Rules of the Court of Chancery 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 Court of Chancery 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, May 16, 2019, effective July 1, 2019.

Rule 2. One form of action.

There shall be 1 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.*

(1) An action is commenced by filing with the Register in Chancery a complaint or, if required by statute, a petition or statement of claim all hereafter referred to as "complaint." Sufficient copies of the complaint shall be filed so that 1 copy is available for service on each defendant as hereafter provided, unless the Court orders otherwise.

(2) Each complaint, when accepted for filing by the Register in Chancery, shall be accompanied by a covering sheet in the form adopted by the Court and containing information which the Court shall determine is necessary and appropriate.

(aa) *Verification.* All complaints, counterclaims, cross-claims and third-party complaints, and any amendments thereto, shall be verified by each of the parties filing such pleading. Every pleading, except that filed by a corporation, which is required to be verified by statute or by these Rules shall be under oath or affirmation by the party filing such pleading that the matter contained therein insofar as it concerns the party's act and deed is true, and so far as relates to the act and deed of any other person, is believed by the party to be true. Every pleading by a corporation which must be verified shall be verified under oath or affirmation by the chairperson or vice-chairperson of the board of directors, by the president, by a vice-president, by a secretary, by an assistant secretary, by the treasurer, or by an authorized agent and shall be under the seal of the corporation.

(b) *Nonrefundable deposit for costs.* The Register in Chancery shall not file any paper or record or docket proceeding until a nonrefundable deposit for fees and costs has been made with the Register. Such deposit is $100 for all matters except those specifically stated herein. The Register in Chancery shall apply the deposit from time to time in payment of the fees and costs of the Register's office. If the amount of the deposit is expended in payment of such fees and costs as they accrue from time to time, the Register shall demand and receive such additional amount as shall be necessary in the Register's judgment to defray fees and costs for additional services before any such services shall be performed. If the amount of the deposit is not exhausted in payment of such fees and costs, any balance is not refundable and shall be retained by the Register in Chancery at the end of the case. An additional deposit of $400 shall be required in all actions commenced by writ of sequestration, pursuant to 10 Del. C. § 366; $200 of such additional deposit shall be set aside solely for the purpose of paying any fee that the Court may allow the sequestrator. For papers filed from time to time in connection with guardianship matters, the deposit for costs shall be such sum as the Register, from the Register's experience, shall deem sufficient to cover fees and costs of the Register's office for such matter. This rule shall not apply to any action or other proceeding that is exempt by law from making a deposit for costs.

(bb) *Court fees or charges.* The Register in Chancery shall assess the following court fees:

FEES AND CHARGES APPLICABLE TO ALL TYPES OF ACTIONS

Issuing summonses, subpoenas, and other writs	
Original	$ 50
Each copy	$ 25
Filing an exception to a Master's Final Report	$ 200
Noticing appeal (including preparation of record)	$ 500
Furnishing advertisements to publishers	$ 25
Certification of a document (excludes copy charge)	$ 25
Exemplification of a document (in addition to certification)	$ 50
Preparation of Register's certificate	$ 25
Preparation of short certificate	$ 25
Filing commission	$ 20
Filing bond	$ 25
Any court proceeding scheduled upon request of a party,	
whether in-person or telephonic	$ 150 per day

Docketing any item, per page	$ 1
Scanning hard copy documents for docketing, per page	$ 2
Photocopies, per page	$ 1.50
Copies of opinions, per page	$ 1.50
Microfilm copies, per page	$ 2
Facsimiles, first page	$ 10
Facsimiles, per page after first	$ 2
Storage of exhibits, per exhibit	
(charged to party that submitted exhibit)	$ 10
Archival retrieval fees (excluding copy charge)	
One folder or less	$ 25
For each box or partial box greater than one folder	$ 50
Preparation of mailing via next day carrier	
(excludes copy charge)	$ 5

CIVIL ACTION FEES

Filing a new case or petition	
With 1 or 2 defendants	$ 300
With 3 or more defendants	$ 450
Asserting class action or derivative claims	$ 600
Asserting technology disputes under 10 Del. C. § 346	$ 600
Involving service under 10 Del. C. § 3114	
with 10 or less defendants	$ 600
with more than 10 defendants	$ 850

To confirm or vacate an arbitration award	$ 500
For partition	$ 150
For decree of distribution	$ 150
To sell real property to pay debts	$ 150
For instructions	$ 150
For adjudication of presumed death	$ 150
For order disposing of remains	$ 150
For elective share	$ 150
For admission of a copy of decedent's will to probate	$ 150
For a rule to show cause to compel return of assets	
Pursuant to 12 Del. C. § 2105	$ 150
To remove the personal representative of a decedent's estate	$ 250
For sequestration	$ 850

(In addition to filing fees an extra $ 100 is collected at time of filing as a deposit for court costs)

Counterclaims, cross-claims, or third-party claims are charged at the same rates as a new case or petition

Amended complaint	$ 250

An amended complaint must be separately docketed. A party cannot rely on the form of amended complaint attached to a motion for leave to amend.

Motion or application for expedited proceedings	$ 500

Note: A motion or application for expedited proceedings must be filed in connection with any motion or application for a temporary restraining order or preliminary injunction or in conjunction with any summary proceeding

Petition for Mediation under Rules 93-95	$ 10,000
Each additional day of mediation	$ 5,000
Service letters under 10 Del. C. § 3114 (per letter)	$ 10

Filing and recording any pleading Per page	$ 2.00

TRUST FEES

Petitions	
For administration of new trust	$ 25
To modify a trust	$ 650
Otherwise civil action fees apply	
Trustee bond	$ 10
Filing, recording & indexing accounts of trustees and receivers	
Amount of principal and income of trust:	
Less than $ 500 to $ 1000	$ 10
$ 1001 to $ 5000	$ 20
$ 5001 to $ 15,000	$ 60
Each additional $ 1000 to $ 10,000 or part thereof	$ 15
Charge per page	$ 1
Filing inventory, charge per page	$ 2
Mailing notices to interested parties (per notice)	$ 5
Trustee release	$ 10
Registering certificates of trust	$ 25
Filing an exception to trust accounting	$ 100
Orders modifying a trust — per additional order beyond one	$ 150

GUARDIANSHIP FEES

Petition or application	
To appoint guardian for a minor (inclusive of all initial filing fees)	$ 125
To appoint guardian for a disabled person (inclusive of all initial filing fees)	$ 125
In connection with tort settlement (inclusive of all initial filing fees)	$ 125
For a rule to show cause in a pending action	$ 50
To remove a guardian	$ 50
To appoint a successor guardian	$ 50
To expend	$ 35
To initiate or increase monthly allotment	$ 35
To reinvest	$ 35
To sell real estate	$ 50
To accept foreign guardianship	$ 50
To transfer guardianship	$ 50
Promissory note for guardian borrowing from account	$ 25
Transfer of funds	$ 15
Third party certification of compliance with order	$ 3
Filing an exception to guardianship accounting	$ 100

RECEIVERSHIP FEES

Order appointing receiver	$ 100
Processing of receivership claims	
Claims under $ 100	$ 0
Claims of $ 100 to $ 999	$ 25
Claims of $ 1000 or greater	3% of amount

paid

STATEWIDE SECURITY FEE APPLICABLE TO ALL COURTS

Pursuant to 10 Del. C. § 8505, a $10 fee is assessed in addition to any other costs imposed by Rule for each complaint, amended complaint, petition, cross-petition, counter-petition, cross-claim, counterclaim, or third party complaint. The fee is not retained by the Court of Chancery. It is deposited in the Court Security Fund to provide supplemental funding for personnel, equipment, and/or training expenses related to judicial branch security.

THE ATTORNEY GENERAL WHEN FILING UNDER THE DELAWARE FAIR HOUSING ACT PURSUANT TO 6 Del. C. § 4614(e) OR IN VETERANS ADMINISTRATION CASES, THE OFFICE OF THE PUBLIC GUARDIAN, THE INSURANCE COMMISSIONER, AND THE HUMAN RELATIONS COMMISSION ARE EXEMPT FROM PAYING FILING FEES AND COSTS.

Charges for matters not covered by this Rule shall be filed by Order of the Court. Any charge herein may be increased or decreased by the Court for good cause.

(c) *Security for costs.* In every case in which the plaintiff is not at the time of filing the complaint a resident of this 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 the Court, on motion, may dismiss the complaint.

History.

Amended, effective July 1, 1977; Apr. 2, 1984; Nov. 1, 1987; June 1, 1992; Jan. 1, 2002; Aug. 23, 2002, effective Sept. 1, 2002; Mar. 10, 2003; June 21, 2005, effective July 1, 2005; Jan. 4, 2006, effective Jan. 1, 2006; Dec. 20, 2006, effective Jan. 1, 2007; Oct. 15, 2007, effective Dec. 1, 2007; Dec. 31, 2008, effective Mar. 2, 2009; June 4, 2009, effective Aug. 1, 2009; Feb. 20, 2012, effective Apr. 1, 2012; Dec. 15, 2014, effective Jan. 1, 2015; Aug. 24, 2015, effective Sept. 1, 2015; July 19, 2018, effective Aug. 15, 2018.

Rule 4. Process.

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

(b) *Same; form.* The summons shall be signed by the Register in Chancery, 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 defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

(c) *By whom served.* Service of summons may be effected by any person who is not a party and who is at least 18 years of age. At the request of the plaintiff, the Court may direct that service be effected by the sheriff, the sheriff's deputy or by another person specially appointed by the Court for that purpose. All persons, other than the sheriff or his deputy, wishing to serve process in person for Court of Chancery matters must be registered with the Court in accordance with the procedures set out in the Court's operating procedures.

(d) *Summons; personal service.* The summons and complaint shall be served together. The Register in Chancery shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

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

(2) Upon an infant by serving the summons in the manner prescribed by law for service of summons upon any such defendant.

(3) Upon an incompetent person by serving the summons in the manner prescribed by law for service of summons upon any such defendant.

(4) Upon a Delaware corporation or a foreign corporation in the manner provided by statute.

(5), (6) Repealed.

(7) An order directing another or an additional mode of service of a summons in a special case may be made by the Court.

(da) *Service by publication.* No order shall be entered under 10 Del. C. § 365 unless a verified complaint or affidavit accompanying the application for such an order contains an allegation that any defendant is a nonresident of the State and contains a further allegation as to the last known address of such defendant or an allegation that the address of the defendant outside Delaware is unknown and cannot, with due diligence, be ascertained. In addition to the publication of the order for the appearance of a defendant prescribed by 10 Del. C. § 365, the order shall provide for sending such defendant by registered or certified mail a copy of such order and a copy of the complaint at the defendant's address outside of Delaware where the verified complaint or affidavit contains such information. The Court may direct the giving of other notice to such defendant in such manner as may be deemed appropriate under the circumstances.

(db) *Service by publication and seizure.*

(1) No order shall be entered under 10 Del. C. § 366 unless it appears in the complaint that the defendant or any one or more of the defendants is a nonresident of the State of Delaware and the application therefor is accompanied by the affidavit of a plaintiff or other credible person stating:

(a) As to each nonresident defendant whose appearance is sought to be compelled, the 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 such 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) Within 3 business days after the filing of such bond or bonds as may be required or within such other time as the Court may fix, the Register shall, in addition to making the required publication, send by registered or certified mail to each defendant whose appearance is sought to be compelled a certified copy of the order and a copy of the pleading asserting the claim.

(3) After the filing of such bond or bonds as may be required by the order, but not later than 10 days after the date of the order of seizure, the sequestrator shall serve a certified copy of the order upon the person, persons or corporation having possession or custody of the property or control of its transfer, and shall seize the property. The sequestrator shall seize property which is, or appears, not to be susceptible of physical seizure within the State by serving a director in writing that the person, persons or corporation having possession or custody of the property or control of its transfer, shall:

(a) Retain the property and recognize no transfer thereof until further notice from the sequestrator or 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, deliver a certificate under oath to the sequestrator, 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 title or interest therein, if known, and, if beneficial, the name and address of the holder of the legal title thereto, if known.

(4) Within 20 days after seizure, unless otherwise specially ordered, the sequestrator shall make a return to the Court, therein setting out all proceedings hereunder to the date of said return, including the date and hour or service and seizure pursuant to subparagraph (3) hereof.

(5) The Court may in its discretion and subject to statutory requirements dispense with or modify compliance with the requirements of any part of this rule in any cause upon application to it stating the reasons therefor.

(dc) *Service pursuant to 10 Del. C. § 3114.*

(1)(a) In every action where service of process is sought pursuant to 10 Del. C. § 3114 against a nonresident of Delaware by reason of such nonresident's service as officer, director, trustee or member of the governing body of a corporation organized under the laws of this State, the party seeking such service of process shall at the time when such service is applied for file with the Register in Chancery a statement signed by the attorney for the applicant or, if the applicant is not represented by counsel, by the applicant, containing the following information:

(i) The name and principal business address of the corporation upon whose governing body the nonresident serves or has served, which address shall be the principal business address set forth on the most recent annual report filed by the corporation with the Secretary of State of Delaware, unless the statement shall also contain the basis for the applicant's conclusion that the business address set forth on the most recent annual report is not presently the principal business address of the corporation.

(ii) The name and address, including county, of the registered agent in Delaware of said corporation, or a statement that the corporation has no present registered agent.

(iii) The last residence address known to the applicant of each nonresident as to whom service of process is sought, which address shall be the residence address of such nonresident defendant set forth on the most recent annual report filed by the corporation with the Secretary of State of Delaware, unless the statement shall also contain the basis for the applicant's conclusion that the residence address set forth in the most recent annual report filed by the corporation is not presently the residence address of such nonresident.

(b) If any information called for by subparagraph (1)(a) is not known to the applicant, the statement shall so state and shall also state affirmatively that the applicant has made diligent efforts to ascertain such information.

(2)(a) If the summons presented by the plaintiff applying for service pursuant to 10 Del. C. § 3114 is in proper form, the Register in Chancery shall sign, seal and issue it to the plaintiff for service upon the registered agent of the corporation upon whose governing board the nonresident serves or has

served, or, if the corporation has no registered agent, upon the Secretary of State. The plaintiff shall file a return of service forthwith after effectuation of said service.

(b) The summons issued pursuant to subparagraph (2)(a) hereof shall, in addition to the statements called for under other provisions of law, state that it is issued pursuant to 10 Del. C. § 3114 and a copy of that statute shall be appended thereto. The summons shall direct that an answer or other responsive pleading be filed in accordance with the time provisions of the statute.

(3) Within 7 days after service under subparagraph (2)(b) hereof is effected, the Register shall send by registered mail to each nonresident upon whom service is being effected, copies of all of the papers served upon the corporation under subparagraph (2)(a) hereof at: (a) The principal place of business of the corporation and (b) the residence address of such nonresident. The Register shall note on the docket of the cause the date upon which such mailings take place.

IN THE COURT OF CHANCERY OF THE STATE OF

DELAWARE IN AND FOR NEW CASTLE COUNTY

Plaintiff,	CIVIL ACTION NO.
v.	SUMMONS PURSUANT
Defendant.	TO 10 DEL. C. § 3114

THE STATE OF DELAWARE

TO THE SHERIFF OF NEW CASTLE COUNTY:

YOU ARE COMMANDED:

To Summon the above named individual defendant ( ) by service pursuant to 10 Del. C. § 3114 upon the defendant(s)' designated agent for service of process in Delaware,..... , being the registered agent for..... , a Delaware corporation, so that within the time required by law, such defendant ( ) shall serve upon ..... , plaintiff 's attorney whose address is ..... and answer to the complaint.

To serve upon defendant ( ) a copy hereof, of the complaint, and of a statement of plaintiff filed pursuant to Chancery Court Rule 4(dc)(1).

Dated .....

.....

Register in Chancery

(e), (f) Omitted.

(g) *Return.* The summons provided for in paragraph (a) hereof shall be returnable 20 days after the issuance thereof unless otherwise specially ordered. 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 the officer's deputy such person's return shall be verified. Failure to make a return or proof of service shall not affect the validity of service.

(h) *Amendment.* 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.

Form 1.

APPLICATION OF INDIVIDUAL SEEKING DESIGNATION AS SPECIAL

PROCESS SERVER FOR THE COURT OF CHANCERY OF THE

STATE OF DELAWARE:

1. NAME OF INDIVIDUAL _____

2. HOME ADDRESS _____

3. HOME PHONE _____ 4. WORK PHONE _____

5. DRIVERS LICENSE NO. _____

6. DATE OF BIRTH _____

7. HEIGHT _____ 8. WEIGHT _____

9. HAIR COLOR _____ 10. EYE COLOR _____

11. COMPANY/FIRM NAME _____

12. COMPANY/FIRM ADDRESS _____

13. HOW LONG HAVE YOU BEEN WITH THE COMPANY/FIRM _____

Form 2.

CERTIFICATION OF APPLICANTS SEEKING DESIGNATION

AS SPECIAL PROCESS SERVER FOR THE

COURT OF CHANCERY OF THE

STATE OF DELAWARE:

I, _____ , swear/affirm under oath that I will perform the duties of a process server in compliance with the provisions of law governing the service of process in Delaware.

I further swear/affirm under oath that:

I will perform personal service of Court of Chancery documents in a business-like manner in accordance with all applicable statutes, rules of procedure and Court of Chancery policies and procedures regarding service.

I acknowledge that I may **not** represent myself as an officer of the Court.

I will accurately, completely and legibly provide to the Court the requisite information on each document relative to service, as specified by the Court.

I will indemnify and hold harmless the State of Delaware and all its agencies from and against any and all claims for injury, loss of life, or damage to or loss of use of property caused by or alleged to be caused by my acts or omissions and which arise out of my performance or failure to perform as specified above.

I am 18 years or age or older.

I am not a party to the case for which I am serving process.

I declare under penalty, under the laws of the State of Delaware, that the foregoing is true and correct.

_____ _____

Date Signature of Special Process Server Applicant

SWORN AND SUBSCRIBED before me this __ this day of _____ , 20 __

_____

Notary Public

Form 3.

APPLICATION OF COMPANY/FIRM TO BE REGISTERED TO HAVE A

DESIGNATED MEMBER OF THEIR ORGANIZATION AUTHORIZED AS

A SPECIAL PROCESS SERVER FOR THE COURT OF CHANCERY

I swear or affirm under oath that:

The information provided is true and accurate to the best of my knowledge.

It is the responsibility of the company/firm to ensure that all persons who provide service of process for the company/firm comply with the Court's requirements as outlined.

The company/firm will indemnify and hold harmless the State of Delaware and all its agencies from and against any and all claims for injury, loss of life, or damage to or loss of use of property caused or alleged to be caused by acts or omissions of its contractors or employees and which arise out of the contractors' or employees' performance or failure to perform as specified.

I declare under penalty of perjury, under the laws of the State of Delaware, that the foregoing is true and correct.

_____

_____

Date

Manager of Company/Firm Making Application

SWORN AND SUBSCRIBED before me this __ this day of _____ , ____

_____

Notary Public

Form 4.

COURT OF CHANCERY OF THE STATE OF DELAWARE

Authorization of Special Process Server

Name of Applicant _____

Company/Firm Employing Applicant _____

Application reviewed by Ken Lagowski on _____

Approved _____ Denied _____ _____

Chancellor

Expiration date of this appointment _____

History.

Amended, effective July 28, 1978; Jan. 4, 2006, effective Feb. 1, 2006; Dec. 15, 2014, effective Jan. 1, 2015.

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

(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) *Appearance: When; how made; withdrawal.* Except as otherwise provided by statute, a defendant may appear though a summons had 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. An appearance must bear the name of an individual attorney and not merely a firm name. No appearance shall be withdrawn except on written motion and order of the Court.

(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, or required by law. Service upon an attorney shall have the same force and effect as if made upon the party represented by that attorney. 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 Register in Chancery. 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.

(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 Court of Chancery 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 Register in Chancery.

(e) *Filing with the Court defined.* The filing of pleadings and other papers with the Court as required by these Rules shall be made by filing them with the Register in Chancery, except that the Court may permit the papers to be filed with it, in which event it shall note thereon the filing date and transmit them to the office of the Register in Chancery.

(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) *Notice by publication.* Whenever by statute, rule or order of this Court notice by publication is required within this state, the party required to give notice shall cause to be published such notice in *The News Journal or the Delaware State News*. No other newspaper shall be used for publication of notices within this state unless, upon petition to the Court, good cause is shown to depart from this rule.

History.

Amended, effective July 1, 1974; Nov. 1, 1987; Sept. 1, 1990; Apr. 7, 1992; March 31, 1999, effective June 1, 1999; effective July 1, 2005; Jan. 4, 2006, effective Feb. 1, 2006; Dec. 20, 2006, effective Jan. 1, 2007; Nov. 5, 2012, effective Jan. 1, 2013; Dec. 15, 2014, effective Jan. 1, 2015.

Rule 5.1. Public access to documents filed with the Court in civil actions.

(a) *General principle of public access.* Except as otherwise provided in this Rule, proceedings in a civil action are a matter of public record. All pleadings and other materials of any sort, including motions, briefs, letters, affidavits, exhibits, deposition transcripts, answers to interrogatories, answers to requests for admissions, and hearing transcripts, that are filed with the Register in Chancery, provided to the Court, or otherwise part of the record in a civil action ("Documents") shall be available for public access.

(b) *Obtaining Confidential Treatment.* After the commencement of an action pursuant to Rule 3(a), any person may request that the Court order the Register in Chancery to permit Documents to be filed confidentially and not available for public access ("Confidential Treatment").

(1) Except as otherwise provided in this Rule, a Document shall not receive Confidential Treatment unless the person seeking Confidential Treatment shall have first obtained an order of this Court specifying the information or categories of information for which good cause exists for Confidential Treatment ("Confidential Information"). A Document shall receive Confidential Treatment only if and to the extent that it contains Confidential Information.

(2) For purposes of this Rule, "good cause" for Confidential Treatment shall exist only if the public interest in access to Court proceedings is outweighed by the harm that public disclosure of sensitive, non-public information would cause. Examples of categories of information that may qualify as Confidential Information include trade secrets; sensitive proprietary information; sensitive financial, business, or personnel information; sensitive personal information such as medical records; and personally identifying information such as social security numbers, financial account numbers, and the names of minor children.

(3) The party or person seeking to obtain or maintain Confidential Treatment always bears the burden of establishing good cause for Confidential Treatment. The designation of material as Confidential Information constitutes a certification that the designating lawyer, party, or person has reviewed the Document and believes that good cause exists for Confidential Treatment.

(4) In connection with the entry of an order pursuant to this Rule, the Court may determine the manner and extent of Confidential Treatment for any Document, category of Documents, or type of Confidential Information, including limiting access to attorneys of record in the civil action. The Court may, in its discretion, review any Document *in camera* to determine whether good cause exists for Confidential Treatment.

(c) *Filing a document entitled to Confidential Treatment.* Any Document entitled to Confidential Treatment shall be filed confidentially (a "Confidential Filing").

(1) The Register in Chancery shall maintain a docket system for civil actions that permits a Confidential Filing to be viewed only by the Court, the filer, and those participants in the case who have been served with the Confidential Filing. The title of the document, the identity of the filer, and the identities of the participants in the case who have been served with the Confidential Filing shall be available for public access.

(2) Every Confidential Filing shall have a cover page bearing the caption of the case, the title of the Document, and stating:

YOU ARE IN POSSESSION OF A CONFIDENTIAL

FILING FROM THE COURT OF CHANCERY OF THE

STATE OF DELAWARE.

If you are not authorized by Court Order to view or

retrieve this document, read no further than this page.

You should contact the following person:

[Filing Attorney or Party's Name]

[Filing Attorney's Law Firm]

[Filing Attorney or Party's Address]

[Filing Attorney or Party's Telephone Number]

If a public version of the Document will be filed in accordance with Rule 5.1(d), then the cover page shall also state:

A public version of this document will be filed on or

before [DATE].

In lieu of the text "[DATE]," insert the calendar date on or before which the public version will be filed pursuant to this Rule.

No other information should appear on the cover page.

(3) If a Confidential Filing includes multiple Documents, such as an appendix of exhibits or a brief or affidavit with exhibits attached, then the Confidential Filing shall be filed with a single cover page for the document as a whole.

(4) Every page of a Confidential Filing shall have a footer stating "THIS DOCUMENT IS A CONFIDENTIAL FILING. ACCESS IS PROHIBITED EXCEPT AS AUTHORIZED BY COURT ORDER." A party may omit the footer for voluminous exhibits.

(d) *Filing a public version.* Except as otherwise provided in this Rule, the filer of a Confidential Filing shall file a public version within five days after making the Confidential Filing. In the absence of timely compliance with this Rule, the Confidential Filing shall become part of the public record, and the Register in Chancery shall make the Confidential Filing available for public access on the docket system to the same extent as any other public filing.

(1) Not later than 3:00 p.m. on the next business day after a Confidential Filing is filed, and contemporaneously whenever reasonably practicable, the filer shall give notice to each attorney who has entered an appearance on behalf of each person who has designated information in the Confidential Filing as Confidential Information. The notice shall not be filed with the Register in Chancery. The notice shall attach a proposed public version of the Confidential Filing ("filer's proposed public version") that redacts only the information the filer believes qualifies as Confidential Information. The notice shall refer to this Rule and state that the filer's proposed public version shall be filed in compliance with this Rule if no one designates Confidential Information in response to the notice by 3:00 p.m. on the fifth day after the Confidential Filing. If no one has designated Confidential Information in response to the notice by that time, then the public version filed shall be the filer's proposed public version; otherwise, the public version filed shall be a version that redacts only the filer's Confidential Information and the Confidential Information designated in response to the filer's notice.

(2) For administrative convenience, the filer need not file a public version of documentary exhibits or deposition transcripts. If there is a challenge to the Confidential Treatment of an exhibit or deposition transcript for which no public version has been filed, then the filer shall file a public version of the exhibit or deposition transcript in compliance with Rule 5.1(f).

(e) *Confidential Treatment for complaints.* A plaintiff may file a complaint and any related Documents as a Confidential Filing without first obtaining an order as required by this Rule according to the following procedure.

(1) The plaintiff shall file as a Confidential Filing (i) the complaint and any related Documents and (ii) a cover letter addressed to the Register in Chancery that certifies compliance with this Rule in accordance with Rule 5.1(c). When filing a complaint as a Confidential Filing in accordance with this Rule, the plaintiff (i) shall file publicly the covering sheet referenced in Rule 3(a)(2) and (ii) the covering sheet shall summarize the claims asserted in the complaint in sufficient detail to inform the public of the nature of the dispute.

(2) On the same day that the plaintiff files the complaint and any Documents as a Confidential Filing, and contemporaneously whenever reasonably practicable, the plaintiff shall use its best efforts to give actual notice to each person who could have a legitimate interest in designating information in the foregoing materials as Confidential Information. The notice shall not be filed with the Register in Chancery. If the person has a registered agent in this State, the plaintiff shall both give notice to the registered agent and use its best efforts to give notice to the person at its principal place of business, through counsel, or in accordance with the notice provision in any agreement giving rise to the confidentiality obligation. The notice shall include a copy of this Rule and a proposed public version of the complaint and any related Documents redacting only the information that the plaintiff believes qualifies as Confidential Information ("plaintiff's public versions"). The notice shall state that the plaintiff's public versions shall be filed in compliance with this Rule if no one designates Confidential Information in response to the notice by 3:00 p.m. on the third day after the giving of notice.

(3) The plaintiff shall file public versions of the complaint and any related Documents within three days after filing the Confidential Filings. If no one has designated Confidential Information by 3:00 p.m. on the third day after giving of notice, then the public versions filed shall be the plaintiff's public

versions; otherwise, the public versions filed shall be versions that redact only the plaintiff's Confidential Information and the Confidential Information designated in response to the notice.

(f) *Challenges to Confidential Treatment.* Any person may challenge the Confidential Treatment of a Confidential Filing by filing a notice raising the challenge with the Register in Chancery.

(1) If the Confidential Filing is a Document for which the filing of a public version was not required under Rule 5.1(d), then within five days after the filing of the challenger's notice, the person who filed the Confidential Filing shall give notice to each attorney who has entered an appearance for each person who designated Confidential Information in the Confidential Filing. The filer's notice shall not be filed with the Register in Chancery. The filer's notice shall attach a proposed public version of the Confidential Filing ("filer's public version") that redacts only the material that the filer believes qualifies as Confidential Information. The filer's notice shall refer to this Rule and state that the filer's public version shall be filed in compliance with this Rule unless additional Confidential Information is timely designated. If no one has designated additional Confidential Information within 10 days of the filing of the challenger's notice, then the filer shall file the filer's public version; otherwise the filer shall file a public version that redacts the filer's Confidential Information and any Confidential Information designated in response to the filer's notice. Once a public version is accessible, any person may challenge the omission of material from the public version by filing a notice in accordance with this Rule.

(2) If a public version of the Confidential Filing is accessible, any person may seek continued Confidential Treatment for the Confidential Information redacted from the public version by filing a motion within five days after the filing of the challenger's notice. The filing of the motion constitutes a certification that the signer of the motion personally reviewed the Confidential Filing and that continued Confidential Treatment is appropriate. The person challenging Confidential Treatment shall have five days to file an opposition. The Court shall then determine whether Confidential Treatment will be maintained, or whether a reply, hearing or further proceedings are warranted. If a motion seeking continued Confidential Treatment is not timely filed, then the Confidential Filing shall become part of the public record, and the Register in Chancery shall permit access to the Confidential Filing on the docket system to the same extent as any other public filing. If an opposition to the motion is not timely filed, then the challenge shall be deemed withdrawn and the Confidential Filing shall continue to receive Confidential Treatment.

(g) *Treatment of Confidential Filings three years after final disposition.* The Confidential Treatment afforded to any Document in a civil action shall expire three years after the final disposition of the civil action.

(1) At least 90 days before the expiration of the three-year period, the Register in Chancery shall file a notice on the docket advising the parties of the expiration of the order providing for Confidential Treatment. Unless the Court further extends the period of Confidential Treatment by separate order issued after the filing of the Register in Chancery's notice, every Confidential Filing shall become a part of the public record three years after final disposition, and the Register in Chancery shall make all Confidential Filings available for public access on the docket system to the same extent as other public filings.

(2) Any person seeking continued Confidential Treatment must move for continued Confidential Treatment within 30 days after the filing of the Register in Chancery's notice. The motion for continued Confidential Treatment must demonstrate that the particularized harm from public disclosure of the Confidential Information in the Confidential Filing clearly outweighs the public interest in access to Court records. The movant must file a supporting brief and affidavits providing an evidentiary basis for the particularized harm on which the movant relies for each Document for which continued Confidential Treatment is sought. The Court shall then determine whether or to what extent Confidential Treatment will be maintained, or whether a hearing or other proceedings are warranted.

(h) *Time periods not subject to Rule 6(e).* The additional time after service by mail or e-File permitted by Rule 6(e) shall not apply to the time periods described in this Rule for the parties to take action, regardless of the method of service.

History.

Added, Nov. 5, 2012, effective Jan. 1, 2013.

Rule 6. Time.

(a) *Computation.* In computing any period of time prescribed or allowed by these Rules, by order of Court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed shall be included, unless is a Saturday, a Sunday or other legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the Register inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. 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 of the State.

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

(c) Repealed.

(d) Repealed.

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

History.

Amended, effective Nov. 1, 1987; Jan. 4, 2006, effective Feb. 1, 2006; Oct. 15, 2007, effective Dec. 1, 2007; Jan. 24, 2014, effective Feb. 1, 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; and 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 in writing, shall state with particularity the grounds therefor, and shall set forth clearly in the motion the relief sought. The party making the application shall not file a separate notice of motion. The party making the application or any other interested party may submit a proposed form of order.

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

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

(4) With respect to all written motions, the parties may enter into a stipulated brief schedule. If the parties are unable to agree to a brief schedule, any party may apply for an order fixing such schedule. After all briefs have been filed, any party may apply for an order fixing a time for argument. Unless the Court directs otherwise, argument on a written motion shall be set only upon the application of a party. Briefing and/or argument may be waived by the parties subject to the approval of the Court.

(c) *Demurrers; pleas; motions for decree notwithstanding answer; exceptions and replications; abolished.* Demurrers, pleas, motions for decree notwithstanding answer, exceptions (except in special proceedings) and replications shall not be used.

History.

Amended, effective Nov. 1, 1987; Jan. 4, 2006, effective Feb. 1, 2006.

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. Denials 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 the pleader's denials as specific denials of designated averments or paragraphs, or the pleader 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, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, laches, 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.

(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 2 or more statements of a claim or defense alternately or hypothetically, either in 1 count or defense or in separate counts or defenses. When 2 or more statements are made in the alternative and 1 of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of 1 or more of the alternative statements. A 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.

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, which negative averment shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) *Fraud, mistake, condition of the mind.* In all averments of fraud or mistake, the circumstances constituting fraud 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) *Special damage.* When items of special damage are claimed, they shall be specifically stated.

Rule 10. Form of pleadings.

(a) *Caption; names of parties.* Every pleading, and every notice, motion, affidavit, form of order, request for or response to discovery, or other filing shall contain a caption setting forth the name of the Court, the title of the action, the number assigned to the action by the Register in Chancery, and a brief descriptive title indicating the nature of the document. All pleadings and other filings with the Court shall carry the designation "IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE" and shall not reflect the county where the pleading was filed. In the complaint the title of the action shall include the names of all the parties, but in other filings 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. An answer to a complaint, counterclaim, or cross-claim should repeat the allegations of the pleading to which it is responding and then set forth the response below each such allegation. 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, notice, motions, letters, affidavits, forms of order and other documents produced for filing shall be produced on opaque, unglazed white, $8^1/_2$ x 11 inch paper, and shall have double spacing between each line of text, except for quotations and footnotes, and margins of not less than 1 inch on all sides. All such papers shall use Times New Roman 14-point typeface. Papers materially defaced by erasures or interlineation shall not be received by the Register in Chancery without an order of the Court. Additional requirements as to the form of briefs and memoranda of points and authorities are contained in Rule 171.

History.

Amended, effective Mar. 1, 1983; effective Apr. 1, 2014.

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 of party.

(b) *Representations to Court.* By presenting 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 nonmonetary 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, 1987.

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

(a) *When presented.* A defendant shall serve an answer within 20 days after the service of the summons and complaint upon the defendant, unless the Court directs otherwise when service of process is made pursuant to rules 4 (da) and 4 (db). A party served with a pleading stating a cross-claim against the party shall serve an answer thereto within 20 days after the service upon the 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. For cause shown the Court may shorten or enlarge the time periods specified herein. 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 pleadings 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.

(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 1 or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the 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 pleading 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 paragraph (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in paragraph (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 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 the party's 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, 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.* A party who makes a motion under this rule may join with it the 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 motion, the party shall not thereafter make a motion based on any of the defenses or objections so omitted except as provided in subparagraph (h)(2) hereof on any of the grounds there stated.

(h) *Waiver of 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 paragraph (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.

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, except that such a claim need not be so stated if at the time the action was commenced the claim was the subject of another pending action.

(b) *Permissive counterclaims.* A pleading may state as a counterclaim any claim against an opposing party not arising but 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 1 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.

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 process 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 service if the third-party plaintiff files the third-party complaint not later than 10 days after serving the 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 the 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 thereupon shall assert any defenses as provided in Rule 12 and any counterclaim and cross-claim as provided in Rule 13. Any party may move to strike the third-party claim, or 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.

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 set for trial, the party may so amend it 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 longer, unless the Court otherwise orders. If a motion to amend the pleadings is granted, either by stipulation of the parties or by court order, the amended pleading shall be filed as a separate docket entry and shall be signed and verified as required by Rules 3(aa) and 11.

(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.

(aaa) Notwithstanding subsection (a) of this Rule, a party that wishes to respond to a motion to dismiss under Rules 12(b)(6) or 23.1 by amending its pleading must file an amended complaint, or a motion to amend in conformity with this Rule, no later than the time such party's answering brief in response to either of the foregoing motions is due to be filed. In the event a party fails to timely file an amended complaint or motion to amend under this subsection (aaa) and the Court thereafter concludes that the complaint should be dismissed under Rule 12(b)(6) or 23.1, such dismissal shall be with prejudice (and in the case of complaints brought pursuant to Rules 23 or 23.1 with prejudice to the named plaintiffs only) unless the Court, for good cause shown, shall find that dismissal with prejudice would not be just under all the circumstances. Rules 41(a), 23(e) and 23.1 shall be construed so as to give effect to this subsection (aaa).

(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 an 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 laws that provide 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 name of the party against whom a claim is asserted if the foregoing provisions of subdivision (2) of this paragraph are satisfied and, within 120 days of the filing of the complaint, or such additional time the Court allows for good cause shown, 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. If the Court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.

History.

Amended, effective June 1, 2001; Jan. 4, 2006, effective Feb. 1, 2006; Dec. 31, 2008, effective Mar. 2, 2009; Dec. 15, 2014, effective Jan. 1, 2015.

Rule 16. Pretrial procedure; formulating issues.

(a) In any action, the Court may in its discretion direct the attorneys for the parties, and any party not represented by an attorney, to appear before the Court in person for a conference or conferences before trial to consider:

(1) The formulation and simplification of the issues including the elimination of 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;

(4) The advisability of a preliminary reference of issues to a Master;

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

(b) In any action that is to be tried, unless the Court otherwise directs, a pretrial conference shall be held on a date, no less than 7 days before the trial, fixed by the Court. Counsel (or parties not represented by an attorney) who will conduct the trial shall be present at the pretrial conference. No less than 3 days before the pretrial conference, counsel shall submit to the Court in duplicate, a pretrial order which shall meet the requirements of paragraph (c) of this Rule. Counsel shall confer in good faith effort to stipulate to the contents of the pretrial order. To the extent that counsel are unable to agree upon the contents of the pretrial order, each attorney (or party not represented by an attorney) shall submit to the Court a proposed pretrial order that shall indicate the areas of disagreement.

(c) Except to the extent that the Court orders otherwise, all pretrial orders shall include the following information:

(1) A statement of the nature of the action.

(2) A statement of the facts which are admitted and required no proof.

(3) A statement of the issues of fact and of law which any party contends remain to be litigated.

(4) A statement of the relief sought by each party.

(5) Any amendments of the pleadings desired by any party, with a statement as to whether it is unopposed or objected to, and if objected to, the grounds therefor.

(6) A list of witnesses, including experts, who will be called by each party at the trial, and a statement of the testimony, if any, that will be adduced by transcript (or videotape) of depositions.

(7) A description of any evidentiary issues that will require resolution, which shall include a listing of any exhibits which are objected to and the nature of the evidentiary objection, and an undertaking by counsel (or by parties not represented by an attorney) that insofar as is feasible before the trial commences, all trial exhibits will be premarked and will indicate whether they may be admitted into evidence without objection.

(8) An estimate by each party to the action of the number of trial days that will be required.

History.

Amended, effective Nov. 1, 1987.

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; but in those cases in which the bringing of an action for the use or benefit of another is the subject of statutory regulation, the action shall be brought as provided by statute. 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, unborn children and incompetent persons.* No proceeding shall be deferred because of the infancy or competency of a party, unless the Court otherwise orders. The appearance of an infant or incompetent shall be by a general guardian or a trustee, if there be such and if the guardian or trustee be not otherwise interested in the cause, but otherwise by a guardian ad litem.

A guardian ad litem will be appointed upon verified petition of the proposed guardian, or some other party, setting forth such infancy or incompetency; that there is no general guardian or trustee within the State, or that such guardian or trustee has an interest in the cause, and that the proposed guardian ad litem has no interest in the cause. Further proof of the infancy or incompetency, including the production of the infant or incompetent person, may be ordered by the Court.

If within 3 days after the return day of a summons duly served upon an infant or incompetent party, who has no general guardian or trustee within the State, or whose guardian or trustee has an interest in the cause, application be not made on behalf of the infant or incompetent party for the appointment of a guardian ad litem, the plaintiff, upon petition and proof by affidavit of the infancy or incompetency, may obtain an order nisi, for the appointment of a person named in the order to be such guardian. A copy of this order shall be served personally upon the infant, if such infant is over 14 years of age; if under that age, upon the person with whom the infant resides. In the case of a person allegedly incompetent, a copy of the order shall be served upon the incompetent unless the condition of the incompetent is such as to render notice to the incompetent useless in which event the service shall be on the person having the care of the incompetent.

If at the expiration of 10 days after the service of such copy, an affidavit of such service having been filed, no application has been made in behalf of the infant or incompetent for the appointment of a guardian ad litem, the order shall become absolute. If the infant or incompetent party has no known place of abode within the State, and an order for the infant's or incompetent's appearance shall have been duly published, the order for the appointment of a guardian ad litem shall be absolute in the first instance.

A guardian ad litem will not be appointed before service of the summons on the infant or incompetent, except upon personal appearance of the infant or incompetent before the Court, or other proof of infancy or incompetency satisfactory to the Court.

Where the interests of an unborn child are or may be involved in a pending proceeding in this Court, a guardian ad litem may be appointed to represent such interests upon motion of the Court of any party. Such motion shall set forth briefly the interests which will or may be affected by the proceeding, and any guardian so appointed shall have no other interest in the cause.

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.

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 paragraph (a)(1) and (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 paragraph (a)(1) and (2) hereof who are not joined, and the reasons why they are not joined.

(d) *Exception of class actions.* This rule is subject to the provisions of Rule 23.

Rule 20. Permissive joinder of parties.

(a) *Permissive joinder.* All persons may join in 1 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 1 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 1 or more of the plaintiffs according to their respective rights to relief, and against 1 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.

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.

(a) *When applicable.* 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.

(b) *Pleading and procedure.* Defendants shall not plead to a complaint (or cross-claim or counterclaim) for interpleader, except to contest the plaintiff's right to relief. When no party disputes the plaintiff's right to the relief prayed for in the complaint, an appropriate order shall be entered discharging the plaintiff, if proper so to do, after the subject matter of the complaint has been deposited with or placed under the control of the Court, and directing the defendants to interplead.

> In case of a contest of plaintiff's right to relief, the successful plaintiff shall serve a copy of the order on all the answering defendants and until proof of such service is filed, the plaintiff shall not be considered discharged. Nonanswering defendants shall within 20 days after service of the summons, and answering defendants shall within 20 days after the service of a copy of the order, interplead by serving separate statements of claim denominated "Statement of Claim in Interpleader of. . . . . ," setting forth their several claims to the fund or property; and if they dispute the claims of any codefendant, they shall within 20 days after the time above limited, unless otherwise ordered, serve a separate answer to the claim of each codefendant which they dispute, denominated "Answer in Interpleader of. . . . . to Statement of Claim in Interpleader of. . . . . ." Failure to serve a statement of claim shall constitute a waiver of any claim to the fund, and failure to serve an answer to any codefendant's claim shall constitute, as against a defaulting party, an admission of the validity of such claim.

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.

(aa) Each person seeking to serve as a representative party on behalf of a class pursuant to this Rule shall file with the Register in Chancery an affidavit stating that the person has not received, been promised or offered and will not accept any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in the class action in which the person or entity is a named party except for (i) such damages or other relief as the Court may award such person as a member of the class, (ii) such fees, costs or other payments as the Court expressly approves to be paid to or on behalf of such a person, or (iii) reimbursement, paid by such person's attorneys, of actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of the action. The affidavit required by this subpart shall be filed within 10 days after the earliest of the affiant filing the complaint, filing a motion to intervene in the action or filing a motion seeking appointment as a representative party in the action. An affidavit provided pursuant to this subpart shall not be construed to be a waiver of the attorney-client privilege.

(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 a member from the class if the member 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 the member 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.* Subject to the provisions of Rule 15(aaa), a class action shall not be dismissed or compromised without the approval of the Court, and notice by mail, publication or otherwise of the proposed dismissal or compromise shall be given to all members of the class in such manner as the Court directs; except that if the dismissal is to be without prejudice to the class or with prejudice to the plaintiff only, then such dismissal shall be ordered without notice thereof if there is a showing that no compensation in any form has passed directly or indirectly from any of the defendants to the plaintiff or plaintiff's attorney and that no promise to give any such compensation has been made. At the time that any party moves or otherwise applies to the Court for approval of a compromise of all or any part of a class action, each representative party in such action shall file with the Register in Chancery a further affidavit in the form required by section (aa) of this rule.

History.

Amended, Dec. 20, 2006, effective Jan. 1, 2007.

Rule 23.1. Derivative actions by shareholders.

(a) In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall allege that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and the reasons for the plaintiff's failure to obtain the action or for not making the effort.

(b) Each person seeking to serve as a representative plaintiff on behalf of a corporation or unincorporated association pursuant to this Rule shall file with the Register in Chancery an affidavit stating that the person has not received, been promised or offered and will not accept any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in the derivative action in which the person or entity is a named party except (i) such fees, costs or other payments as the Court expressly approves to be paid to or on behalf of such person, or (ii) reimbursement, paid by such person's attorneys, of actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of the action. The affidavit required by this subpart shall be filed within 10 days after the earliest of the affiant filing the complaint, filing a motion to intervene in the action or filing a motion seeking appointment as a representative party in the action. An affidavit provided pursuant to this subpart shall not be construed to be a waiver of the attorney-client privilege.

(c) The action shall not be dismissed or compromised without the approval of the Court, and notice by mail, publication or otherwise of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the Court directs; except that if the dismissal is to be without prejudice or with prejudice to the plaintiff only, then such dismissal shall be ordered without notice thereof if there is a showing that no compensation in any form has passed directly or indirectly from any of the defendants to

the plaintiff or plaintiff's attorney and that no promise to give any such compensation has been made. At the time that any party moves or otherwise applies to the Court for approval of a compromise of all or any part of a derivative action, each representative plaintiff in such action shall file with the Register in Chancery a further affidavit in the form required by subpart (b) of this rule.

(d) For the purposes of this Rule, an "unincorporated association" includes a statutory trust, business trust, limited liability company and a partnership (whether general or limited), and a "member" includes a person permitted by applicable law to bring a derivative action to enforce a right or such an unincorporated association.

History.

Amended Jan. 4, 2006, effective Feb. 1, 2006; Dec. 20, 2006, effective Jan. 1, 2007.

Rule 23.2. Actions relating to unincorporated associations.

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the Court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e). For the purposes of this Rule, an "unincorporated association" includes a statutory trust, business trust, limited liability company and a partnership (whether general or limited), and a "member" includes a person permitted by applicable law to bring a derivative action to enforce a right of such an unincorporated association.

History.

Amended, Dec. 20, 2006, effective Jan. 1, 2007.

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 the applicant claims an interest relating to the property or transaction which is the subject 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. In exercising its discretion the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original 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.

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 process, 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 death as provided herein for the service of a motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of 1 or more of the plaintiffs or of 1 or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiff 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 may permit the action to continue after the appointment of a guardian ad litem for such party.

(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 paragraph (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 the officer's 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 the officer's 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.

V. Depositions and Discovery

Rule 26. General provisions governing discovery.

(a) *Discovery methods.* Parties may obtain discovery by 1 or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, or tangible things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the Court orders otherwise under paragraph (c) of this rule, the frequency of use of these methods is not limited.

(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, 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 paragraph (c).

(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 subparagraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) *Trial preparation: Materials.* Subject to the provisions of paragraph (b) (4) of this rule, a party may obtain discovery of documents, electronically stored information, and tangible things otherwise discoverable under paragraph (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 discovery of such materials when the required showing has been made, the Court shall protect against 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 person making it and contemporaneously recorded.

(4) *Trial preparation: Experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of paragraph (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 paragraph (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 paragraphs (b)(4)(A)(ii) and (b)(4)(B) of this rule and (ii) with respect to discovery obtained under paragraphs (b)(4)(A)(ii) of this rule the Court may require, and with respect to discovery

obtained under paragraph (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.

(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 1 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 though 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.

History.

Amended, effective Nov. 1, 1987; Dec. 4, 2012, effective Jan. 1, 2013; May 16, 2019, effective July 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 such person or officer as may be appointed by commission or under letters rogatory.

(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 of 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) *Notice of deposition not requiring commission.* Notices of deposition to be taken by an officer without a commission shall include citation to the legal authority that confers the powers of the officer to administer any necessary oath and take testimony.

History.

Amended Apr. 23, 2018, effective July 1, 2018.

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.

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 special notice is given as provided in paragraph (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, electronically stored information, and tangible things; deposition of organization.*

(1) A party desiring to take the deposition of any 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.

(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 the 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 the court orders otherwise, a deposition may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by nonstenographic means. With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents, electronically stored information, 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 designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate 1 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 paragraph (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 purposes of this Rule and Rules 28(a), 37(a)(1) and 45(a), 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 Rule 43(b). The officer before whom the deposition is to be taken 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 paragraph (b)(4) of this rule. If requested by 1 of the parties, the testimony shall be transcribed. 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 any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

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 deposition. Evidence objected to shall be 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 questions should be answered. A person 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(c) 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 or by 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 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 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; exhibit, copies; notice of filing.*

(1) The officer shall certify 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. The officer shall securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly send it by registered or certified mail 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, electronically stored information, and tangible things produced for inspection during the examination of the witness, shall, upon the request of the party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with 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 deposition 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 therefor, 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 an attorney pursuant to the notice, the Court may order the party giving the notice to pay to such other party reasonable attorney's fees incurred by that party and that party's attorney in attending.

(2) If the party giving the notice of the taking of a 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 an attorney because that party expects the deposition of that witness to be taken, the Court may order the party giving the notice to pay to 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 1 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.

History.

Amended, effective Jan. 1, 2002; Dec. 4, 2012, effective Jan. 1, 2013.

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, a party may serve recross 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.

Rule 32. Use of depositions in court proceedings.

(a) *Use of depositions.* At the trial or upon the 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 deponent as a witness.

(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 offer or 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 in any court of the United States or of any state has been dismissed and another action involving the same subject matter if 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.

(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.* A party does not make a person the party's own witness for any purpose by taking the person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under paragraph (a)(2) of this rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by that party or by any other party.

(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, in 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.* Error 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.

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.

(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 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, or from a compilation, abstract or summary based thereon, 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.

Rule 34. Production of documents, electronically stored information, and tangible 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 or electronically stored information (which together include books, papers, writings, drawings, graphs, charts, photographs, sound recordings, images, electronic documents, electronic mail, and other data or data compilations from which information can be obtained, either directly or, if necessary, after conversion by the responding party into a 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 purpose 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 grounds and reasons for objection(s) 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, electronically stored information, and tangible things or to submit to an inspection as provided in Rule 45.

(d) *Requests 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 Dec. 4, 2012, effective Jan. 1, 2013; May 16, 2019, effective July 1, 2019.

Rule 35. Physical and mental examination 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 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 Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requestor a copy of a 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 such 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 of refuses to make a report the Court may exclude the examiner's testimony if offered at the 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 paragraph applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This paragraph 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.

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 therefore 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.

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.

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 or production 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 or production in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before the proponent applies for an order.

(3) *Evasive or incomplete answer or response.* For purposes of this paragraph 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 the 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 paragraph (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 order 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 subparagraph, unless the party failing to comply shows that that party is unable to produce such person for examination.

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 made 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 35(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 reasons 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 actions 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 paragraph (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) *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; or (b) dismiss the action or enter a default judgment.

(f) Omitted.

History.

Amended, May 16, 2019, effective July 1, 2019.

VI. Trials

Rule 38. Jury trial of right.

Omitted.

Rule 39. Trial by jury or by the Court.

Omitted.

Rule 40. Call of calendar, duty of register; continuances.

(a) *Calendar call; each county; time.* Each year on the first Monday of March in Kent and Sussex Counties and on the second Monday of April in New Castle County, at such times as the Court shall fix, the Judges of the Court of Chancery shall call the calendar of all pending cases. The Court may by special order fix different or additional dates for such purpose.

The Register shall prepare a list of all cases pending 60 or more days prior to the time fixed for the call of the calendar, and at least 10 days prior thereto shall cause a copy of the list to be mailed to each attorney of record in such cases; alternatively, the register may mail to each attorney of record in such cases notice that the list has been prepared and is available for distribution in the office of the Register. The list shall state the time and place of the calling of the calendar and shall indicate that the call is primarily for the purpose of determining whether there has been any undue delay in connection with pending matters. The call is not for the purpose of fixing argument or hearing dates.

(b) Omitted.

(c) *Attorneys to be present at calendar call.* At the call of the calendar the attorneys will be expected to be present and explain the status of the case and any apparently unusual delay. The Court will then take such action as is deemed to be in the best interest of the proper administration of justice.

(d) *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 attendance of the witness, 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 the trial.

History.

Amended, effective Apr. 19, 1972.

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) and Rule 23.1 an action may be dismissed by the plaintiff without order of court (i) 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 or dismissal signed by all the parties who have appeared in the action. However, no such dismissal pursuant to subpart (i) above shall be effective where the complaint is subject to a motion to dismiss and the plaintiff has chosen to file an answering brief rather than seeking to amend. See Rule 15(aaa). 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 defendants' 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 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 paragraph and any dismissal not provided for in this Rule, other than a dismissal for lack of jurisdiction or 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 subparagraph (1) of paragraph (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) *Inaction for 1 year; dismissal.* Subject to the provisions of Rules 23, 23.1 and 23.2 in each cause pending wherein no action has been taken for a period of 1 year, the Court may upon application of any party, or on its own motion, and after reasonable notice, enter an order dismissing such cause unless good reason for the inaction is given, or the parties have stipulated with the approval of the Court as to such matter.

History.

Amended, effective Nov. 1, 1975; Dec. 21, 1978; June 1, 2004.

Rule 42. Consolidations: 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.

Rule 43. Evidence.

(a) *Form and admissibility.* In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these Rules, by statute or by order for cause. All evidence shall be admitted which is admissible under statute or under the rules of evidence applied in the courts of the State of Delaware. In any case, the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner.

(b) *Scope of examination and cross-examination.* A party to the record in any action or judicial proceeding may interrogate any unwilling or hostile witness by leading questions. Such party may call an adverse party or person for whose immediate benefit any action or judicial proceeding is prosecuted or defended, or an officer, director or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate the witness thus called by leading questions and contradict and impeach the witness in all respects as if the witness had been called by the adverse party and the witness may be contradicted and impeached by or on behalf of the adverse party also and may be cross-examined by the adverse party only upon the subject matter of the witness' examination in chief.

(c) *Record of excluded evidence.* If an objection to a question propounded to a witness is sustained by the Court, the examining attorney may make a specific offer of what the examining attorney expects to prove by the answer of the witness. The Court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. The Court upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

(d) *Affirmation; when; form.* A person conscientiously scrupulous of taking an oath may be permitted, instead of swearing, solemnly, sincerely and truly to declare and affirm to the truth of the matters to be testified.

(e) *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 depositions.

Rule 44. Proof of official record.

(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 with a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the 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 political subdivision in which the record is kept, authenticated by the officer's seal.

(2) *Foreign.* A foreign official record, or any 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, consul, vice consul, or consular agent of the United States, or a diplomatic on 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 paragraph (a)(1) of this rule in the case of a domestic record, or complying with the requirements of paragraph (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.

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 his 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 Rule 43. The Court's determination shall be treated as a ruling on a question of law.

Rule 45. Subpoena.

(a) *Form; issuance.*

(1) Every subpoena shall

(A) State the name of the Court;

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

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

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

(2) A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A subpoena may specify the form or forms in which documents or electronically stored information are to be produced.

(3) The Register in Chancery shall issue a subpoena, or a subpoena for the production of documentary evidence, signed but otherwise in blank, to a party requesting it, who shall fill it in before service. A member of the Delaware bar may issue and sign a subpoena as an officer of the Court.

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

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

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

(2)(A) A person commanded to produce and permit inspection and copying of designated documents, electronically stored information, or tangible things or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

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

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

(i) Fails to allow reasonable time for compliance;

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

(iii) Subjects a person to undue burden.

(B) If a subpoena

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

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

(d) *Duty in responding to subpoena.*

(1) If a subpoena does not specify a form for producing documents or electronically stored information, the person responding shall 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, the person responding need not produce the same documents or electronically stored information in more than one form. The person responding need not provide discovery of documents or electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On a motion to compel discovery or for a protective order, the person responding to a subpoena must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court nevertheless may order discovery from such sources if the requesting party shows good cause. The Court may specify the conditions for the discovery.

(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, electronically stored information, or tangible things not produced that is sufficient to enable the demanding party to contest the claim.

(e) *Enforcement.* Failure by any person without adequate excuse to obey a subpoena served upon the person may be deemed a contempt. The attendance of witnesses at depositions and the production by them of designated documents or tangible things elsewhere than in the State of Delaware may be

compelled or enforced by whatever means are available under the laws of the place where the examination is to be held.

History.

Amended, effective Nov. 23, 1970; Jan. 4, 2006, effective Feb. 1, 2006; Dec. 4, 2012, effective Jan. 1, 2013.

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.

Rule 47. Jurors.

Omitted.

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

Omitted.

Rule 49. Special verdicts and interrogatories.

Omitted.

Rule 50. Motion for a directed verdict.

Omitted.

Rule 51. Instructions to jury: Objection.

Omitted.

Rule 52. Findings by the Court.

Omitted.

Rule 53. Masters.

Transferred. See Rules 135 - 147.

VII. Judgment

Rule 54. Judgment; costs.

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

(b) *Judgment upon multiple claims.* When more than 1 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 1 or more but fewer than all of the claims or parties only upon an express determination that there is not 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) *Demand for judgment.* A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

(d) *Costs.* Except when express provision therefor is made either in a statute or in these Rules, costs shall be allowed as of course to the prevailing party unless the Court otherwise directs. The costs in any action shall not include any charge for the Court's copy of the transcript of the testimony or any depositions.

(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) *Appearance fees abolished.* No appearance fees for attorneys will be permitted or taxed as costs in any action or cause in the Court of Chancery.

Rule 55. Default judgments.

(a) Omitted.

(b) *Judgment.* 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: 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 such party has not appeared written notice shall be served if the Court so directs. 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.

(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. In all cases a judgment by default is subject to the limitations of Rule 54(c).

Rule 56. Summary judgment.

(a) *For claimant.* A party seeking to recover upon a claim, counter claim, cross-claim or 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 by the adverse party move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) *For defending party.* A party against whom a claim, counterclaim, cross-claim or declaratory judgment is asserted 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.

(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 issues of liability alone although there is a genuine issue as to the amount of damages, or some other matter.

(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 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.* 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, admissions on file, or further 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 may make such other order as is just.

(g) *Affidavit 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 March 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. 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.

Rule 58. Entry of judgment.

The order of the Court shall constitute the judgment of the Court.

Rule 59. New trials.

(a) *Grounds.* A new trial may be granted to all or any of the parties, and on all or part of the issues for any of the reasons for which rehearings have heretofore been granted in suits in equity. The Court may open the judgment if one has been entered, take additional testimony, amend or make new factual findings and legal conclusions, and direct the entry of a new judgment. A new trial will not be granted after the filing of an appeal.

(b) *Time for motion.* A motion for a new trial shall be served not later than 10 days after the entry of the judgment.

(c) *Time for serving affidavits.* When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the Court for good cause shown or by the parties by written stipulation. The Court may permit reply affidavits.

(d) *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.

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

(f) *Rearguments.* A motion for reargument setting forth briefly and distinctly the grounds therefor may be served and filed within 5 days after the filing of the Court's opinion or the receipt of the Court's decision. A copy of the motion shall also be delivered by the moving party to the Judge to whom the matter has been assigned. Within 5 days after service of the motion any opposing party may serve and file a short answer to each ground asserted in the motion and shall deliver a copy thereof to the Judge assigned.

History.

Amended, effective Oct. 23, 1979.

Rule 60. Relief from judgment or order.

(a) *Clerical mistakes.* Clerical mistakes in judgments, order 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; (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. The procedure for obtaining relief from judgments shall be by motion as prescribed in these Rules or by an independent action.

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 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 in cases of appeal and motion for new trial.

(a) Omitted.

(b) *Stay on motion for new trial or to amend 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.

(c) *Injunction pending appeal.* When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the Court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) *Supersedeas or stay on appeal.* Stays pending appeal and stay and cost bonds shall be governed by article IV, § 24 of the Constitution of the State of Delaware and by the Rules of the Supreme Court.

(e) — (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.

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. The successor 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.

VIII. Provisional and Final Remedies and Special Proceedings

Rule 64. Seizure of persons or property.

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 statute, or existing in this Court at the date of the adoption of these Rules.

Rule 65. Injunctions.

(a) *Preliminary injunction.*

(1) *Notice.* No preliminary injunction shall be issued without notice to the adverse party, and without a prayer therefor appearing in a verified complaint, or a motion therefor filed and supported by affidavit.

(2) *Consolidation of hearing with trial on merits.* Before or after the commencement of the hearing of an application for a preliminary injunction, the Court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial.

(b) *Temporary restraining order; notice; hearing; duration.* A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the Court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the office of the Register in Chancery and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if that party does not do so, the Court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) *Security.* No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. Any security given as a condition to the issuance of a restraining order shall also constitute security for any preliminary injunction subsequently issued and requiring security.

(d) *Form and scope of injunction or restraining order.* Every order granting an injunction and every restraining order shall be specific in its terms; shall describe in reasonable detail, and not by reference to the complaint or other document unless such document is served with the injunction or restraining order, the act or acts to be restrained; and shall be binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) Omitted.

History.

Amended March 31, 1999, effective June 1, 1999.

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 such surety submits to the jurisdiction of the Court and irrevocably appoints the Register in Chancery 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 Register in Chancery, who shall forthwith mail copies to the sureties if their addresses are known.

Rule 66. Receivers.

Transferred. See Rules 148-168.

Rule 67. Depositing money in Court.

A statute or order requiring money to be brought into Court shall be deemed to be complied with by depositing the same to the order of the Court of Chancery within the county, in a bank or trust company having capital and surplus of at least 50 million dollars, and by filing with the Register a certificate of such deposit and making a return or report thereof to the Court.

History.

Amended, effective June 1, 2004.

Rule 68. Offer of judgment.

Omitted.

Rule 69. Execution writ for payment of money.

(a) *In general.* If a final order be for the payment of money, it may contain, in addition to other methods of enforcement of the order, an order for the issuance of writs of execution substantially in the form and with the same effect as those used in the Superior Court. Such writs shall be directed to and executed by the sheriff of the county as other like writs are executed and shall be returned to the Court of Chancery as directed in the order thereof.

(b) *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 examine any person, including the person against whom a judgment has been entered, in the manner provided in these Rules for taking depositions.

Rule 70. Judgment for specific acts; vesting title; contempt.

(a) *Performance by substitute and other methods of procuring compliance.* If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the Court may direct the act to be done at the cost of the disobedient party by some other person appointed by the Court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the Register shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The Court may also in proper cases adjudge the party in contempt. If real or personal property is within the jurisdiction of the Court, the Court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the Register in Chancery. The provisions of this paragraph shall not be construed to replace any statutory authority granted this Court to compel performance by a substitute.

(b) *Contempt and other remedies for disobedience of Court order.* For failure to obey a restraining or injunctive order, or to obey or to perform any order, an attachment may be ordered by the Court upon the filing in the cause of an affidavit showing service on the defendant, or that the defendant has knowledge of the order and setting forth the facts constituting the disobedience. At the hearing of the attachment, the examination of the defendant and also of witnesses shall be oral before the Court, unless it be otherwise ordered by the Court.

> In other proceedings taken in the name of the State to punish contempt, the attachment may be ordered upon the filing of an affidavit setting forth the facts constituting the contempt and thereupon the proceedings shall be as set forth in the preceding paragraph of this rule.

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

When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if that person were a party, and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if that person were a party.

Rule 71A. Condemnation of property.

Omitted.

IX. Appeals

Rule 72. Appeals, certifications and mandates.

(a) *Appeals to Court of Chancery.* The procedure in cases appealed to the Court of Chancery shall be as heretofore.

(b) *Procedure of certification.* A party filing a petition requesting this Court to certify a question to the Supreme Court shall set forth therein the facts and issues at such length and with sufficient clarity to enable this Court to make a finding necessary to warrant a certification under the terms and conditions of the Rule of the Supreme Court governing certification. There shall be attached to such petition a proposed form of certification. In the event the Court enters an order of certification the petitioner shall file with the Register the copies necessary to conform to the requirements of the Supreme Court rule.

(c) *Supreme Court mandate; action in this Court thereon.* Upon receipt of a mandate from the Supreme Court, the Register shall immediately mail notice thereof to the Delaware attorneys involved or if not represented by Delaware attorneys to the parties. The notice shall direct the attorneys or the parties to proceed in accordance with this Rule. In any case where the judgment of this Court shall have been reversed or modified or in any case where further proceedings are necessary an appropriate order shall be prepared by counsel and submitted to the Court.

Rule 73. Appeal to a court of appeals.

Omitted.

Rule 74. Joint or several appeals to the Supreme Court or to a circuit court of appeals; summons and severance abolished.

Omitted.

Rule 75. Record on appeal to a circuit court of appeals.

Omitted.

Rule 76. Record on appeal to a circuit court of appeals; agreed statement.

Omitted.

X. The Court of Chancery; Register in Chancery

Rule 77. Court of Chancery; duties of Register in Chancery; records and exhibits.

(a) *Court of Chancery always open.* The Court of Chancery shall be deemed always open for the purpose of the transaction of business. The Court may in chambers and in vacation make any order, including a final order.

(b) Omitted.

(c) *Orders grantable as a matter of course by the Register in Chancery.* The Register in Chancery is authorized to sign and enter the following orders without further direction by the Court: Orders on stipulations extending the time period prescribed for action by Rules 12(a), 33(a) and 36(a) of this Court, and orders on stipulations under Rules 15, 34 and 35. Any order entered by the Clerk under this rule may be vacated or modified by the Court for cause shown.

(d) *Notice of orders of judgments.* Immediately upon the entry of an order of judgment, the Register in Chancery 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 Register in Chancery 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 Register in Chancery:*

(1) *Court attendance.* The Register in Chancery, a Deputy or Clerk shall attend the Court in person.

(2) *Notice of amendment of Rules.* The Register in Chancery 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.

(f) *Records and exhibits.*

(1) *Custody.* The Register in Chancery shall have custody of the records and papers of the Court. The Register in Chancery shall not permit any original record, paper or exhibit to be taken from the courtroom or from the Register in Chancery's office except at the direction of the Court or as provided by statute or by these Rules.

(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 obtaining a writ of appeal, if no writ of appeal has been sued out, all exhibits shall be removed by the party who introduced them. If not so removed, the Register in Chancery 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 Register in Chancery may obtain an order of the Court for their disposition.

(g) *Opinions to be dated.* Each written opinion (including letter opinions) shall bear 2 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.

History.

Amended, effective July 1, 1974; July 28, 1978; March 31, 1999, effective June 1, 1999.

Rule 78. Motion day.

Omitted.

Rule 79. Books and records kept by the Register and entries therein.

(a) *Docket.* The Register shall maintain the electronic dockets containing all Chancery actions as reflected in Rule 79.1.

(aa) *Notation of judicial action.* The Register shall make appropriate docket entries noting briefly judicial action in every matter whenever it occurs. Among such entries will be the following:

(1) The date when an oral argument is heard; by what judge and its subject matter, i.e., upon what kind of a motion or issue.

(2) The date or dates of all trials, the name of the trial judge and the elapsed trial time.

(3) The date of any decision by the Court and the name of the judge rendering it.

(4) The date of the filing of an opinion, its subject matter and the name of the judge rendering it.

(5) The fact, if it be a fact, that the opinion was written without oral argument, i.e., upon briefs, etc.

(b) *Judicial statistics.* The Register shall keep such judicial statistics in such form as the Court shall direct.

(c) [Repealed.]

History.

Amended, Jan. 15, 2021, effective Jan. 29, 2021.

Rule 79.1. Electronic filing.

(a) The electronic filing of documents in the Court of Chancery of the State of Delaware shall be referred to as "eFile" or "eFiling".

(b) Every civil action and civil miscellaneous action in the Court of Chancery is subject to electronic filing ("eFiling"). Any rule or procedure that refers to or requires the filing of a document shall mean that the document must be eFiled. Each document that must be filed under the Rules shall be eFiled unless otherwise ordered by the Court. Paper copies of any complaint, praecipe, and supplemental information form also shall be filed if necessary to facilitate service of process or as required by the Rules and by statute. Exceptions for eFiling certain documents, along with the requirement for delivering paper copies to the presiding judge, are set forth in the Court's operating procedures.

(c) The Chancellor shall establish administrative procedures for the eFiling of documents, which procedures may be found in the Court's operating procedures.

(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. The technology fee is not imposed on filings by the Department of Justice or by indigent parties or their counsel. Additional fees may be charged in accordance with the Rules of the Court and the Court's operating procedures.

(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 by that lawyer to assist in eFiling.

(f) No person shall use, or allow another person to use, 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 Court of Chancery Rule 11.

(h) Each electronically filed document shall bear an original, facsimile, or typographical signature of an attorney at the firm authorizing the filing or by the pro se party authorizing the filing. Each document eFiled by or on behalf of a party also shall include the typed name, address, and telephone number of the attorney or unrepresented party filing such document. Attorneys shall include their Delaware bar number. If an affidavit or declaration is signed by any person other than a Delaware attorney, the filing party shall maintain the original signed document during the pendency of the litigation and shall make the original available, upon reasonable notice, for inspection by other counsel, the Register in Chancery, or the Court.

(i) Unless otherwise ordered, the electronic service of a document, in accordance with the Court's operating procedures, shall be considered service under Court of Chancery Rule 5. Service by electronic means shall be treated in the same manner as service by hand delivery.

(j) *Personal identifying information.* Parties shall refrain from including, or shall redact where inclusion is necessary, the following personal identifiers from all documents filed with the Court in civil actions, unless otherwise ordered by the Court: social security numbers, names of minor children, dates of birth, and complete financial account numbers. Caution also should be exercised when filing in civil actions documents that contain personal identifying numbers, such as driver's license numbers, medical records, treatment, and diagnosis, employment history, individual financial information, and proprietary or trade secret information. It is the sole responsibility of counsel and pro se parties to be sure that all pleadings comply with the rules of this Court requiring redaction of personal identifiers. The Register in Chancery will not review each pleading for redaction.

(k) If an electronic filing is not filed and served with the Register in Chancery because of (1) an error in the transmission of the document to File & Serve Xpress, which error was unknown by the sending party, (2) a failure to process the electronic filing when received by File & Serve Xpress, (3) rejection by the Register in Chancery, or (4) other technical problems experienced by the filer, the Court may upon satisfactory proof enter an order permitting the document to be filed or served nunc pro tunc to the date it was first attempted to be sent electronically.

History.

Added, effective Sept. 29, 2003; amended, Jan. 4, 2006, effective Feb. 1. 2006; Dec. 15, 2014, effective Jan. 1, 2015; Dec. 11, 2015, effective Jan. 1, 2016.

Rule 79.2. Deadline for all documents filed and served electronically.

Except for the initial pleadings governed by Rule 7(a) and notices of appeal, all electronic transmissions of documents (including, but not limited to, motions, briefs, appendices and discovery responses) in non-expedited cases must be filed and/or served by 5:00 p.m. Eastern Time in order to be considered timely filed and/or served that day. All electronic transmissions of documents in expedited cases must be filed and/or served before midnight Eastern Time in order to be considered timely filed and/or served that day, unless otherwise agreed to by the parties and so ordered by the Court. For purposes of meeting the filing and/or service deadline set forth herein, expedited cases shall mean any case that is set for expedited treatment by an order of the Court.

History.

Added, Sept. 7, 2018, effective Sept. 14, 2018.

XI. General Provisions

Rule 80. Court of Chancery seal.

The Chancellor may designate a court seal, which shall be the official Court of Chancery Seal for use in such official and ceremonial purposes as the Chancellor shall designate.

History.

Added, effective Apr. 1, 2003.

Rule 81. Applicability in special proceedings.

(a) *Conformity.* The procedure in special matters 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.

(b) *Procedure for corporate election held by Court order.*

(1) In case an order made by the Court for the holding of an election of directors of a corporation of the State of Delaware be not obeyed, the Court may punish the directors for contempt of Court, and take such other and further proceeding as may be appropriate to enforce obedience to its order, or impose on the corporation a penalty for disobedience thereof.

(2) It may also appoint a Master to hold such election not less than 20 days after the Master's appointment at a time and place to be fixed by the Court, or by said Master as the Court shall order, any provision of the charter or bylaws of the corporation to the contrary notwithstanding.

(3) For the purpose of holding such election the Master shall at least 10 days before the election make from the original stock ledger of the corporation an alphabetical list of the stockholders entitled to vote at such election, which stock ledger or a copy thereof shall be made available to the Master by the corporation. The Court may make such other and further order in respect to a list of stockholders as it may deem appropriate. The Master may require the production at said election of certificates of shares of stock of the corporation as evidence of a right to vote thereat. Such list shall for 10 days prior to the election be open to the inspection of any stockholders at the place where said election is to be held, and shall also be produced and kept at the time and place of such election during the whole time thereof and be subject to the inspection of any stockholder of the corporation who may be present.

(4) A notice of said election and of any change in the time and place of holding the same shall at least 20 days before it is held be mailed by the said Master to each of the stockholders on said list addressed to the stockholder at the stockholder's last known post-office address.

(5) The Court may by order give to the Master such other powers and duties as may be deemed necessary and proper to effectuate the purpose of this rule.

(6) The Court may impose upon the petitioner, the corporation, or any director thereof, the costs and expenses of the proceeding and of holding said election, including compensation of said Master, and where there are no assets of the corporation in this State, and the petitioner be a nonresident of this State, may require the petitioner to give a bond to secure such costs, expenses and compensation.

Rule 82. Jurisdiction and venue unaffected.

These Rules shall not be construed to extend or limit the jurisdiction of the Court of Chancery or to affect the venue of actions therein.

Rule 83. Procedings in forma pauperis.

(a) If a party seeks to commence, prosecute or defend any action or petition and is unable to prepay fees and costs, the party may 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 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 or a portion of the fees or costs, or the Court may order fees and costs to be paid in accordance with a payment schedule. If, as a result of the relief requested in the action or petition, a party proceeding *in forma pauperis* recovers funds through a judgment, settlement, or other form of award, the funds shall be paid to Register in Chancery so that accrued fees and costs can be deducted and the balance disbursed to the party. If a party proceeding *in forma pauperis* seeks to dismiss a claim without obtaining any recovery, the party or their attorney of record shall file an affidavit stating that no recovery in any form has been obtained.

(b) If the Court denies the application of a party to proceed *in forma pauperis*, the Register in Chancery 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. If the fee is not paid by that date, then the action will be closed or the filing will be rejected. In addition, the Court may order such other action or penalty as it deems appropriate.

History.

Added, effective Oct. 1, 2013.

Rule 84. Court interpreters.

In trials and other proceedings in the presence of a judicial officer, an interpreter shall be provided for indigent persons who have limited English proficiency or are hearing impaired. In determining indigence, the Court shall consider whether the party or parties on whose behalf the services of a court interpreter are sought would be allowed to proceed *in forma pauperis* under Rule 83.

History.

Added Dec. 15, 2014, effective Jan. 1, 2015.

Rule 85. Title.

These Rules may be known and cited as the Chancery Court Rules.

Rule 86. Effective date.

These are the Rules in effect on December 31, 1970. Each rule or paragraph thereof is effective as of the date adopted by the Court. Each rule or paragraph thereof governs proceedings in actions pending on its effective date except to the extent that in the opinion of the Court its application in a particular action pending when the rule or paragraph thereof took effect would not be feasible, or work injustice, in which event, the former procedure applies.

Rule 87. Assignment of causes to Family Court.

(a) *Certificate; contents.* The assignment or transfer of causes and matters by the Court of Chancery to the Family Court, under the respective statutes, shall be by certificate of the Chancellor or 1 of the Vice Chancellors or, if pursuant to a general direction of the Court, of the county Register in Chancery. 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 Register in Chancery forthwith to deliver to the clerk of the lower court the certificate, together with such of the original pleadings and exhibits, or true and correct copies thereof, as the Court shall direct.

(b) *Report.* The report or certificate of the lower court shall be in triplicate and shall be signed by a judge thereof, shall set forth the decision or determination made and shall be filed with the Register in Chancery. Any original pleadings or exhibits shall be returned by the lower court. The Register in Chancery shall forthwith deliver a copy of the certificate or report to counsel for each party.

(c) *Approval of report.* Within 10 days from the filing of the lower court's certificate or report, unless the same be extended or shortened by the Court of Chancery for cause shown, a party may move for further hearing, or for disapproval or modification of the decision or determination made by the lower court. The

Court of Chancery, pursuant to motion or upon its own initiative and after such notice, if any, as the Court directs, may modify or alter any ruling, decision, judgment or determination of the lower court before approval thereof.

History.

Amended, effective Dec. 12, 1973.

Rule 88. Allowance for fees, expenses and services.

In every case in which an application to the Court is made for a fee or for reimbursement for expenses or services the Court shall require the applicant to make an affidavit or submit a letter, as the Court may direct, itemizing (1) the amount which has been received, or will be received, for that purpose from any source, and (2) the expenses incurred and services rendered, before making such an allowance. This rule shall not apply to any petition for the allowance of additional commissions or fees pursuant to Rule 192.

History.

Amended, effective Dec. 25, 1974.

Rule 89. Bonds of fiduciaries.

Each bond filed in the Court of Chancery after December 1, 1969, shall be in the form and manner prescribed by the Court and submitted to the Register in Chancery or filed electronically.

History.

Added, effective Oct. 31, 1969; amended, Jan. 15, 2021, effective Jan. 29, 2021.

Rule 90. Access to documents filed with the Court in civil miscellaneous actions.

(a) Matters docketed as Civil Miscellaneous (C.M.) actions including, but not limited to, guardianships, and associated miscellaneous petitions are confidential and not subject to public disclosure or access by the general public.

(1) The confidential treatment of Civil Miscellaneous (C.M.) actions is not subject to the provisions of Rule 5.1 governing public access to documents filed with the Court in Civil Actions.

(2) Any person or entity aggrieved by the confidential treatment provisions of this Rule may file a motion with the Court requesting public access to the matter. A copy of such motion shall be served upon any known party to the action. Any party to the action who believes that continued confidential treatment is required shall file a response to the motion within eleven days. After considering the motion and any response thereto, the Court shall determine whether good cause exists to allow public access to all or any portion of the record or the proceedings, notwithstanding the privacy concerns inherent in these fiduciary matters.

(b) If the Court issues in a Civil Miscellaneous (C.M.) action an opinion the Court believes may have importance or precedential value to the Bar or the general public, the Court may, to the extent warranted, publish the opinion utilizing pseudonyms or other devices that will remove any indicia of personal identification of the parties or persons involved in the action.

History.

Added, effective Sept. 16, 1970; amended Dec. 15, 2014, effective Jan. 1, 2015.

XI-A. Technology Disputes

Rule 91. Technology Disputes Arising at Law.

The Court shall have jurisdiction to adjudicate a technology dispute involving solely a claim for monetary damages only in the event the amount in controversy exceeds one million dollars.

History.

Added, Sept. 29, 2003.

Rule 92. Consent to Litigate.

(a) Provided that the parties and the amount in controversy meet the eligibility requirements in 10 Del. C. § 346, a written agreement to engage in litigation in the Court of Chancery is acceptable if it contains the following language: "The parties agree that any dispute arising under this agreement shall be litigated in the Court of Chancery of the State of Delaware, pursuant to 10 Del. C. § 346. The parties agree to submit to the jurisdiction of the Court of Chancery of the State of Delaware and waive trial by jury."

(b) The filing fees and costs for a technology dispute shall be established by a Standing Order of the Court which shall be maintained by the Register in Chancery.

History.

Added, Sept. 29, 2003.

XI-B. Rules Governing Private Mediation Proceedings for Business and Technology Disputes

Rule 93. Scope of Rules.

(a) These rules shall govern the procedure in mediation proceedings for technology disputes and business disputes pursuant to 10 Del. C. §§ 346 and 347.

(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 million 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 master sitting permanently in the Court.

(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.

(4) "Consent to Mediate," means a written or oral agreement to engage in mediation in the Court of Chancery. Provided that the parties and the amount in controversy meet the eligibility requirements in 10 Del. C. § 347, 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 Court of Chancery of the State of Delaware, pursuant to 10 Del. C. § 347."

History.

Added, Sept. 29, 2003.

Rule 94. Commencement of Mediation.

(a) *Petition.*

(1) Mediation is commenced by submitting to the Register in Chancery a petition for mediation (hereinafter a "petition") and the filing fee specified by the Register in Chancery. The petition must be signed by Delaware counsel, as defined in Rule 170(b). 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 Register in Chancery, 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 Register in Chancery 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 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 principal place of business in Delaware, 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) *Confidentiality.* The petition and any supporting documents are considered confidential and not of public record. The Register in Chancery 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 a mediation proceeding under these Rules. The Mediator may request parties to exchange or provide to the Mediator documents or other material 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, Sept. 29, 2003.

Rule 95. 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 170 (b), shall also attend the mediation conference on behalf of each party.

(b) *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 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 of 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 wilful, wanton disregard of the rights, safety, or property of another.

(d) *Mediation Agreement.* If the parties involved in the mediation conference 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 conference 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 Register in Chancery.

History.

Added, Sept. 29, 2003.

Rule 96. Appointment of Arbitrator Under Delaware Rapid Arbitration Act.

(a) *Scope.* This rule governs the procedure in a summary proceeding to appoint an arbitrator under 10 Del. C. § 5805.

(b) *Commencement of proceeding.* Commencement of the proceeding under this rule shall be made under Rule 3. Service of the petition or application must be made under Rules 4 or 5, as appropriate.

(c) *Defenses.* A respondent may, but need not, serve an answer within 5 days after service of the petition or application. No counterclaims or cross-claims may be asserted in the answer.

(d) *List of proposed arbitrators.* The parties must file with the Court a joint list of persons that are qualified and willing to serve as an arbitrator under the Delaware Rapid Arbitration Act, 10 Del. C. § 5801 et seq. The list must be accompanied by background information regarding those persons sufficient

to allow the Court to make its decision. Unless the Court directs otherwise, the list must be filed (1) within 7 days after service of the petition or application or (2) within 3 days after service of the answer, whichever is later. The list may be filed by any party, but the list must include all persons proposed by all parties, without indicating which party proposed which person.

(e) *Limitation of proceeding.* Unless the Court directs otherwise, the parties may not take discovery in the proceeding. No dispositive motions may be filed in the proceeding.

History.

Added, effective June 1, 2015.

Rule 97. Special Proceedings Under Delaware Rapid Arbitration Act.

(a) *Definitions.* For purposes of this rule:

(1) "Arbitration" shall have the meaning set forth in 10 Del. C. § 5801(2).

(2) "Arbitrator" shall have the meaning set forth in 10 Del. C. § 5801(3).

(3) "Party" shall mean any party to an Arbitration.

(b) *Enforcement of subpoena.*

(1) This Rule 97(b) governs the procedure in a proceeding to enforce a subpoena issued under 10 Del. C. § 5807(b). The proceeding will be determined in a summary fashion.

(2) An Arbitrator may commence the proceeding under Rule 3 by a petition to enforce a subpoena against the respondent named in the subpoena. Service of the petition on all Parties must be made pursuant to the methods of service in Arbitration. Other service of the petition, including service of the respondent names in the subpoena, must be made under Rule 4.

(3) Unless the Court otherwise directs, the respondent named in the subpoena must serve an answer within 7 days after service of the petition. The Parties may appear in the proceeding but may not serve an answer or file any dispositive motions.

(4) Unless the Court otherwise directs, no discovery may be taken in the proceeding.

(c) *Determination of Arbitrator's fees.*

(1) This Rule 97(c) governs the procedure in a proceeding to determine an Arbitrator's fees under 10 Del. C. § 5806(b).

(2) An Arbitrator may commence the proceeding by a petition to determine fees under Rule 3. The proceeding may be commenced only after the final award in the Arbitration has been issued. No defendant need be named in the petition. The petition must be served on all Parties pursuant to the methods of service in the Arbitration.

(3) The Parties may, but need not, serve an answer.

(d) *Entry of judgment.*

(1) This Rule 97(d) governs the procedure for entry of judgment under 10 Del. C. § 5810(b).

(2) Any Party may commence the proceeding to determine by a petition to enter judgment under Rule 3. No defendant need be named in the petition. The petition must be accompanied by the final award in the Arbitration. Service of the petition must be made on all other Parties pursuant to the methods of service in the Arbitration.

(3) No answer may be filed in the proceeding. No dispositive motions may be filed in the proceeding.

(4) No discovery may be taken in the proceeding.

(5) Upon the Court's satisfaction that the requirements of 10 Del. C. § 5810 have been satisfied, final judgment shall be entered forthwith.

History.

Added, effective June 1, 2015.

Rule 98. Reserved [Reserved]

Rule 99. Reserved for possible future rule [Reserved]

XII. Proceedings to Modify Trusts by Consent

Rule 100. Contents of a petition to modify a trust by consent.

(a) A party seeking to modify a trust by consent shall file a petition with the Register in Chancery.

(b) Every petition to modify a trust by consent shall address each of the following matters:

(1) The factual circumstances under which the trust was settled or created, the reasons for its settlement, how the trust has operated since its settlement including any material amendments since its settlement, and the events leading to the relief sought in the petition;

(2) Whether the trust was settled or created in a state other than Delaware or contains a choice of law provision in favor of the law of a jurisdiction other than Delaware; and

(3) The basis for this Court's jurisdiction over the trust and, to the extent jurisdiction is based on Delaware being the principal place of administration, a description of the administrative tasks and duties carried out by the Delaware trustee or other Delaware fiduciaries and a comparison of those tasks and duties to those entrusted to fiduciaries or proposed fiduciaries domiciled outside Delaware.

(c) Every petition to modify a trust by consent shall address each of the following matters with particularity:

(1) The nature and status of any filed, pending, or threatened action, suit, or proceeding, whether civil, criminal, administrative, arbitral, or regulatory, relating to the subject matter of the trust, or among any of the petitioners or trust beneficiaries;

(2) Any prior determination or judgment on the merits in any action, suit, or proceeding involving any living person who is either a petitioner or a person who will serve as a fiduciary if the relief requested in the petition is granted, resulting in a criminal conviction, an adjudicated breach of the fiduciary duty of loyalty, or a determination reflecting on the honesty or integrity of such person;

(3) The nature of the relief sought in the petition and the reasons why such relief is being sought;

(4) The role(s) of the petitioner(s) in the existing trust (whether beneficiary, fiduciary, adviser, protector, etc.) and the proposed role(s) of the petitioner(s) in the trust if the relief sought in the petition is granted;

(5) How the proposed relief will affect the interests of current, vested future, and contingent beneficiaries;

(6) Any personal interest of any petitioner, or person who will serve as a fiduciary if the relief requested in the petition is granted, creating an actual or potential conflict between the interests of such person and the interests of the current, vested future, or contingent beneficiaries relating to the relief requested in the petition, including but not limited to conflicts relating to differing investment horizons, an interest in present income versus capital growth, or any limitation on, exculpation from, or indemnification for any existing or potential future liability;

(7) Whether any petitioner or beneficiary has a familial, personal, or financial relationship with any person who, as a result of the relief requested in the petition, will be appointed to a fiduciary or nonfiduciary office or role relating to the trust or will receive greater authority, broader discretion, or increased protection, including but not limited to any limitation on, exculpation from, or indemnification for existing or potential future liability;

(8) Whether the relief sought in the petition would lead to any limitation on, exculpation from, or indemnification for any existing or potential future liability on the part of any fiduciary; and

(9) Whether any required consents are being given on behalf of any beneficiaries by representation under 12 Del. C. § 3547. Any petition which relies upon such consents also must conform with the requirements of Rule 103.

(d) In addition to the foregoing, any petition to modify a trust by consent that seeks to confirm a change of situs of a trust from another jurisdiction to Delaware, or that seeks to apply Delaware law to a trust despite a choice of law provision selecting the law of another jurisdiction, also shall address:

(1) Whether the trust instrument contains a provision expressly allowing the situs of the trust or the law governing the administration of the trust to be changed;

(2) If the trust was settled or created in a jurisdiction other than Delaware or contains a choice of law provision in favor of the law of a jurisdiction other than Delaware, whether or under what circumstances the law of the other jurisdiction authorizes changing the situs of the trust or the law governing the administration of the trust;

(3) Whether application has been made to the courts of the jurisdiction in which the trust had its situs immediately before the change of situs to Delaware for approval of the transfer of situs of the trust to Delaware, and the status of the application, or if no application was made, why such approval need not be sought;

(4) Whether Delaware law governs the administration of the trust, and, if so, why. To the extent that the petition relies upon the domicile of the trustee as support for a determination that the trust situs is Delaware or that Delaware law governs the administration of the trust, the petition shall explain why Delaware is the principal place of trust administration, taking into account the administrative tasks and duties that will be carried out by the trustee, any tasks and duties assigned to advisers, trust protectors, or other persons, and any other factors counting in favor of or against Delaware jurisdiction, such as the ability of the Delaware trustee to resign automatically or under specific circumstances; and

(5) Whether a court of any other jurisdiction has taken any action relating to the trust.

History.

Added, effective May 1, 2012.

Rule 101. Appendix of exhibits to consent petition.

(a) The party submitting the consent petition shall file contemporaneously an appendix of exhibits containing all documents relevant to the Court's review of the petition, including but not limited to:

(1) The current trust instrument;

(2) The terms of any proposed modification of the trust's governing instrument;

(3) A blacklined version of the proposed modified trust instrument indicating plainly in what respect the proposed modified trust instrument differs from the current trust instrument;

(4) A clean version showing how the proposed modified trust instrument will read if the consent petition is granted;

(5) Any orders relating to the trust instrument;

(6) A family tree or other document showing the relationship to the trustor of those having a beneficial interest in the trust; and

(7) Consents or statements of non-objection to the relief sought in the petition from all whose interest in the trust is affected by the petition, which may include, but shall not be limited to, consents from:

(i) Trustees and other fiduciaries, unless they have otherwise signified their consent or non-objection to the petition by acting as a petitioner or accepting a fiduciary position;

(ii) Trust beneficiaries, who will generally be those with a present interest in the trust and those whose interest in the trust would vest, without regard to the exercise or non-exercise of a power of appointment, if the present interest in the trust terminated on the date the petition is filed;

(iii) The trustor of the trust, if living; and

(iv) All other persons having an interest in the trust according to the express terms of the trust instrument (such as, but not limited to, holders of powers and persons having other rights, held in a nonfiduciary capacity, relating to trust property).

History.

Added, effective May 1, 2012; amended, effective Dec. 1, 2012.

Rule 102. Form of consents to the relief sought in the petition.

(a) Consents to the relief sought in the petition shall be submitted in the following form:

(1) Each consent shall have a signature line with the name of the individual signing the consent typed or printed underneath.

(2) Each consent shall be executed by (i) the beneficiary personally; (ii) the beneficiary's attorney ad litem; (iii) a person authorized to represent the beneficiary under 12 Del. C. § 3547 or any successor statute; or (iv) a person authorized by applicable law to represent the beneficiary as to the petition (such as, but not limited to, the beneficiary's attorney-in-fact or the Attorney General in the case of certain charitable beneficiaries).

(3) Each consent shall be acknowledged by a person authorized to notarize documents (or a similar official if a document is signed in a foreign jurisdiction) unless there is justifiable cause why the consents cannot be acknowledged and the Court waives the requirement of an acknowledgment by separate order.

(4) Each consent shall affirm that the party executing the consent has been provided with the petition and all disclosures and documents required by Court of Chancery Rules 100(b), 100(c), and 101, and has received, read, understood, and been provided with an opportunity to consult with counsel regarding the consent and the materials provided.

(5) A consent may, but need not, waive notice of draft reports, reports, hearings or other matters relating to the petition.

(6) Each consent shall include a statement in which the consenting party consents to the jurisdiction of the courts of this State as a proper forum for (i) the resolution of all matters pertaining to the administration of the trust for so long as the situs of the trust is Delaware and (ii) any future matters arising out of or relating to the subject matter of the petition.

(b) A statement of non-objection is deemed a consent for purposes of this Rule.

History.

Added, effective May 1, 2012.

Rule 103. Consent petitions appending consents under 12 Del. C. § 3547.

(a) In addition to complying with Rules 100-102, every petition to modify a trust by consent that includes one or more consents being given on behalf of any beneficiaries by representation under 12 Del. C. § 3547, or any successor statute, shall address with particularity the process used to obtain the required consents, including the information provided to the parties giving consent.

(b) Each consent executed under 12 Del. C. § 3547, or any successor statute, shall include a reference to the statute, state the relationship of the person signing the consent to those represented, certify that no material conflict of interest exists between the consenting party and the person(s) represented, including any of the factors set forth in subsection (c) of this Rule, and include in the signature block the name of the person signing the consent, the class of those persons represented, and the relationship between the person signing the consent and the class of persons represented.

(c) Any petition falling under this Rule shall contain a certification, signed by the senior Delaware attorney involved in the matter and the senior out-of-state attorney, if any, involved in the matter, certifying to the best of their knowledge that, after good faith investigation, the person purporting to consent for others by representation:

(1) Will not, as a result of the relief sought in the petition, be appointed to a fiduciary or nonfiduciary office or role relating to the trust;

(2) If already serving in a fiduciary or nonfiduciary office or role relating to the trust, will not as a result of the relief sought in the petition receive greater authority, broader discretion, or increased protection, including but not limited to any limitation on, exculpation from, or indemnification for any existing or potential future liability; and

(3) Does not have an actual or potential conflict of interest with those persons represented relating to the relief sought in the petition, including but not limited to conflicts relating to differing investment horizons or an interest in present income over capital growth.

History.

Added, effective May 1, 2012.

Rule 104. Consent petition proposed orders and application of rules.

(a) The party submitting the consent petition shall file contemporaneously a separate order for each request sought in the consent petition. Proposed orders for multiple individuals, beneficiaries, or other interested parties are not permissible and a separate proposed order for each individual, beneficiary, or interested party must be submitted with the consent petition. The initial filing fee for a consent petition will include the cost of filing one proposed order. If more than one proposed order is submitted with a consent petition, an additional fee equal to the fee charged for filing one proposed order shall be charged for each additional proposed order submitted.

(b) Rules 100 through 104 of Section XII shall apply to any matter before the Court of Chancery in which the relief sought includes a modification of a trust, whether by means of a consent petition, civil action, court approved settlement or otherwise. For purposes of this rule, "modification of a trust" shall not include the severance or division of a trust, the merger of a trust, a distribution from a trust, or the appointment of a fiduciary of a trust if, by the terms of the trust instrument or applicable law, such action is permissible without court intervention, unless the parties seek court approval of such action.

History.

Added, effective Dec. 1, 2012.

Rule 105. Notice of intent to execute writ given by sheriff.

Omitted, effective Apr. 1, 2003.

Rule 106. Appointment of trustee without writ.

Omitted, effective Apr. 1, 2003.

Rule 107. Trustee appointed without writ; contents of petition.

Omitted, effective Apr. 1, 2003.

Rule 107.1. Hearing upon petition for appointment of trustee without writ.

Omitted, effective Apr. 1, 2003.

Rule 107.2. Petition for leave to expend principal or borrow money.

Omitted, effective Apr. 1, 2003.

Rule 108. Discharge of trustee upon recovery of sanity.

Omitted, effective Apr. 1, 2003.

XIII. Guardians and Trustees

Rule 109. Bond by guardian or trustee; power of attorney.

(a) If bond, with or without surety, is required by the Court in the order appointing a guardian or trustee, each such guardian or trustee and each trustee named in a will shall before acting as guardian or trustee or being qualified to act as such give bond or recognizance with any such surety approved by the Court in such amount as the Court shall fix. The Court may waive bond or surety.

(b) In the case of a testamentary trust, if the person designated as trustee is a nonresident of this State or is a corporation which has neither incorporated nor qualified to do business under the laws of this State, then before beginning duties as trustee or being qualified as such, such trustee shall file in the office of the Register in Chancery an irrevocable power of attorney designating the Register in Chancery and the Register in Chancery's successors in office as the person upon whom all notices and process issued by any court of this State may be served, with like effect as personal service, in relation to any suit, matter, cause or thing affecting or pertinent to the trust. The Register in Chancery shall forward forthwith to the trustee, by registered or certified mail, any notice or process served upon the Register in Chancery.

(c) When the will creating the trust relieves the testamentary trustee from giving bond, the court may require that bond be given if it finds that circumstances warrant a disregard of the testator's direction.

Rule 110. Requirements for inventory and supplemental inventory.

(a) Each guardian of the property or trustee appointed by the court shall file a verified inventory with an affidavit that he or she has made diligent inquiry concerning the guardianship or trust assets and that the inventory contains all that have come to light.

(b) Except where the requirement for an accounting is waived in the will, each trustee named in a will shall file a verified inventory of all assets received.

(c) If, after filing an inventory, a guardian or trustee receives additional assets not described therein, he or she shall file a verified supplemental inventory of all such assets.

(d) The inventory required by either paragraph (a) or (b) of this Rule and any supplemental inventory required by paragraph (c) of this Rule.

(i) shall describe such assets;

(ii) shall provide such knowledge or information as to the fair market value of the assets as the guardian or trustee may have; and

(iii) shall be filed in the Office of the Register in Chancery within thirty (30) days after the appointment of the guardian or trustee, or after the receipt of the assets, as the case may be.

(e) This Rule shall not apply to any assets received by a trustee from an executor under 12 Del. C. § 3525(b).

Rule 111. Appraisal.

If the Court is not satisfied that the information contained in the inventory or supplemental inventory as to the value of assets listed therein is sufficient, the Court shall appoint an appraiser who shall make an appraisal of the fair market value of the assets listed in the inventory or supplemental inventory within sixty (60) days of the appraiser's appointment and who shall file the same in the office of the Register in Chancery. The appraiser shall estimate the rental value of any real estate and report any matters respecting the assets which in the appraiser's judgment should be brought to the knowledge of the Court for the benefit of the disabled person or beneficiary or for effecting the care, preservation, development or increase of the assets. If it shall appear that the amount of the bond previously given by the guardian or trustee is inadequate for the proper protection of the assets, the Court shall require the guardian or trustee to give additional bond.

Rule 112.

This Rule is deleted as a separate Rule.

Rule 113. Application to sell real estate of disabled person.

(a) *Appointment of appraiser.* When a guardian of the property makes an application to the Court to sell real estate, the guardian shall first file a motion to appoint an appraiser pursuant to 12 Del. C. § 3951(c). The motion shall be accompanied by a proposed order for the appointment of an appraiser by the Court. The appraiser appointed shall be appointed by the Court and shall be independent of the parties and disinterested in the transaction. The appraiser so appointed shall provide the appraisal report to the guardian or trustee within thirty (30) days of the appointment.

(b) *Petition to sell real estate.*

(1) The guardian shall be authorized to market the real estate of the disabled person for a price equal to or in excess of the appraised value, with the final terms of sale subject to further order of the Court. Thereafter, after obtaining a written contract offer for sale of the real estate, the guardian shall submit a petition to the Court providing a copy of the proposed contract, a copy of the appraisal by the Court appointed appraiser, and any other relevant information regarding the proposed sale. If the guardian seeks to sell the real estate for less than the appraised value, the guardian's petition shall be accompanied by an affidavit explaining why such sale is in the disabled person's best interests, including information regarding the carrying costs of the property, whether the property is vacant, how the property was advertised and marketed, how long the property was marketed, the number of showings and offers received, and whether the proposed sale is an arms-length transaction.

(2) Notice of the petition shall be sent to interested parties identified in the petition to appoint a guardian and to the Office of the Attorney General as counsel for Medicaid in the case of any disabled person who is approved for and receiving Medicaid benefits at the time of the petition. Persons receiving notice shall be required to file any objection within twenty days of the date of such notice. If no objection is filed within the required time period, the Court may, in its discretion, set the matter down for a hearing or consider the proposed sale based on the documents submitted. In considering the petition, the Court shall consider the provisions of 12 Del. C. § 3951 and may approve the sale of the real estate for such price as it finds to be fair and reasonable and in the best interest of the disabled person.

History.

Amended Dec. 15, 2014, effective Jan. 1, 2015; Sept. 1, 2015.

Rule 114. Timing of accountings.

(a) Each guardian of the property or trustee appointed by the Court and each trustee named in a will and required to account by statute or the express provisions of a will shall file with the Register in Chancery and submit to the Court for approval an accounting identifying (1) the value of the account at the beginning of the covered period, (2) each receipt or disbursement made during the covered period, and (3) the value of the account at the end of the covered period.

(b) *Trustee accountings.* A trustee shall file the first trust accounting within ninety days after the one (1) year anniversary from the funding of the trust, and the covered period shall be the first twelve (12) months of the administration of the trust. Further trust accountings shall be filed at least once every two years and the covered period shall be the two years of trust administration that followed the covered period for the last accounting and shall be filed within ninety days of the end of the covered period of each accounting. At such other times as it deems appropriate, the Court may direct a trustee to file an accounting.

(c) *Guardianship accountings.*

(1) Each guardian of the property shall file a first accounting no later than nine months after the date of the guardian's appointment, and the covered period for the first accounting shall be the first six (6) months of the guardian's administration of the disabled person's property, with such covered period

beginning on the date the guardian is appointed. Thereafter, the guardian shall file an annual accounting no later than the first business day of the calendar quarter in which the guardian was appointed. The covered period for each guardianship accounting after the first accounting shall be twelve (12) months of the guardian's administration of the disabled person's property, with each covered period beginning the day after the final day of the previous accounting. At such other times as it deems appropriate, the Court may direct a guardian to file an accounting.

(2) The guardian shall attach to each accounting, except the first accounting and the final accounting, the annual update and medical statement required by Rule 180-B of these rules. No accounting shall be approved before the annual update and medical statement is provided, except the Office of Public Guardian may provide its own review form in lieu of the annual update and medical statement required by Rule 180-B.

History.

Amended, effective Apr. 1, 2003; Dec. 15, 2014, effective Jan. 1, 2015; Jan. 15, 2021, effective Jan. 29, 2021.

Rule 115. Interested party may require accounting.

Upon petition of any party interested in the guardianship or the trust, the court may require a guardian of the property or trustee, whenever or however appointed or named, to file an account.

Rule 116. Requirements as to account.

Every account of a guardian of the property or trustee shall state the period covered thereby. The guardian or trustee shall charge itself with every item of money received and may claim credit for every item of money paid out. Upon direction of the Court or the request of any interested party, a guardian or trustee shall submit to the Register such vouchers as may be required.

Rule 117. Schedules required in account.

Every account of a guardian of the property or trustee shall include a schedule showing such of the following items as may be applicable:

(a) The amount of principal on hand at the time the account begins and the manner of the investment thereof.

(b) The additions to principal, when made and the source from which they were obtained.

(d) The deductions from principal, when made and for what purpose.

(e) The income paid out, when paid, to whom and for what purpose.

(f) The principal on hand at the time the account ends and the manner of the investment thereof.

(c) The amount of income received, when received and from what source.

With each account there shall be filed an affidavit or affirmation by the guardian of the property or trustee that the account is just and true. If principal commissions are claimed there shall also be filed with the account the written statement or statements of computations of fair value required by Rule 132.

History.

Amended, effective Jan. 1, 2010.

Rule 118. Additional requirements upon filing account.

Each account shall state the name and post office address of the person with a disability, the next of kin of the person with the disability or, with respect to a trust, the name and address of each trust beneficiary then eligible or entitled to receive distributions of income or principal (and whether such beneficiary is a person with a disability and the name and post office address of the guardian of such beneficiary). If the account is a distributive or final account it shall include a schedule of any proposed distribution of the principal of the guardianship or the trust and the name and address of each person then entitled to the property, or a share or interest therein, or if such name and address is not known to the guardian or trustee and cannot be ascertained after diligent inquiry, this shall be so represented by the guardian or trustee.

Rule 119. Notice to beneficiaries upon filing of an account.

Upon the filing of an account with the information required in Rule 118, except with respect to persons who have filed a waiver of notice and consent to the account, the Register in Chancery shall forthwith mail to each adult who is next of kin to the disabled person or who is a beneficiary then eligible or entitled to receive distributions of trust income or principal a notice in writing stating that the account has been filed and that the same will be open for inspection and exception for 30 days from the date of filing the account. In case any next of kin of the disabled person or a beneficiary then eligible or entitled to receive distributions of trust income or principal shall be a disabled person, such notice shall be mailed to the guardian of the property of such disabled person. The Court may make an order for publication of notice of the filing of the account in any case where the guardian or trustee does not know or cannot ascertain the name or address a beneficiary then eligible or entitled to receive distributions of trust income principal.

Rule 120. Duties of Register as to accounts filed.

As to each account filed with the Court, the Register in Chancery shall examine the same, compare it with the vouchers, if any, check the calculations and certify thereon whether the Register finds the same to be correct. The Register in Chancery shall also certify thereon the date that the notices required by Rule 119 were mailed.

Rule 121. Objection by person not notified of filing of an account.

Any person entitled to notice of the filing of an account under Rule 119 whose name or address was not included in the information required to be filed with the account under Rule 118, and who has not waived the notice to which he or she is entitled and consented in writing that the account be approved by the Court, may except to the guardian's or trustee's account, notwithstanding any approval thereof by the Court.

Rule 122. When account to be presented to Court for approval.

A guardian of the property or trustee shall not present an account to the Court for approval until after the expiration of 30 days from the date of the filing of the account, unless all of the persons entitled to receive notice thereof under Rule 119 shall have waived the notice and consented in writing to the approval of the account.

Rule 123. Exceptions to an account.

Exceptions to the account of a guardian of the property or trustee shall be in writing and shall be filed in the office of the Register in Chancery. Upon the filing of such exceptions, the Register in Chancery shall forthwith mail to the guardian of the property or trustee notice thereof in writing. The Court will hear exceptions after the expiration of 30 days from the time such notice is sent.

For good cause the Court may grant extensions to the period for filing exceptions to an account.

Rule 124. Procedure on hearing exceptions to account.

At the hearing on exceptions the exceptant shall be heard first, then the guardian of the property or trustee filing the account may reply, and then the exceptant shall be heard in rebuttal.

Rule 125. Testimony on hearing exceptions to account.

At a hearing on exceptions to an account of a guardian of the property or trustee, testimony shall be taken as in other causes and shall be heard by the Court.

Rule 126. Guardian or trustee may be examined.

Every guardian or trustee may be examined on oath before the Court upon any matters relative to the account.

Rule 127. Account may be referred to Master; procedure.

The Court may refer to a Master an account rendered by a guardian of the property or trustee and any exceptions to such account. Within the time specified in the order appointing the Master, the Master shall conduct a hearing, examine the account, consider any relevant evidence and report thereon in writing to the Court, in accordance with Rules 124 through 126 and, as applicable, Part XIV of these Rules.

Rule 128. Procedure by Court on Master's report as to account.

Upon receiving a Master's report the Court may conduct such further proceedings to adjudicate the account as seem appropriate, but in no case shall any matter referred to in the Master's report respecting an account be determined adversely to the guardian of the property or trustee until the guardian of the property or trustee and all interested parties have had an opportunity to be heard.

Rule 129. Effect of Court approval of account.

The approval by the Court of an account shall not be *res judicata* with respect to any matters stated in the account or with respect to the liability of the guardian of the property or trustee or any loss or injury to the guardianship or the trust that shall have occurred through the act, neglect or default of such guardian or trustee, or that shall have resulted from any fraud, deception or concealment by the guardian or trustee. This Rule shall not apply to those matters as to which exception has been taken and determined.

Rule 130.

This Rule is deleted as a separate Rule.

Rule 131. Fee-for-service guardians.

(a) A final guardianship order may provide that a guardian of the person or property shall act as a fiduciary to the disabled person on a fee-for-service basis, and that compensation shall be made to the guardian from the funds of the disabled person on that basis, and not based on a commission as provided in Rule 132. The order shall set forth or incorporate by reference the fee schedule to be used by the fee-for-service guardian in setting its fee.

(b) The fee-for-service guardian shall keep a record of the time spent on the disabled person's behalf for which the guardian will seek payment. Payment shall be authorized by the Court in its discretion upon application of the guardian, with notice to all interested parties. Fee-for-service guardians shall file a yearly accounting of the estate of the disabled person, which shall include the accrued fees claimed by the guardian.

(c) The fee-for-service guardian may request that the guardianship order provide that a fee reserve be set aside if the guardian believes that the creation of such a reserve is in the best interest of the disabled person. The fee reserve shall be placed in an interest-bearing account unless otherwise provided by order of the Court, and interest on the reserve shall be the property of the disabled person. The principal shall be deemed the property of the guardian only when earned and approved by order of the Court.

(d) A fee-for-service guardian of the property of a disabled person shall maintain a separate bank account for that disabled person, unless otherwise provided by order of the Court. All funds of the disabled person shall be kept in this account or in other investments as approved by the Court, with the exception that an amount sufficient to pay the monthly expenses of the disabled person may be placed each month into an escrow account maintained by the guardian, from which the guardian may pay the monthly expenses.

(e) If the Court appoints an entity as a fee-for-service guardian, that entity may, with the Court's permission, appear and file papers with the Court through an officer designated by it.

(f) Any individual or entity serving as a fee-for-service guardian appointed by this Court shall provide a bond in an amount fixed by the Court.

History.

Added, effective June 1, 2001; amended, effective Apr. 1, 2003; Dec. 15, 2014, effective Jan. 1, 2015.

Rule 132. Fiduciary commissions.

As used in this rule the terms "trustee" or "trustees" mean testamentary trustees, trustees for mentally ill persons, trustees by appointment of the Court, and other trustees, and fiduciaries whose duties call for the care and management of property (referred to herein as the "trust estate" or the "trust"). This rule shall not apply to guardianships.

As used in this rule the term "commission period" means a period covering 1 month, 3 months, 6 months or a year.

Subject to the provisions of any valid agreement determining compensation, and subject in any case to increase or decrease by the Court for cause appearing sufficient to the Court a trustee shall be entitled to the following commissions for services:

(a) *Income commissions.* A charge on gross income during each trust accounting year collected by the trustee calculated at the following rates:

6% on the first $20,000 of income;

3.5% on the next $10,000 of income;

3% on the next $270,000 of income;

2% on all income over $300,000.

(b) *Periodic principal commissions.* A charge on the principal or corpus of the trust estate, computable and payable at the times and in the manner hereinafter set forth at the following annual rates:

$^{5}/_{10}$ of 1% on the first $100,000 of principal;

$^{3}/_{10}$ of 1% on the next $100,000 of principal;

$^{2}/_{10}$ of 1% on the next $500,000 of principal;

$^{1}/_{10}$ of 1% on all principal over $700,000.

The principal commissions shall be computed for each commission period on the basis of the fair value of the trust estate, which shall be determined either (1) for any commission period less than annually by an appraisal made by the trustee and certified to the Court as of the last business day of the commission period selected; or (2) by the value theretofore determined as a part of a periodic review of trusts by the trustee, such review to be of a date not more than 12 months prior to the date of making such annual charge. Periodic reviews to be eligible for use for valuation purposes under clause (2) shall be made approximately at 12-month intervals and the date of such reviews shall not vary more than 60 days from 1 year to the next until the termination of the trust, as of which date a final valuation shall be made.

Principal received or withdrawn during any commission period shall be included in the total valuation of the trust estate, but, as to commission periods in excess of 3 months, its value shall be adjusted proportionately for each 3-month period in such commission period that preceded the date of its receipt or followed the date of its withdrawal.

A trustee shall, with respect to any particular trust, select 1 of the commission periods permitted by these Rules and shall adhere to the period selected in computing successive periodic principal commissions for that trust; provided that a trustee may thereafter change such commission period upon notice to the beneficiaries of the trust who are then entitled to receive distributions of income or principal, and to any cotrustees or trust advisors for the trust involved. In any periodic accounting which a trustee is required to file under Rule 114, such fair value so computed shall be certified to the Court in the form of written statements by the trustee, 1 for each commission period for which principal commissions are claimed. Each such certification shall contain a complete list of assets of the principal of the trust estate, the amount of the fair value of each asset, a statement showing which of the methods above referred to has been adopted as a basis of the valuation and the date of such valuation.

The charge aid collection of principal commissions for 1 or more commission periods may at any time from time to time be deferred; in such case, a notion shall be entered on the account submitted to the Court showing the accumulated amount of such principal commissions as computed but not actually charged.

A trustee may not compute or charge periodic principal commissions in which event the trustee shall, at the time of distribution or of termination of the trust or of transfer to a successor trustee, be allowed principal commissions computed under the provisions of paragraph (e) of this rule, or in lieu thereof the trustee may at such time or times apply to the Court for appropriate commissions on principal, which the Court in its discretion may allow and which need not be limited to the amounts of principal commissions at termination set forth by paragraph (e) of this rule.

Notwithstanding an earlier election not to compute or charge periodic principal commissions, a trustee may elect prospectively to compute, charge and collect such commissions at any time during the administration of the trust estate.

Periodic principal commissions may be collected less frequently than the commission period selected for their computation and charge.

(c) *Additional charges in special cases.* When the trust includes 1 or more mortgages, an additional commission shall be allowed at the annual rate of $^1/_4$ of 1% of the total face value of all mortgages held in the trust as of the times of the valuation of the trust assets required by paragraph (b) of this rule or, if the trustee is not charging periodic principal commissions, of the total face value of such mortgages held in the trust on the last business day of each fiscal year of the trust.

When the trust includes real estate, the income commission specified in paragraph (a) of this rule shall apply to gross rents collected by an outside agent and paid to the trustee. If such rents are collected directly by the trustee, the trustee shall be allowed a commission of 8% of gross rentals received.

In the discretion of the Court, additional and special commissions may be allowed for unusual and extraordinary services.

(d) *Decrease of commissions in certain cases.*

(1) *Control in person other than trustee.* If the direction and control of investments in any trust, the corpus of which exceeds $300,000 in value, rest solely with a person other than the trustee, the principal commissions set forth in paragraph (b) of this rule shall be reduced by 15 percent so long as such condition exists.

(2) *Large blocks of securities.* In a trust with limited diversification and a fair value of $1,000,000 or more, three fourths or more of the fair value of which is invested in not more than 2 blocks of stocks and/or bonds, the income commission set forth in paragraph (a) of this rule shall be reduced by 25 percent, so long as such condition exists.

(e) *Principal commissions upon distribution or transfer.* Upon partial or complete distribution of any trust or upon transfer of a successor trustee, the aggregate principal commissions allowable shall be calculated at the following rates:

5% of principal on the first $50,000;

3.6% of principal on the next $50,000;

2.3% of principal on the next $900,000;

1% of principal on all over $1,000,000.

Provided, however, that if at the time of distribution or transfer the trust shall have been administered by the trustee for a period less than 10 years, such principal commissions shall be reduced to the following percentages of the rates hereinabove specified:

30% if termination occurs within 3 years;

40% if termination occurs after 3 and before 4 years;

50% if termination occurs after 4 and before 5 years;

60% if termination occurs after 5 and before 6 years;

70% if termination occurs after 6 and before 7 years;

80% if termination occurs after 7 and before 8 years;

90% if termination occurs after 8 and before 9 years;

100% if termination occurs after 9 years.

There shall be deducted from such principal commissions the sum of all periodic principal commissions theretofore charged and collected by the trustee with respect to the trust estate or, in the case of a partial distribution, with respect to the distributable portion of the trust estate. If such sum exceeds the aggregate principal commission allowable under this paragraph, the trustee shall

not be obligated to repay such excess but shall not ordinarily be allowed any additional principal commission upon termination of the trust.

Such aggregate principal commission shall be computed on the fair value of the trust estate at the time of partial or complete distribution or of transfer to a successor trustee. Such fair value shall be determined by an appraisal made by the trustee as of the date of partial or complete distribution or transfer. In any accounting which a trustee is required to file, such fair value so determined shall be certified to the Court in the form of written statements by the trustee filed with and as a part of the final account of the trustee, or in the case of partial distribution or transfer, as a part of the next account of the trustee required under these rules. Each such certification shall contain a complete list of the assets of the principal of the trust estate, the amount of the fair value of each asset, the date of such valuation and a statement of the amounts previously allowed the trustee as periodic principle commissions under this rule. The time or date of partial or complete distribution or transfer shall mean the date of the event that caused the partial or complete termination or transfer of the trust: e.g., the date a beneficiary dies, the date a beneficiary comes of age, or the date on which a written instrument is delivered to the trustee or a Court order is entered authorizing or directing the transfer to a successor trustee.

(f) *Apportionment of commissions.* Except to the extent that the governing instrument or a Court order shall otherwise provide, principal commissions shall be paid out of principal and income commissions shall be paid out of income. Additional commissions on mortgages and real estate shall be charged to income.

(g) *Perpetual trusts.* If a trust is or becomes perpetual (e.g., a charitable trust), the trustee shall be entitled to the total commissions set forth under paragraphs (a) and (b) of this rule, which shall be charged entirely against income.

(h) *Co-trustees.* The compensation to be allowed to each of 2 or more trustees shall be as the Court in its discretion may determine, considering the amount and character of the trust property, the extent of the risk and responsibility of each trustee, the character of the services rendered by each trustee, the degree of difficulty in administering the trust, the skill and success of the administration, and any other relevant and material circumstances. The compensation allowed each trustee, upon petition of any of them, shall be computed in a manner consistent with the above schedule, but the amounts allowed in the aggregate may exceed the amounts allowed a single trustee at the rates set forth above for normal services.

(i) *Certain payments income for commission purposes.* For the purpose of determining commissions upon income allowable under this rule, income shall be deemed to include (without being limited to) periodic payments of insurance, annuities, pensions, Social Security and railroad retirement board benefits and the like, whether received from public, private or governmental sources; provided that payments shall have been received at substantially regular intervals over a period of at least 12 months during the continuance of the trust and provided further that the Court may in its discretion, when the circumstances are such that the allowance of such commissions upon such payments would work an undue hardship, enter an order modifying the extent to which the provisions of this paragraph shall be applicable to the allowance of commissions on such payments.

(j) *Trustee's fee for review of accountings of an executor or an administrator other than trustee.* When a trustee receives property from an executor or administrator other than itself, a fee equal to the reasonable costs actually incurred by the trustee shall be charged against principal and allowed to the trustee as compensation for review of the actions, administration and accounting of the executor or administrator. In no event, however, shall this fee exceed the sum of $1,000 without special allowance of the Court.

(k) *Successor trustee's fees for review of accountings of former trustee.* When a successor trustee receives property from a former trustee, a fee equal to the reasonable costs actually incurred by the successor trustee shall be charged against principal and allowed to the successor trustee as compensation for review of the actions, administration and accounting of the former trustee. In no event, however, shall this fee exceed the sum of $1,000 without special allowance of the Court.

(*l*) *Minimum commissions.* A trustee shall be entitled to a minimum commission of $500 for services in any l accounting year to be charged against income to the extent collectible as computed under paragraph (a) of this rule and the balance, if any, to be charged against principal.

History.

Amended, effective Jan. 1, 1972; July 1, 1979; Jan. 1, 1983; Apr. 1, 2003; Oct. 18, 2021, effective Dec. 1, 2021.

Rule 132A Fiduciary compensation for individual guardians.

This rule shall apply to compensation for individual guardians of the person and/or property in adult guardianships (referred to herein as a "guardian"). It shall not apply to fee-for-service guardians, the Office of Public Guardian, guardianships over the property of minors, or situations where compensation of the guardian has been established via an estate planning instrument.

As used in this rule the term "accounting period" means a period o f six (6) months for the guardian's first accounting and of one (1) year for all subsequent accountings.

Subject to the provisions of any valid agreement determining compensation approved by the Court, and subject in any case to increase or decrease by the Court for cause appearing sufficient to the Court, a guardian shall be entitled to the following compensation for services:

(a) *Allowable compensation.* — With Court approval, a guardian shall be entitled to compensation of $250 for guardianship services for any six (6) month accounting period, and $500 for guardianship services provided for any one (l) year accounting period, to be charged against guardianship income to the extent collectible. A guardian seeking compensation in excess of the allowable compensation amount for services provided for any one (1) accounting period may petition the Court who, in its discretion, will consider the amount and character of the guardianship property, the extent of the risk and responsibility of the guardian, the character of the services rendered, the degree of difficulty in administering the guardianship, the skill and success of the administration, and any other relevant and material circumstances.

(b) The charge and collection of compensation for one (1) or more accounting periods may from time to time be deferred, either at the guardian's request or at the Court's discretion; in such cases, the compensation approved by the Court shall be entered on the case docket, along with a notation of the accumulated amount of such compensation approved but not actually charged or collected.

(c) *Co-guardians.* — The compensation to be allowed to each of two (2) or more co-guardians of the person or property for any accounting period shall be as the Court in its discretion may determine, considering the amount and character of the guardianship property, the extent of the risk and responsibility of each guardian, the character of the services rendered by each guardian, the degree of difficulty in administering the guardianship, the skill and success of the administration, and any other relevant and material circumstances. The compensation allowed each co-guardian, upon petition, may exceed the allowable compensation for a single guardian under subsection (a), at the discretion of the Court.

History.

Added Oct. 18, 2021, effective Dec. 1, 2021.

Rule 133. Appointment and duties of successor guardian or trustee.

When a new guardian of the property or trustee is appointed by the Court, then as soon as the new guardian of the property or trustee shall have given any bond required by the Court, the preceding guardian of the property or trustee, or the representative of a deceased guardian of the property or trustee, shall pay over, transfer and deliver to the new guardian of the property or trustee, and the new guardian of

the property or trustee shall receive and take possession of, all cash, investments, securities, property and effects constituting the guardianship or trust. Unless otherwise provided by the terms of the governing instrument or by order of the Court, whenever the new guardian of the property or trustee has actual knowledge of a breach of fiduciary duty by its predecessor that would cause a reasonable person to inquire, the new guardian of the property or trustee shall examine the accounts and records of its predecessor, and inquire into the acts and omissions of its predecessor, and report to the Court any maladministration of its predecessor. This provision shall apply in the case of the resignation, removal or death of a guardian of the property or trustee.

Rule 134. Foreign trusts.

When a trust is created in a foreign jurisdiction and there is in this State real or personal property subject to the trust so created, the trustee (all references to "trustee" include all acting trustees and their successors) of such property shall have the same rights and powers in this State respecting such property as it may have respecting a similar kind of property in the state where the trust was created, upon (i) the filing and recording in the office of the Register in Chancery in the county in which such property is located a certified copy of the instrument creating the trust, and (ii) subject to the approval of the Court, such other certificates as shall show that the trustee is duly appointed and qualified, chat it is entitled by the instrument creating the trust, or by the order or decree of some court or officer of competent jurisdiction, to exercise rights and powers over such property and that the trustee has given such security in such form and amount as may be required in the relevant foreign jurisdiction.

Rule 134.1. Business trusts.

The provision of Part XIII of these Rules dealing with trusts and trustees shall not apply to a business trust.

XIV. Masters

Rule 135. Appointment; removal.

The Court shall have authority in any cause pending in the Court of Chancery of this State to appoint a Master in Chancery pro hac vice in such particular cause.

The appointment of a Master in Chancery 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.

Rule 136. 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 Register in Chancery, 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 may be deemed necessary and proper, subject at all times to the revision and control of the Court.

Rule 137. Witnesses; documents.

Witnesses may be summoned to appear before the Master by subpoena in the usual form, which shall be issued by the Register in Chancery 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 the Master 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 Register'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.

Rule 138. Proceedings to be transcribed.

All proceedings before the Master shall be transcribed by a stenographer selected by the Master except in proceedings not involving the submission of evidence if agreed to by the parties and approved by the Master. The Master shall fix the compensation of such stenographer and apportion the cost of such transcription among the parties.

History.

Amended, effective June 1, 2001.

Rule 139. 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 ruling upon each objection. When the Master has ruled that a witness or party shall answer a given questions 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 upon the testimony and evidence that was submitted. 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 report such testimony as the Court may rule to be irrelevant or immaterial.

Rule 140. 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 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.

Rule 141. 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.

Rule 142. Limiting time for taking testimony.

The Master may fix a day within which any party shall close its proofs, which time the Master may 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 without waiting for further evidence or testimony from the party so failing to close its proofs within the time limited.

Rule 143. Standing Masters; Masters' orders.

The Chancellor may designate one or more attorneys admitted to practice by the Delaware Supreme Court as full-time Masters in Chancery. These Masters shall not be otherwise engaged in the practice of law and shall serve at the pleasure of the Chancellor. When a Master appointed pursuant to this Rule issues a directive of this Court denominated as an "Order," that directive shall be deemed a final Master's Report under Rule 144 of the Rules of this Court.

History.

Added, effective Mar. 15, 2007.

Rule 144. Master's reports.

(a) *Final reports.* A Master shall issue a decision in the form of a final report. A final report may be provided orally on the record or in writing. The final report shall be filed with the Register in Chancery and include factual and legal determinations sufficient to support the Master's decision and to permit *de novo* review by the Court.

(b) *Draft reports.* Before issuing a final report, a Master may provide the parties with the report in draft form. A draft report may be provided orally on the record or in writing. The Master may modify the draft report in response to exceptions by the parties or as the Master deems appropriate. Any party failing to file a notice of exception within the period prescribed by this rule shall be deemed to have waived the right to review the report, except insofar as the report is modified in response to the exceptions of other parties.

(c) *Exceptions.* Any party may take exception to a final report or a draft report. Exceptions to a draft report shall be heard by the Master and shall be addressed in the final report issued by the Master. Exceptions to a final report shall be heard by the Court. If the Master files a draft report, then the only exceptions that a party may take to a final report are (i) exceptions to the draft report that were timely

filed and disallowed and (ii) exceptions to any differences between the draft report and the final report. If a notice of exception to a final report is not timely filed, then the parties shall be deemed to have stipulated to the approval and entry of the report as an order of the Court.

(d) *Schedule for taking and briefing exceptions.* Unless otherwise agreed by the parties or directed by the Master or the Court, the following schedule shall govern the taking and briefing of exceptions.

(1) In actions that are not summary in nature or in which the Court has not ordered expedited proceedings, any party taking exception shall file a notice of exceptions within eleven days of the date of the report. The party taking exception shall file its opening brief in support of its exceptions within twenty days after filing the notice of exception. Any party opposing the exceptions may file an answering brief within twenty days after the filing of the exceptant's opening brief. The exceptant may file a reply brief within fifteen days of the answering brief. If the party taking exception fails to file a timely opening brief, then the notice of exception shall be deemed withdrawn.

(2) In actions that are summary in nature or in which the Court has ordered expedited proceedings, any party taking exception shall file a notice of exceptions within three days of the date of the report. The presiding Chancellor, Vice Chancellor, or Master shall promptly set a schedule for briefing on the exceptions, taking into account the need for summary or expedited resolution of the action.

(e) *Record for taking exceptions.* Proceedings before the Court on any exceptions shall be on the record before the Master, unless the Court determines otherwise for good cause shown. Any party taking exception to an oral report shall obtain a transcript of the report, which shall be filed as an exhibit to the party's opening brief. If a party wishes to rely on a transcribed portion of the record when taking exception to or opposing an exception to a report, then the party that wishes to rely on the transcribed portion shall obtain the appropriate portion of the transcript and file it as an exhibit to the opening or answering brief, as applicable. The Court or the Master may order additional portions of the transcript and tax the parties as appropriate.

(f) *Stay of exceptions.* For good cause shown, the Master may stay the time for taking exceptions to a report until a later phase of the proceeding.

(g) *Shortened periods for certain orders.* An order of the type identified in this section, when issued by the Master, shall constitute a final report for purposes of this Rule, except that any notice of exception to the report shall be filed within three days of the entry of the order. If no exceptions are taken, the order shall be considered submitted to the Chancellor, who will review the order *de novo* and enter it as an order of the Court to the extent appropriate. If the Court does not indicate otherwise within three days after the expiration of the period for taking exceptions, the order shall be deemed adopted in its entirety as an order of the Court, and shall have the same effect as though issued by a Chancellor or Vice Chancellor, as of the date it was issued by the Master, *nunc pro tunc*. The types of orders falling within this section are scheduling orders, any order issued in an uncontested civil miscellaneous action, preliminary orders setting a matter for a hearing and directing that notice shall be provided, and returns of sale.

(h) *Agreement for submission to final decision by Master.* Subject to the approval of the Court, the parties may agree to submit any case or proceeding or any claim or issue in a case or proceeding to a Master for a final decision that shall not be subject to further judicial review. Any such agreement must be embodied in a stipulation filed with the Register in Chancery (i) specifying the case, proceeding, claim, or issue to be submitted to the Master for final decision, (ii) waiving the right of any party to seek further judicial review of the Master's decision, and (iii) reciting that each party has consulted with counsel and agreed to the submission of the case, proceeding, claim, or issue to the Master for a final decision that shall not be reviewable. The stipulation shall be executed by counsel for all parties and approved by the Court. Matters governed by the stipulation shall proceed in accordance with Rules 136 through 147, except that no exceptions shall be taken to the final report, which shall have the same effect as a final order of the Court and shall not be subject to further judicial review or appeal.

History.

Amended, effective Nov. 1, 1987; June 1, 2001; July 1, 2005; Mar. 15, 2007; Dec. 15, 2014, effective Jan. 1, 2015.

Rule 145. Inspection of documents.

Where, by any decree or order of the Court, or subpoena issued by the Register in Chancery, 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.

Rule 146. Receivership claims filed with register.

When a Master is appointed to pass upon the validity, lawful order and priority of claims of creditors in a receivership cause, such claims shall not be filed with the Master, but with the Register.

Rule 147. Accounts; filing of exceptions and examining parties.

When an account is referred to a Master all exceptions thereto must be filed with the Master and heard by the Master, and the Master or any party interested in the account shall have power to examine the accountant touching the account and all matters therein contained, and touching the vouchers and other papers submitted therewith.

XV. Receiverships; Receivers and Trustees for Corporations

Rule 148. Applicable rules.

Rules 149 to 168 shall apply to all cases in which receivers are appointed for any person, partnership, association or corporation, existing or dissolved, and in all cases in which trustees are appointed for a dissolved corporation, whether such receivers or trustees are appointed pursuant to a statute of the State of Delaware or pursuant to the inherent authority of the Court; provided, however, that the Court may relieve the receivers or trustees from complying with all or any of the duties and procedures set forth in Rules 149 through 168 and may impose such other duties or prescribe such other procedures as the Court may deem appropriate.

Rule 149. Appointment on verified complaint; receiver pendente lite.

Every complaint filed for the appointment of a receiver for a corporation shall be verified. A receiver pendente lite may be appointed by the Court if cause therefor be shown by the complaint, and it be prayed for therein; and whether the receiver is appointed or not, a rule may be ordered by the Court requiring the defendant to show cause why the receiver pendente lite should not be continued, or such a receiver appointed, as the case may be.

Upon the hearing of the rule, if an answer admitting the allegations of the bill be not then filed, a receiver pendente lite may be appointed or the receiver theretofore appointed may be continued until final order, or until the further order of the Court, upon the giving of a bond by the receiver to the State of Delaware within the time fixed in the order of appointment, with surety to be approved by the Court.

Rule 150. Nonresident.

No person shall be appointed sole receiver who does not at the time of appointment reside in the State of Delaware.

Rule 151. Duties after appointment.

Every receiver unless otherwise ordered by the Court shall, within 30 days from the time of the receiver's appointment and qualification, file with the Register in Chancery:

(1) An inventory of all the estate, property and effects of the company and an appraisement thereof to be made by appraisers to be appointed by the Court.

(2) A list of the debtors and creditors of the company, showing all the debts due to and from the company, with the last-known post-office address or place of business of each debtor and creditor.

(3) A list of the stockholders of the company with the last-known post-office address or place of business.

It shall be the duty of the receiver to include in the receiver's first report a statement whether the capital stock outstanding has been fully paid in, and if not, the names and post-office addresses of the holders of shares whose stock has not been fully paid for, and the number of shares held by them respectively, and the sums of money due from each of them on that account.

If, after filing the inventory above mentioned, a receiver shall acquire additional property of the company, not described in the inventory, the receiver shall forthwith file a supplemental inventory describing such property, and apply to the Court for the appointment of appraisers to appraise the same. The Court shall appoint appraisers unless the additional property consists of money only; and if it shall appear that the amount of the bond previously given by the receiver is inadequate for the proper protection of the receivership estate, the Court shall require the receiver to give additional bond, with surety.

Rule 152. Depository for receivership money.

The receiver shall deposit in a banking institution in the State of Delaware in a special account in the receiver's name all moneys of the corporation that may come into the receiver's hands. Immediately upon making the first deposit therein, the receiver shall file in the office of the Register a written statement of the depository showing compliance with this provision.

Rule 153. Receiver to notify creditors.

Unless otherwise ordered by the Court, within 15 days after the filing of a list of the creditors of the company, the receiver appointed pursuant to Rule 149 shall give to every known creditor of the company notice by mail to file their claims against the company within a certain time to be fixed in said notice, which shall not be less than 60 days after the mailing of said notices; and cause a like notice to be published in such newspaper or newspapers and for such time as shall be designated by the Court; and forthwith file a report of the receiver's performance of the duty, which report shall include an affidavit executed by the receiver and stating that the receiver has diligently inquired and has no knowledge of any additional creditors who are not identified in the list required by Rule 151(2).

History.

Amended Apr. 23, 2018, effective July 1, 2018.

Rule 154. Contents of creditors' claims.

Within 60 days after notices are mailed to creditors, or such further time as the Court for good cause shown may allow, all claims of creditors shall be filed in the office of the Register in Chancery; and copies thereof shall be served on the receiver or on the attorney for the receiver. Claims shall consist of a statement in writing under oath, signed by the creditor, setting forth the amount claimed to be due at the time of the appointment of the receiver or thereafter, the consideration therefor and the payments received on account thereof, if any, and shall contain an averment as to what security if any is held therefor.

All book accounts shall be fully itemized.

When interest is claimed on instruments bearing interest according to the terms thereof, the time from which interest is claimed and the rate thereof shall be stated in the claim.

Claims based on obligations of record must be accompanied with a certified abstract of the record.

Claims based on written evidence of indebtedness must be accompanied by such instrument, unless the same be lost or destroyed, and in such case a statement under oath of the circumstances of such loss or destruction shall be filed with the claim.

Claims having priority and claims based upon liens on the property of the corporation shall contain a statement of the priority, if any, to which they are entitled.

Rule 155. When creditor may withdraw original instrument.

Original instruments filed by creditors may be withdrawn upon application to the Court, and a copy thereof substituted therefor, until the Court shall upon application of the receiver or any party interested require the production of the original instrument.

Rule 156. Exceptions to creditors' claims.

Exceptions to claims shall be filed in the office of the Register in Chancery and shall be served on the person to whose claim exception is taken, by the receiver, or by any party in interest, within 30 days from the expiration of the time for filing claims or of any extension of time allowed by the Court and will be heard by the Court upon such notice to the receiver, creditor and exceptant as may be ordered by the Court.

Rule 157. Testimony at hearing on exceptions.

At the hearing of exceptions to claims and to accounts, the testimony of witnesses shall be taken in the same manner as is provided for in other causes pending in this Court.

Rule 158. Sale of assets; notice to creditors and stockholders.

Unless otherwise ordered by the Court, notice of all sales to be made by the receiver shall be sent by the receiver by mail at least 15 days prior to the day of sale to all creditors who have filed claims, and to all stockholders.

Rule 159. Rights of lienholder upon purchase of asset.

Whenever the person holding a lien for money due from the corporation on property sold by a receiver, or on a particular part thereof, becomes the purchaser of the property covered by the lien, and the validity, priority and amount thereof have been duly determined by the Court, then the Court may by order permit

the purchaser to credit the amount of the purchase price, or part thereof, on the debt due the purchaser under the lien, if the price be less than the whole debt, and if the price be more than the whole debt, the purchaser shall be required to pay only the excess of the purchase price over the debt.

Rule 160. Requiring corporate officer or agent to make disclosure.

Upon the application of the receiver or any creditor or stockholder of the corporation, the Court may require any officer, employee or agent of the corporation to appear before the receiver, or before a Master appointed by the Court, at a designated time and place, and answer such questions respecting the assets, liabilities, dealings and transactions of the company as are or seem likely to be important in the discovery, recovery and collection of the assets of the company and the administration of the receivership. Whenever necessary, a Master will be appointed to conduct the examination and make report of any matter deemed by the Master important in the administration of the receivership.

Rule 161. Duty to file reports.

Every receiver shall within 3 months of being appointed submit to the Court a full report of the receiver's proceedings and the state of the affairs of the company, and thereafter make like report at the expiration of each year during the pendency of the receivership.

Rule 162. Contents of accounts; duty of register.

Accounts rendered by receivers shall be for a period therein stated, and show in detail (1) all moneys received, when, from whom or from what source; (2) gains or losses on sales made of the property included in the inventory; (3) payments made, to whom and for what purpose. Every such account shall be accompanied by oath of the receiver that the account is just and true, and shall be filed in the office of the Register in Chancery, with the vouchers for all payments; whereupon it shall be the duty of the Register in Chancery to examine the account, compare it with the vouchers, prove the calculations and additions and certify therein whether the Register finds the same to be correct.

Rule 163. Register: Duty when receiver in default.

When the receiver shall fail to make or file reports, returns or accounts at the time when they shall be due, the Register shall report the same to the Court, and also notify the receiver of the delinquency.

Rule 164. Petition for allowances.

A receiver desiring compensation for services and allowances for expenses and services of the receiver's attorney shall file with the account a petition for such allowances, stating generally therein the services rendered by such receiver and the receiver's attorney and the compensation desired for the services of each. A separate petition for compensation may be filed by the attorney for the receiver.

Rule 165. Notice of filing of account or petition for allowances.

Upon the filing of an account by a receiver or a petition of a receiver or an attorney for a receiver for compensation and allowances, the Register in Chancery shall give notice by mail of the filing thereof and the hearing thereon to all classes or persons designated in the order of the Court setting such account or petition for hearing.

Rule 166. Exceptions to account or petition of allowances; Register's duty.

Exceptions to an account or to a petition for allowances filed by a receiver, or an attorney for a receiver, shall be made in writing by any party interested, and shall be filed in the office of the Register and served on the receiver or the attorney for the receiver, as the case may be, within the time fixed by the Court in its order setting such account or petition for hearing. The exceptions will be heard by the Court at the time fixed for the hearing on the account or petition unless otherwise ordered.

Rule 167. Final account; allowances; distribution.

Upon settling the final account with the receiver, the Court may make final allowances to the receiver for the receiver's services and expenses and for the services of the receiver's attorneys and order the distribution by the receiver among the creditors or stockholders of the company of the moneys remaining for distribution to which they are entitled; and thereupon the receiver shall make report to the Court of the receiver's proceedings under the order of distribution, submitting vouchers for all payments so made.

Rule 168. Discharge.

When a receiver shall have made a final distribution of the property and effects of the company and duly reported the same, and shall have complied with all orders and decrees of the Court touching the distribution, the receiver may be discharged by the Court upon petition of the receiver.

XVI. Judicial Ethics, Attorneys, etc.

Rule 169. Canons of judicial ethics.

(a) *Judicial ethics.* The Code of Judicial Conduct, approved and adopted by the American Bar Association on August 16, 1972, as modified and published by the Supreme Court in pamphlet form effective April 1, 1974, shall govern the conduct of all Judges of this Court.

History.

Amended, effective July 1, 1974.

Rule 170. Attorneys.

(a) *Admission.* Any person admitted to practice in the Supreme Court of this State shall be entitled to practice as an attorney in this Court so long as such person remains entitled to practice in the Supreme Court and maintains an office in this State for the practice of law.

(b) 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"). 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.

(c) 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 Principles of Professionalism for Delaware Lawyers, as effective on November 1, 2003, and as amended;

(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 Register in Chancery of the county in which the matter pends 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 number of actions 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 in the Supreme Court registration fund for the purpose of the governance of the Bar of its Court and may be distributed pursuant to Supreme Court Rule 69. 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;

(vii) Whether the applying attorney has been disbarred or suspended or is the object 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.

(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, Clerk of the Court, 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 5(aa). 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 1st appearance of the attorney who seeks admission pro hac vice before the Court or the Clerk of the Court 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 facts.

(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.

History.

Amended, effective Jan. 1, 1987; May 11, 1989; Apr. 7, 1992; Mar. 26, 2004, effective July 1, 2002; Jan. 16, 2015, effective Feb. 1, 2015; Apr. 23, 2018, effective July 1, 2018.

Rule 171. Briefs.

(a) *Order of filing and number thereof.* Unless otherwise directed by the Court, briefs shall be served and filed in the following order: First, the main brief of those who at the particular stage of the case are the moving parties; second, the answering briefs of those who oppose the position supported by the main brief; third, the reply brief of those who have previously filed a main brief. Where, as in interpleader, will construction, and other cases, the claims or positions asserted by the defendants are mutually antagonistic, those asserting each separate claim or position shall serve and file separate briefs as moving parties; and all parties who oppose such a position or claim shall serve and file answering briefs to which reply briefs may be filed. Unless otherwise ordered, no additional briefs or letters containing argument shall be filed without first procuring Court approval.

(b) *Time of filing.* The time of filing briefs is governed by Rule 79.2.

(c) *Serving and filing briefs and letters.* Unless otherwise ordered the original and 1 copy of all briefs shall be mailed to or filed with the Register who shall immediately docket them and mail or deliver the original to the Judge to whom the matter has been assigned; and at the same time, a copy shall be served on each Delaware attorney, or firm of attorneys, appearing in the proceeding. If sent by mail, briefs must be posted sufficiently in advance so as to be delivered, in the ordinary course of the mails, not later than the last day for filing. A copy of every letter of counsel to the Court containing argument shall be sent to the Register for filing in the cause and another copy sent opposing counsel.

(d) *Form of briefs and memoranda.*

(1) *Content of covers.* On the front cover of each brief or memorandum of points and authorities there shall be stated the name of the Court, the caption of the case, the number assigned to the case by the Register in Chancery, a description of the nature of the brief or memorandum, the name and designation of the party for whom it is filed, and the name, address and telephone number of counsel by whom it is filed.

(2) *Type of paper and print.* Briefs and memoranda of points and authorities may be produced by any process which produces a clear black image on opaque, unglazed white paper.

(3) *Binding, margins and spacing.* All briefs and memoranda shall be firmly bound along the left side and printed on $8^1/_2$ x 11 inch paper. Briefs and memoranda of points and authorities shall have double spacing between each line of text, except for quotations and footnotes, and margins of not less than 1 inch on all sides.

(4) *Typeface.* All text in briefs and memoranda of points and authorities, including text in footnotes, shall use Times New Roman 14-point typeface.

(e) *Contents.* Briefs shall contain the following (in separate divisions):

(1) A table of contents or index.

(2) A table of citations arranged in alphabetical order.

(3) In the main and answering briefs, a statement of the nature and stage of the proceeding.

(4) In the main and answering briefs, a concise statement of all relevant facts with page references to the transcript of testimony, if any, and to pleadings, exhibits, or other sources of the facts.

(5) In the main and answering briefs, a concise and accurate statement of the questions involved.

(6) An argument, divided into sections (and subsections, if need be) under appropriate headings indicating the points discussed and correlating the sections with the stated questions involved.

(f) *Length.*

(1) *Type-volume limitation.* Unless otherwise ordered by the Court, filings shall comply with the following word limits:

(A) *Merits-related motions.* An opening brief in support of a motion pursuant to Rules 12, 23, 23.1, 56 or 65, and opening pre-trial or post-trial briefs, shall not exceed 14,000 words. The answering brief filed in response shall not exceed 14,000 words. The reply brief shall not exceed 8,000 words. The front cover, table of contents, table of citations, signature block, and any footer included pursuant to Rule 5.1(c) do not count toward the limitation. All other text counts toward the limitation.

(B) *Other motions.* All other applications shall be made by motion without a supporting brief. The motion seeking relief shall not exceed 3,000 words. The opposition to the motion shall not exceed 3,000 words. The reply shall not exceed 2,000 words. The caption, title, signature block, and any footer included pursuant to Rule 5.1(c) do not count toward the limitation. All other text counts toward the limitation.

(C) *Letters.* A letter to the court shall not exceed 1,000 words. Parties may use letters to provide updates to the court or to address logistical and scheduling issues. Letters should not be used to request substantive relief. The letterhead, header, address and delivery information, caption, salutation, complimentary close, signature, statement of enclosures and copy recipients, and any footer included pursuant to Rule 5.1(c) do not count toward the limitation. All other text counts toward the limitation.

(2) *Certificate of compliance.* Any document listed in paragraph (f)(1) of this rule must include in the signature block the phrase "Words:", followed by the number of words in the document. Use of that phrase constitutes a certification by the signatory of the document, whether counsel or an unrepresented party, that the document complies with the typeface requirement and the type-volume limitation. In so certifying, the signatory may rely on the word count of the word-processing system used to prepare the document.

(g) *Form of citations.* Except as provided below, citations will be deemed to be in acceptable form if made in accordance with the "Uniform System of Citation" published and distributed from time to time by the Harvard Law Review Association. The style of citation of all Delaware opinions which are reported in any series of the Atlantic Reporter shall be as set forth in the following examples:

Melson v. Allman, Del. Supr., 244 A.2d 85 (1968).

Prince v. Bensinger, Del. Ch., 244 A.2d 89 (1968).

State v. Pennsylvania Railroad Co., Del. Super., 244 A.2d 80 (1968).

All further references to the previous State Reporter System shall be omitted. The citation of reported opinions of other jurisdictions shall similarly designate the court, the National Reporter System citation and the date, omitting reference to any state reporter system.

(h) *Opinions cited in brief.* If a cited opinion does not contain a sufficient statement of the facts to demonstrate its pertinency to the pending argument, a statement of the facts shall be included in or attached to the brief. If a 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.

(i) *Compendium.* A party may submit a compendium of authorities that should be limited to those selected authorities that the party wants the Court to focus on. Examples of key authorities to consider include the principal Delaware decisions (whether reported or unreported), persuasive non-Delaware decisions, non-Delaware statutes, regulations, excerpts from treatises, articles, and other authorities not readily accessible to the Court. A compendium should not duplicate authorities already provided by an opposing party. A case that is cited only once generally should not be included in the compendium.

(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 July 28, 1978; Mar. 1, 1983; effective Apr. 1, 2012; effective Apr. 1, 2014; June 30, 2017, effective Aug. 1, 2017; Sept. 7, 2018, effective Sept. 14, 2018.

Rule 171A. CD-ROM Briefs.

In addition to the electronically or conventionally filed paper copies of the brief, as required by these rules, a party may file a brief on CD-ROM subject to the following requirements. The electronically filed or paper submission filed pursuant to these Rules will be the "official version" for the Court's purposes. Except as specifically noted, the filing of a CD-ROM brief does not affect the other requirements of these Rules governing the preparation, filing, and service of the brief:

(a) The cover page of the brief electronically or conventionally filed shall include the following legend in bold type immediately beneath the case number in the caption: "CD-ROM Version To Be Filed".

(b) Multiple parties filing a brief jointly may file such a brief on CD-Rom. Joinders to a brief may also be filed on the same CD-ROM.

(c) A CD-ROM brief shall be identical to the "official version" filed with the Court, including pagination and the signature of counsel, or an /s/ indicating that counsel has authorized its filing.

(d) The table of contents of the CD-ROM brief shall contain hyperlinks to the cited page within the brief.

(e) The CD-ROM brief shall contain hyperlinks to all cases, statutes, reference materials, exhibits and such other items as are cited in the brief, subject to the following:

(i) Hyperlinks shall link directly to the cited page(s) of the linked document.

(ii) Hyperlinks shall only link to documents filed on the same CD-ROM, and not directly to the internet or other external sources.

(f) *Format:*

(i) Any party filing an e-brief shall file a single CD-ROM.

(ii) Any party wishing to file an e-brief on DVD rather than CD-ROM shall seek leave of Court to do so.

(iii) CD-ROM brief must be contained on Windows-compatible CD-ROMs.

(iv) The Court will not require any particular structure or format for electronic briefs and will accept any format as long as it meets the minimum requirements stated within this rule.

(v) CD-ROM briefs must either come with their own viewing programs or be viewable using (a) a program such as Adobe Acrobat that is downloadable from the Internet at no cost to the user, (b) both Internet Explorer and Netscape Navigator or (c) Microsoft Word.

(vi) CD-ROM briefs must be free of computer viruses.

(vii) CD-ROM briefs must be accompanied by a statement, preferably within or attached to the packaging, which (a) provides the instructions for viewing the record or brief and the minimum equipment required for doing so and (b) verifies the absence of computer viruses and describes the software used to ensure that they are virus-free.

(viii) The CD-ROM shall not be bootable.

(ix) The CD-ROM shall also include a text version of the brief in the format in which it was created and in RTF [Rich Text Format].

(x) Files shall be configured to allow selecting and printing. All fonts used in a file shall be imbedded in the file.

(g) *Time and Form of Filing:*

(i) The CD-ROM brief shall be filed not later than ten days after the filing of the electronically filed or conventionally filed paper copies of the brief, unless the Court directs otherwise.

(ii) Three copies of the CD-ROM shall be filed by conventional means. The CD-ROM version of the brief shall not be electronically filed.

(iii) Two copies of the CD-ROM shall be served on each party separately represented and on each pro se party. A certificate of service shall accompany each submission.

(iv) Each submission shall be labeled with the name of this Court, the short caption of the case and its case number, the title of the brief, the date of submission, and the name of the party making submission. The label shall appear on the CD-ROM itself and on the container.

(h) *Filing under seal:*

(i) To the extent any portion of a CD-ROM brief shall be filed under seal, the parties shall substitute an appropriately worded page or document into location of the document or portion of the document to be filed under seal. The hyperlink for the page or document shall link to the substituted page or document.

(ii) A CD-Rom brief filed under seal shall include the entire e-brief including all materials and the label shall include: "Filed under seal."

History.

Added, Oct. 15, 2007, effective Dec. 1, 2007.

Rule 172. Sureties.

(a) *Surety companies.* Each surety company shall, in the month of January in each year, file with the Register in Chancery of the Court of Chancery, 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 the power of attorney, before the Court shall accept or approve such company as surety. Nothing herein contained shall prohibit the execution by a surety company of any bond within the 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 as surety in any case pending in this Court.

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

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

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

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

(c) *Proceedings by remote communication.* The Court may, upon the request of any party or sua sponte, direct that any argument or hearing be held by means of remote communication in whole or in part. The Court may make such orders regarding appearance of counsel, parties and witnesses by remote communication as it shall deem appropriate.

History.

Amended Jan. 4, 2006, effective Feb. 1, 2006; June 4, 2009, eff. Aug. 1, 2009.

Rule 174. Mediation.

(a) *Scope and purpose.* The term "mediation" means the process by which a neutral mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution. The scope of the mediation includes all contacts and communications between the mediator and any party or parties, or among the parties, from the time of the referral to mediation until its conclusion. The purpose of mediation in the Court of Chancery is to provide the parties with convenient access to a dispute resolution mechanism that is fair, confidential, effective, inexpensive, and expeditious. This rule shall be interpreted in accordance with its purpose. This rule does not apply to mediation proceedings for technology disputes and business disputes pursuant to 10 Del. C. §§ 346 and 347, which proceedings are governed by Rules 93-95.

(b) *Voluntary mediation.* In any type of matter, with the consent of the parties, the Court may enter an order referring the matter or any issue for mediation before a judicial mediator or a non-judicial mediator. A member of the Court of Chancery or a Master sitting permanently in Chancery who has had no prior involvement in the case may serve as a judicial mediator. Any impartial individual may serve as a non-judicial mediator. A non-judicial mediator need not be an attorney.

(c) *Mandatory mediation.*

(1) In an adult guardianship, trust, or probate matter, without the consent of the parties, the Court may enter an order referring the matter or any issue for mediation before a judicial mediator or a non-judicial mediator. If the reference is to a non-judicial mediator, then the parties shall select a mediator by stipulation within twenty (20) days of the referral. If the parties are unable to agree, the Court will appoint a non-judicial mediator.

(2) Upon the filing of any dispute involving deed covenants or restrictions under 10 Del. C. § 348, the parties to the dispute shall be assigned to mandatory mediation. The judicial officer assigned to the action shall appoint a mediator by court order. Mediation shall commence within sixty (60) days of the filing of the action. In order to receive expedited treatment under this rule, a plaintiff or petitioner must attach to the complaint a certification that the case is eligible to proceed under 10 Del. C. § 348.

(3) In any action involving mandatory mediation, the mediator shall set the date and time of the mediation and shall notify the parties of the date and time by certified and U.S. Mail at least 13 days in advance of the scheduled mediation. Parties to mandatory mediation are required to participate in the mediation in good faith and may not withdraw or adjourn the mediation without the consent of the mediator.

(d) *Stay of pending litigation.* Upon order of the Court, proceedings in a matter referred to mediation may be stayed pending the conclusion of the mediation.

(e) *Mediation areement.* The parties to a mediation may enter into a written mediation agreement that identifies the issues to be mediated, specifies the methods by which the parties shall attempt to resolve the issues, identifies the mediator, and addresses the parties' responsibility for any fees and costs of mediation together with such other matters as the parties may deem appropriate. The provisions of this Rule are deemed incorporated by reference in the mediation agreement.

(f) *Client participation.* An authorized representative of the client shall participate in the mediation. The client representative shall have authority to resolve the matter fully. The client representative shall not be a lawyer who has entered an appearance in the matter referred to mediation. The mediator may waive or modify the client participation requirement.

(g) *Confidentiality.*

(1) Mediation is a confidential proceeding. Unless all parties consent, only the mediator, the parties, and their representatives may participate in the mediation.

(2) Except for the order of referral, the record of the mediation is confidential and not available for public access. The Register in Chancery will not include any mediation materials as part of the public docketing system.

(3) All memoranda, work product, and other materials contained in the files of the mediator are confidential. All communications made in or in connection with the mediation that relate to the controversy being mediated, whether with the mediator or a party during the mediation, are confidential.

(4) Information received from other parties during the mediation that the recipient does not already have or that is not public shall be used only for the mediation and not for any other purpose.

(5) The confidentiality of the mediation can be waived only by a written agreement signed by all parties and the mediator.

(h) *Limitation on discovery.*

(1) Mediation proceedings are not subject to discovery.

(2) The mediator and any participant in the mediation may not be compelled to testify in any judicial or administrative proceeding concerning any matter relating to the mediation.

(3) Any memoranda, work product, or other materials contained in the mediator's files are not subject to discovery. Any communications made during or in connection with the mediation that relate to the controversy being mediated, whether with the mediator or another participant in the mediation, are not subject to discovery.

(4) The limitation on discovery shall not extend to the mediation agreement, any settlement agreement, any evidence provided to the mediator or exchanged in the mediation that otherwise would be subject to discovery, and any memoranda, reports, or other materials provided to the mediator or exchanged in the mediation that were not prepared specifically for use in the mediation.

(i) *Scope of mediator's authority.* The mediator shall have no authority to make any adjudication relating to the matter or issue referred for mediation. The mediator shall have authority to take any of the following actions:

(1) Convene an initial conference or teleconference to obtain information from the parties and address logistical matters;

(2) Determine the time and place of mediation;

(3) Direct the mediating parties to provide submissions, including confidential submissions, to assist the mediator in the mediation;

(4) Speak privately with any participant or a subgroup of the participants in the mediation;

(5) Terminate the mediation if the parties are unable to agree;

(6) Waive, modify, or allocate the court costs in a mediation conducted by a judicial mediator in light of the parties' economic circumstances or for good cause shown; and

(7) A judicial mediator may impose the costs of the mediation on a party who the mediator believes has failed to mediate in good faith. A mediator shall not have authority to impose any other sanction or penalty.

(j) *Settlement agreement.* If the parties reach agreement regarding the matter or issue referred to mediation, then the parties shall reduce their agreement to writing in the form of a settlement agreement signed by the parties. The settlement agreement shall address the nature of any filings necessary to dismiss or proceed with the underlying action. The settlement agreement may provide for some or all of the terms of the agreement to be implemented by court order in the underlying action. If the settlement agreement resolves the entire case and does not require judicial approval, the parties may keep the terms of the settlement confidential and file a stipulation of dismissal in the underlying action.

(k) *Report to Court.* The mediator shall report to the Court that the mediation has resulted in a settlement or has not resulted in a settlement. The mediator may report to the Court that the parties are continuing to mediate, in which case the mediator may advise the Court of the schedule for the mediation. In a mediation conducted by a judicial mediator, the judicial mediator shall advise the Court of the number of days of mediation so that court costs may be assessed. If any fees or costs are shifted or allocated among the parties, whether by agreement or because of a determination by the mediator, then the mediator shall inform the Court of the scope of each party's obligation. The mediator shall not provide the Court with any information about the conduct of the mediation, including the mediator's view regarding whether any party failed to mediate in good faith.

(*l*) *Compensation and Court costs.* A non-judicial mediator shall be compensated at the rate and in the manner agreed upon by the parties. A judicial mediator shall not be compensated. At the conclusion of the mediation in any civil action or matter involving a trust, the parties shall be assessed an additional court cost in the amount of $5,000 for each day or partial day of mediation with a judicial mediator. At the conclusion of the mediation in any guardianship matter, probate dispute or dispute involving a deed covenant or restriction, the parties shall be assessed an additional court cost in the amount of $1,500 for each day or partial day of mediation with a judicial mediator. No additional court cost shall be incurred for a judicial mediator's initial teleconference with the parties or for time spent by a judicial mediator preparing for the mediation. Court costs relating to mediations shall be deposited in a separate account maintained by the Court of Chancery and shall be used from time to time at the discretion of the Chancellor for mediation training or other Court-related purpose. If the State or an agency of the State is a participant in mediation with a judicial mediator, the portion of the court costs allocated to the State shall be waived by the Court.

(m) *Civil immunity.* A mediator is immune from civil liability arising out of or relating to a mediation absent a showing of bad faith.

History.

Added, effective Apr. 1, 1998; amended, effective Nov. 12, 2002; Nov. 20, 2002; July 1, 2005; Aug. 1, 2009; Dec. 15, 2014, effective Jan. 1, 2015.

Rule 174.1. Mandatory mediation for adult guardianship matters and probate disputes.

Repealed.

XVII. Guardians For Persons With Disabilities

Rule 175. Petition for appointment of guardian for adult with an alleged disability.

(a) *Form of petition.* A petition for the appointment of a guardian for the person or property, or both, of an adult person with an alleged disability, as defined in 12 Del.C. § 3901(a)(2)-(3), shall be verified. The information in the petition shall be provided to the best of petitioner's knowledge. If petitioner cannot ascertain particular information after exercising due diligence, the petition shall state that fact. The petition shall contain at a minimum the following items of information:

(1) The name of the person with an alleged disability, the name and address of petitioner and the relationship of petitioner to the person with an alleged disability or, if not related, the nature of petitioner's interest in the person or property of the person with an alleged disability.

(2) The age, marital status, domicile and place of present residence of the person with an alleged disability; whether such person is a patient or otherwise a resident of any hospital or institution of any type whatsoever and, if so, the name and address of such institution and the date and circumstances surrounding the admission or entry into such institution of the person with an alleged disability.

(3) The names and addresses of any potentially interested party. If the petitioner does not know and cannot learn the address of an interested party required to receive notice, the petitioner shall submit an affidavit describing petitioner's efforts to locate the interested party. Efforts may include performing an internet search, speaking to mutual acquaintances, and attempting to contact the interested party through any known means including electronic means. The term "interested party" shall include:

(A) The spouse and next of kin of the person with an alleged disability. Next of kin means those individuals who would be entitled to inherit through the estate of the person with an alleged disability if that person died intestate. If the interested party is a minor, the petition shall state the minor's approximate age and identify the minor's parent or other appropriate individual to contact.

(B) Any person acting for or named by the person with an alleged disability as a fiduciary, executor, or beneficiary in a power of attorney or testamentary instrument, or named as an agent in an advance health care agreement or other health care proxy.

(C) Any person primarily responsible in the past six months for the care of the person or finances of the person with an alleged disability.

(D) [Repealed.]

(4) Any information concerning the existence and location of any estate planning or healthcare document, including any will, power of attorney, or advance healthcare agreement, directive, or proxy executed by the person with an alleged disability and the identity of any attorney-in-fact or agent named in such power of attorney or healthcare agreement, directive, or proxy.

(5) A listing of the assets of the person with an alleged disability and the probable value thereof, the estimated income that the person with an alleged disability receives from all sources, the obligations and liabilities of the person with an alleged disability, and any information concerning other arrangement for paying the expenses of the person with an alleged disability.

(6) Whether the person with an alleged disability was ever a member of the armed services of the United States.

(7) Whether the person with an alleged disability has been represented by a Delaware attorney within the past two years and, if so, the name of such attorney.

(8) A general allegation that the person with an alleged disability is unable properly to manage his or her person or property because of a disability, and as a consequence is in danger of dissipating his or her property or becoming the victim of designing persons and, if an interim guardian is sought, specific allegations demonstrating that the person with an alleged disability is in danger of incurring imminent serious physical harm or substantial economic loss or expense, which may occur before a hearing for the appointment of a guardian may be held.

(9) Whether the person with an alleged disability has a guardian to take charge of and manage his or her person or property;

(10) [Repealed.]

(11) A request that the Court appoint a guardian, and an interim guardian where necessary, to take charge of and manage the person or property, or both, of the person with an alleged disability.

(b) *Request for specific authority.* If the petitioner seeks specific authority as guardian to use the person with an alleged disability's property for reasons other than the support, care, protection, welfare, and rehabilitation of the person with an alleged disability, to borrow money for the benefit of the person with an alleged disability, or to prepay burial expenses, then the petition shall specify the nature of the authority requested and why the petitioner believes the expenditure would be in the best interests of the person with an alleged disability. The form of such request shall follow Rule 178 so far as applicable.

(c) *Exhibits to the petition.* The petition shall attach the following items as exhibits:

(1) A form of preliminary order setting the matter down for hearing and providing for the giving of the required notice.

(2) A form of final order that includes, as applicable:

(A) A paragraph stating that an order from the Court of Chancery is required to authorize the opening of any safe deposit box of the person with a disability and to sell or encumber any real property of the person with a disability.

(B) If an attorney ad litem or guardian ad litem was appointed, a paragraph discharging the attorney ad litem or guardian ad litem from further service on behalf of the person with a disability.

(C) If an attorney filed the petition on behalf of the guardian, a paragraph stating that the attorney is responsible for ensuring that any guardianship bank account required by the final order is properly opened and that the proof of compliance and inventory are filed within thirty (30) days.

(D) If bond is required, a paragraph stating that the bond shall be executed and filed within seven (7) days of the entry of the order and that no copy of the final order, whether certified or not, will be released until the bond is filed.

(E) A paragraph requiring the guardian to notify the Court of Chancery of the death of the person with a disability within ten (10) days of the death.

(3) An affidavit filed by the attorney stating that he has explained to the proposed guardian the fiduciary duties and responsibilities of a guardian. This requirement shall not apply where the proposed guardian is a fee-for-service guardian or the Office of the Public Guardian.

(4) A physician's affidavit, executed by a medical or osteopathic doctor authorized to practice medicine, using the Court's most recent form, available on the Court's website.

(5) Affidavits detailing the proposed guardian's history and personal information in the forms provided for by the Court.

(d) *Withdrawal by attorney of record.* An attorney of record who has appeared in connection with a petition to appoint a guardian may withdraw without filing a formal motion to withdraw if (1) the form of final order appointing a guardian states the attorney shall be discharged upon the entry of the order and filing of any bond or proof of compliance and inventory required by the order and (2) the attorney files a notice of withdrawal that includes a consent to the withdrawal executed by the guardian or petitioner.

History.

Amended, effective Nov. 1, 1975; Dec. 15, 2014, effective Jan. 1, 2015; Apr. 23, 2018, effective July 1, 2018; effective May 19, 2022.

Rule 176. Appointment of attorney ad litem upon petition for appointment of guardian; service and notice of hearing.

(a) *Appointment and duties of attorney ad litem.* Upon the filing of a petition for appointment of a guardian of an adult person with an alleged disability, the Court shall appoint a member of the Delaware Bar to represent the person with an alleged disability if such person is not otherwise represented by counsel, to receive notice on behalf of such person and to give actual notice to such person, explain his or her rights, and explain the nature of the proceeding. The attorney ad litem shall represent the best interests of the person with an alleged disability and shall conduct a reasonable investigation into the allegations of the petition, the fitness of the proposed guardian, and all pertinent facts. If the attorney ad litem determines the wishes of the person alleged to be disabled diverge from his or her best interests, the attorney ad litem shall advise the Court. The Court may appoint a second attorney to represent the person with an alleged disability as if engaged by such person and may hold a hearing to determine whether a guardian should be appointed. The Court, in its discretion, may appoint an attorney ad litem to represent a minor.

(b) *Appointment of fact finder.* The Court may appoint an impartial fact finder to report to the Court concerning the matter.

(c) *Report and fees of attorney ad litem or fact finder.* In all cases in which the Court has appointed an attorney ad litem or fact finder under this rule, the attorney shall file a report and recommendation with the Court as directed in the Order of the Court. The attorney shall also file an affidavit of time expended on the matter and a request for a fee and costs. The fee and costs shall not exceed $750 unless the attorney requests and supports a greater fee and the Court finds that payment of a fee greater than $750 is in the best interest of the person with an alleged disability. In all cases, the petitioner shall pay the fee and costs associated with the attorney ad litem or fact finder within thirty (30) days of the appointment of the guardian, unless the Court finds that such fee and costs should be paid by the person with an alleged disability.

(d) *Service on person with an alleged disability.* The attorney ad litem shall provide actual notice of the petition and hearing to the person with an alleged disability at least ten (10) days before the hearing unless, for cause shown, the Court shortens the time.

(e) *Notice to others.* Notice of the time, place and purpose of the hearing shall be given by registered or certified mail, return receipt requested, or by FedEx, United Parcel Service, or any other courier service that provides real-time tracking of delivery, by or on behalf of the petitioner to the attorney-in-fact of the person with an alleged disability, to any attorney identified in Rule 175(a)(7), and to all interested parties as defined by Rule 175(a)(3) unless, for cause shown, the Court concludes that any such notice is likely to result in harm to the person with an alleged disability. Notice need not be given to any interested party who has consented in writing to the granting of the petition or has waived such notice.

(f) *Proof of service and notice.* Proof of service and of notice shall be filed with the Register in Chancery prior to the hearing.

History.

Amended, effective July 28, 1978; Dec. 15, 2014, effective Jan. 1, 2015; Apr. 23, 2018, effective July 1, 2018; Jan. 15, 2021, effective Jan. 29, 2021.

Rule 177. Hearing upon petition for appointment of guardian.

The Court shall hold a hearing upon the petition for the appointment of a guardian for a person with an alleged disability, unless all interested parties as defined in Rule 175(a)(3) provide written consent to the petition prior to the hearing and the petitioner is represented by counsel. The Court, in its discretion, may require that the person with an alleged disability be produced at the time of such hearing. If there is no objection to the petition at the hearing, the Court may grant it without requiring the petitioner to present

other evidence. If there is objection to the petition, the Court will receive evidence at the hearing or, for good cause, adjourn the hearing to another date for the reception of evidence.

History.

Amended Apr. 23, 2018, effective July 1, 2018.

Rule 178. Petition to exercise powers not granted by Subchapter II of Chapter 39 of Title 12 of the Delaware Code or by the Court.

(a) *Petition needed.* If the guardian desires authority to exercise powers not granted by Subchapter II of Chapter 39 of Title 12 of the Delaware Code or by the Court (such as the power to expend principal of the estate of the person with a disability for reasons other than the support, care, protection, welfare, clothing and rehabilitation of that person, the power to sell real property belonging to that person, the power to borrow money for that person's benefit or the power to prepay burial expenses), the guardian shall make application therefor to the Court by a petition.

(b) *Contents of petition.* The petition shall be verified and shall set forth:

(1) The name of the guardian, the date of the guardian's appointment, the amount of any bond and the name of the guardian's surety, if any;

(2) If the petition concerns the property of the person with a disability, a summary of the guardianship assets,

(3) A list of all interested parties entitled to receive notice of the petition in accordance with Rule 175(a)(3), and

(4) A request for leave to take the requested actions.

(c) *Proposed order annexed.* A form of order shall be filed with the petition.

(d) *Notice period.* Unless otherwise ordered by the Court, notice of all petitions filed pursuant to Rule 178(a) must be served on all interested parties, and the petition shall be held for a period of at least thirteen (13) days to allow interested parties to respond.

History.

Amended Apr. 23, 2018, effective July 1, 2018; effective May 19, 2022.

Rule 178A. Petition for instructions regarding life-sustaining procedures.

(a) A petition to change or provide life-sustaining procedure instructions for a person with a disability who does not have a qualifying condition as defined by 16 Del.C. § 2501(r) shall be filed in the Court of Chancery and shall include:

(1) The facts and circumstances requiring the change or provision of life sustaining procedure instructions;

(2) Two physician's affidavits outlining the medical requirements and needs supporting the instructions;

(3) Notice that any objection or response shall be filed in writing with the Court of Chancery within twenty (20) days of the date of the petition unless the Court expedites the matter; and

(4) A form of order implementing the change of status.

(b) The petition shall be served by certified mail, return receipt requested, upon interested parties as defined in Rule 175(a)(3). If no responsive pleading is received by the Court within twenty (20) days, the Court may act on the petition without further proceedings. The Court may expedite consideration of the petition for good cause shown.

History.

Added Apr. 23, 2018, effective July 1, 2018.

Rule 178B. Unsworn Declarations under Penalty of Perjury in certain guardianship matters.

Pursuant to § 3927 of Title 10, the use of an Unsworn Declaration under Penalty of Perjury is hereby authorized for pleadings or papers filed in guardianship matters, except for those listed below. Unsworn Declarations under Penalty of Perjury may be used in lieu of verifications, sworn declarations, affidavits, and notarized signatures that are otherwise required on pleadings or papers. An Unsworn Declaration under Penalty of Perjury may not be used with any of the following: petitions seeking to appoint a guardian for adults with an alleged disability or to appoint a guardian of property for a minor, to remove a guardian and/or appoint a successor guardian, and to add a co-guardian; physician's affidavits, and personal information sheets filed by petitioners related to those petitions; petitions to terminate a guardianship due to recovery of the person with a disability or to terminate in favor of less restrictive measures; petitions for instructions regarding life-sustaining procedures; consents filed related to those petitions; petitions to transfer funds at majority in guardianships of a minor's property; and applications to proceed in forma pauperis. The Chancellor may further limit the use of Unsworn Declarations by Order or Administrative Directive.

History.

Added May 4, 2022.

Rule 179. Property subject of specific devise or bequest.

Where guardianship property which is the subject of a specific devise or bequest is sold or pledged, the devise or bequest shall not be adeemed, but the proceeds of such sale or loan shall be pro rata substituted for the property sold or pledged and shall be separately accounted for.

Rule 180. Guardian of property of a minor.

(a) *Threshold for guardianship.* Pursuant to 12 Del. C. § 3901(b) and (*l*), no petition to appoint a guardian of a minor's property is required if the minor will receive property or funds of $25,000 or less, inclusive of costs and attorneys' fees, except that a limited guardian may be appointed under subsection (b)(2) of this rule, if necessary.

(b) *Petition for limited guardianship of minor's property.*

(1) If a minor is entitled to receive property or funds of more than $25,000, inclusive of costs and attorneys' fees, a petition shall be filed to appoint a limited guardian of the minor's property, as provided in 12 Del. C. § 3901(*l*). The limited guardianship shall terminate, and the guardian shall be released from the bond, upon the filing of proof that the minor's funds were placed in an annuity or structured financial instrument for the benefit of the minor. Such annuity or structured financial instrument 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 appointing the limited guardian.

(2) If a minor is entitled to receive property or funds of $25,000 or less, inclusive of costs and attorneys' fees, but a guardian is necessary to obtain, secure, sell, or transfer the minor's property, a limited guardian may be appointed for the purpose of taking such action. The guardian's authority shall be limited by court order. Unless otherwise ordered, the limited guardianship shall terminate, and the guardian shall be released from the bond, upon the filing of proof that the minor's funds were deposited in a custodial account under Title 12, ch. 45 of the Delaware Code.

(3) A petition for limited guardianship shall contain all of the information and annexed documents required by subsections (e) and (f) of this rule.

(4) Before the order appointing the guardian is released by the Court, the guardian shall execute a bond in an amount set by the Court, which shall be no less than the amount due to the minor.

(c) *Petition for plenary guardianship of minor's property.* Upon a showing of good cause, a petition may be filed to appoint a guardian of a minor's property for the term of the minority.

(1) In addition to the items set forth in subsections (e) and (f) of this rule, such petition also shall set forth the reasons why plenary guardianship is necessary, including why the guardian expects to need access to the minor's funds during the term of the minority.

(2) Upon Court approval of a petition for appointment of a plenary guardian of the property of a minor, and before the final order is released by the Court, the guardian shall execute a bond in the amount set by the Court. The guardian and her attorney, if any, shall then open an account at a banking institution with at least one Delaware branch, which account shall be titled to indicate that withdrawals may not be made without Court order. The guardian's attorney, or the guardian if she is not represented by counsel, shall file proof of compliance within 30 days of entry of the final order, demonstrating that the guardianship account was opened and properly titled.

(3) The guardian shall file a bank statement annually on January 15, showing the current balance in the guardianship account.

(4) The Court may require a guardian to account for all funds expended from the guardianship account.

(5) The Register's Office may from time to time inspect any account established for the benefit of the minor, and the financial institution holding said account(s) is authorized and directed to allow said inspection, and to supply a statement of the account, if requested, to the Court.

(6) The guardian of the minor's property shall notify the Register's Office of any address or phone number change within 30 days of occurrence.

(d) *Filing petition.* A petition for appointment of a limited or plenary guardian of the property of a minor may be filed in the Court of Chancery. If the minor will receive property by reason of an award entered in a case pending in another court in the State of Delaware, a petition for appointment of a limited or plenary guardian for the property of a minor may be filed in that court and may be transferred to the Court of Chancery pursuant to 12 Del. C. § 3901(k) if necessary for administration of the guardianship.

(e) *Contents of petition.* A petition filed in the Court of Chancery for the appointment of a guardian of the property of a minor shall be verified and shall set forth:

(1) The name and age of the minor for whom guardianship is sought, including the date on which the minor will reach the age of majority;

(2) The name and address of the petitioner and the petitioner's relationship to the minor child;

(3) The names and addresses of all interested parties, which shall include the minor child's natural or adoptive parents, grandparent(s) if any parent(s) are deceased, any court-appointed guardian, any attorney who has represented the minor child within the last two years, and any siblings who have reached the age of majority. If the petitioner does not know and cannot learn the address of an interested party required to receive notice, the petitioner shall submit an affidavit describing petitioner's efforts to locate the interested party. Efforts may include performing an internet search,

speaking to mutual acquaintances, and attempting to contact the interested party through any known means including electronic means;

(4) The value and source of the property to be received by the minor, including any supporting documentation regarding the value and source of the property;

(5) The petitioner's consent to the appointment of the Register in Chancery as her agent for the acceptance of service of process on behalf of the petitioner as to any claim arising out of the guardianship if, by reason of the guardian's absence from the state, she cannot personally be served; and

(6) The petitioner's acknowledgement that the minor's funds may not be expended without order of the Court.

(f) *Annexed documents.* The following documents shall be annexed to any petition for appointment of a guardian of the property of a minor:

(1) A birth certificate of the minor.

(2) An affidavit of petitioner's history and personal information sheet, in the form provided for by the Court.

(3) The verified consent of all interested parties, along with the verified consent of the minor, if, at the time the petition is filed, the minor is 14 years of age or older. If consents cannot be obtained, the petition must be sent to all interested parties by certified mail, along with notice that any objection to the petition must be submitted within 13 days.

History.

Amended, effective Sept. 19, 2014; Apr. 23, 2018, effective July 1, 2018.

Rule 180-A. Involuntary sterilization proceedings.

A petition brought pursuant to 16 Del. C. Chapter 57 shall be treated as one for the appointment of a guardian of the person. The petition, service thereof and proceedings thereon shall conform to the provisions of Chapter 57.

Rule 180-B. Powers and duties of guardian.

All references to guardians in these Rules shall be applicable to guardians for disabled persons appointed under Chapter 39 of Title 12 after July 8, 1993 and to trustees and guardians appointed under former statutes 12 Del. C. Chapter 37 and Chapter 39.

All guardians of the person and/or property of any person with a disability shall file a status report with the Register in Chancery each year no later than the first business day of the quarter in which the guardian was appointed. The status report shall inform the Court of the current mailing address of both the person with a disability and the guardian, and shall provide to the Court a current medical statement from an approved medical practitioner setting forth the current medical status of the ward and addressing the need for a continued guardianship. The status report shall be in the form provided by the Court, except the Office of the Public Guardian may provide its own review form, subject to the Court's approval.

History.

Amended, effective Apr. 1, 2003; Dec. 15, 2014, effective Jan. 1, 2015; Jan. 15, 2021, effective Jan. 29, 2021.

Rule 180-C. Termination of guardianship.

(a) *Petition to terminate guardianship.* The guardian, the person for whom a guardian has been appointed, or any interested party may file a petition alleging a sufficient reason why guardianship is no longer necessary, and requesting its termination. The Court may make an order for the ascertainment of the truth of the allegation, whether by an examination in open Court, or otherwise. If a hearing is to be held, notice thereof shall be given to the guardian and any interested party as that term is defined in Rule 175(a)(3).

(b) *Termination of guardianship.*

(1) If the Court finds that a guardian no longer is necessary due to recovery of capacity of the person with a disability, the Court will make an order terminating the guardianship, restoring to the person with a former disability the care of his or her person or restoring to him or her the property and estate in the custody, possession and control of the guardian, or both, providing for the payment of costs and expenses incurred during the guardianship, and requiring a full accounting from the former guardian of the property of the person with a former disability.

(2) If the Court finds that guardianship is no longer necessary due to availability of other measures and such measures are in the best interest of the person with a disability, the matter may be administratively closed without prejudice. An affidavit shall be filed with the Court specifying the means of substitute decision making to be used, and the consent of the individual responsible for utilizing it.

(3) Upon termination, the Court may provide for the payment of costs and expenses incurred during the guardianship.

(c) *Restoration of property of minor upon attaining majority.* If the only allegation of disability in the petition for appointment of a guardian was that the person was a minor, the guardianship shall terminate automatically in accordance with 12 Del. C. § 3909 when the minor attains the age of 18 years. The automatic termination of the guardianship of the property shall not relieve the guardian of the duty to account to the Court.

(d) *Final accounting.* Under 12 Del. C. § 3941(a), upon removal or resignation of a guardian or upon termination of a guardianship, the guardian shall render a final accounting within thirty days of the removal, resignation, or termination of the guardianship, unless otherwise ordered by the Court. This Rule shall not apply if accountings have been waived, unless otherwise ordered by the Court.

History.

Amended Dec. 15, 2014, effective Jan. 1, 2015; Apr. 23, 2018, effective July 1, 2018.

Rule 180-D. Guardianship monitoring program of the Office of the Public Guardian.

(a) *Guardianship Monitoring Program of the Office of the Public Guardian.* The Guardianship Monitoring Program of the Office of the Public Guardian shall, in addition to responsibilities assigned by the Office of the Public Guardian, be responsible for monitoring the Court's guardianship docket. This monitoring shall take the following forms:

(1) *Routine audit of active cases.* The Guardianship Monitoring Program may perform routine audits of active guardianship cases, without further order of the Court, other than those cases in which the Office of the Public Guardian serves as an appointed guardian. Such audits shall be conducted randomly on an annual basis. The Guardianship Monitoring Program shall have the discretion to determine the number of cases selected for routine audit based on staff availability and other parameters established by the Office of the Public Guardian.

(2) *Review and investigation upon Court referral.* The Court may, on its own initiative or upon request, refer any guardianship case to the Guardianship Monitoring Program of the Office of the Public Guardian for review or investigation. The Court order referring the case to the Guardianship Monitoring Program of the Office of the Public Guardian shall specify the issues or concerns to be investigated.

(b) *Access to records*. The Office of the Public Guardian shall have access to the docket in any active guardianship case without further order of the Court. Except as otherwise noted in the order of referral, any referral of a case to the Guardianship Monitoring Program under Rule 180-D(a)(2) also shall confer upon the Office of the Public Guardian access to all financial records, accounts, banking documents, insurance records and other financial information of a person with a disability, as well as access to all medical records, treatment providers, clinical information, and other healthcare information of the person with a disability.

(c) *Reports and referrals by the Office of the Public Guardian.*

(1) If, upon either a routine audit or Court-ordered review of a guardianship case, the Office of the Public Guardian concludes that there is a reasonable basis to suspect that the person with a disability has been the victim of abuse or neglect, the Office of the Public Guardian shall refer the guardianship case to the appropriate state or local agency or agencies for investigation. If, upon either a routine audit or Court-ordered review of a guardianship case, the Office of the Public Guardian concludes that there is a reasonable basis to suspect that the person with a disability has been the victim of financial exploitation, the Office of the Public Guardian shall refer the case to the appropriate state or local agency or agencies for investigation.

(2) Whenever the Guardianship Monitoring Program completes a routine audit of a guardianship case, a report summarizing such review shall be filed with the Court. When the Court refers a case to the Guardianship Monitoring Program for review, the referral order shall specify the date on which a written report shall be filed. Such report shall contain a detailed summary of the investigation conducted by the Guardianship Monitoring Program, any facts obtained through such investigation, any referral(s) made to another agency for further investigation, and any recommendation for immediate action by the Court. Reports of the Guardianship Monitoring Program are confidential and interested parties will not receive copies of the report except by approval of the Court.

(d) *Testimony.* A representative of the Guardianship Monitoring Program shall be available upon request of the Court or any interested party to testify regarding the review or investigation conducted by the Guardianship Monitoring Program.

History.

Added, effective Oct. 1, 2013; Apr. 23, 2018, effective July 1, 2018.

XVIII. Miscellaneous Provisions

Rule 181. Hearing on application for temporary relief in separate maintenance cases.

In separate maintenance cases applications for interim or temporary relief will be heard by the Court on affidavits or verified pleadings, or both. Affidavits must be served and filed not later than 3 days prior to the date fixed by the Court Administrator for hearing. Oral testimony will not be received in the absence of a special order entered by the Court prior to the date of hearing.

Rule 182. Sale of land to pay debts; debts of a decedent.

(a) *Complaint to sell land to pay debts.* A complaint by an executor or administrator for leave to sell real property of a decedent to pay the decedent's debts shall, in addition to other allegations, state the name and address of each person interested as an heir, devisee, tenant in possession and creditor of the decedent who holds a lien of record against said property. The complaint shall state whether any such person is a minor and, if so, the name and address of any guardian appointed for such minor.

If any person or guardian entitled by statute, rule or order to notice of an executor's or administrator's intention to file such a complaint resides out of Delaware, the executor or administrator shall give written notice of such intention to such person or guardian, at such person's or guardian's last-known address, by registered or certified mail with return receipt requested. In such event the executor or administrator shall file with the complaint an affidavit reciting the efforts made to give notice under this rule and the results thereof. When the complaint is presented, the Court may make such further order as to notice as the circumstances require.

(b) *Summons upon complaint for order of debt preference.* When a complaint is filed by an executor or administrator for determination by the Court of the order of payment of creditors of a decedent, a summons shall issue directed to and requiring all parties in interest to appear and answer the complaint.

History.

Added, effective July 1, 1970.

Rule 183. Partition.

(a) *Complaint.*

(1) *General requisites.* A complaint for a partition shall state, in addition to other pertinent allegations, (a) how title to the property was first acquired by the tenants in common, joint tenants or parceners, including changes resulting from descent, division or alienation and, if derived by will or deed, an extract from such document; (b) the name and address of each party entitled to partition and designating, if known, any nonresidents of the State, infants or mentally ill persons; (c) the share of each respective party; (d) a description of the premises, buildings and improvements thereon; and (e) a prayer for summons and decree of partition.

(2) *Intestate real estate.* A complaint for partition of intestate real estate shall include all real estate of which the intestate dies seized, and which at the time of the filing is the property of the heirs at law or their assigns.

(b) *Service upon parties.* Service shall be made as stated in Rules 4 and 5 except as otherwise provided by statute.

(c) *Trustee's sale in partition.*

(1) *Return date of order of sale.* An order for the sale of property in partition shall fix the time for the return thereof, which shall not be less than 3 weeks after the date of the order.

(2) *Notice of sale.* Whenever by statute or rule notice of the sale of real property is required to be given to creditors, the person making the sale, in addition to other required notice, shall send at least 10 days before the date of sale by registered or certified mail to each creditor who holds a lien against the lands a copy of the advertisement of sale. Said advertisement shall be mailed postpaid to the post-office address of such creditor.

The person making the sale also shall, at least 2 weeks before the day fixed for return of the sale, cause to be published at least once in 1 or more newspapers published in the county where the lands are situate, a notice to all persons having or claiming a lien or encumbrance against the share or interest of any of the parties entitled to participate in the proceeds of sale, to appear in Court at the return day of sale and make proof of said claim. Such notice shall also be appended to each posted advertisement of sale.

(3) *Interest on liens.* Interest on liens against shares of a party shall not be calculated beyond the date of the order for distribution.

(4) *Trustee's deposit of sale proceeds.* A trustee making a sale in partition shall forthwith deposit in a banking institution in the State of Delaware to the credit of this Court all moneys received from purchasers of the property at the time of sale; and it shall be the duty of such purchasers to deposit in the same manner the balance of the purchase moneys on or before the day for making return of said

sale and to deliver to the trustee a certificate of such deposit, provided that if a purchaser is a party in interest in the property sold, that purchaser shall not be required to make deposit of such purchaser's share and interest in the distributive balance of the net proceeds of sale, if said share is unencumbered; and the trustee shall thereupon state such fact in the trustee's return and the decree for distribution shall be made accordingly.

(5) *Trustee's return of sale.* A trustee appointed to make a sale in partition shall file with the trustee's return a certificate of deposit of purchase moneys in the depository bank; certificates from the collectors of taxes (county and city or town) and a certificate from the Clerk of the District Court of the United States for the District of Delaware, evidencing a search for liens in their respective offices against the parties entitled to shares in such real property; and a certificate of the trustee, or the trustee's attorney, evidencing a search for liens in the offices of the Recorder of Deeds and Prothonotary against said parties.

(6) *Shares subject to dower, curtesy or liens.* A distribution shall not be made without special order of the Court to a party whose share of the proceeds of sale is subject to dower, curtesy or liens.

(7) *Petition for appraisement of dower, curtesy or other life interest.* If lands described in a complaint for partition, or any undivided share therein, be subject to dower, curtesy or other life interest, the complaint shall include a prayer that, in the event the property is sold, the Court appraise the value of the dower, curtesy or other life interest and direct payment of such appraised valuation to the person entitled thereto and distribute the residue among other parties entitled.

(8) *To whom distribution made.* Checks for the payment of money under an order for distribution of the proceeds from the sale of property sold in partition proceedings shall be payable to the order of the party (or to the order of the party's attorney in fact constituted by power of attorney executed and acknowledged in the same manner as deeds for conveying real property) and the party's attorney of record.

(9) *Creditor's petition.* A creditor having a lien against the share of any party may, after a decree of distribution is entered, petition the Court for payment of such lien, stating, under oath, the nature thereof and the amount due. The Court shall direct that notice of such petition be given to the party entitled to the share and to all of the party's other lien creditors. The Court shall thereafter determine the respective rights of creditors and the interested party.

(10) *Payment of minor's share.* A share of the proceeds of sale to which a minor is entitled shall be paid to the guardian of the minor's property when the guardian files a certificate showing the guardian's appointment and qualification.

(11) *Order of distribution.* Upon confirmation of a sale in partition, petitioner's attorney shall file with the Register in Chancery a proposed final order of distribution. The court shall enter an order fixing a time for hearing thereon and directing the Register in Chancery to give written notice by registered mail to all parties. The notice shall state (a) the caption of the case, (b) the filing and availability for inspection of the proposed final order, (c) the time and place of final hearing, and (d) the right of all interested parties to appear at such hearing and either object or consent to the entry of such order. Upon consent of all parties to the proceedings, either with or without hearing as hereinbefore provided or after hearing objections thereto, if any, the Court shall enter its order of distribution which shall be final and conclusive of the rights of the parties.

History.

Added, effective July 1, 1970.

Rule 184. Appeals from registers of wills and exceptions to accounts.

(a) *Appeals and exceptions; how filed.* An appeal from an order, decree or act of the Register of Wills or exceptions to an account of an executor or administrator shall be begun by serving a notice of appeal or a notice of exceptions, as the case may be, in duplicate, in the form hereinafter specified, in the manner provided in Rule 5(b).

(b) *Notice of appeal or exceptions; form.* A notice of appeal or a notice of exceptions shall specify the party or parties taking the appeal or exceptions; shall designate the order, decree, act or account, or part thereof, sought to be reviewed and shall name the Register of Wills or executor or administrator from which the appeal or exceptions are taken. As to exceptions, the notice shall contain a statement of the nature of the exceptions with particularity.

(c) *Duty of Register in Chancery and Register of Wills.* Upon the filing of a notice of appeal or a notice of exceptions the Register in Chancery shall forthwith forward the duplicate thereof to the Register of Wills. Upon receipt of said duplicate the Register of Wills shall transmit the record to this Court as hereinafter provided.

(d) *Records.*

(1) *Record on appeal or on exceptions.* Appeals and exceptions shall be heard on the original papers and exhibits which shall constitute the record in this Court.

(2) *Record: Contents.* Within 10 days after receipt by the Register of Wills of the duplicate notice of appeal or notice of exceptions, as the case may be, the Register of Wills shall transmit to the Register in Chancery all of the original papers including the transcript of testimony, if any, and all exhibits except such as may be omitted by written stipulation of all the parties filed with the Register of Wills; and the Register of Wills shall append the certificate identifying such record with reasonable definiteness. The papers comprising the record shall be laid flat in chronological order and bound at the top. With the record sent to this Court, the Register of Wills shall include a statement of the costs of preparing and certifying the record.

(3) *Notice of filing record.* Immediately upon filing of the record in this Court, the Register in Chancery shall notify counsel or the parties, if the latter or any of them are not represented by counsel, of the date of such filing.

(4) *Return of record.* Upon the final disposition of the cause in this Court, the original papers comprising the record so transmitted shall be returned to the custody of the Register of Wills, with the order of this Court.

(5) *Additional papers.* The Court may direct that any part of the record in the custody of the Register of Wills that has been retained by the Register of Wills pursuant to stipulation or otherwise, be sent to the Register in Chancery.

(e) *Nonapplicability.* This rule shall not apply to any proceedings concerning estates of persons dying on or after December 25, 1974.

History.

Added, effective July 1, 1970; amended, effective Dec. 25, 1974.

Rule 185. Complaint for involuntary sterilization.

In any action filed pursuant to Chapter 57 of Title 16 of the Delaware Code, the petition shall be accompanied by an undertaking by the petitioner to pay the reasonable fee fixed by the Court for an attorney *ad litem* as required by §§ 5709 and 5710 of such chapter.

History.

Added, effective Nov. 1, 1987; transferred, effective Sept. 19, 2014.

Rule 185.1. Complaint for involuntary sterilization.

Transferred.

Rule 186. Receiver for minor.

A petition for the appointment of a receiver for a minor and the proceedings thereon shall conform to the Rules of this Court to the extent applicable and to the requirements of the pertinent statutes.

History.

Added, effective July 1, 1970.

Rule 186.1. Appointment of guardian ad litem in trust matters.

(a) The Court of Chancery shall compile and maintain a list of members of the Delaware Bar, including former or retired judicial officers, who are in good standing and who have represented to the Court of Chancery that they possess the requisite experience and are capable and willing to serve as guardians ad litem in trust matters before the Court of Chancery.

(b) Where a party to a trust matter before the Court of Chancery requires representation, a guardian ad litem shall be selected by the Court from the list compiled by the Court.

(1) A party to a trust matter who requests appointment of a guardian ad litem may specify in its motion whether it believes that any guardian appointed must possess particular qualifications or experience and the reasons why such qualifications or experience are necessary based on the nature of the issues presented. The Court may, in its discretion, take account of such a request when appointing a guardian ad litem.

(2) The parties shall be notified of the guardian ad litem appointed by the Court and shall submit any objection to that appointment within five days. Such objection shall specify the reasons why the party believes the guardian selected by the Court cannot or should not serve in that capacity. The Court shall consider such objection and may in its discretion deny the objection or appoint a substitute guardian ad litem.

(c) Except as may otherwise be provided in (i) the governing trust instrument, (ii) an agreement among the parties to the matter before the Court of Chancery, or (iii) by court order, a guardian ad litem's fees shall be borne by the trust that is the subject of the matter before the Court of Chancery.

History.

Added Dec. 15, 2014, effective Jan. 1, 2015.

XIX. Probate Procedures

Rule 187. Effective date.

Rules 187 through 202 apply to all proceedings concerning estates of persons dying on or after December 25, 1974, and not to any proceedings concerning estates of persons dying prior to that date.

History.

Added, effective Dec. 25, 1974.

Rule 188. Representation and admittance.

(a) *Representation.* Only a personal representative (himself or herself in the case of an individual personal representative and an officer of the corporation in the case of a corporate personal representative) or an attorney then admitted to practice in the Supreme Court of this State who is representing the personal representative shall appear in proceedings before the Register of Wills.

(b) *Admittance pro hac vice.* Attorneys who are not admitted to practice in the Supreme Court of this State may be admitted to practice in the Court of Chancery pro hac vice in the discretion of the Court of Chancery, and such admission will be at the pleasure of the Court. No attorney may be admitted pro hac vice in the Court unless such attorney shall have associated with such attorney an attorney who is admitted to practice in the Supreme Court of this State and who maintains an office in this State for the regular transaction of business, upon whom all notices, orders, pleadings, and other papers filed with the Court or Register of Wills and attend before the Court, Register of Wills, or other officers of the Court.

History.

Added, effective Dec. 25, 1974.

Rule 189. Filing petition prior to proof of will.

No petition for Letters Testamentary or Letters of Administration with Will Annexed shall be filed with the Register of Wills until the will has been proved.

History.

Added, effective Dec. 25, 1974; amended, effective Nov. 1, 1975.

Rule 190. Appearance of personal representative not required.

(a) *Application.* The personal appearance of a personal representative at the Office of the Register of Wills shall not be required at the time of grant of Letters of Testamentary or of Administration, granted pursuant to Chapter 15 of Title 12 of the Delaware Code, or at the time of filing an interim or final accounting, filed pursuant to Chapter 23 of Title 12 of the Delaware Code, if upon written application to the Register of Wills it is shown that the personal representative is represented in the probate proceedings by an attorney admitted to practice before the Supreme Court of the State of Delaware, or the personal representative is serving as a co-fiduciary with a personal representative who will appear or who is represented in the probate proceedings by an attorney admitted to practice before the Supreme Court of the State of Delaware.

(b) *Affidavit.* If the application provided for in paragraph (a) above is approved there shall be attached to any petition for the grant of letters testamentary or of administration or any accounting an affidavit of the personal representative that all statements contained in the petition or that all statements and entries contained in the accounting filed by the personal representative are true and correct and that the personal representative will perform or has performed the duties of the office of personal representative with honesty and integrity.

History.

Added, effective Dec. 25, 1974; amended Dec. 15, 2014, effective Jan. 1, 2015.

Rule 191. Presentation of claims against an estate to the Register of Wills.

A person having a claim against an estate who wants to file such claim with the Register of Wills pursuant to 12 Del. C. § 2104(1) shall file a written Statement of Claim with the Register of Wills which shall include the following information and documentation:

1. Name of deceased.

2. The name and address of the claimant.

3. The amount of the claim.

4. Statement as to the basis of the claim.

5. A copy of any written obligation signed by decedent, if available.

6. A statement as to whether the debt is due or not yet due. If the debt is not yet due, the date when the debt is due shall be stated.

7. A statement as to whether the claim is contingent or unliquidated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated.

8. A statement as to whether the claim is secured or unsecured. If the claim is secured, the security shall be described.

9. A statement that the claim is being filed within the time limitation of 12 Del. C. § 2102.

History.

Added, effective Dec. 25, 1974.

Rule 192. Commissions and fees.

(a) Commissions of personal representatives, and fees of the attorneys who represent them, shall be allowed in a reasonable amount.

(b) In determining what constitutes reasonable commissions and fees, consideration may be given to the time spent, the risk and responsibility involved, the novelty and difficulty of the questions presented, the skill and experience of the personal representative and the attorney, any provisions of the will regarding compensation, comparable rates for similar services in the locality, the character and value of the estate assets, the character and value of assets which are not part of the probate estate but which must be valued and reported on any federal, state, local, or foreign death tax return, the time constraints imposed upon the personal representative and the attorney, the loss of other business necessitated by acceptance of the administration, and the benefits obtained for the estate by the administration. Commissions and fees shall not be considered unreasonable merely because they are based exclusively on hourly rates, exclusively on the value of the probate estate, or exclusively on the value of the assets includible in the estate for the purpose of any tax.

(c) If a trust permits or requires personal representative commissions or attorney's fees to be paid from the trust, such commissions and fees may be paid from the trust in accordance with the provisions of this rule.

(d) Subject to the provisions of the following sentence, commissions of personal representatives and attorney fees shall be presumed reasonable unless a beneficiary files an exception to the account of the personal representative pursuant to 12 Del. C. § 2302(d) alleging that the commissions or fees are unreasonable. The Court shall have the power in all cases to reduce the amount of commissions or fees, even if no exception is filed pursuant to paragraph (e) hereof, if the amount of commissions or fees is determined to be unreasonably high by the Court for cause appearing sufficient to it.

(e) The notice in writing of the filing of the account required to be mailed by the Register of Wills pursuant to 12 Del. C. § 2302(b) shall include the following statement:

"Personal representatives of estates and attorneys who represent them are entitled to reasonable commissions and fees. In determining what constitutes reasonable commissions and fees, consideration may be given to time spent, the risk and responsibility involved, the novelty and difficulty of the questions presented, the skill and experience of the personal representative and the attorney, any provisions of the will regarding compensation, comparable rates for similar services in the locality, the character and value of the estate assets, the character and value of assets which are not part of the probate estate but which must be valued and reported on any federal, state, local, or foreign death tax return, the time constraints imposed upon the personal representative and the attorney, the loss of other business necessitated by acceptance of the administration, and the benefits obtained for the estate by the administration. Commissions and fees shall not be considered unreasonable merely because they are based exclusively on hourly rates, exclusively on the value of the probate estate, or exclusively on the value of the assets includible in the estate for the purpose of any tax.

Unless you file an exception to the account alleging that the commissions of the personal representative(s) or the fees of the attorney(s) for the personal representative(s) as set forth in the account are unreasonable, you shall be deemed to consider such commissions and fees reasonable."

(f) This rule will apply to the administration of estates of decedents dying on or after its effective date: September 1, 1996.

History.

Added, effective Dec. 25, 1974; amended, effective Nov. 15, 1976; Sept. 1, 1996.

Rule 193. Prohibited compensation.

No person employed in the Office of a Register of Wills shall receive any fee or other compensation for any individual or personal service rendered in connection with the administration of an estate.

History.

Added, effective Dec. 25, 1974.

Rule 194. Accounting filed with Register of Wills; notice to beneficiaries; waiver and consent; duties of Register with respect to accounting.

(a) *Requirement of notice of filing of accounting.* Upon the filing of an accounting by a personal representative with the statement of the names and mailing addresses of each beneficiary entitled to share in the distribution of the estate as provided by 12 Del. C. § 2302, and after adjustment and settlement of such accounting by the Register of Wills, the Register of Wills shall mail to such persons written notice that the accounting has been filed and will be open for inspection and exception for 3 months from the date of mailing of the notice in accordance with Article IV, § 32 of the Constitution of 1897. The notice shall be given in the name of the personal representative and the form of notice shall be supplied with stamped addressed envelopes unsealed by the personal representative, in general conformity with a form adopted by the Court of Chancery, at the time of the filing of the accounting. The Court may order publication of the notice of filing of such accounting in cases where the names and addresses of beneficiaries entitled to share in the distribution of the estate are not known or cannot be ascertained. Any beneficiary entitled to share in the distribution of the estate who has not been named in the statement required by 12 Del. C. § 2302 may take exception to the accounting notwithstanding any approval thereof by the Court.

(b) *Beneficiary waiver of notice of filing and consent to Court approval of accounting.* The notice required by section (a) of this rule need not be mailed to any person entitled to receive notice who has waived notice and consented in writing to the approval of the accounting by the Court. A copy of any waiver and consent shall be filed with the Register of Wills.

(c) *Duties of Register of Wills with respect to accounting.* Upon the filing of an accounting by the personal representative, the Register of Wills shall:

(1) Certify that the Register of Wills mailed the notice required by section (a) of this rule and the date of such mailing.

(2) Identify any waivers and consents filed under section(b) of this rule.

(3) Examine the accounting, compare it with the cancelled checks and receipts evidencing estate disbursements, verify the calculations and certify that the Register of Wills finds the accounting to be correctly adjusted and settled.

(d) *Duty of Register of Wills when an accounting is not timely filed.*

(1) In every case where an accounting by an Executor or an Administrator is required to be rendered by law and no accounting is timely filed, the Register of Wills may issue a rule to show cause why an accounting was not filed, said rule to be returnable at the next regular convenient session of the Court.

(2) If, after two or more consecutive years of inactivity on the estate, there has been no filing of an accounting, the Chief Deputy Register of Wills who is appointed pursuant to 12 Del.C. § 2507 may enter an order on behalf of the Court closing the estate administratively, subject to the decision of the Court to reopen the estate or otherwise examine any proceedings in the jurisdiction of the Register of Wills of each county. Before entering an order to close an estate under this sub-section, the Chief Deputy shall cause notice of the proposed closing to be sent by mail to all heirs, beneficiaries, creditors and any other interested parties. If no objections are received in response to that notice, the estate may be closed, but the personal representative shall not be released from her obligations or from liability to the estate, its creditors, or its beneficiaries. No Chief Deputy shall enter an order closing an estate in which he or she or a member of the Chief Deputy's immediate family has an interest until such estate has been submitted to the Chancellor for review.

History.

Added, effective Dec. 25, 1974; amended, effective Nov. 1, 1975; May 11, 1989; Dec. 15, 2014, effective Jan. 1, 2015.

Rule 195. When accounting to be presented to Court for approval.

(a) No accounting shall be presented to the Court for approval until after the expiration of 3 months from the date of the mailing of the notice contemplated by Rule 194(a), unless all of the beneficiaries, guardians, trustees or parents of legally incapacitated beneficiaries interested in the accounting have executed waivers and consents as contemplated in Rule 194(b).

(b) No final accounting shall be presented to the Court for approval until a tax clearance form has been filed with the Register of Wills by the Division of Revenue. See 12 Del. C. § 2304.

(c) For purposes of this Rule, an accounting is presented to the Court when presented to the Chancellor, a Vice Chancellor, a Master in Chancery, or a Chief Deputy Register of Wills appointed in accordance with 12 Del.C. § 2507.

History.

Added, effective Dec. 25, 1974; amended, effective Nov. 1, 1975; Dec. 15, 2014, effective Jan. 1, 2015.

Rule 196. Effect of Court approval of account.

The approval by the Court of an account shall not operate to relieve the personal representative from any liability for any loss of, or injury to, the probate estate which shall occur through the act, neglect or

default of such personal representative, or which shall have resulted from any fraud, deception or concealment by the personal representative.

History.

Added, effective Dec. 25, 1974.

Rule 197. Exceptions to an inventory or accounting.

(a) *Time and form of filing.* Exceptions to an inventory may be filed with the Register of Wills at any time after the filing of the inventory but not later than 3 months after the mailing of the notice of the filing of the final accounting. Exceptions to an accounting shall be filed with the Register of Wills within 3 months of the mailing of the notice of the filing of the accounting. The exceptions shall be in writing and shall contain the following information:

1. The name of beneficiary filing the exception.

2. The nature of the beneficiary's interest in the estate.

3. A list of the specific exceptions and the grounds for each exception.

(b) *Notice and responses.* The Register of Wills shall mail to the personal representative written notice of the filing of exceptions to an inventory or accounting, and the personal representative shall file a response to the exceptions no later than 30 days from the date of the notice of the exceptions.

(c) *Hearing on the exceptions.* The parties shall confer and contact the Court to schedule a hearing on the exceptions to be conducted in the manner prescribed by Rule 198.

History.

Added, effective Dec. 25, 1974; amended Dec. 15, 2014, effective Jan. 1, 2015.

Rule 198. Procedure on hearing of exceptions.

At the hearing of exceptions the personal representative shall be first heard upon the exceptions taken; then the exceptant shall be heard; and the personal representative shall be heard in rebuttal. If by the exceptions it is sought to surcharge the personal representative, the exceptant shall be first heard; then the personal representative shall be heard and then the exceptant shall be heard in rebuttal.

History.

Added, effective Dec. 25, 1974.

Rule 199. Inventory and account may be referred to master: Procedure.

An inventory and account rendered by a personal representative may be referred by the Court to a master, whose duty it shall be within the time set forth in the order of appointment, to examine the matter and report thereon in writing to the Court.

History.

Added, effective Dec. 25, 1974.

Rule 200. Procedure by court on master's report.

Upon receiving a master's report the Court may take such further proceedings to adjudicate the matter as seem appropriate, but in no case shall any matter referred to in the master's report be determined adversely to the personal representative until an opportunity to be heard on the same has been given to the personal representative and all interested parties.

History.

Added, effective Dec. 25, 1974.

Rule 201. Personal representative may be examined.

Every personal representative may be examined on oath before the Court or before a master to whom the exceptions have been referred upon any matters relative to the exceptions.

History.

Added, effective Dec. 25, 1974.

Rule 202. Testimony on hearing of exceptions.

At a hearing on exceptions testimony shall be taken as in other causes and shall be heard by the Court or by a master.

History.

Added, effective Dec. 25, 1974.

Rule 203. Sureties.

(a) *Surety companies.* Each surety company shall, in the month of January in each year, file with the Register of Wills, 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 the power of attorney, before the Court shall accept or approve such company as surety. Nothing herein contained shall prohibit the execution by a surety company of any bond within the 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 as surety in any case or probate proceeding pending in this Court.

History.

Added, effective Dec. 25, 1974.

Rule 204. Court costs.

The Register of Wills shall make charges as provided by 12 Del. C. § 2510. Charges for matters not covered by statute shall be fixed by court order.

History.

Added, effective Dec. 25, 1974.

Rule 205. Probate procedure not specified.

In any instance where the probate procedure is not specifically prescribed by statute or a probate procedure rule, the procedure shall conform to the general practice in the Court of Chancery under the other Rules of the Court of Chancery insofar as practical. In the absence of any applicable statute or rule, the Court may proceed in any lawful manner.

History.

Added, effective Dec. 25, 1974.

Rule 206. Petition for adjudication of presumed death.

Petitions for the adjudication of presumed death pursuant to 12 Del. C. § 1702 shall be filed with the Register in Chancery.

History.

Added, effective Nov. 1, 1975; amended, effective Jan. 1, 2002.

Rule 207. Petitions regarding estates and trusts.

Petitions for an elective share pursuant to 12 Del. C. Ch. 9, petitions for a decree of distribution pursuant to 12 Del. C. § 2332, petitions to sell real property to pay debts, petitions for instructions, petitions to determine the order of preference of creditors pursuant to 12 Del. C. § 2105, petitions for a rule to show cause to compel return of assets to an estate, petitions for admission of a copy of a decedent's will to probate, petitions for adjudication of presumed death, petitions for review of proof of will, petitions for partition, caveats against allowance of instrument as will, petitions for removal of personal representatives, and other similar petitions concerning the estates of decedents that require judicial action by the Court of Chancery shall be filed as civil actions with the Register in Chancery. Petitions to modify a trust and petitions to appoint a successor trustee shall be filed as civil actions with the Register in Chancery, even if all interested parties consent to the petition.

History.

Added, effective Feb. 26, 1982; amended, effective Jan. 1, 2002; Aug. 23, 2002, effective Sept. 1, 2002; Dec. 15, 2014, effective Jan. 1, 2015.

Forms

For court forms associated with this rule set, see: http://courts.delaware.gov/forms/.

Index follows Rules.

INDEX TO RULES OF THE COURT OF CHANCERY OF THE STATE OF DELAWARE