

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: AMENDMENTS TO RULES 3, 16, 53, 81, 93, 127, 128, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 160, 174, 195, 199, 200, 201 AND 202 OF THE COURT OF CHANCERY RULES, SECTIONS I, II, VI, XI, XI-B, XIII, XIV, XV, XVI, AND XIX

This 18th day of July 2023, IT IS HEREBY ORDERED that the Court of Chancery Rules, Sections I, II, VI, XI, XI-B, XIII, XIV, XV, XVI, AND XIX are revised to amend Rules 3, 16, 53, 81, 93, 127, 128, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 160, 174, 195, 199, 200, 201 and 202 are amended as follows to change all references to “Master in Chancery” to “Magistrate in Chancery,” effective immediately.

Rule 3 is amended as follows:

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 Magistrate in Chancery'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
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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
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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
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Each additional day of mediation	\$ 5,000
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Service letters under 10 Del. C. § 3114 (per letter)	\$ 10
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Filing and recording any pleading Per page	\$ 2.00
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TRUST FEES

Petitions

For administration of new trust	\$ 25
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To modify a trust	\$ 650
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Otherwise civil action fees apply

Trustee bond	\$ 10
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Filing, recording & indexing accounts of trustees and receivers
Amount of principal and income of trust:

Less than \$ 500 to \$ 1000	\$ 10
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\$ 1001 to \$ 5000	\$ 20
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\$ 5001 to \$ 15,000	\$ 60
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Each additional \$ 1000 to \$ 10,000 or part thereof	\$ 15
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Charge per page	\$ 1
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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 person with a disability (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, crossclaim, 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.

Rule 16 is amended as follows:

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 Magistrate in Chancery;
- (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.

Rule 53 is amended as follows:

Rule 53. Magistrates in Chancery.

Transferred. See Rule 135 – 147.

Rule 81 is amended as follows:

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 Magistrate in Chancery to hold such election not less than 20 days after the Magistrate in Chancery's appointment at a time and place to be fixed by the Court, or by said Magistrate in Chancery 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 Magistrate in Chancery 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 Magistrate in Chancery 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 Magistrate in Chancery 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 Magistrate in Chancery 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 Magistrate in Chancery 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 Magistrate in Chancery, 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 93 is amended as follows:

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 Magistrate in Chancery 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.

“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.”

Rule 127 is amended as follows:

Rule 127. Account may be referred to Magistrate in Chancery; procedure.

The Court may refer to a Magistrate in Chancery 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 Magistrate in Chancery, the Magistrate in Chancery 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 is amended as follows:

Rule 128. Procedure by Court on Magistrate in Chancery's report as to account.

Upon receiving a Magistrate in Chancery'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 Magistrate in Chancery 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.

The Title to Section XIV is amended as follows:

XIV. Magistrates in Chancery

Rule 135 is amended as follows:

Rule 135. Appointment; removal.

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

The appointment of a Magistrate in Chancery shall be complete and effective when an order for the same is signed by the Court.

Any Magistrate in Chancery may be removed at the pleasure of the Court.

Rule 136 is amended as follows:

Rule 136. Duties and powers.

The Magistrate in Chancery shall regulate all the proceedings in every hearing before the Magistrate in Chancery upon every order of reference. The Magistrate in Chancery shall have full authority to administer all oaths in the discharge of the Magistrate in Chancery'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 Magistrate in Chancery'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 Magistrate in Chancery; 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 Magistrate in

Chancery, which may be deemed necessary and proper, subject at all times to the revision and control of the Court.

Rule 137 is amended as follows:

Rule 137. Witnesses; documents.

Witnesses may be summoned to appear before the Magistrate in Chancery 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 Magistrate in Chancery may also compel the production by witnesses, including parties to the cause, of books, papers and documents to be used as evidence before the Magistrate in Chancery 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 Magistrate in Chancery, 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 is amended as follows:

Rule 138. Proceedings to be transcribed.

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

Rule 139 is amended as follows:

Rule 139. Objections to testimony; hearing thereon.

The Magistrate in Chancery 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 Magistrate in Chancery 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 Magistrate in Chancery 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 Magistrate in Chancery is closed, and before the Magistrate in Chancery makes a report thereon, any party

who has made an objection during the proceedings before the Magistrate in Chancery which has been overruled may bring such objections before the Court, and if the Court, shall sustain the rulings of the Magistrate in Chancery, the Magistrate in Chancery 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 Magistrate in Chancery to admit evidence. If any of the objections to the rulings of the Magistrate in Chancery shall be sustained, the Magistrate in Chancery 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 is amended as follows:

Rule 140. Persons who may be examined; burden of proof on exceptions to claim.

The Magistrate in Chancery shall be at liberty to examine any party, or any creditor, or other person making claims before the Magistrate in Chancery either upon written interrogatories, or orally, or in both modes, as the nature of the case may appear to the Magistrate in Chancery 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 Magistrate in Chancery for good cause shown.

Rule 141 is amended as follows:

Rule 141. Time for taking testimony.

Where the order of reference specifies the time to begin taking testimony before the Magistrate in Chancery, and also the time for closing proofs, the Magistrate in Chancery shall have no power to extend the time beyond the day named in the order, but when a matter is referred to a Magistrate in Chancery to examine and report upon, and the order of reference does not specify any time to begin taking testimony or for closing proofs, the Magistrate in Chancery 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 Magistrate in Chancery speed the proceedings and certify to the Court the reasons for any delay.

Rule 142 is amended as follows:

Rule 142. Limiting time for taking testimony.

The Magistrate in Chancery may fix a day within which any party shall close its proofs, which time the Magistrate in Chancery 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 Magistrate in Chancery, the Magistrate in Chancery 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 is amended as follows:

Rule 143. Standing Magistrates in Chancery ; Magistrate in Chancery's orders.

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

Rule 144 is amended as follows:

Rule 144. Magistrate in Chancery reports.

(a) *Final reports.* A Magistrate in Chancery 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 Magistrate in Chancery's decision and to permit *de novo* review by the Court.

(b) *Draft reports.* Before issuing a final report, a Magistrate in Chancery may provide the parties with the report in draft form. A draft report may be provided orally on the record or in writing. The Magistrate in Chancery may modify the draft report in response to exceptions by the parties or as the Magistrate in Chancery 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 Magistrate in Chancery and

shall be addressed in the final report issued by the Magistrate in Chancery. Exceptions to a final report shall be heard by the Court. If the Magistrate in Chancery 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 Magistrate in Chancery 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 Magistrate in Chancery 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 Magistrate in Chancery, 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 Magistrate in Chancery may order additional portions of the transcript and tax the parties as appropriate.

(f) *Stay of exceptions.* For good cause shown, the Magistrate in Chancery 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 Magistrate in Chancery, 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 Magistrate in Chancery, *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 Magistrate in Chancery.* 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 Magistrate in Chancery 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 Magistrate in Chancery for final decision, (ii) waiving the right of any party to seek further judicial review of the Magistrate in Chancery'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 Magistrate in Chancery 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.

Rule 145 is amended as follows:

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 Magistrate in Chancery for the purpose of such decree or order, it shall be in the discretion of the Magistrate in Chancery to determine what books, papers or writings are to be produced, and when and for how long they are to be left in the Magistrate in Chancery's office; and in case the Magistrate in Chancery shall not deem it necessary that such books, papers or writings should be left or deposited in the Magistrate in Chancery's office, then the Magistrate in Chancery may give

directions for the inspection thereof by the parties requiring the same at such time and in such place and manner as the Magistrate in Chancery shall deem expedient.

Rule 146 is amended as follows:

Rule 146. Receivership claims filed with register.

When a Magistrate in Chancery 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 Magistrate in Chancery, but with the Register.

Rule 147 is amended as follows:

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

When an account is referred to a Magistrate in Chancery all exceptions thereto must be filed with the Magistrate in Chancery and heard by the Magistrate in Chancery, and the Magistrate in Chancery 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.

Rule 160 is amended as follows:

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 Magistrate in Chancery 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 Magistrate in Chancery will be appointed to conduct the examination and make report of any matter deemed by the Magistrate in Chancery important in the administration of the receivership.

Rule 174 is amended as follows:

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 Magistrate in Chancery 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 nonjudicial 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 nonjudicial 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 agreement.* 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.

Rule 195 is amended as follows:

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 Magistrate in Chancery, or a Chief Deputy Register of Wills appointed in accordance with 12 Del.C. § 2507.

Rule 199 is amended as follows:

Rule 199. Inventory and account may be referred to Magistrate in Chancery: Procedure.

An inventory and account rendered by a personal representative may be referred by the Court to a Magistrate in Chancery, 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.

Rule 200 is amended as follows:

Rule 200. Procedure by court on Magistrate in Chancery's report.

Upon receiving a Magistrate in Chancery'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 Magistrate in Chancery'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.

Rule 201 is amended as follows:

Rule 201. Personal representative may be examined.

Every personal representative may be examined on oath before the Court or before a Magistrate in Chancery to whom the exceptions have been referred upon any matters relative to the exceptions.

Rule 202 is amended as follows:

At a hearing on exceptions testimony shall be taken as in other causes and shall be heard by the Court or by a Magistrate in Chancery.

FOR THE COURT:

/s/ Kathaleen St. J. McCormick
Chancellor Kathaleen St. J. McCormick