The fee is \$25.00.

- iv. Extension Requests

A request for an extension of time to file can be submitted in writing to the Register’s office.

(2) Guardianship Accounts

- i. All guardianship accounts established for minors or a person with a disability must be titled in such a way that clearly states that withdraws may not be made without Court order.

- ii. The proposed final order filed with a guardianship petition should specify the proposed title for the guardianship account, which shall follow the sample wording below:

COURT OF CHANCERY GUARDIANSHIP ACCOUNT
FOR JOHN DOE, [MINOR/PERSON WITH A

DISABILITY], JANE DOE, GUARDIAN.

WITHDRAWS ONLY BY ORDER OF THE COURT

- iii. An alternate title may be requested upon a showing that a different title is appropriate or necessary under the circumstances.
- iv. The final order signed by the Court shall specify how the account must be titled, and that order shall be followed by the banking institution at which the account is established.

(3) Physician's Affidavit

- i. The physician's affidavit filed with the initial guardianship petition shall be notarized and signed by the physician who examined the person with an alleged disability.
- ii. The physician should have seen the person with an alleged disability in the last three (3) months.

(4) Real Estate

- i. Appraisers appointed by the Court to assess the person with a disability's real property shall be paid within fifteen days of the appraisal. The Register's Office shall require that the independent appraiser appointed by the Court under 12 *Del. C.* § 3951 shall submit an invoice for the appraisal to the petitioning attorney or *pro se* party and also to the Office of the Register in Chancery. In any case where payment of the appraiser's fee would result in a hardship to the person with a disability or petitioner, the petitioner should so indicate in the petition, and the Chancellor, or any Vice Chancellor or Magistrate in Chancery, may make such departure from this Operating Procedure as justice requires.
- ii. If the person with a disability or minor is receiving Medicaid benefits at the time the petition to sell real property is filed, notice must be sent to the Delaware Division of Medicaid and Medical Assistance.

(5) Routine Guardianship Hearings

All documents for routine guardianship hearings are due by noon two (2) days before the hearing or the hearing may be postponed.

IV. In Forma Pauperis Financial Eligibility Guidelines

(1) Poverty level

- i. When *in forma pauperis* applicants have income and assets at or below 125% of the poverty level as published in the Code of Federal Regulations, 45 C.F.R. Pt. 1161, their applications shall be approved. At income or asset levels above 125% of the poverty level, the judicial officer may use discretion in granting all or part of the application, if the applicant has unusual expenses or debts in relation to their income.
- ii. In determining the maximum allowable assets, the following shall be excluded:
 - a. Principal residence and surrounding land;
 - b. Reasonable equity value in work-related equipment that is essential to employment or self-employment of an individual;
 - c. Motor vehicles used for transportation with equity values of up to \$10,000;
 - d. Household goods;
 - e. Personal belongings with a fair market value of less than \$25,000;
 - f. Life insurance with a maximum cash surrender value of \$8,000;
 - g. Pension funds and dedicated retirement funds; and
 - h. Burial plots.

(2) Non-inmate applications

- i. Applications and affidavits to proceed *in forma pauperis* from non-inmates shall be presented to the Magistrate in Chancery assigned to review such applications.
- ii. The Magistrate may:
 - a. Enter an order waiving all fees and court costs and directing the complaint be filed as a new case and given a number.
 - b. Enter an order directing certain fees and court costs be paid and directing the complaint be filed as above.
 - c. Enter an order establishing a schedule for payment of fees and court costs and directing the complaint be filed as above.
 - d. Enter an order denying the application and directing payment of fees by a specified date.

- e. Such an order shall be considered a draft report to which the non-inmate may file an exception under Chancery Court Rule 144. If no exception is filed in a timely manner, the report shall be deemed final, and the non-inmate shall be deemed to have stipulated to the approval and entry of the report as a final order of this Court.

(3) Inmate applications

- i. Applications and affidavits to proceed *in forma pauperis* from inmates shall be presented to the Magistrate in Chancery assigned to review such applications.
- ii. The Magistrate may:
 - a. Direct the amount of fees and costs to be paid and that the inmate shall pay 20 percent of the average daily balance of that inmate's account for the previous six months or since the time of incarceration, whichever period of time is less.
 - b. Determine whether, based upon the affidavit, the inmate should be ordered to pay more than 20 percent.
 - c. Establish a schedule for payment.
 - d. Order that the pleading be filed as a new case and given a number, if any of the above is ordered. Enter an order denying the application and directing payment of fees by a specified date.
 - e. Such an order shall be considered a draft report to which the inmate may file an exception under Chancery Court Rule 144. If no exception is filed in a timely manner, the report shall be deemed final and the inmate shall be deemed to have stipulated to the approval and entry of the report as a final order of the Court. The Register in Chancery shall then forward a copy of the payment order to the institution where the inmate is housed.
- iii. After establishing the amount of fees and costs to be paid, and once the complaint has been filed and assigned an appropriate number, the Magistrate shall review the complaint and issue such orders as authorized or required by Chapter 88 of Title 10 of the Delaware Code and such other applicable statutes (hereinafter, the "IFP Statute").
- iv. If the Magistrate dismisses the complaint, the order of dismissal

shall be considered a draft report to which the inmate or non-inmate may file an exception under Chancery Court Rule 144

- v. If no exception is filed in a timely manner, the order dismissing the complaint along with any written decision by the Magistrate shall be presented to the Chancellor for review and final order.
- vi. If the Magistrate does not dismiss the complaint upon initial review under the IFP Statute, the Magistrate shall order that service of process issue.

(4) Denied application to proceed *in forma pauperis*

- i. If the application to proceed in forma pauperis is denied, the Register in Chancery shall notify the applicant that:
 - a. The application has been denied.
 - b. The amount of the filing fee due.
 - c. The filing fee must be paid by a specified date (not less than 15 calendar days away) from the date of the notice and, if not paid by then, the matter will be considered closed.

(5) Miscellaneous

- i. Any judicial officer to whom the case is assigned may subsequently dismiss the complaint and issue such other orders as are authorized or required under the IFP Statute.
- ii. The Court retains jurisdiction over the *in forma pauperis* litigant after dismissal or judgment is entered against such litigant for purposes of collecting all fees and costs.
- iii. If an application to proceed *in forma pauperis* is filed in a matter that already is assigned to a judicial officer, the judicial officer assigned to the case shall be informed of such application. If the judicial officer assigned to the case is a Magistrate in Chancery, that Magistrate shall review the application. If the case is assigned to the Chancellor or a Vice Chancellor, a Magistrate shall review the application in the first instance, after alerting the assigned judicial officer.
- iv. The Application to Proceed *In Forma Pauperis* will be heard first by a Judicial Officer before the accompanying new-case petition or complaint, or before any other pleading or document for which the Court of Chancery Rule 3(bb) fee is being requested to be waived.

V. Deed Restriction Cases (Under 10 Del. C. § 348)

(1) Filing under 10 Del. C. § 348

Filing under 10 Del. C. § 348 provides expedited procedure for suits to avoid improper enforcement of deed covenants or restrictions, but the parties must follow proper procedure to receive such treatment

(2) Eligibility for Expedition

Only cases brought by homeowners associations or individual homeowners and/or lot owners in subdivisions are eligible for expedition under the following circumstances:

- i. A duly qualified officer of a homeowners association or other entity representing the homeowners or lot owners of a subdivision may file suit in the Court of Chancery against a homeowner or lot owner in the same subdivision to enforce a deed covenant or restriction.
- ii. If no homeowners association or similar entity exists, then any homeowner or lot owner in the subdivision may file suit in the Court of Chancery against a homeowner or lot owner in the same subdivision to enforce a deed covenant or restriction.

(3) Certification of Eligibility Forms

A complaint explaining the nature of the dispute and requesting appropriate relief should be filed with the required certification of eligibility form certifying that the case is eligible for the expedited statutory procedure. (The Certification of Eligibility Forms are on the Court of Chancery website under ‘forms’.)

- i. The complaint filing must adhere to the standard requirements regarding supplemental information sheet, etc., as shown in the Operating Procedures of the Court.
- ii. Failure to complete and file the certification form with the complaint will result in the case being placed on the normal litigation track.
- iii. Present the complaint and supporting documents to the Court of Chancery clerk either via electronic filing if permitted, or by hand-delivery to the Register in Chancery office in which the subdivision is located. (See e-filing requirements in the Operating Procedures.)
- iv. Pay the required Court filing fees pursuant to Rule 3(b)(b). See Chancery Rule 3(b)(b) for filing fees.

(4) Statutory Procedures

- i. After an eligible complaint to enforce a deed covenant or restriction is a subdivision is filed in the Court of Chancery, the matter will be referred to a mediator whose role is to assist the parties in trying to resolve the dispute.
- ii. A mandatory mediation hearing will be held within sixty (60) days of the filing of the complaint.
- iii. If the parties are unable to resolve the dispute through mediation, a trial will be held before a Magistrate in Chancery within 120 days of the unsuccessful mediation hearing. Trial may be scheduled for a later time upon good cause shown.
- iv. If the mediation is unsuccessful and the dispute goes to trial, the losing party is responsible for paying the winning party's attorney fees and court costs. The payment of attorney fees and court costs may not result if the court finds the outcome of enforcing this provision to be unfair, unreasonable or harsh.
- v. The parties may seek moderate extensions to the deadlines prescribed in the statute for mediation and trial for good cause shown. Any major extension will generally remove the case from the scope of Section 348 and, as a result, the statutory deadlines and mechanism for shifting attorneys' fees will no longer apply.

(5) Counsel Requirements

- i. Neither party is required to be represented by counsel during the mediation process.
- ii. If the mediation is unsuccessful, then a homeowners association or other entity must be represented by counsel in order to proceed to trial.
- iii. An individual homeowner or lot owner may represent himself at trial, but will find the assistance of counsel to be extremely useful.

NOTE: Condominium Associations and Owners are not eligible under this statute.

VI. Other Recommended Practices

(1) Appeal (Court of Chancery Rule 72)

- i. The appeal is filed with the Supreme Court.

- ii. Supreme Court will file a Notice of Appeal onto Court of Chancery's docket with instructions specifying the date Court of Chancery's record must be filed onto their docket.
- iii. The Notice of Appeal prompts the Register's Office to contact the appellant's attorney regarding the Court of Chancery Rule 3(bb) appeal fee of \$500.00. Only upon receipt of payment will the appeal be prepared and transferred to the higher Court.
- iv. If the appeal fee is not received by Register in Chancery from appellant's counsel in time to file the Court's record as required by the Supreme Court, the Register in Chancery will notify the Supreme Court of the deficiency, which has caused non-compliance.

(2) Appendix

- i. An Appendix is a collection of exhibits when the exhibits are too large to add to the brief.
- ii. The Appendix serves as a "Table of Contents" for the exhibits; select document type "Appendix".
- iii. The exhibits themselves are scanned/uploaded separately. Select document type "Exhibits" and file as supporting documents to the Appendix.
- iv. The first page of the filing (cover sheet) requires a full case caption, but no attorney block or signature is needed.
- v. Make sure a Certificate of Service is filed for the Appendix.

(3) Commission (Court of Chancery Rule 28)

- i. The document title must state who is being requested to appear or to be deposed.
- ii. The same Commission can be for more than one item, meaning it can be for both the deposition and production of documents.
- iii. Document type "Commission" must be selected in the e-filing for the proposed commission upload.
- iv. A filing fee will be assessed per Commission which is paid through File & ServeXpress pursuant to Court of Chancery Rule 3(bb).

Submitted documents should be the following:

- a. Motion for Commission.

- b. Proposed Order (in editable format) for the judge to sign, containing the name of the person for whom commission is to be issued.
- c. Commission (or Proposed Commission) - include a signature line for the Register in Chancery.
- d. Certificate of Service, scanned/uploaded separately or with the Motion itself.
- e. Schedules must be uploaded separately as exhibits. (Schedules specify what information is required by the Commission and needs no case caption, signature or attorney block; it cannot be attached to the bottom of the Commission or Motion.)
- f. A notice of deposition may also be filed at the same time, uploaded separately with its own certificate of service.

NOTE: A Commission is *not* needed when (i) the deposition or production of documents are being requested of a named party in the case, (ii) the event is taking place in Delaware, (iii) the person being deposed or providing documents has agreed to appear or (iv) if the Uniform Discovery and Deposition Act (UDDA) applies. In this instance, the Notice of Service should include language stating a commission is not required and citing why per Court of Chancery Rule 28(e), including the State citation in which the deposition will take place. Citing only the UDDA without the accompanying state rule or statute will cause the filing to be rejected.

(4) Granted Commission

- i. Counsel should contact the Register in Chancery for direction in obtaining certification of granted Orders.
- ii. Fees will be assessed pursuant to Court of Chancery Rule 3(bb) regarding the certification of documents.
- iii. The law firm should provide a copy of the Commission and complete granted Order with the electronic signature for certified copies. .
- iv. Be sure to be clear in your request, either by an accompanying letter or on the runner sheet, which documents you want certified, i.e., both the Order and the Commission, or just the Order, or just the Commission. This determines the fees assessed, and it will help alleviate any miscommunication.

(5) Compendium

- i. Does not have to be e-filed.
- ii. Courtesy copies can be dropped off for the Chancellor or Vice Chancellor depending on their preference, and should be exchanged among the parties.
- iii. If they are uploaded and e-filed, they are document type “Exhibits” and should be accompanied by a letter of introduction or courtesy copy letter.

(6) Confidentiality (Court of Chancery Rule 5.1)

- i. Exhibits filed as confidential or under seal pursuant to Court of Chancery 5.1(c)(2) should have the required under seal cover page in each scan/upload.
- ii. Notices of Challenge must clearly identify the date, filing transaction id, docket entry number, and the document name for each document being challenged, and state when a public version was filed, if one was. Notices of Challenge should be linked back to the sealed document (and public document when applicable) in which it challenges.
- iii. Public versions of document must contain the words PUBLIC VERSION on the first page of the document near the caption under the case number. The date of the filing of the public version is also required either under the PUBLIC VERSION notation on the first page or, in the instance of a pleading, on the page containing the original date of the document and displaying below that original date.

(7) Consolidation

- i. When two or more related cases are filed in our court, counsel may submit a Motion and Proposed Order to have the cases combined (Consolidated).
- ii. Any Motion/Proposed Order to Consolidate must be filed on File & ServeXpress as a multi-case filing. If not, the filing will be rejected.
- iii. When filing the multi-case consolidation request, the filing firm must load their client as party type ‘interested party’ to any cases in which their party is not currently shown.

- iv. Proposed Orders for Consolidation must clearly state in the body which case is going forward as the “lead” case, and the new case caption for the consolidated action/case number.

(8) Declarations (Unsworn)

- i. It is the Court’s preference that documents should be notarized when possible, particularly affidavits, except for certain civil miscellaneous documents which do not require notarization (Court of Chancery Rule 178B).
- ii. The Court allows Unsworn Declarations in place of Verifications to Complaint; and when a notarized Affidavit cannot be obtained after the proper efforts have been made.
- iii. When filing an Unsworn Declaration for any purpose, the document must cite the statute for the applicable Unsworn Declaration, be it Unsworn Declaration (10 Del. C. Sec. 3927), or Unsworn Foreign Declaration (10 Del. C. Sec. 5354).
- iv. Unsworn Declarations must contain the language as shown in each statute, including the perjury line binding the signer to the State of Delaware, and the location of the person, if outside the United States or its territories.
- v. When filing an Unsworn Declaration in place of a Verification to Complaint, select document type “Verification to Complaint”. Otherwise, use document type “Declaration”.

(9) Deposition (Notice Of)

- i. The Notice of the Deposition will be on the docket, but the deposition may not be filed.
- ii. The law firms may e-file a notice of deposition and upload a SERVED subpoena duces tecum with the Return of Service attached as document type “Subpoena”.
- iii. Subpoenas that have not been served need not be on the docket.
- iv. Full attorney signature block is needed on the Notice of Deposition, and a Certificate of Service is required.
- v. Name of the person to be deposed must be in the Notice and in the document e-filing title.
- vi. A re-notice of deposition (with a new date, time, location, etc.) must be linked to the original notice of deposition.

NOTE: If the Notice of Deposition is for something taking place outside the state of Delaware (and the deponent is not a party), the Notice should be linked to a granted Commission Order. If no Order exists because the deponent has agreed to appear (or the state in which the event is happening does not require a subpoena), the Notice of Deposition or a cover letter must clearly indicate why a commission was not required and, therefore, not on the record. (Court of Chancery Rule 28(e)).

(10)Discovery (Interrogatories, Requests for Production, etc.)

- i. Discovery requests should not be e-filed onto the Court’s docket; they only should be served to the opposing side. On File & ServeXpress, they should be marked as “Serve Only, Private.”
- ii. Only the Notice of Service of any Discovery is necessary to be filed **and** served.
- iii. If you do choose to file the actual Discovery, it must have a Certificate of Service.
- iv. The initial request for Discovery or Notice of Service of the initial request should be linked to the Scheduling Order (if one is on the docket) or to the most recent Complaint filed.
- v. Responses to Discovery requests, or the Notice of Service of the Responses must be linked to the Discovery requests or Notice of Service of the Requests filed by the opposing party.

(11)Dismissal (Court of Chancery Rule 41)

- i. Any type of dismissal (Notice, Stipulation, Motion) must be linked to that which you are dismissing (Complaint or Motion).
- ii. Proof of service of the Notice or Motion to Dismiss must accompany the filing so that defendants are aware of the dismissal.
- iii. A Proposed Order is required with all Motions to Dismiss; and, may be required for a Stipulation depending on the circumstances.
- iv. A Certificate of Service is not required when all parties have signed a Stipulation of Dismissal.

(12)Entry Of Appearance (Court of Chancery Rule 5(aa))

- i. An Entry of Appearance needs to contain the attorneys entering their appearance and for which parties they are representing.

- ii. It must be linked to the initial Complaint and have a Certificate of Service.
- iii. Include, if applicable, attorneys who serve in a limited or as conflictual counsel, and if they join other attorneys already representing the same party. If the latter, link to the previously filed appearance with whom they join.
- iv. Attorneys can e-file an Entry of Appearance in the same transaction as other documents (i.e. Motions, etc.).
- v. **ALL** attorneys who are in the signature block on an Entry of Appearance must be loaded to File & ServeXpress or the filing will be rejected.
- vi. Pursuant to Court of Chancery Rule 5(aa), only those Pleadings in direct response to the Complaint may be filed in lieu of a formal Entry of Appearance (e.g. an Answer, a Motion to Dismiss the Complaint, or a Stipulation extending the time to respond to the initial Complaint).
- vii. No appearance can be withdrawn except by Motion and Order of the Court.

(13) Interrogatories

- i. Interrogatories and any other discovery do not have to be e-filed; they should be done on File & ServeXpress as “serve only, private.”
- ii. See Discovery.

(14) Letter

- i. All letters should use Times New Roman 14-point font and be double spaced (Court of Chancery Rule 10(d)).
- ii. Letters to the Court must not exceed 1,000 words and address only logistical and scheduling issues per Rule 171(f)(C). In the signature block, the phrase “Words:” followed by the number of words in the letter should be recorded.
- iii. The document type used should be ‘letter’, and it should be linked to the documents to which the letter references. The exception would be if the Motion is in the same transaction id as the letter.
- iv. If there is “cc” at the bottom of the letter, that serves as the Certificate of Service for any exhibits filed with it. This “cc” cannot be used when filing a main document such as a Motion. In this

instance, a Certificate of Service is required. See Certificate of Service in this document.

- v. Letters in reference to courtesy copies of documents should wait until those documents have been accepted onto the docket sheet so they can be properly linked. All letters should be on firm letterhead.
- vi. The “cc” on a letter must include individual names of people given copies (cannot say “all counsel”), but it can show only one Delaware counsel from each of the firms representing parties in the case.
- vii. Any letters from out-of-state counsel being filed into the docket by local counsel must be uploaded as document type ‘exhibits’ and be accompanied by a letter of introduction from local counsel.

(15) Memorandum (Court of Chancery Rule 171)

- i. Memoranda must adhere to the typeface of Times New Roman 14-point per Rule 171(d).
- ii. Memoranda cannot have Tables of Contents or Tables of Authorities. They must be filed with a Certificate of Service.
- iii. Memoranda are for points and authorities and should not be filed in place of briefing.

(16) Motion

- i. Merits-related motions under Rule 171(f)(A) and all other motions under Rule 171(f)(b), must adhere to the word count limits imposed. (Word-Count Limit Guideline).
- ii. Motions under Rule 171(f)(B) shall be made without a supporting brief.
- iii. Motions cannot have tables of contents or tables of authorities.
- iv. Motions must be filed with the accompany proposed order and a Certificate of Service.

(17) Notice Of Service

- i. Discovery is not required to be filed onto the docket; however, a Notice of Service attesting to the service of the discovery on opposing counsel is required, with a certificate of service for when the Notice was served.
- ii. If the Notice of Service and the Discovery were served on opposing counsel simultaneously, inclusion of the phrase “...and this Notice of

Service....” in the wording of the Notice negates the need for a separate Certificate of Service.

(18) Praecipe (for Service of a Writ)

- i. Praecipe is used to request service through the Sheriff and is to be e-filed onto the docket.
- ii. For pro se or self-represented litigants, the Register in Chancery will prepare the summons after the case is assigned to a judge. Delaware counsel should draft their summons contact the Register in Chancery for the name of the person to whom the drafts would be e-mailed.
- iii. The firm will have the summons(es) picked up, attach the service copies and Sheriff fees, and then deliver the entire package to the respective Sheriff’s office.
- iv. The Sheriff will return their service or non-service affidavit to the Court through File and ServeXpress or by other means.
- v. *See* Summons in the Best Practices section of this document.

(19) Pro Hac Vice (Court of Chancery Rule 170)

A Motion for Pro Hac Vice is an attorney asking the Court to admit a non-Delaware attorney into the case. The following documents are needed to file for Pro Hac Vice and in the required format discussed below:

- i. Motion (from the Delaware attorney; must include the name of the attorney to be admitted Pro Hac Vice)
 - a. Must file a separate motion for each attorney in a case.
 - b. Select document type, “Motion for Pro Hac Vice”, per attorney, per case so that the Supreme Court admittance fee can be properly assessed.
- ii. Certification of the attorney to be admitted Pro Hac Vice. See Rule 171. <http://courts.delaware.gov/forms/download.aspx?id=39138>.
 - a. The attorney being admitted should sign the certification.
 - b. No DE Bar ID number is required since they are not a Delaware attorney.
 - c. The Certification Pro Hac Vice must be in the format outlined in Court of Chancery Rule 170(c) and may make a generic statement regarding the payment of fees to the Court (rather than listing out the amount).

- iii. Proposed Order Pro Hac Vice
 - a. Select the document type, “Proposed Order-Pro Hac Vice”.
 - b. Must be in editable format.
 - c. Must state the name of the attorney to be admitted and the party(ies) they will represent.
 - d. The document title should read as the following:
 - e. Attorney’s last name, first name: Proposed Order for Admission of Pro Hac Vice representing plaintiff (with name of plaintiff).
Example: Wilson, Thomas: Proposed Order for Admission Pro Hac Vice Representing ABC Investments LLC.
- iv. Certificate of Service must accompany the filing and have the proper docket title when scanned/uploaded.

NOTE: All document titles on the filing, and the body of the proposed order, must state who the pro hac vice counsel will represent.

(20) Proposed Order

- i. A Proposed Order must be uploaded separately from any other documents and be filed in editable Word format.
- ii. If a Proposed Order is not filed with its responsive Motion (such as a corrected Proposed Order), a letter of introduction with “cc” at the bottom is required to be filed with it, scanned/uploaded separately.
- iii. There must be a line for the presiding judicial officer to sign, including the judge’s name and title – not just ‘J.’ or ‘V.C.’ - on cases where a judge is assigned.
- iv. The document title on the filing must state what the Proposed Order is for.
- v. The filing must be linked to the documents to which the Proposed Order refers or applies, if they are not in the same filing.

NOTE: Only Proposed Orders for a Motion to Expedite or a Motion for a TRO may be filed with new cases. ALL others must wait until a judge is assigned before being filed with a letter of enclosure and linked back to the Complaint/Petition.

(21) Statement Pursuant To Court Of Chancery Rule 4(dc)

- i. After the Summons is served, the law firm will efile the summons

return onto the docket.

- ii. The law firm will then e-file the Statement pursuant to Court of Chancery Rule 4(dc).
- iii. The Statement gives all the information needed for the Register's office to complete registered mailings under certain statutes for service (such as 18-109, 17-109 or 3114).
- iv. The Statement will contain the information listed out as required in the appropriate statute and/or Court of Chancery Rule 4 and may include the business address of the company and personal addresses of the individuals served.
- v. If personal addresses are unknown, that should be stated.
- vi. This may be done in letter format.
- vii. It is the party's responsibility to read the statutes and include in the Rule 4(dc) Statement or mailing letter the information required for the applicable statutes or the mailing cannot be completed by the Register in Chancery.
- viii. The party must provide the Register in Chancery where the assigned judge is located, copies of the Complaint and other documents to be used for the mailing. (The copies should be two-sided, and staple or clipped, not bound).

(22) Status Reports

- i. When filing a Status Report or other update to the Court, the document type should be "Status Report".
- ii. If the Status Report is in letter form, it must also contain the word count noted at the signature line pursuant to Court of Chancery Rule 171(f)(1).

(23) Stipulation

- i. Any Stipulation filed by Delaware counsel/pro se litigants must include all parties' signatures.
- ii. If for some reason one of the attorney's or parties do not sign, then the opposing counsel can submit a cover letter explaining why all

counsel/parties have not signed, choosing document type, “Stipulation and Proposed Order” when filing.

- iii. If the stipulation is being submitted to Chambers for their reference only and not for approval at this time, the document type should be “Exhibits” and must be accompanied by a letter of introduction for explanation to the Court.
- iv. If the Stipulation is fully effectuated but does not need Chamber’s signature to be implemented, the document type should always be “Stipulation” – this document type eliminates the document from being placed into judicial review.

(24) Substitution Of Counsel (Delaware Counsel)

- i. Outgoing counsel must efile the Stipulation and Proposed Order of Substitution of Counsel. The filing would also contain a separately scanned/uploaded Certificate of Service if not all parties have signed the Stipulation.
- ii. The body of the Proposed Order must clearly identify the names of the counsel and firm withdrawing/leaving, names of counsel and firm entering, and the parties they represent.
- iii. Absent the ability to have a Stipulation of Substitution of Counsel signed, incoming counsel may properly file an Entry of Appearance, including in the same transaction a letter of explanation as to why a Stipulation was not signed.
- iv. Outgoing attorneys must file a Motion and Proposed Order to Withdraw if a Stipulation of Substitution of Counsel is not possible; or for any other reason they want to withdraw from a case.
- v. Any Motion or Stipulation for Substitution of Counsel should state whether pro hac vice counsel will remain representing the party with the new counsel, or whether they will be withdrawing.

(25) Subpoena (Court of Chancery Rule 45)

- i. When preparing to scan for efilng, the Subpoena should show first, with the Affidavit of Service attached after.
- ii. Schedules should be uploaded separately as document type “Exhibits”. (Schedules for a Subpoena Duces Tecum are lists of the documents requested by the subpoena).

- iii. There is no Certificate of Service needed, unless a Notice of Deposition or Notice of Service is also filed in the transaction.
- iv. When E-filed, upload in this format:
 - 1) Subpoena with return of service attached as one document for uploading, and this must be indicated in the document title.
- v. Schedule A (this should be uploaded separately as an exhibit).

NOTE: If you are filing a subpoena return pertaining to a commission, you will file a Notice of Service of Subpoena (with a Certificate of Service for the Notice) with the out-of-state subpoena and proof of service as an exhibit to the Notice and then link to the granted order for the commission.

NOTE: Attorneys can prepare subpoenas in a similar format to the subpoenas issued by the Court. The subpoena must contain the full attorney’s signature block. When the subpoena is served and is returned to the attorney, it should be e-filed as a document type “Subpoena” so that the proper fee will be assessed through File & ServeXpress.

(26) Summons (Court of Chancery Rule 4)

After a new Complaint is filed, there will either be a letter filed as document type “Summons Instructions” (for a Special Process Server or for mailing) **or** a Praecipe (for Sheriff Service) as described below and in the required format.

- i. Summons Instructions Letter - should specifically state that the law firm will prepare the Summons, the statute under which service is being requested for each defendant and list the names and addresses of the defendants to be served, along with the name of the registered process server agency who will serve the Summons pursuant to Operating Procedures II.(2)ii.

Note: It must be a process server registered with the court to service process. This list can be found on the Court’s website.

- a. When the law firm prepares the Summons, they will still need to submit the Summons to the Register’s office for signature and seal. No party or attorney is permitted to sign a Summons.

Note: Do NOT send the drafted Summons to Register in Chancery (RIC) until the case is assigned to a judge, unless the case is a TRO, then you will send the drafted

Summons to New Castle RIC (or New Castle will automatically prepare them);

- b. If there is a Motion to Expedite, you will send the drafted summonses to the Register's office closest to the law firm's address, or that Register's office will automatically prepare them.
- ii. Praecipe – should state which Sheriff is to do the service of the Summons, cite the statute service is being requested under for each defendant, and list the addresses to which those defendants should be served.
- iii. Completed Summons – the Register in Chancery will contact the law firm stating the Summons is ready for pick up by the law firm or the process server. If the Summons is for the Sheriff, Chancery will contact the law firms so they may pick up the Summons, and have it taken with the service copies and fees to the Sheriff's office.
- iv. Issuance of Summons - Chancery will write a note on the top of the Praecipe or Summons Instructions Letter that states how many Summons were issued, what type, the date and to whom they were issued. This, along with copies of the front and back of the issued Summons, will be e-filed in the appropriate case by the Register in Chancery as document type "Issuance of Summons."
- v. Return of Service -After the Summons has been served, the law firm will upload the front and back of the Summons and the proof of service, a.k.a. Affidavit of Service, in the same scan/upload for all parties served with that Summons.
 - a. The Return of Service will be document type "Summons" and must be linked to the issuance of the Summons that Register in Chancery has filed onto the docket.
 - b. A Return of Service from the Sheriff will be returned to the Register in Chancery office that issued the summons for docketing, or by uploading into the docket through File and ServeXpress.
 - 1. There is no set format for the return of service. However, it must be signed by the special process server, be notarized and list the process server agency name.
 - 2. Individual names and/or companies for service must be listed in the Affidavit. It cannot say, "foregoing names."

3. The names of the parties served, listed on the Affidavit, must match the names of the parties to be served on the back of that respective summons. If it does not, the reviewing clerk will reject the filing.
4. The process server on the proof of service must match that listed on the summons, and he/she must be registered with the court, or the reviewing clerk will reject the filing.

NOTE: It is the law firms or party's responsibility to confirm the Sheriff fees. The Court provides the following as guidance only:

Sheriff: \$30.00 for each defendant at each different address. If more than one defendant at the same address, it is \$30.00 for the first defendant and \$5.00 each for the other defendants. Checks are to be made payable to whichever county the Sheriff will do the service: New Castle County Sheriff, Kent County Sheriff or Sussex County Council. In addition, service upon the Insurance Commissioner requires an additional check for \$25.00 per person served, with the check made payable to the Insurance Commissioner. No personal checks are accepted; bank or law firm checks or money orders only.

(27) Supplemental Information Form (Case Information Sheet)

The Supplemental Information Form is required to be filed with the Complaint.

- i. The form should be ONE (1) page in length and uploaded separately from the Complaint.
- ii. Each section of the form is to be completed and should contain the full case caption and Attorney Bar ID number.
- iii. All sections must be completed or have N/A in them if the section is not applicable.
- iv. You must use the supplemental information sheet on the Court's website under forms pursuant to Court of Chancery Rule 3(bb)(1).
- v. You may also use the editable format version in the Resources Center on File and ServeXpress.

(28) Supplemental Submissions (Memoranda, Briefing, Letters, Etc.)

- i. Are used only when the Court has requested supplemental submissions, usually after a court event.
- ii. If the Court requests 'Briefing', then proper Briefs must be filed, and word limits adhered to.
- iii. Must use document type "Supplemental Submission" when filing.
- iv. The filing must have a Certificate of Service.
- v. Any exhibits to the submission must be scanned/uploaded separately as document type "Supplemental submissions".
- vi. Any questions as to in what form Supplemental Submissions should be submitted to the Court should be made at the time the party is directed by the Judge.
- vii. Absent that, a request for instructions may be filed onto the docket, or an inquiry made with the appropriate Chambers or case manager.

(29) Verification/Verified Petition (Court of Chancery Rule 3)

- i. All Complaints/Petitions/Crossclaims/Counterclaims/Amended & Third-party Complaints filed on or after January 1, 2007 must have a notarized Verification from *each* petitioner/plaintiff/claimant.
- ii. This document should be uploaded separately from the Petition/Complaint and be filed using document type "Verification to Complaint."
- iii. The notarial stamp and/or seal MUST be visible, or the filing will have to be rejected. If it is a raised notary seal, shade it with a pencil prior to scanning/uploading the document.
- iv. Failure to have notarized Verification statement(s) submitted with the Complaint will cause the filing to be rejected.
- v. If a person is making the Verification on behalf of a corporation, the Verification must clearly state what title/position an individual holds in a corporation.
- vi. The Verification(s) must be uploaded separately from the Complaint and be filed as document type "Verification to Complaint." The document title must state the name of the person making the Verification, and who they are making it on behalf of, if applicable. All documents must be uploaded and scanned separately when efiled.

- vii. An Unsworn Declaration may be used in place of a Verification to Complaint, see “Declaration, Unsworn” herein.

(30) Word-Count Limits (Court of Chancery Rule 171(f))

The Register in Chancery provides basic guidance below regarding the word count limits requirements, but will not interpret the Court rule for the parties or counsel:

RULE 171 WORD-COUNT LIMITS (as of 8/1/2017):

Rule 171. Briefs

(f)(1) length

(A) merits-related motions –

Rule 12 = Motions to dismiss, for judgment on pleadings, preliminary hearings, for more definite statement, to strike, for consolidation of defenses, or waiver of defenses;

Rule 23 = Class Certification;

Rule 23.1 = Derivative Action motions such as share representative, intervention, or dismissal;

Rule 56 = Summary judgment; and

Rule 65 = Preliminary or permanent injunctions such as TRO or status quo, Motion to Expedite.

- Opening brief, opening pre-trial or post trial briefs = 14,000 words
- Answering brief = 14,000 words
- Reply brief = 8,000 words

(B) other motions –

- No brief required.
- Motion limit = 3,000 words
- Opposition/Responses = 3,000 words
- Reply = 2,000 words

(C) Letters –

- Letters = 1,000 words