

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: AMENDMENTS TO RULES 7, 10, 17–25, AND 171 OF THE COURT OF CHANCERY RULES, SECTIONS, III, IV, AND XVI

This 25th day of September 2023, IT IS HEREBY ORDERED that the Court of Chancery Rules, Sections II, IV, and XVI are revised to amend Rules 7, 10, 17, 18, 19, 20, 21, 22, 23, 23.1, 23.2, 24, 25, and 171, effective immediately.

Rule 7 is amended as follows:

Rule 7. Pleadings; Motions; Briefs; Letters; Compendia; Scheduling and Argument

(a) Pleadings.

(1) *Permitted Pleadings.* Only these pleadings are permitted:

(A) a complaint;

(B) an answer to a complaint;

(C) an answer to a counterclaim designated as a counterclaim;

(D) an answer to a crossclaim;

(E) a third-party complaint;

(F) an answer to a third-party complaint; and

(G) if the Court orders one, a reply to an answer.

(2) *No Other Pleadings.* Statutory references to other types of pleadings—such as a petition, statement of claim, or response—correspond to permitted pleadings.

(3) *Paragraphs.* A pleading must state allegations, claims, or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. An answer to a complaint, counterclaim, or crossclaim must repeat the allegations of the pleading to which it is responding and then set forth the response below each such allegation.

(4) *Separate Counts or Defenses.* If doing so would promote clarity, each claim founded on a separate

transaction or occurrence—and each defense other than a denial—may be stated in a separate count or defense.

(5) *Incorporation by Reference; Exhibits.* A pleading may incorporate another pleading or document by reference. Exhibits to a pleading are part of the pleading for all purposes.

(b) Motions.

(1) *In General.* Except where provided elsewhere, a request for a court order must be made by motion. Unless made during a hearing or trial, a motion must be made in writing.

(2) *Form and Content of Written Motions.*

(A) A written motion, opposition, or reply must contain, in the order indicated:

- (i) the title of the motion, opposition, or reply;
- (ii) an introduction;
- (iii) in the motion or opposition, any relevant background;
- (iv) an argument; and
- (v) a conclusion stating the relief sought.

(B) A written motion, opposition, or reply must contain numbered paragraphs.

(C) A written motion should attach a form of order providing for the relief sought.

(D) Any written motion the movant is or will be supporting with an opening brief may refer to the brief for the items identified in Rule 7(b)(2)(A). If such a motion contains only one paragraph, then the paragraph need not be numbered.

(3) *Word Limits for Written Motions.*

(A) Any written motion the movant is or will be supporting with an opening brief may not exceed 500 words.

(B) Any written motion the movant is not or will not be supporting with an opening brief may not exceed 3,000 words. The opposition to the motion may not exceed 3,000 words. The reply may not exceed 2,000 words. No other submissions containing argument may be filed unless the Court permits.

(C) The caption, title, signature block, and any footer included under Rule 5.1(c) do not count toward the word limitations.

(c) Briefs.

(1) *In General.* Except as the Court orders, only the following briefs may be filed:

(A) an opening, answering, and reply brief for a motion under Rule 12, 23, 23.1, 41(b), 56, or 65;

(B) briefs relating to the approval of a settlement or application for attorney's fees and expenses for an action under Rule 23, 23.1, or 23.2;

(C) pre-trial briefs; and

(D) post-trial briefs.

(2) *Form and Content of Briefs.*

(A) A brief must have a cover page that identifies:

(i) the caption as required under Rule 10;

(ii) the title of the brief; and

(iii) the name, office address, and telephone number of the party or counsel filing the brief.

(B) A brief must contain, in the order indicated and separated by appropriate headings:

(i) a table of contents, with page references;

(ii) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with page references;

(iii) an introduction;

(iv) in an opening or answering brief, a statement of facts with references to the record;

(v) an argument, divided into sections (and subsections, if needed); and

(vi) a conclusion stating the relief sought.

(C) A brief may not contain numbered paragraphs.

(3) *Word Limits.* An opening or answering brief may not exceed 14,000 words. The reply brief may 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.

(d) Letters.

(1) *Purpose.* A letter may be used to transmit courtesy copies of other documents, provide an update to the Court, address logistical or scheduling issues, or address disputes over forms of order. Without authorization from the Court, a party may not request other relief by letter.

(2) *Letters from non-Delaware Counsel.* Any letter from a lawyer must be signed by a Delaware lawyer. A letter from a Delaware lawyer may not merely transmit a letter from a non-Delaware lawyer.

(3) *Word Limits.* A letter to the Court may not exceed 1,000 words. The letterhead, header, address and delivery information, caption, date, salutation, complimentary close, signature, statement of enclosures and copy recipients, and any footer included under Rule 5.1(c) do not count toward the limitation.

(e) Compendium. A party may submit a compendium of the authorities that the party wants the Court to review. Examples include the principal Delaware decisions (whether reported or unreported), applicable Delaware regulations, persuasive non-Delaware decisions, non-Delaware statutes, and excerpts from treatises, articles, and other authorities not readily accessible to the Court. A compendium should not duplicate authorities that an opposing party provided. The compendium should generally not include cases only cited once.

(f) Scheduling and Argument.

(1) Parties may submit a briefing schedule for Court approval by stipulation and proposed order.

(2) If the parties cannot reach agreement, any party may seek an order fixing a briefing schedule.

(3) Any party may request a hearing. The Court may grant the request or rule without a hearing.

Comment

In 2023, Rule 7 was revised to align its language with Federal Rule of Civil Procedure 7 and with other revisions to these rules.

The revision deletes prior Rule 7(b)(2) and (b)(3) as unnecessary cross references. The revision deletes prior Rule 7(c) as unnecessary in light of prevailing practice.

The revision alters Rule 7(b)(4) to align with current practice.

Rule 7 contains new sections that incorporate aspects of prior Rule 171, which the revision eliminates.

Rule 7(c)(1) states when briefs are generally permitted.

Rule 7(c)(2)(B) addresses the contents of motions.

Rule 7(b)(3) imposes a word limitation so that motions supported by briefs do not include argument reserved for the briefs. Rule 7(d) addresses the use of letters.

Rule 10 is amended as follows:

Rule 10. Caption; Form of Filings

(a) Caption. Every pleading, notice, motion, affidavit, form of order, request for or response to discovery, or other filing must have a caption with the Court's name, the names of the parties, and the civil action number. There also must be a title for the filing. The caption of a complaint or a third-party complaint must name all the parties; the caption of other papers, after naming the first party on each side, may refer generally to other parties.

(b) Format.

(1) *Font.* The font for a filing must use one of three conventions:

(A) Times New Roman 14-point typeface with 13-point typeface in footnotes;

(B) Century 12-point typeface with 11-point typeface in footnotes; or

(C) Century Schoolbook 12-point typeface with 11-point typeface in footnotes.

(2) *Spacing.* The line spacing of the text of a filing must be at least twice the point size of the typeface. The line spacing of headings, footnotes, and block quotations may be the exact point size of the typeface.

(3) *Margins.* The margins of a filing must be at least one inch on all sides.

(c) Citations. Citations and quotations must conform to the *Uniform System of Citation* (the Blue Book) published and distributed from time to time by the Harvard Law Review Association as modified by *Delaware Uniform Citation* (the Yellow Book), published and distributed from time to time by the Delaware State Bar Association.

(d) Certification. By signing a filing, the signatory certifies that it complies with the requirements of this rule. The signatory may rely on a word-processing application to generate the word count. The signature block for any motion, brief, or letter must identify:

- (1) the word limit applicable to the filing; and
- (2) the number of words in the filing subject to that limit.

(e) Copies.

(1) *In General.* A party may deliver two copies of each motion, brief, or letter to the judicial officer assigned to the case, in addition to filing it electronically.

(2) *Method of Reproduction.*

(A) Copies must be reproduced by a method that yields a clear black image on white paper. The paper must be opaque, unglazed, and—for briefs, motions, letters, compendia, and appendices—measure 8½ by 11 inches. All copies may be printed double-sided.

(B) Photographs, illustrations, and tables must be reproduced by a method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(3) *Binding.* Briefs, compendia, and appendices must be bound in a secure manner that does not obscure the text and permits the document to lie flat when open. All other filings may be bound or stapled.

Comment

In 2023, Rule 10 was revised to align its language with the Federal Rules of Civil Procedure and with other revisions to these rules.

To avoid duplication, Rule 10 now includes rules about the format of filings that previously appeared in prior Rule 171. As a result, the revision deletes prior Rule 171.

The revision clarifies the formatting of briefs, motions, and letters and permits the use of typographical styles that promote readability.

The revision reflects the current practice regarding sending courtesy copies to the Court.

Rule 17 is amended as follows:

Rule 17. Real Party in Interest; Capacity; Public Officers

(a) Real Party in Interest.

(1) *Designation in General.* An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) an executor;

(B) an administrator;

(C) a guardian;

(D) a bailee;

(E) a trustee of an express trust;

(F) a party with whom or in whose name a contract has been made for another's benefit; and

(G) a party authorized by statute.

(2) *Joinder of the Real Party in Interest.* The Court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

(b) Persons Without Capacity.

(1) *Persons Included.* A person without capacity is an unborn descendant, minor, person with a disability, or other person who lacks the capacity to sue or defend a lawsuit.

(2) *Representatives*. The following representatives may sue or defend on behalf of a person without capacity unless the representative has an interest in the action:

(A) a general guardian;

(B) a limited guardian with authority to sue or defend the lawsuit;

(C) a trustee;

(D) a conservator; and

(E) a like fiduciary.

(3) *Guardian Ad Litem*. A guardian ad litem may sue or defend a lawsuit on behalf of a person without capacity if appointed by the Court. The Court must appoint a guardian ad litem to represent a person without capacity who is unrepresented.

(4) *Rebuttable Presumption of Qualification to Serve as a Guardian*. A parent of a minor who holds joint or sole custody will be presumed a qualified guardian ad litem unless such person has an interest in the case which is inconsistent with the minor's interests.

(5) *Procedure for Appointment of Guardian Ad Litem*.

(A) *Motion for Appointment*. A person who wishes to have a guardian ad litem appointed for a person without capacity must file a motion. The motion must:

(i) explain how the person to be represented lacks capacity, including the person's date of birth if a minor;

(ii) confirm the absence of any duly appointed representative;

(iii) describe the movant's relationship to the person without capacity;

(iv) identify the proposed guardian ad litem;

(v) describe the qualifications of the guardian ad litem;

(vi) affirm that the proposed guardian ad litem lacks any interest in the action;

(vii) identify all persons holding parental or custodial rights, guardianship, or power of attorney to sue or defend lawsuits, or who

otherwise have the care of the person without capacity and whether each is available for appointment or has an interest in the case; and

(viii) be verified or otherwise supported by sufficient evidence.

(B) *Service*. The motion must be served on all parties to the action and:

(i) on the person allegedly without capacity, unless the Court determines that service would be useless or harmful;

(ii) on all persons or entities holding parental or custodial rights, guardianship or power of attorney to sue or defend lawsuits, or, if such persons or entities do not exist, then an adult living with or who otherwise has the care of the person allegedly without capacity; and

(iii) by publication as the Court directs, if the location or identity of the person allegedly without capacity is unknown.

(C) *Order*. If the motion shows cause for appointing a guardian ad litem, or if the Court appoints a guardian ad litem on its own initiative, then the Court must enter an order of appointment. The Court will not enter an order of appointment before 20 days after service of the motion, if one is filed.

(D) *Granting of Motion*. If a person opposes the motion, then the Court may appoint a guardian ad litem after finding:

(i) the person to be represented lacks capacity;

(ii) the guardian ad litem can fairly represent the interests of the person without capacity; and

(iii) the guardian ad litem can best represent the interests of the person without capacity, if there is more than one proposed guardian ad litem.

(6) *No Appropriate Guardian*. If no appropriate guardian ad litem is identified, the Court can:

(A) appoint an attorney to represent the person without capacity, and assess any related attorney's fees and expenses against any or all parties;

(B) permit the person without capacity to proceed without a guardian ad litem; or

(C) dismiss any claim or the action.

(c) Public Officer’s Title and Name. A public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the Court may order that the officer’s name be added.

Comment

In 2023, Rule 17 was revised to align its language to the extent possible with Federal Rule of Civil Procedure 17 so that authorities interpreting the federal rule could be cited more easily as persuasive authority for the interpretation of Rule 17.

Except as noted, no substantive change in the interpretation of the rule was intended, and prior Delaware authorities interpreting the rule remain applicable.

The revision transfers the contents of Rule 25(d)(2) to Rule 17(c). No substantive change was intended.

The revision makes the following substantive changes.

The revision permits the appointment of a limited guardian that will sue or defend a lawsuit on behalf of a person without capacity.

The revision incorporates a presumption that a parent of a minor who holds joint or sole custody is a qualified guardian ad litem unless the parent has a conflict of interest.

The revision specifies and expands (i) the information required in any motion for appointment of a guardian ad litem and (ii) the service recipients. It also requires that no order be entered until 20 days after service of a motion, if one is filed.

The revision omits the “order nisi” to align Rule 17 with the Court’s current practice of permitting an opportunity to respond to a motion before entry of an order.

The revision specifies possible alternatives in the event no appropriate guardian ad litem is identified.

Rule 18 is amended as follows:

Rule 18. Joinder of Claims

A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

Comment

In 2023, Rule 18 was revised to align its language to the extent possible with Federal Rule of Civil Procedure 18(a) so that authorities interpreting the federal rule could be cited more easily as persuasive authority for the interpretation of Rule 18.

No substantive change in the interpretation of the rule was intended, and prior Delaware authorities interpreting the rule remain applicable.

Rule 19 is amended as follows:

Rule 19. Required Joinder of Parties

(a) Persons Required to Be Joined if Feasible.

(1) *Required Party.* A person who is subject to service of process must be joined as a party if:

(A) in that person's absence, the Court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) *Joinder by Court Order.* If a person has not been joined as required, the Court must order that the person

be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(3) *Venue*. If a joined party objects to venue and the joinder would make venue improper, the Court must dismiss that party.

(b) When Joinder Is Not Feasible. If a person who is required to be joined if feasible cannot be joined, the Court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the Court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

(c) Pleading the Reasons for Nonjoinder. When asserting a claim for relief, a party must state:

(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and

(2) the reasons for not joining that person.

(d) Exception for Class Actions. This rule is subject to Rule 23.

Comment

In 2023, Rule 19 was revised to align its language to the extent possible with Federal Rule of Civil Procedure 19 so that authorities interpreting the federal rule could be cited more easily as persuasive authority for the interpretation of Rule 19.

No substantive change in the interpretation of the rule was

intended, and prior Delaware authorities interpreting the rule remain applicable.

Rule 20 is amended as follows:

Rule 20. Permissive Joinder of Parties

(a) Persons Who May Join or Be Joined.

(1) *Plaintiffs.* Persons may join in one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiffs will arise in the action.

(2) *Defendants.* Persons may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

(3) *Extent of Relief.* Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The Court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.

(b) Protective Measures. The Court may issue orders—including an order for separate trials—to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.

Comment

In 2023, Rule 20 was revised to align its language to the extent possible with Federal Rule of Civil Procedure 20 so that authorities interpreting the federal rule could be cited

more easily as persuasive authority for the interpretation of Rule 20.

No substantive change in the interpretation of the rule was intended, and prior Delaware authorities interpreting the rule remain applicable.

Rule 21 is amended as follows:

Rule 21. Misjoinder and Nonjoinder of Parties

Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the Court may at any time, on just terms, add or drop a party. The Court may also sever any claim against a party.

Comment

In 2023, Rule 21 was revised to align its language with Federal Rule of Civil Procedure 21 so that authorities interpreting the federal rule could be cited more easily as persuasive authority for the interpretation of Rule 21.

No substantive change in the interpretation of the rule was intended, and prior Delaware authorities interpreting the rule remain applicable.

Rule 22 is amended as follows:

Rule 22. Interpleader

(a) Grounds.

(1) *By a Plaintiff.* Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Joinder for interpleader is proper even though:

(A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or

(B) the plaintiff denies liability in whole or in part to any or all of the claimants.

(2) *By a Defendant.* A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.

(b) Relation to Other Rules. This rule supplements—and does not limit—the joinder of parties allowed by Rule 20.

Comment

In 2023, Rule 22 was revised to align its language to the extent possible with Federal Rule of Civil Procedure 22 so that authorities interpreting the federal rule could be cited more easily as persuasive authority for the interpretation of Rule 22.

No substantive change in the interpretation of the rule was intended, and prior Delaware authorities interpreting the rule remain applicable.

The revision deletes prior subpart (b) as unnecessary.

Rule 23 is amended as follows:

Rule 23. Class Actions

(a) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members 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) Affidavit from Representative Party.

- (1) A person seeking to serve as a representative party must file an affidavit within 10 days after filing any of the following:
 - (A) a complaint;
 - (B) a motion to intervene; or
 - (C) a motion seeking appointment as a representative party.

(2) The affidavit must state that the person has not received, been promised, or been offered-and will not accept-any form of compensation, directly or indirectly, for serving as a representative party, except for:

(A) any damages or other relief that the Court may award the person as a class member;

(B) any fees, costs, or other payments that the Court expressly approves to be paid to or on behalf of the person; or

(C) reimbursement from the person's attorneys of actual and reasonable out-of-pocket expenditures incurred in prosecuting the action.

(b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

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

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

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

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole; or

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

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

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

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

(D) the likely difficulties in managing a class action.

(c) Certification Order; Notice; Judgment; Subclasses.

(1) *Certification Order.* A class action must be certified by order. The order must define the class and identify a representative party. The order may be altered or amended before final judgment.

(2) *Notice.*

(A) For (b)(1) or (b)(2) Classes. In any class action certified under Rule 23(b)(1) or (b)(2), the Court may direct appropriate notice to the class members.

(B) For (b)(3) Classes. In any class action certified under Rule 23(b)(3), the Court must direct to the class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must advise each member:

(i) that the Court will exclude from the class any member who requests exclusion by a specified date;

(ii) of the binding effect of a judgment, whether favorable or not, on members who do not request exclusion; and

(iii) that a class member who does not request exclusion may enter an appearance through counsel if the member so desires.

(3) *Judgment.* Whether or not favorable to the class, the judgment must:

(A) in an action maintained as a class action under Rule 23(b)(1) or Rule 23(b)(2), include and describe those whom the Court finds to be class members; and

(B) in an action maintained as a class action under Rule 23(b)(3), include and specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the Court finds to be class members.

(4) *Particular Issues*. When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(5) *Subclasses*. When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(d) Class Counsel.

(1) *Duty of Class Counsel*. Class counsel must fairly and adequately represent the interests of the class.

(2) *Interim Counsel*. The Court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action. Interim counsel has the same duty as class counsel to fairly and adequately represent the interests of the class.

(3) *Appointing Class Counsel*. Unless a statute provides otherwise, the Court must appoint class counsel when certifying a class and may make further orders in connection with that appointment. If only one applicant seeks appointment and the applicant cannot provide adequate representation, then the Court may not certify the class.

(4) *Disputed Appointments*. The Court may resolve disputes over the appointment of class or interim counsel, including who can best represent the interests of the class.

(A) When selecting class or interim counsel, the Court may consider:

- (i) counsel's competence and experience;
- (ii) counsel's access to the resources necessary to represent the class;
- (iii) the quality of the pleading;
- (iv) counsel's performance in the litigation to date;
- (v) the proposed leadership structure;

(vi) the relative economic stakes of the representative parties;

(vii) any conflicts between counsel or the representative parties and members of the class; and

(viii) any other matter pertinent to the ability of counsel or the representative party to fairly and adequately represent the interests of the class.

(B) The Court may:

(i) order any applicant to provide information on any subject pertinent to the application and to propose terms for attorney's fees and expenses; and

(ii) include in the appointing order provisions about the award of attorney's fees or expenses under Rule 23(g).

(e) Conducting the Action.

(1) *In General.* In conducting an action under this rule, the Court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) require-to protect class members and fairly conduct the action-giving notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) *Amending and Combining Orders.* An order under Rule 23(e)(1) may be altered or amended from time to time and may be combined with an order under Rule 16.

(f) Dismissal or Settlement.

(1) *In General.* Subject to Rule 15(aaa), a class action may be dismissed or settled only if the Court approves the terms of the proposed dismissal or settlement.

(2) *Required Submissions.* The parties submitting the proposed dismissal or settlement must file:

(A) a further affidavit from each representative party that meets the requirements of Rule 23(aa)(2);

(B) if a dismissal, a proposed form of order stating the terms on which the action will be dismissed; and

(C) if a settlement, the definitive agreement governing the settlement.

(3) *Notice.* Notice of the proposed dismissal or settlement must be given to all class members in the manner directed by the Court.

(A) *Dismissal Without Notice.* But the Court may order dismissal without notice if the dismissal is to be without prejudice to the class or with prejudice to the plaintiff only.

(B) *Information About Notice.* The parties must provide the Court with information sufficient to rule on whether to require notice and in what form.

(C) *Means of Notice.* Notice may be given by any appropriate means approved by the Court, including first-class U.S. mail, email, or publication.

(D) *Contents of Notice.* Unless the Court orders otherwise, the notice of a proposed dismissal or settlement must clearly and concisely state, in plain, easily understood language:

(i) the location, date, and time of any hearing;

(ii) the nature of the action;

(iii) the definition of the class;

(iv) a summary of the claims, issues, defenses, and relief that the class action sought;

(v) a description of the terms of the proposed dismissal or settlement;

(vi) any award of attorney's fees or expenses, or any representative-party award, that will be sought if the proposed dismissal or settlement is approved;

(vii) instructions for objectors;

(viii) that additional information can be obtained by contacting class counsel;

(ix) how to contact class counsel; and

(x) not to contact the Court with questions about the terms of the proposed dismissal or settlement.

(4) *Class-Member Objections.*

(A) *In General.* Any class member may object to the proposed dismissal or settlement of a class action. The objection must state with specificity the grounds for and purpose of the objection and state whether it applies only to the objector, to a specific subset of the class, or to the entire class.

(B) *Court Approval Required for Payment in Connection with an Objection.* Unless approved by the Court after a hearing, no payment or other consideration may be provided in connection with:

(i) forgoing or withdrawing an objection; or

(ii) forgoing, dismissing, or abandoning an appeal from the judgment approving the proposed dismissal or settlement.

(C) *Taking over Case After Providing Adequate Security.* The Court may allow an objector to substitute as a representative party if:

(i) the objector satisfies the requirements for a representative party in Rule 23; and

(ii) if the proposed dismissal or settlement would provide relief to the class, the objector provides adequate security.

(5) *Approval of the Proposal.* If the proposed dismissal or settlement would bind class members, the Court may approve it only after a hearing and only on finding that it is reasonable after considering whether:

(A) the representative party and class counsel have adequately represented the class;

- (B) adequate notice of the hearing was provided;
- (C) the proposed dismissal or settlement was negotiated at arm's length; and
- (D) the relief provided for the class falls within a range of reasonableness, taking into account:
 - (i) the strength of the claims;
 - (ii) the costs, risks, and delay of trial and appeal;
 - (iii) the scope of the release; and
 - (iv) any objections to the proposed dismissal or settlement.

(6) *Disposition of Residual Settlement Funds.*

(A) Any order approving a settlement under this rule that establishes a process for compensating class members must provide for the disbursement of residual settlement funds, if any.

(B) The Court may direct that residual settlement funds be redistributed to identified class members. But if redistribution is uneconomic, the Court may approve a transfer of the funds to the Combined Campaign for Justice or a similar organization.

(g) Attorney's Fees and Expenses; Representative-Party Awards.

(1) In a class action, the Court may award reasonable attorney's fees and expenses to class counsel.

(2) Any person from whom payment is sought may oppose the award, and any class member may object as provided in Rule 23(f)(4).

(3) Any counsel who will share in the award of attorney's fees and expenses must submit an affidavit documenting their fees and expenses.

(4) The Court may authorize class counsel to pay a reasonable award to a representative party out of any award of attorney's fees.

Comment

In 2023, Rule 23 was revised to align its language in certain respects with Federal Rule of Civil Procedure 23 so that authorities interpreting the federal rule could be cited

more easily as persuasive authority for the interpretation of Rule 23.

Except as noted, no substantive change in the interpretation of the rule was intended, and prior Delaware authorities interpreting the rule remain applicable. In particular, the revision deletes the last sentence of prior Rule 23(aa) as unnecessary and replaces the term “compromise” in prior Rule 23(f) with “settlement.” No substantive change in interpretation was intended.

The revision makes the following changes to conform Rule 23 more closely to Federal Rule 23 and current practice:

The revision removes the requirement to certify a class “[a]s soon as practicable” as inconsistent with current practice. Consistent with the 2003 amendments to the federal rule, the revision does not provide for “conditional” certification orders.

Rule 23(d) addresses practice regarding class counsel; it is new and modeled on current practice.

Rule 23(f) addresses practice regarding dismissal and settlement; it is mostly new and modeled on the federal rule and current practice. Rules 23(f)(1), 23(f)(2)(A), and 23(f)(3)(A) are carryovers from the prior rule.

Rule 23(g) addresses attorney’s fees; it is new and modeled on the federal rule and current practice.

Rule 23.1 is amended as follows:

Rule 23.1. Derivative Actions for Entities with Separate Legal Existence

(a) Pleading Requirements. The complaint in a derivative action must:

(1) state with particularity:

(A) any effort by the derivative plaintiff to obtain the desired action from the entity; and

(B) the reasons for not obtaining the action or not making the effort; and

(2) allege facts supporting a reasonable inference that the derivative plaintiff has standing to sue derivatively under the law governing the entity.

(b) Affidavit from Derivative Plaintiff.

(1) A person seeking to serve as a derivative plaintiff must file an affidavit within 10 days after filing any of the following:

(A) a complaint;

(B) a motion to intervene; or

(C) a motion seeking appointment as a derivative plaintiff.

(2) The affidavit must state that the person has not received, been promised, or been offered—and will not accept—any form of compensation, directly or indirectly, for serving as a derivative plaintiff, except for:

(A) the indirect benefit from any damages or other relief that the Court may award to the entity;

(B) a ratable share of any damages or other relief that the Court may award;

(C) any fees, costs, or other payments that the Court expressly approves to be paid to or on behalf of the person; or

(D) reimbursement from the person's attorneys of actual and reasonable out-of-pocket expenditures incurred in prosecuting the action.

(c) Derivative Plaintiffs and Derivative Counsel.

(1) *Derivative Plaintiffs.*

(A) A person may serve as a derivative plaintiff if:

(i) The person has standing to sue derivatively under the law governing the entity; and

(ii) The person can fairly and adequately represent the interests of the entity in pursuing the derivative action.

(B) If only one person has sued derivatively but cannot adequately represent the interests of the entity in pursuing the derivative action, then the Court must dismiss the derivative action without prejudice. But an alternative derivative plaintiff

may move to intervene within 60 days and continue the action.

(2) *Derivative Counsel.* A derivative plaintiff must be represented by counsel. Derivative counsel must fairly and adequately represent the interests of the entity in pursuing the derivative action.

(3) *Disputed Appointments.*

(A) The Court may resolve disputes over the appointment of derivative counsel, including who can best represent the interests of the entity in pursuing the derivative action, and may make further orders in connection with the appointment.

(B) When selecting derivative counsel, the Court may consider:

- (i) counsel's competence and experience;
- (ii) counsel's access to the resources necessary to prosecute the litigation;
- (iii) the quality of the pleading;
- (iv) counsel's performance in the litigation to date;
- (v) the proposed leadership structure;
- (vi) the derivative plaintiff's relationship to and interest in the entity;
- (vii) any conflicts between counsel or the derivative plaintiff and the entity; and
- (viii) any other matter pertinent to ability of counsel or the derivative plaintiff to fairly and adequately represent the interests of the entity in the derivative action.

(C) The Court may:

- (i) order any applicant to provide information on any subject pertinent to the application and to propose terms for attorney's fees and expenses; and
- (ii) include in the appointing order provisions about the award of attorney's fees or expenses.

(4) *Replacement of Derivative Plaintiff or Derivative Counsel.* If a derivative plaintiff or derivative counsel fails to adequately represent the interests of the entity in pursuing the derivative action, then the Court may

dismiss the derivative action without prejudice, replace the derivative plaintiff or derivative counsel, or make further orders as warranted.

(d) Dismissal or Settlement.

(1) *In General.* Subject to Rule 15(aaa), a derivative action may be dismissed or settled only if the Court approves the terms of the proposed dismissal or settlement.

(2) *Required Submissions.* The parties submitting the proposed dismissal or settlement must file:

(A) a further affidavit from each derivative plaintiff that meets the requirements of Rule 23.1(b)(2);

(B) if a dismissal, a proposed form of order stating the terms on which the action will be dismissed; or

(C) if a settlement, the definitive agreement governing the settlement.

(3) *Notice.* Notice of the proposed dismissal or settlement must be given in the manner directed by the Court.

(A) *Dismissal Without Notice.* But the Court may order dismissal without notice if the dismissal is to be without prejudice or with prejudice to the derivative plaintiff only.

(B) *Information About Notice.* The parties must provide the Court with information sufficient to rule on whether to require notice and in what form.

(C) *Means of Notice.* Notice may be given by any appropriate means approved by the Court, including first-class U.S. mail, email, or publication.

(D) *Contents of Notice.* Unless the Court orders otherwise, the notice of a proposed dismissal or settlement must clearly and concisely state, in plain, easily understood language:

(i) the location, date, and time of any hearing;

(ii) the nature of the action;

(iii) a summary of the claims, issues, defenses, and relief that the derivative action sought;

(iv) a description of the terms of the proposed dismissal or settlement;

(v) any award of attorney's fees or expenses, or any derivative-plaintiff award, that will be sought if the proposed dismissal or settlement is approved;

(vi) instructions for objectors;

(vii) that additional information can be obtained by contacting derivative counsel;

(viii) how to contact derivative counsel; and

(ix) not to contact the Court with questions about the terms of the proposed dismissal or settlement.

(4) *Objections.*

(A) *In General.* Any person situated similarly to the derivative plaintiff may object to the proposed dismissal or settlement. The objection must state with specificity the grounds for and purpose of the objection.

(B) *Court Approval Required for Payment in Connection with an Objection.* Unless approved by the Court after a hearing, no payment or other consideration may be provided in connection with:

(i) forgoing or withdrawing an objection, or

(ii) forgoing, dismissing, or abandoning an appeal from the judgment approving the proposed dismissal or settlement.

(C) *Taking over Case After Providing Adequate Security.* The Court may allow an objector to substitute as a derivative plaintiff if:

(i) the objector satisfies the requirements for a derivative plaintiff in Rule 23.1; and

(ii) if the proposed dismissal or settlement would provide relief to the entity, the objector provides adequate security.

(5) *Approval of Proposed Settlement.* The Court may approve a proposed settlement only after a hearing and only on finding:

(A) the derivative plaintiff and derivative counsel adequately represented the entity;

(B) adequate notice of the hearing was provided;

(C) the proposed settlement was negotiated at arm's length;

(D) the relief falls within a range of reasonable results, taking into account:

(i) the strength of the claims;

(ii) the costs, risks, and delay of trial and appeal;

(iii) the scope of the release; and

(iv) any objections to the proposed settlement.

(e) Attorney's Fees, Expenses, and Derivative-Plaintiff Awards.

(1) In a derivative action, the Court may award reasonable attorney's fees and expenses to derivative counsel.

(2) Any person from whom payment is sought may oppose the award, and any person with standing to object to a proposed dismissal or settlement may object to the award.

(3) Any counsel who will share in the award of attorney's fees and expenses must submit an affidavit documenting their fees and expenses.

(4) The Court may authorize derivative counsel to pay a reasonable award to a derivative plaintiff out of any award of attorney's fees.

(f) Definitions. For purposes of Rule 23.1:

(1) "derivative action" means an action on behalf of an entity to enforce a claim that the entity could assert;

(2) "derivative counsel" means a counsel representing a derivative plaintiff in pursuing a derivative action on behalf of an entity;

(3) "derivative plaintiff" means a person pursuing a derivative action; and

(4) "entity" means an entity with a separate legal existence, including a corporation, limited liability company, limited partnership, general partnership with entity status, common law trust, or statutory trust.

Comment

In 2023, Rule 23.1 was revised to align its language in certain respects with Federal Rule 23.1 so that authorities interpreting the federal rule could be cited more easily as persuasive authority for the interpretation of Rule 23.1. The revision added elements modeled on current practice and on Federal Rule 23.

Except as noted, no substantive change in the interpretation of Rule 23.1 or the law governing derivative actions is intended. Prior Delaware authorities interpreting the rule and the law governing derivative actions remain applicable.

The revision replaces the term “compromise” with “settlement.” The revision applies to all entities with a separate legal existence and to any derivative plaintiff.

The revision specifies requirements for notice of a proposed dismissal or settlement.

The revision requires Court approval for any payment or other consideration provided in connection with the forgoing or withdrawal of an objection.

Rule 23.2 is amended as follows:

Rule 23.2. Actions on Behalf of or Against the Members of an Association Without Separate Legal Existence

(a) Actions on Behalf of the Members of an Association.

(1) Despite Rule 23, a person may sue for the members of an association if the person is:

(A) a member of the association; and

(B) capable of adequately representing the interests of the association and its members.

(2) Despite Rule 9(a), the complaint must allege the capacity in which the person is suing for the members of the association and facts sufficient to satisfy Rule 23.2(a)(1).

(3) Despite Rules 10(a) and 17(a), the caption must name the association as a nominal plaintiff and may name the member suing.

(b) Actions Against the Members of an Association.

(1) Despite Rule 23, a plaintiff may sue the members of an association by naming a person as a defendant who is:

(A) a member of the association; and

(B) capable of adequately representing the interests of the association and its members.

(2) Despite Rule 9(a), the complaint must allege the capacity in which each person is named as a defendant and facts sufficient to satisfy Rule 23.2(b)(1).

(3) Despite Rule 10(a) and 17(a), the caption must name the association as a nominal defendant and may name the member being sued.

(c) Determination of Adequacy; Notice; Dismissal for Inadequacy; Disputes Among Members.

(1) *Determination of Adequacy.* A determination that a person is a member and can adequately represent the interests of the association and its members must be made by order. The order may be altered or amended before final judgment.

(2) *Notice.* Except for cause, the Court must direct appropriate notice of the action to the association and all of its members.

(3) *Dismissal for Inadequacy.* If only one person has sued or been named as a defendant and if the person cannot adequately represent the interests of the association and its members, then the Court must dismiss the action without prejudice. But an alternative plaintiff may move to intervene within 60 days and continue the action.

(4) *Disputes Among Members as to Litigation.* The Court may resolve any dispute among members regarding the conduct of the litigation by applying the rules of the association. If the Court cannot resolve the dispute by applying the rules of the association, then the action cannot proceed under this rule. It must comply with Rule 23.

(d) Conduct of the Action. In conducting the action, the Court may issue any orders contemplated by Rule 23(e).

(e) Dismissal or Settlement.

(1) *In General.* An action under this rule may be dismissed or settled only if the Court approves the terms of the proposed dismissal or settlement.

(2) *Required Submissions.*

(A) The parties submitting a proposed dismissal must file a form of order stating the terms on which the action will be dismissed; and

(B) The parties submitting a proposed settlement must file the definitive agreement governing the settlement.

(3) *Notice.* Except for cause, the Court must direct appropriate notice of the proposed dismissal or settlement to the association and all of its members. The parties must provide the Court with information sufficient to rule on whether to require notice and in what form.

(4) *Objections.*

(A) *In General.* Any member of the association may object to the proposed dismissal or settlement. The objection must state with specificity the grounds for the objection and its purpose. The objection must state whether it applies only to the objector, to a specific subset of the members of the association, or to all members.

(B) *Court Approval Required for Payment in Connection with an Objection.* Unless approved by the Court after a hearing, no payment or other consideration may be provided in connection with:

(i) forgoing or withdrawing an objection, or

(ii) forgoing, dismissing, or abandoning an appeal from the judgment approving the proposed dismissal or settlement.

(5) *Approval of the Proposal.* If the proposed dismissal or settlement will bind the members of the association, the Court may approve it only after a hearing and only on finding that it is reasonable after considering whether:

(A) the interests of the association and its members were adequately represented;

(B) adequate notice of the hearing was provided;

(C) the proposed dismissal or settlement was negotiated at arm's length;

(D) the relief provided falls within a range of reasonableness, taking into account:

(i) the strength of the claims;

(ii) the costs, risks, and delay of trial and appeal;

(iii) the scope of the release; and

(iv) any objections to the proposed dismissal or settlement.

(f) Attorney's Fees, Expenses, and Member Awards. The procedure for any application for an award of attorney's fees, expenses, or an award to a member who represented the interests of the association and its members, must correspond with the procedure in Rule 23(g).

(g) Definitions. For Rule 23.2:

(1) "association" means a collective organization of persons who have united together for some purpose or business but without forming an entity with a separate legal existence; and

(2) "member" means a person who belongs to or acts as part of an association.

Comment

In 2023, the Court of Chancery Rules were revised as part of an effort to align them with the Federal Rules of Civil Procedure. Rule 23.2 is an exception. It was revised in its entirety.

Prior Rule 23.2 and existing Federal Rule of Civil Procedure 23.2 address suits on behalf of or against the members of an unincorporated association. Rule 23.2 provides a simplified, quasi-class action vehicle for suits on behalf of or against the members of an unincorporated association. It uses procedures modeled on Rule 23.

The revision does not affect the ability of members of an

association to sue as plaintiffs individually, nor the ability of a party to sue members of an association as defendants individually.

Rule 24 is amended as follows:

Rule 24. Intervention

(a) Intervention of Right. On timely motion, the Court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a state statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) Permissive Intervention.

(1) *In General.* On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a state statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) *By a Government Officer or Agency.* On timely motion, the Court may permit a state governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) *Delay or Prejudice.* In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) Notice and Pleading Required. A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention. A motion to intervene must:

(1) be accompanied by a pleading that sets out the claim or defense for which intervention is sought; or

(2) state the reasons why a pleading should not be required.

Comment

In 2023, Rule 24 was revised to align its language in certain respects with Federal Rule of Civil Procedure 24 so that authorities interpreting the federal rule could be cited more easily as persuasive authority for the interpretation of Rule 24.

Except as noted, no substantive change in the interpretation of the rule was intended, and prior Delaware authorities interpreting the rule remain applicable.

The revision includes language contemplating intervention by a government officer or agency in certain enumerated circumstances.

The revision changes the pleading requirement for movants seeking to intervene.

Rule 25 is amended as follows:

Rule 25. Substitution of Parties

(a) Death.

(1) *Substitution if the Claim Is Not Extinguished.* If a party dies and the claim is not extinguished, the Court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

(2) *Continuation Among the Remaining Parties.* After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(3) *Service.* A motion to substitute must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. An attorney who represented the deceased party may file the notification of death, which withdraws the appearance of the attorney, other attorneys from the same firm, and any attorneys admitted pro hac vice from the representation of the deceased party. Any statement noting death should identify the decedent's successor or representative, and that person's attorney, if any.

(b) Incompetency. If a party becomes incompetent, the Court may, on motion, permit the action to be continued by or against the party's representative. The motion must be served as provided in Rule 25(a)(3).

(c) Transfer of Interest. If an interest is transferred, the action may be continued by or against the original party unless the Court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

(d) Public Officers; Death or Separation from Office. An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The Court may order substitution at any time, but the absence of such an order does not affect the substitution.

Comment

In 2023, Rule 25 was revised to align its language in certain respects with Federal Rule of Civil Procedure 25 so that authorities interpreting the federal rule could be cited more easily as persuasive authority for the interpretation of Rule 25.

Except as noted, no substantive change in the interpretation of the rule was intended, and prior Delaware authorities interpreting the rule remain applicable.

The revision moved the contents of prior Rule 25(d)(2) to Rule 17.

The revision changes the procedures for giving notice of a party's death and the effect on an attorney's representation.

Rule 171 is amended as follows:

Rule 171. Briefs

Repealed. Content transferred to Rules 7 and 10.

FOR THE COURT:

/s/ Kathaleen St. J. McCormick

Chancellor Kathaleen St. J. McCormick