**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

**IN RE: AMENDMENTS TO RULES 1-6, 8, 9, 11-15, 23, 23.1, 79, 79.1, 79.2, AND 174 OF THE COURT OF CHANCERY RULES, SECTIONS, I, II, III, IV, X, AND XVI**

WHEREAS, on May 31, 2024, the Chancellor issued an Order amending Court of Chancery Rules, Sections I, II, III, IV, X, and XVI are revised to amend Rules 1–6, 8, 9, 11–15, 23, 23.1, 79, 79.1, 79.2, and 174 effective June 14, 2024. The Court subsequently identified errors in cross references in the Comment to newly amended Rule 5 and in newly amended Rule 12(h)(2)(b), which this Order corrects.

THEREFORE, Court of Chancery Rules, Sections I, II, III, IV, X, and XVI are revised as follows to amend Rules 1–6, 8, 9, 11–15, 23, 23.1, 79, 79.1, 79.2, and 174 effective June 14, 2024.

**Rule 1 is amended as follows:**

**TITLE I. SCOPE OF RULES –– FORM OF ACTION**

**Rule 1. Scope and Purpose**

These rules shall govern the procedure in the Court of Chancery of the State of Delaware. They should be construed, administered, and employed by the Court and the parties to secure the just, speedy, and inexpensive determination of every proceeding.

**Comment**

In 2024, Rule 1 was revised to align its language to the extent possible with Federal Rule of Civil Procedure 1 so that authorities interpreting the federal rule could be cited more easily as persuasive authority for the interpretation of Rule 1.

Before the 2024 revision, Rule 1 stated that the rules governed "except as stated in Rule 81." Because Rule 81 is

part of the rules, that exception was deemed superfluous and eliminated.

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

**Rule 2 is amended as follows:**

**Rule 2. One Form of Action**

There is one form of action—the civil action.

**Comment**

In 2024, Rule 2 was revised to align its language to the extent possible with Federal Rule of Civil Procedure 2 so that authorities interpreting the federal rule could be cited more easily as persuasive authority for the interpretation of Rule 2.

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

The Court of Chancery maintains a separate docket for a subtype of civil actions, known as civil miscellaneous actions. Specific rules apply to civil miscellaneous actions.

**Rule 3 is amended as follows:**

**Rule 3. Commencing an Action; Related Deposits, Fees, and Charges**

**(a) Complaint.** A civil action is commenced by filing a complaint with the Register in Chancery.

**(b) Supplemental Information Sheet.** Each complaint must be accompanied by a completed supplemental information sheet in the form adopted by the Court.

**(c) Verification.**

(1) The following papers must be verified:

(A) complaints;

(B) counterclaims;

(C) crossclaims;

(D) third-party complaints; and

(E) amendments or supplements to those pleadings.

(2) Each party filing the paper must verify under oath or by affirmation that the matter contained in the paper is true and correct to the best of the party's knowledge, information, and belief. An authorized person must verify a paper filed by an entity or association.

**(d) Deposits for Fees and Charges.**

(1) *Initial Nonrefundable Deposit and Use.*

(A) To commence an action, a party must pay an initial nonrefundable deposit, except in matters:

(i) concerning a trust;

(ii) concerning a guardianship;

(iii) for partition;

(iv) for a decree of distribution;

(v) to sell real property to pay debts;

(vi) for instructions;

(vii) for an adjudication of presumed death;

(viii) for an order disposing of remains;

(ix) for elective share;

(x) to admit a will to probate;

(xi) for a rule to show cause to compel return of assets; and

(xii) for a distribution order to discharge estate debt.

(B) The initial nonrefundable deposit is in addition to any other fees or charges due to commence the case.

(C) The Register in Chancery will apply the initial deposit to satisfy fees or charges for the plaintiff's filings after the initial filings in the case.

(2) *Additional Deposit and Use*. If the initial nonrefundable deposit is exhausted, a party may be required to pay an additional deposit before performing any additional services. The Register in Chancery will use the additional deposit to satisfy fees or charges for filings.

(3) *Sequestration Deposit.* In an action seeking a sequestration order, a party must pay an additional deposit. The Register in Chancery will set aside part of the additional deposit to pay the sequestrator any Court-ordered fee.

(4) The Register in Chancery will refund any balance from an additional or sequestration deposit remaining at the end of the case.

**(e) Schedule of Deposits, Fees, and Charges.** The Register in Chancery will assess the deposits, fees, and charges identified in a schedule published by the Register in Chancery.

**(f) Modifications.** The Register in Chancery may determine any deposits, fees, or charges for services not specified in the Schedule of Deposits, Fees, and Charges. The Register in Chancery may increase or decrease any deposit, fee, or charge for good cause in a particular case.

**(g) Additional Fees.** In addition to any other deposits, fees, and charges, a party must pay:

(1) a technology surcharge for each filing; and

(2) a supplemental court security fee for each initial civil filing, to be deposited in the Court Security Fund, pursuant to 10 *Del. C.* § 8505.

**(h) Security for Costs Incurred by Non-Resident Plaintiffs.** A non-Delaware resident may be required to post security for costs.

**(i) Exemptions.** The following parties are exempt from paying fees and charges:

(1) the Attorney General or the Department of Justice;

(2) the Insurance Commissioner;

(3) the Human Relations Commission;

(4) the Office of the Public Guardian; or

(5) any party the Court determines to be unable to pay the fees and charges.

## Comment

In 2024, Rule 3 was revised to align its language to the extent possible with Federal Rule of Civil Procedure 3 so that authorities interpreting the federal rule could be cited

more easily as persuasive authority for the interpretation of Rule 3.

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 follows Federal Rule 3 in stating that a civil action is commenced by filing a complaint. Under Rule 7, a complaint for purposes of the rules includes a petition or a filing that a statute may designate for commencing an action.

The revision removes the requirement to file service copies of a complaint to align with current electronic filing practice. It also addresses the obligation to file a supplemental information sheet with each complaint.

The revision clarifies that supplements to certain pleadings must be verified.

The revision clarifies that (i) the initial nonrefundable deposit is not required in certain matters and (ii) any additional or sequestration deposit is refundable. The revision removes the Register in Chancery's discretionary deposit for costs associated with filings in guardianship matters to align with the current practice of fee collection at the time of filing.

The revision incorporates and replaces Rule 79.1(d) regarding the technology surcharge.

The revision modifies the language concerning the supplemental court security assessment for consistency with 10 *Del. C.* § 8505.

The revision removes the costs of deposits and the statewide security fee, and the schedule of fees and charges. The Register in Chancery will publish a Schedule of Deposits, Fees, and Charges that will be updated from time to time.

The new Schedule of Deposits, Fees, and Charges:

(i) clarifies that the Register in Chancery will assess fees and charges against the filing or authorizing party, except in certain specified instances;

(ii) identifies the cost of the initial nonrefundable deposit, sequestration deposit, supplemental court security fee, and technology surcharge;

(iii) clarifies that the fees and charges for "All Actions" are default costs unless otherwise specified for civil actions or matters concerning guardianships, trusts or receiverships;

(iv) removes the duplicative references to fees for "Docketing any item" and "Scanning hard copy documents for docketing" and replaces them with a single per page fee for "Recording any document filed";

(v) clarifies the cost associated with in-person and remote court proceedings;

(vi) clarifies that there is no charge for motions to expedite, in-person and remote court proceedings, and exhibit storage in guardianship matters;

(vii) identifies the cost of subpoenas in guardianship and trust matters;

(viii) increases the fee for amended counterclaims, cross-claims, and third-party claims to align with the fee for filing an amended complaint;

(ix) clarifies the costs associated with filing, recording and indexing of accounts and mailing notices to interested parties that the Register in Chancery charges in trustee, guardianship, and receivership matters;

(x) clarifies that fees for mediation, pursuant to Rules 93–95 and 174, apply to full and partial days and include time spent preparing for mediation and follow-up with the parties; and

(xi) increases the cost of mediation pursuant to Rule 174 for civil actions or trust matters.

**Rule 4 is amended as follows:**

**Rule 4. Process**

**(a) Form of Summons.** The summons must:

(1) name the Court and the parties;

(2) be directed to the defendant;

(3) state the name and address of the plaintiff or—if represented—the plaintiff's attorney;

(4) state the time within which the defendant must appear and defend;

(5) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(6) be signed by the Register in Chancery; and

(7) bear the Court's seal.

**(b) Issuance of Summons.** On or after filing the complaint, the plaintiff may present a summons to the Register in Chancery for signature and seal. If the summons is properly completed, the Register in Chancery will sign it, seal it, and issue it to the plaintiff for service on the defendant. The Register in Chancery will furnish the person making service with sufficient copies. A summons—or a copy of the summons if addressed to multiple defendants—must be issued for each defendant to be served.

**(c) Service of Process.**

(1) Service of process means service of both the summons and the complaint. The summons and complaint must be served together.

(2) Any person who is at least 18 years old and not a party may serve process. At the plaintiff's request, the Court may order that service be made by the sheriff or by a person specially appointed by the Court for that purpose. All persons—except the sheriff—wishing to serve process in person for the Court's matters must be registered with the Register in Chancery.

**(d) Personal Service.** Service of process may be made on:

(1) An individual other than a person without capacity, by:

(A) delivering process to the individual personally;

(B) leaving process at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering process to an agent authorized by appointment or by law to receive service of process;

(2) A person without capacity, by serving process in the manner prescribed by law;

(3) A Delaware or foreign entity—with or without separate legal existence—by serving process in the manner provided by statute; or

(4) Any defendant, pursuant to a Court order directing another or additional mode of service.

**(e) Service Under a Consent Statute.**

(1) This rule applies when serving:

(A) a partner or liquidating trustee under 6 *Del. C.* § 15-114;

(B) a partner or liquidating trustee under 6 *Del. C.* § 17-109;

(C) a manager or liquidating trustee under 6 *Del. C.* § 18-109; and

(D) a director, trustee, member of the governing body, or officer, under 10 *Del. C.* § 3114.

(2) The plaintiff must file a statement signed by the party or its attorney providing:

(A) the addresses required by the consent statute;

(B) the registered agent and registered address of the entity;

(C) the date of service on the entity; and

(D) if any information is unknown, a description of the diligent efforts made to ascertain it.

(3) A summons for service under a consent statute must identify the consent statute and append a copy of the statute.

(4) Within the time required by the consent statute, the Register in Chancery must mail a copy of the summons as prescribed by the statute. Not later than three days after the mailing is completed, the Register in Chancery will note on the docket when the mailing took place.

**(f) Service under 10 *Del. C.* § 365.**

(1) The plaintiff must file an affidavit stating that:

(A) a defendant is out of the State or cannot be found to be served with process; and

(B) there is just ground to believe the defendant is intentionally avoiding service.

(2) The plaintiff must obtain a Court order providing for:

(A) the defendant to appear by a specific date; and

(B) publication of the order in the manner directed by the Court, but not less than once per week for three consecutive weeks.

(3) The Register in Chancery will cause the order to be published as directed by the Court.

(4) Service is accomplished upon compliance with the Court order.

**(g) Service under 10 *Del. C.* § 366.**

(1) The plaintiff must file an affidavit:

(A) stating that a defendant is a nonresident;

(B) providing a last-known address or stating that the last-known address is unknown and cannot be ascertained after reasonable diligence;

(C) providing a reasonable description of property to be sequestered, including the estimated value of the property;

(D) describing the nature of the defendant's title or interest in the property and—if that title or interest is beneficial in nature—the name of the holder of legal title;

(E) identifying the source of the information; and

(F) providing reasons for omitting any information.

(2) The plaintiff must obtain a Court order:

(A) providing for the defendant to appear by a specific date;

(B) requiring publication of the order in the manner directed by the Court, but not less than once per week for three consecutive weeks;

(C) specifying sufficient security;

(D) appointing a sequestrator; and

(E) specifying the property that the sequestrator must seize if the defendant fails to appear and the plaintiff posts sufficient security.

(3) The Register in Chancery will:

(A) cause the order to be published as directed by the Court; and

(B) send the order by registered or certified mail if a last-known address has been provided.

(4) If the defendant fails to appear and the plaintiff posts the required security, then the sequestrator must:

(A) serve a certified copy of the Court's order on the person with possession, custody, or control of the property;

(B) seize the property; and

(C) report to the Court within 20 days after the seizure—or different time if the Court directs—regarding the property sequestered, including the date and time of the property's seizure.

(5) The sequestrator may seize property that is, or appears to be, not susceptible of physical seizure by serving on the person with possession, custody, or control of the property a writing directing the person to:

(A) retain the property until the Court's further order or notice from the sequestrator;

(B) promptly notate that the property is sequestered by Court's order; and

(C) within 10 days after service of the order, deliver an affidavit:

(i) providing a reasonable description of property being sequestered, including the estimated value of the property;

(ii) describing the nature of the defendant's title or interest in the property;

(iii) identifying the name and address of the beneficial owner if the defendant only holds legal title or the legal owner if the defendant is the beneficial owner; and

(iv) providing the reasons for omitting any information.

(6) The Court may modify these procedures except as required by statute.

(7) Service is accomplished upon compliance with the Court order.

**(h) Other Means of Service.** Whenever a statute, rule, agreement, or Court order provides for other means of serving process, service may be made according to the statute, rule, agreement, or order.

**(i) Proof of Service.** Proof of service of process must be filed promptly with the Register in Chancery. Except for service by the sheriff, service must be proven by affidavit. Failure to prove service does not affect the validity of service.

**(j) Amendment.** The Court may allow the amending of any process or proof of service unless it would clearly cause material prejudice to the substantial rights of a defendant.

## Comment

In 2024, Rule 4 was revised to align its language in certain respects with Federal Rule of Civil Procedure 4 and to conform Rule 4 more closely to current practice.

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 makes the following changes to conform Rule 4 more closely to current practice:

It clarifies that process means service of both the summons and the complaint.

It clarifies the procedures for service by publication and service by publication and seizure.

Prior Rule 4(dc) was modified significantly to address generally service under 6 *Del. C.* § 15-114, 6 *Del. C.* § 17-109, 6 *Del. C.* § 18-109, and 10 *Del. C.* § 3114. The only substantive changes intended were to rely expressly on the language of the pertinent statute and to avoid any mismatch between the provisions of the Rule and the provisions of the pertinent statute.

Rule 4(h) was added to clarify that service may be made by any authorized means—in particular, 10 *Del. C.* § 3104(d).

Rule 4(i) was revised slightly to conform to practice.

**Rule 5 is amended as follows:**

**Rule 5. Service and Filing; Appearance and Withdrawal**

**(a) Service: When Required.**

(1) *In General*. Unless these rules or the Court provides otherwise, each of the following papers must be served on every party:

(A) an order stating that service is required;

(B) a pleading filed after the original complaint;

(C) a discovery paper required to be served on a party;

(D) a written motion, brief, or letter—except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or any similar paper.

(2) *For a Party in Default*. No service is required on a party in default. But a pleading that asserts a new claim for relief against a party in default must be served on that party under Rule 4.

(3) *Following the Seizing of Property*. If service of process was accomplished by seizing property, any service under this rule before the filing of an appearance must be made on the person who had custody, possession, or control of the property when it was seized.

**(b) Service: How Made.**

(1) *Serving an Attorney*. If a party is represented by an attorney, service under this rule must be made on the attorney unless a statute or the Court requires service on the party. Service on an attorney has the same effect as service made on the party represented by that attorney.

(2) *Service in General*. A paper is served under this rule by:

(A) serving it electronically;

(B) handing it to the person;

(C) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(D) mailing it to the person's last-known address—in which event service is complete upon mailing;

(E) leaving it with the Register in Chancery if the person has no known address; and

(F) delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.

**(c) Filing.**

(1) *In General*. Except for discovery requests and responses or as directed by the Court, any paper after the original complaint that is required to be served must be filed with the Court.

(2) *Method of Filing*.

(A) Any paper required to be filed with the Court must be filed electronically, unless the Court otherwise directs. All filings must comply with any administrative procedures for electronic filing that the Chancellor establishes.

(B) A self-represented party may deliver a paper for filing to the Register in Chancery with the required filing fee. For determining timeliness, the paper is deemed filed when delivered to the Register in Chancery for filing.

(3) *Discovery*.

(A) The following discovery requests and any responses to them must not be filed with the Court: interrogatories; requests for documents, electronically stored information, or tangible things, or to permit entry onto land; physical or mental

examinations of persons; and requests for admission.

(B) A party requesting or responding to discovery or furnishing an expert report must file with the Court a notice of service containing the following information:

(i) a certification that the paper was served;

(ii) the person on which service was made; and

(iii) the date and manner of service.

(C) If a request or response is served electronically, then the electronically served version constitutes the original for purposes of these rules. Otherwise, the party serving the request or response must retain the original and becomes its custodian. If a Delaware attorney has appeared, then a Delaware attorney must be the custodian.

(D) If a discovery request or response is used in the proceeding—or if the Court orders—then the request or response, or a relevant portion, must be filed with the Court.

(E) Depositions need not be filed with the Court. But if used in the proceeding—or if the Court orders—then the deposition transcript, or a relevant portion, must be filed with the Court.

(4) *Documents Used at Hearings or Trials.* Unless otherwise ordered by the Court, a party must file:

(A) any presentation used at a hearing within 10 days after the hearing; and

(B) its testifying expert reports and demonstrative exhibits within 10 days after the conclusion of the trial or hearing where the expert testifies or the report is used.

**(d) Deadlines for Electronic Service and Filing.** To be served or filed on the date of its service or filing:

(1) an original complaint or a notice of appeal must be filed by midnight;

(2) any paper in a summary proceeding or an action that the Court has ordered expedited must be served or filed by midnight; and

(3) any other paper in any other action must be served or filed by 5:00 p.m.

**(e) Unsuccessful Electronic Service or Filing.** The Court may deem, upon satisfactory proof, that a paper was served or filed on the date of the first attempt at electronic service or filing if the first attempt was unsuccessful due to:

(1) an error in the transmission of the paper to the electronic filing system that the filer did not know about or could not resolve;

(2) a failure by the electronic filing system to process the paper;

(3) rejection by the Register in Chancery; or

(4) other technical problems.

**(f) Certificate of Service.** No certificate of service is required when a paper is served on a person electronically. But if a person serves a paper other than electronically, then the person must file an affidavit or attorney certification showing that and how service has been made.

**(g) Submission of Documents for In Camera Review.** If a person submits a document to the Court for in camera review, then the person must file a letter noting the submission.

**(h) Notice by Publication.** The Court may make an appropriate order when a statute, rule, or Court order requires notice of publication within the State.

**(i) Appearances.**

(1) *Appearance of Defendants*. Unless a statute provides otherwise, a defendant may appear even if process has not been served on that defendant.

(2) *Appearance of Counsel*.

(A) Counsel may appear by filing:

(i) notice of the appearance; or

(ii) a motion or pleading purporting to respond to the complaint.

(B) An appearance of counsel must bear the name of an individual attorney—not just a firm's name.

(C) A Delaware attorney may withdraw an appearance by notice—and without obtaining the Court's permission—if another Delaware attorney from the same law firm continues to appear as an attorney of record for the party or if the attorney's

client is no longer or does not become a party. Otherwise, withdrawing an appearance requires Court approval.

**(j) Electronic Filing System.**

(1) No one who has been issued credentials on the Court's electronic filing system may allow another person to use those credentials for filing papers.

(2) A filing on the Court's electronic filing system must be made or authorized by a Delaware attorney or by a party, if unrepresented.

**(k) Personally Identifying Information.** Unless otherwise ordered by the Court, parties must not include—or must redact where inclusion is unavoidable—the following personal identifiers in papers filed with the Court:

(1) social security numbers;

(2) names of minor children;

(3) dates of birth; and

(4) complete financial account numbers.

## Comment

In 2024, Rule 5 was revised to align its language in certain respects with Federal Rule of Civil Procedure 5 so that authorities interpreting the federal rule could be cited more easily as persuasive authority for the interpretation of Rule 5. Rule 5 was also revised in a number of ways to conform to current practice. Prior Delaware authorities interpreting the rule nevertheless remain applicable.

Among the principal changes made are the following:

Rule 5(a)(1) provides that the Court may order otherwise as to each of the types of papers that must be served, and briefs and letters were added to Rule 5(a)(1)(D). The "offer of judgment" was deleted from prior Rule 5(a) given the absence of Rule 68.

Prior Rule 5(aa)(2) was amended to provide that Delaware attorneys may withdraw with notice (and without Court approval) if another Delaware attorney from the same firm continues to represent the party.

Prior Rule 5(c) was omitted because electronic service allows for service on numerous defendants.

Rule 5(b)(2)(F) adopts the concept of consented-to service from Federal Rule 5(b)(2)(F).

Rule 5(b)(2)(A) clarifies that electronic service is a recognized method of service.

Provisions regarding electronic service and filing were incorporated from former Rule 79.1—which has been deleted in this revision.

The obligation to "file" a deposition transcript or the relevant portion that is used in the proceeding under Rule 5(c)(3)(E) contemplates filing in accordance with Rule 5.1. It is distinct from a lodged deposition as contemplated by Rule 5.1(f)(1).

Rule 5(c)(4) adds requirements for filing of certain documents used at hearings or trials.

Prior Rule 5(e) was combined with Rule 5(c)(2) and clarified to include electronic filing.

Prior Rule 5(d)(2) was modified to conform to current practice, and prior Rules 5(d)(6)–(7) were deleted to conform to current practice.

Rule 5(f) provides that a certificate of service is not needed for a paper served electronically (except for discovery, which still requires a notice of service).

Rule 5(g) provides that when a person submits a document to the Court for in camera review (i.e., documents which will not be seen by other case participants or made publicly available), the person must also file a letter noting the submission.

Rule 5(h) provides the Court with full discretion when ordering notice of publication within the State.

Rule 5(i) addresses the use of the electronic filing system. Any person who secures credentials from the system provider has the technical ability to file papers. Rule 5(i)(1) makes clear that no one may allow any other person to use their credentials to make filings. Rule 5(i)(2) emphasizes

the role of Delaware counsel. A Delaware lawyer must make or authorize every filing, thereby ensuring that the filing complies with the Court's rules. Parties who are self-represented do not have Delaware counsel. They can make filings on their own behalf and must ensure for themselves their filings comply with the rules.

**Rule 5.1 is amended as follows:**

**Rule 5.1. Public Access to Documents Filed with the Court in Civil Actions**

**(a) General Principles of Public Access.**

(1) Court proceedings are matters of public record.

(2) Trials, hearings, and conferences are open to the public, unless the Court orders otherwise.

(3) Papers filed with the Register in Chancery ("Filed Documents") must be available to the public, except as provided in this rule.

(4) Rule 5.1 does not apply to materials exchanged during discovery that do not become Filed Documents. The Court may enter orders establishing protections for those materials.

(5) If necessary to rule on confidential or privileged material, the Court may review materials in chambers, without subjecting that material to public access.

(6) The Court maintains a separate docket—the civil miscellaneous docket—for civil actions involving sensitive matters such as guardianships and trusts. This rule does not apply to the civil miscellaneous docket.

**(b) Confidential Information.**

(1) Public access to a Filed Document may be limited only if the Filed Document contains Confidential Information.

(2) "Confidential Information" means information:

(A) that is maintained confidentially;

(B) that is not otherwise publicly available;

(C) where public access to the information will cause particularized harm; and

(D) where the magnitude of the harm from public access to the information outweighs the public interest in the information.

(3) Confidential Information includes:

(A) trade secrets;

(B) sensitive personal information such as medical records; and

(C) personally identifying information such as social security numbers, complete financial account numbers, dates of birth, and the names of minor children, which the filer should omit or redact under Rule 5(k).

**(c) Confidential Filings.**

(1) The Register in Chancery must maintain a docket system that permits a Filed Document containing Confidential Information to be filed confidentially (a "Confidential Filing").

(A) The docket system must allow the Court to restrict access to a Confidential Filing to the Court, the filer, persons served with the Confidential Filing, and persons otherwise given access to the Confidential Filing by Court order.

(B) The docket system must provide public access to the title of the Confidential Filing, the identity of the filer, the persons served, and any order giving other persons access to the Confidential Filing.

(2) Every Confidential Filing must have a cover page that contains only the following information:

(A) The caption of the action, the title of the Confidential Filing, and the following statement:

> YOU ARE IN POSSESSION OF A CONFIDENTIAL FILING FROM THE COURT OF CHANCERY OF THE STATE OF DELAWARE
>
> If you are not authorized to view this document under Rule 5.1 or by Court Order, read no further than this page and contact the following person:
>
> [Filer's Name]
>
> [Filer's Firm]

[Filer's Address]

[Filer's Telephone Number]

(B) The following additional statement, if a public version must be filed:

A public version of this document will be filed on or before [DATE].

(3) Except for voluminous exhibits, every page of a Confidential Filing must have a footer stating: THIS DOCUMENT IS A CONFIDENTIAL FILING. ACCESS IS PROHIBITED EXCEPT AS AUTHORIZED BY RULE 5.1 OR BY COURT ORDER.

**(d) Making a Confidential Filing.**

(1) A person may make a Confidential Filing if the person believes that the paper contains Confidential Information.

(2) A person must make a Confidential Filing if the person believes that another person would contend that the paper contains Confidential Information.

(3) By making a Confidential Filing, the filer certifies compliance with this rule.

**(e) Notice of Confidential Filing.**

(1) *Obligation to Give Notice.* After making a Confidential Filing, the filer must use best efforts to give notice to any person who has designated information in the Confidential Filing as Confidential Information or who the filer believes could have a legitimate interest in designating information in the filing as Confidential Information.

(2) *Notice to a Person Who Has Appeared.* If the person has appeared, the filer must provide the notice to the person's attorney or to the person, if unrepresented.

(3) *Notice to a Person Who Has Not Appeared.* If the person has not appeared, the filer must attempt to provide actual notice. A filer may provide notice:

(A) in accordance with the notice provision in any agreement giving rise to a confidentiality obligation governing the Confidential Information;

(B) to the person at the person's principal place of business;

(C) to the person's registered agent, if the person has a registered agent in this State; or

(D) to an attorney who represents the person in connection with the Confidential Information, if the identity of that attorney is known to the filer.

(4) *Contents of the Notice.* The notice must refer to this rule and include a proposed public version of each Confidential Filing for which a public version is required. The proposed public version may redact information that the filer believes constitutes Confidential Information or that the filer believes another person would contend constitutes Confidential Information. The notice must identify the date and time by which this rule requires the recipient of notice to identify any additional information for redaction.

(5) *Notice Not Filed.* The notice is not filed with the Register in Chancery.

(6) *Designating Confidential Information for Redaction in Response to Notice.*

(A) Any recipient of notice may designate additional information for redaction if the person believes in good faith that the information qualifies as Confidential Information or that another person would contend that it qualifies as Confidential Information.

(B) The recipient of notice must identify any additional information for redaction within the time period set by this rule.

(C) A person designating information for redaction certifies compliance with this rule.

(7) *Timing of Notice and Designation of Confidential Information for Redaction.*

(A) When the Confidential Filing contains an original complaint, the filer should give notice contemporaneously with the Confidential Filing and must give notice not later than 3:00 p.m. on the next day. Any recipient must designate any additional information for redaction by 3:00 p.m. on the third day after the filing.

(B) Otherwise, the filer should give notice contemporaneously with the Confidential Filing and must give notice not later than 3:00 p.m. two days

after the filing. Any recipient must designate any additional information for redaction by 3:00 p.m. on the fifth day after the filing.

**(f) Filing a Public Version.**

(1) *Public Version Required*. A public version is required for every Confidential Filing, except for an exhibit or lodged deposition.

(2) *Timing of Public Version*. The filer must file a public version of every Confidential Filing that was the subject of a Rule 5.1(e) notice the day after the deadline for designating additional information for redaction. The public version must contain the redactions in the proposed public version and any additional information designated for redaction in response to the notice unless the filer and a person receiving notice agree to make fewer redactions.

**(g) Challenging a Confidential Filing.**

(1) *Right to Challenge*. Any person may challenge the confidential treatment of a Confidential Filing.

(2) *The Challenge Notice*. To challenge the confidential treatment of a Confidential Filing, the challenger must file a challenge notice with the Register in Chancery. The challenge notice must identify each challenged Confidential Filing by docket number, Transaction ID, title, or other identifying information.

(3) *Timing*. Unless the Court orders otherwise, a challenge notice cannot be filed until ten days after the filing of the Confidential Filing.

(4) *If a Required Public Version Does Not Exist*. If Rule 5.1(f)(1) required the filing of a timely public version of the challenged Confidential Filing, and if a public version of the challenged Confidential Filing was not filed before the filing of the challenge notice, then the Register in Chancery must make the Confidential Filing publicly available.

(5) *If a Public Version Does Not Exist and Was Not Previously Required*. If Rule 5.1(f)(1) did not require the filing of a public version of the challenged Confidential Filing and a public version does not exist, then the filer of the Confidential Filing must file a public version. The timely filing of a public version satisfies the challenge

notice. The filer must follow the procedures in Rule 5.1(e) and Rule 5.1(f), except that:

(A) the filer must give notice within five days after the filing of the challenge notice; and

(B) any recipient of notice must designate any additional information for redaction within 10 days of the filing of the challenge notice.

(6) *If a Public Version Exists.* If a public version of the challenged Confidential Filing has been filed before the filing of the challenge notice, then the Register in Chancery must make the Confidential Filing publicly accessible unless a person timely moves for an order maintaining its confidential treatment.

(A) *Moving to Maintain Confidential Treatment*. Any person seeking to maintain confidential treatment must move within five days after the filing of the challenge notice. The motion must be served on the challenger.

(B) *Opposing a Motion*. Any person who opposes confidential treatment must file an opposition within five days after the filing of the motion. If a timely opposition is not filed, the challenge is deemed withdrawn.

(C) *Further Proceedings*. The Court will determine whether further filings or proceedings are warranted.

(D) *Burden of Persuasion*. The person seeking to maintain confidential treatment bears the burden of persuading the Court that confidential treatment is warranted.

(E) *Fees and Expenses*. The Court may award fees and expenses if the Court determines that the motion to maintain confidential treatment or the opposition lacked sufficient justification.

**(h) Expiration of Confidential Treatment.** Unless the Court orders otherwise, confidential treatment expires three years after the final disposition of the action, and the Register in Chancery must make any Confidential Filing publicly accessible unless a person files a timely motion to extend confidential treatment.

(1) *Expiration Notice.* At least 90 days before the expiration date, the Register in Chancery must file a

notice on the docket advising the parties of the expiration of confidential treatment.

(2) *Moving to Extend Confidential Treatment.* Any person may move to extend confidential treatment within 45 days after the filing of the expiration notice.

(A) The movant must demonstrate that the particularized harm from public disclosure of the Confidential Filing clearly outweighs the public interest in access to Court records. The movant must provide evidentiary support for the particularized harm.

(B) The Court will determine whether additional proceedings are warranted.

**(i) Rule 6(e) Inapplicable.** The additional time after service by mail does not apply to this rule, regardless of the method of service.

## Comment

In 2024, Rule 5.1 was revised to align its structure and language with other provisions of the Court of Chancery Rules. In addition, certain revisions were made to the procedures provided for under the rules.

As a general matter, Rule 5.1 no longer requires the entry of a Court order before parties can file documents confidentially. Rule 5.1(d) authorizes confidential filings so long as parties comply with its terms.

Rule 5.1 does not apply to documents that are not filed with the Court, such as materials exchanged during discovery. Parties may enter into agreements or stipulations or seek court orders to govern those aspects of a case.

Other changes to Rule 5.1 include:

Rule 5.1(b) clarifies the definition of Confidential Information. To qualify, information must meet all of the requirements of the definition. Thus, following information generally will qualify as Confidential Information:

- sensitive proprietary information; and
- sensitive financial, business, or personal information.

By contrast, some types of information generally meet the requirements of Rule 5.1(b)(2)(A) and (B), in that the information is maintained confidentially and is not otherwise publicly available. Examples include:

- proprietary, financial, business, or personal information that generally would be considered private or is not available to the public;
- information subject to a confidentiality agreement; and
- information that is embarrassing or where public access could cause generalized, non-specific harm.

Information of this sort will not qualify as Confidential Information unless the information also meets the requirements of Rule 5.1(b)(2)(C) and (D).

Rule 5.1(e) revises the procedures for providing notice of a confidential filing. Rule 5.1(e)(1) requires notice to be provided to any person who could have a legitimate interest in designating information as confidential and sets forth the procedure for providing notice to such person. In addition, Rules 5.1(e)(2) and (e)(3) set forth the means for providing notice to persons, depending upon whether they have appeared in the action. Rule 5.1(e)(5) provides that the notice is not filed with the Register in Chancery.

Rule 5.1(e)(7) revises the deadline for the filing party to propose redactions to 3:00 p.m. on the day after filing.

Rule 5.1(f)(2) revises the deadline for filing a public version to the day after the deadline for designating additional information for redaction.

Rules 5.1(g) and (h) clarify the authority of the Register in Chancery to file a public version if no party files redactions. In addition, they establish a procedure for restoring confidential treatment when no public version is filed.

Rule 5.1(g)(2) requires that any challenge to confidential treatment be filed with the Register in Chancery and specify the filing being challenged.

Rule 5.1(g)(4)(A) requires that any motion to maintain confidential treatment be served on the person challenging confidential treatment.

Rule 5.1(g)(4)(E) authorizes the Court to award fees and expenses if the Court determines that a motion to maintain confidential treatment or the opposition lacked sufficient support.

Otherwise, no substantive change in the interpretation of the rule is intended, and prior Delaware authorities interpreting the rule remain applicable.

**Rule 6 is amended as follows:**

**Rule 6. Computing and Extending Time**

**(a) Computing Time.** The following rules apply in computing any time period specified in these Rules, in a Court order, or in any statute that does not specify a method of computing time and that addresses the timing of events in a Court proceeding:

(1) *Period Stated in Days or a Longer Unit.* When the period is stated in days or a longer unit of time:

(A) Exclude the day of the event that triggers the period.

(B) Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days.

(C) Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) Begin counting immediately on the occurrence of the event that triggers the period.

(B) Count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays.

(C) If the period would end on a Saturday, Sunday, or legal holiday, the period continues until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the Register in Chancery*. Unless the Court orders otherwise, if the Register in Chancery

is inaccessible on the last day of a period, then the period for any filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) "*Next Day" Defined*. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(5) *"Legal Holiday" Defined*. As used in this rule, "legal holiday" means any day declared a holiday by the Governor of the State or identified as a holiday in 1 *Del. C*. § 501.

**(b) Enlargement.**

(1) *In General*. When an act may or must be done within a specified time, the Court may, for good cause shown, extend the time:

(A) with or without motion or notice if the Court acts, or if a request is made, before the time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) *Exceptions*. The Court must not extend the time for taking any action under Rule 59(b), (d), or (e), except to the extent and under the conditions stated in them.

**(c) Additional Time After Service by Mail.**

(1) The time period calculated under Rule 6(a) is extended by three calendar days when:

(A) an act may or must be done within a specified time after service; and

(B) service is made exclusively by mail.

(2) The additional three-day period applies only to acts by parties and not to acts of the Court.

## Comment

In 2024, Rule 6 was revised to align its language to the extent possible with Federal Rule of Civil Procedure 6 so that authorities interpreting the federal rule could be cited more easily as persuasive authority for the interpretation of Rule 6. The revision made substantive changes to conform Rule 6 with current practice and to adopt aspects Federal Rule 6.

Revised Rule 6(a) provides that the rules for calculating time periods apply to statutes if the statutes address the timing of events in this Court. This aspect of revised Rule 6 conforms the language of the rule with the interpretation provided in *Nelson v. Frank E. Best, Inc.*, 768 A.2d 473 (Del. Ch. 2000), and related authorities.

Revised Rule 6(a)(1) does not adopt the current federal approach of counting every day when calculating time periods. Revised Rule 6 retains the existing Court of Chancery method of excluding intermediate Saturdays, Sundays, and legal holidays when calculating a period of less than 11 days.

Like Federal Rule 6(a)(2), revised Rule 6(a)(2) provides a method for counting periods measured in hours.

Like Federal Rule 6(a)(3), revised Rule 6(a)(3) no longer refers to "weather or other conditions" as the sole reason why the Register in Chancery's office could be inaccessible. The revision acknowledges that the Register in Chancery could be inaccessible for other reasons.

Like Federal Rule 6(a)(4), revised Rule 6(a)(4) defines "next day" for purposes of calculating time periods. Federal authorities interpreting the phrase should be persuasive.

Revised Rule 6(c) adds the word "exclusively" to make clear that the three extra days for calculating a time period only apply when a paper is served exclusively by mail. The three extra days do not apply if the paper is both served by mail and filed electronically. Other authorities, including Rule 5 and the Court's procedures for electronic filing, address when a party may serve a paper exclusively by mail. Revised Rule 6(c) follows federal Rule 6(d) by clarifying that the three additional days are calendar days. Thus, intermediate Saturdays, Sundays, and legal holidays are included, not omitted. The Federal Advisory Committee Notes to Rule 6—2005 Amendment includes helpful examples for applying the rule.

**Rule 8 is amended as follows:**

**Rule 8. General Rules of Pleading**

**(a) Claim for Relief.** A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the Court's subject-matter jurisdiction, unless the Court already has subject-matter jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

**(b) Defenses; Admissions and Denials.**

(1) *In General.* In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) *Denials—Responding to the Substance.* A denial must fairly respond to the substance of the allegation.

(3) *Specific Denials Required.* A party must either specifically admit or deny each allegation. A general denial is not permitted, except by a nominal party or any other party joined only to ensure that full and complete relief can be granted.

(4) *Denying Part of an Allegation.* A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) *Lacking Knowledge or Information.* A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) *Effect of Failing to Deny.* An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

**(c) Affirmative Defenses.**

(1) *In General.* In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

- accord and satisfaction;
- arbitration and award;
- assumption of risk;
- contributory negligence;
- discharge in bankruptcy;
- duress;
- estoppel;
- failure of consideration;
- fraud;
- illegality;
- laches;
- license;
- payment;
- release;
- res judicata;
- statute of frauds;
- statute of limitations;
- unclean hands; and
- waiver.

(2) *Mistaken Designation*. If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the Court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(3) *Supporting an Affirmative Defense.* The pleading must provide a short and plain statement of the basis for the affirmative defense.

**(d) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.**

(1) *In General*. Each allegation must be simple, concise, and direct. No technical form is required.

(2) *Alternative Statements of a Claim or Defense.* A party may set out two or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) *Inconsistent Claims or Defenses*. A party may state as many separate claims or defenses as it has, regardless of consistency.

**(e) Construing Pleadings.** Pleadings must be construed so as to do justice.

## Comment

In 2024, Rule 8 was revised to align its language to the extent possible with Federal Rule of Civil Procedure 8 so that authorities interpreting the federal rule could be cited more easily as persuasive authority for the interpretation of Rule 8.
Except as noted, no substantive change in the interpretation of the rule was intended, and prior Delaware authorities interpreting the rule remain applicable.

Revised Rule 8(a)(1) requires that a pleading must include a short and plain statement of the grounds for the Court's subject-matter jurisdiction, unless the Court already has subject-matter jurisdiction and the claim needs no new jurisdictional support. This revision aims to promote efficiency by allowing the Court to quickly identify any claims that lack subject-matter jurisdiction.

Revised Rule 8(a)(1) does not alter existing Delaware law under which a pleading does not have to plead a basis for personal jurisdiction. *See, e.g.*, *Hart Hldg. Co. v. Drexel Burnham Lambert Inc.*, 593 A.2d 535, 538 n.3 (Del. Ch. 1991).

Revised Rule 8(b)(3) omits language that previously permitted parties to assert a general denial to all allegations of a pleading. Revised Rule 8(b)(3) requires parties to specifically admit or deny each allegation of a pleading. Under Revised Rule 8(b)(3), only nominal parties and relief parties (i.e., parties joined only to ensure that full and complete relief can be granted) can assert general denials.

Revised Rules 8(b)(3) and (d)(3) delete unnecessary cross references to Rule 11, consistent with the revision to Rule 7(b)(3), effective as of September 25, 2023. This change does not affect the application of Rule 11.

Revised Rule 8(c)(3) requires that for each affirmative defense asserted in a pleading, the party asserting it include a short statement setting forth the basis of the affirmative defense. This revision conforms the rule to existing case law. *E.g.*, *Cypress Assocs., LLC v. Sunnyside Cogeneration Assocs. Project*, 2007 WL 148754, at *2 (Del. Ch. Jan. 17, 2007).

**Rule 9 is amended as follows:**

**Rule 9. Pleading Special Matters**

**(a) Capacity or Authority to Sue; Legal Existence.**

(1) *In General.* Except when required to show that the Court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) *Raising Those Issues.* To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

**(b) Fraud or Mistake; Conditions of Mind.** In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

**(c) Conditions Precedent.** In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

**(d) Official Document or Act.** In pleading an official document or official act, it suffices to allege that the document was legally issued or the act legally done.

**(e) Judgment.** In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it suffices to plead the judgment or decision without showing jurisdiction to render it.

**(f) Time and Place.** An allegation of time or place is material when testing the sufficiency of a pleading.

**(g) Special Damages.** If an item of special damage is claimed, it must be specifically stated.

**Comment**

In 2024, Rule 9 was revised to align its language to the extent possible with Federal Rule of Civil Procedure 9 so that authorities interpreting the federal rule could be cited more easily as persuasive authority for the interpretation of Rule 9.

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

**Rule 11 is amended as follows:**

**Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions**

**(a) Signature.** Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by affidavit. The Court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

**(b) Representations to the Court.** By presenting to the Court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous

argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

**(c) Sanctions.**

(1) *In General.* If, after notice and a reasonable opportunity to respond, the Court determines that Rule 11(b) has been violated, the Court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for violations committed by its partners, associates, or employees.

(2) *Motion for Sanctions.* A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the Court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the Court sets. If warranted, the Court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) *On the Court's Initiative.* On its own, the Court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) *Nature of a Sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into Court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) *Limitations on Monetary Sanctions.* The Court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) *Requirements for an Order.* An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

**(d) Inapplicability to Discovery.** This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

**Comment**

In 2024, Rule 11 was revised to align its language with Federal Rule of Civil Procedure 11 so that authorities interpreting the federal rule could be cited more easily as persuasive authority for the interpretation of Rule 11.
No substantive change in the interpretation of the rule was intended, and prior Delaware authorities interpreting the rule remain applicable.

**Rule 12 is amended as follows:**

**Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing**

**(a) Time to Serve a Responsive Pleading.**

(1) *In General.* Unless another time is specified by this rule or statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer within 20 days after being served with the summons and complaint;

(B) A party must serve an answer to a counterclaim or crossclaim within 20 days after

being served with the pleading that states the counterclaim or crossclaim.

(2) *Effect of a Motion*. Unless the Court sets a different time, serving a motion under this rule directed at a pleading in whole or part alters these periods as follows:

(A) If the Court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 10 days after notice of the Court's action; or

(B) If the Court grants a motion for a more definite statement, the responsive pleading must be served within 10 days after the more definite statement is served.

**(b) How to Present Defenses.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;

(4) insufficient process;

(5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted; and

(7) failure to join a party under Rule 19.

**(c) Motion for Judgment on the Pleadings.** After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

**(d) Result of Presenting Matters Outside the Pleadings.** If a party moves under Rule 12(b)(6) or 12(c) and presents matters outside the pleadings that are not excluded by the Court, then

(1) the motion must be treated as one for summary judgment under Rule 56; and

(2) all parties must be given a reasonable opportunity to present pertinent material under Rule 56.

**(e) Motion for a More Definite Statement.** A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but that is so vague

or ambiguous that the party cannot reasonably prepare a response. The party must move before filing a responsive pleading, and the motion must identify the defects and the details required to reasonably prepare a response. If the Court orders a more definite statement and the order is not obeyed within 10 days after notice of the order or within the time the Court sets, the Court may strike the pleading or issue any other appropriate order.

**(f) Motion to Strike.** A party may move to strike from a pleading any insufficient defense or any material that is redundant, scandalous, immaterial, or not pertinent. The party must move either before responding to the pleading or, if a response is not allowed, within 20 days after being served with the pleading. The Court may also act on its own initiative.

**(g) Joining Motions.**

(1) *Right to Join.* A party may join a motion allowed by this rule with any other motion allowed by this rule.

(2) *Limitation on Further Motions.* Except as provided in Rule 12(h)(2)–(4), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

**(h) Asserting and Waiving Defenses Under Rule 12(b).**

(1) *Defenses Under Rule 12(b)(1).* A party may assert a defense under Rule 12(b)(1) motion filed at any time, or the Court may raise the defense on its own initiative.

(2) *Defenses Under Rule 12(b)(2)–(5).*

(A) A party may assert a defense listed in Rule 12(b)(2)–(5) by motion filed before a responsive pleading, if a responsive pleading is allowed.

(B) A party that does not file a motion contemplated by Rule 12(h)(2)(A) may preserve a defense listed in Rule 12(b)(2)–(5) by including it in a responsive pleading or in an amendment to the responsive pleading allowed by Rule 15(a)(1) as a matter of course.

(C) Otherwise, a party waives any defense listed in Rule 12(b)(2)–(5).

(3) *Defenses Under Rule 12(b)(6).* A party may assert a defense under Rule 12(b)(6) by filing a motion *before* a responsive pleading, if a responsive pleading is allowed. A party may preserve the defense by including it in any pleading allowed or ordered under Rule 7(a). Otherwise, the defense is waived.

(4) *Defenses Under Rule 12(b)(7).* A party may assert a defense under Rule 12(b)(7) by motion filed before a responsive pleading, if a responsive pleading is allowed, by motion under Rule 12(c), or at trial.

(5) *When No Responsive Pleading Is Allowed*. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim.

(6) *Amended and Supplemental Pleadings*. If a pleading raises new matter that is subject to a defense listed in Rule 12(b)(2)–(6), then an opposing party may assert that defense—even if not asserted or preserved initially—as to the new matter.

**(i) Deferral Until Trial.** The Court may defer until trial ruling on any defense listed in Rule 12(b)—whether made in a pleading or by motion—or any motion under Rule 12(c).

**Comment**

In 2024, Rule 12 was revised to align its language with Federal Rule of Civil Procedure 12 so that authorities interpreting the federal rule could be cited more easily as persuasive authority for the interpretation of Rule 12.
No substantive change in the interpretation of the rule was intended, and prior Delaware authorities interpreting the rule remain applicable.

**Rule 13 is amended as follows:**

**Rule 13. Counterclaim and Crossclaim**

**(a) Compulsory Counterclaim.**

(1) *In General*. A pleading must state as a counterclaim any claim that—at the time of its service—the pleader has against an opposing party if the claim:

(A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

(2) *Exceptions*. The pleader need not state the claim if:

(A) when the action was commenced, the claim was the subject of another pending action; or

(B) the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.

**(b) Permissive Counterclaim.** A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

**(c) Relief Sought in a Counterclaim.** A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

**(d) Counterclaim Maturing or Acquired After Pleading.** The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

**(e) Crossclaim Against a Coparty.** A pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.

**(f) Joining Additional Parties.** Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.

**(g) Separate Trials; Separate Judgments.** If the court orders separate trials under Rule 42(b), it may enter judgment on a counterclaim or crossclaim under Rule 54(b)

when it has jurisdiction to do so, even if the opposing party's claims have been dismissed or otherwise resolved.

**Comment**

In 2024, Rule 13 was revised to align its language in certain respects with Federal Rule of Civil Procedure 13 so that authorities interpreting the federal rule could be cited more easily as persuasive authority for the interpretation of Rule 13.

Revised Rule 13(b) deletes the phrase "not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim." A party may state as a permissive counterclaim a claim that arises out of the same transaction or occurrence as an opposing party's claim even if one of the exceptions in Rule 13(a) means the claim is not a compulsory counterclaim.

Prior Rule 13(g) was listed as "omitted." Revised Rule 13 omits that placeholder. The subsections that followed in the prior version have been re-lettered in sequence.

The revised rule omits Rule 13(f) as it appeared in the prior rule. Rule 15 governs amendments to add counterclaims. For amendments that require leave of Court, Rule 13(f) established arguably different requirements than Rule 15(a)(2). In practice, however, courts have interpreted the rules in parallel. The existence of Rule 13(f) as a separate rule therefore creates unnecessary uncertainty. *See* 6 Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice & Procedure: Civil* §1430 (2d ed. 1990). Omitting Rule 13(f) eliminates any potential confusion. The subsections that followed in the prior version have been re-lettered in sequence.

**Rule 14 is amended as follows:**

**Rule 14. Third-Party Practice**

**(a) When a Defending Party May Bring in a Third Party.**

(1) *Timing of the Summons and Complaint*. A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But

the third-party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more than 10 days after serving its original answer.

(2) *Third-Party Defendant's Claims and Defenses*. The person served with the summons and third-party complaint—the "third-party defendant":

(A) must assert any defense against the third-party plaintiff's claim under Rule 12;

(B) must assert any counterclaim against the third-party plaintiff under Rule 13(a), and may assert any counterclaim against the third-party plaintiff under Rule 13(b) or any crossclaim against another third-party defendant under Rule 13(g);

(C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim; and

(D) may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(3) *Plaintiff's Claims Against a Third-Party Defendant*. The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The third-party defendant must then assert any defense under Rule 12 and any counterclaim under Rule 13(a), and may assert any counterclaim under Rule 13(b) or any crossclaim under Rule 13(g).

(4) *Motion to Strike, Sever, or Try Separately*. Any party may move to strike the third-party claim, to sever it, or to try it separately.

(5) *Third-Party Defendant's Claim Against a Nonparty*. A third-party defendant may proceed under this rule against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it.

**(b) When a Plaintiff May Bring in a Third Party.** When a claim is asserted against a plaintiff, the plaintiff may bring in a third party if this rule would allow a defendant to do so.

**Comment**

In 2024, Rule 14 was revised to align its language with Federal Rule of Civil Procedure 14 so that authorities interpreting the federal rule could be cited more easily as persuasive authority for the interpretation of Rule 14.

Revised Rule 14(b) follows Federal Rule 14(b) in clarifying that a plaintiff can assert a third-party claim to the same degree of as a defendant, regardless of whether the claim against the plaintiff giving rise to the third-party claim was asserted as a counterclaim or as another form of claim.

**Rule 15 is amended as follows:**

**Rule 15. Amended and Supplemental Pleadings**

**(a) Amendments Before Trial.**

(1) *Amendments as a Matter of Course.* A party may amend the party's pleading once as a matter of course:

(A) at any time before a responsive pleading is served; or

(B) if the pleading is one to which no responsive pleading is required and the action has not been set for trial, no later than 20 days after the pleading is served.

(2) *Other Amendments*. In all other cases, a party may amend its pleading only with the opposing party's written consent or the Court's leave. The Court should freely give leave when justice so requires.

(3) *Form of Amendments*. A party must file an amended pleading with the Court, even if the Court has granted a motion for leave to file the amended pleading. A party filing an amended pleading must also file a document indicating plainly how the amendment differs from the pleading that it amends.

(4) *Effect of an Amended Pleading on Other Parties' Claims*. An amended pleading has no effect on another party's counterclaims, crossclaims, or third-party claims, which are preserved and do not need to be re-filed.

(5) *Time to Amend After Certain Motions and Consequence of Not Amending*.

(A) If a party wishes to amend the party's complaint in response to a motion to dismiss under Rules 12(b)(6) or 23.1, the party must amend the party's complaint—or seek leave to amend—either:

(i) before the party's response to the motion is due; or

(ii) if the case has been transferred from another court, within 30 days after the transfer, even if the party responded to the motion in the other court.

(B) If a party neither amends nor moves to amend by the time set forth in Rule 15(a)(5)(A), a dismissal under Rule 12(b)(6) or 23.1 will be with prejudice—but only as to the named party—unless the Court for good cause shown dismisses the complaint without prejudice.

(6) *Time to Respond to Amended Pleading*. Unless the Court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 10 days after service of the amended pleading, whichever is later.

**(b) Amendments During and After Trial.**

(1) *Based on an Objection at Trial*. If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The Court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the Court that the evidence would prejudice that party's action or defense on the merits. The Court may grant a continuance to enable the objecting party to meet the evidence.

(2) *For Issues Tried by Consent*. When an issue not raised by the pleadings is tried with the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform to the evidence and to raise an unpled issue. But failure to amend does not affect the result of the trial of that issue.

**(c) Relation Back of Amendments.** An amendment to a pleading relates back to the date of the original pleading when:

(1) the law that provides the applicable statute of limitations allows relation back;

(2) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(2) is satisfied and, within 120 days of the filing of the complaint, or such additional time the Court allows for good cause shown, the party to be brought in by amendment:

(A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits; and

(B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

**(d) Supplemental Pleadings.** On a motion, the Court may permit a party to serve a supplemental pleading setting out any transaction, occurrence or event that happened after the date of the pleading to be supplemented. The Court may permit supplementation even though the original pleading is defective in stating a claim or defense. If the Court permits the supplemental pleading, the opposing party must respond within 10 days after service of the pleading.

## Comment

In 2024, Rule 15 was revised to align its language in certain respects with Federal Rule of Civil Procedure Rule 15, while maintaining the Court's unique approach to (1) subsequent pleadings embodied in former Rule 15(aaa); (2) filing the amended pleading as a separate, signed, and verified docket entry; and (3) the 120-day timeframe in former Rule 15(c)(3). Except as noted, no substantive

changes in the interpretation of the rule were intended by these stylistic changes.

The revision deviates from both the Federal Rules and the prior Rule in the following substantive respects:
First, the rule regarding form of amendments (former Rule 15(aa) and now Rule 15(a)(3)) was revised to conform to the current practice of filing a separate blackline reflecting any changes.

Second, the rule regarding time to amend after certain motions (former Rule 15(aaa) and now Rule 15(a)(5)) was revised in response to *Otto Candies, LLC v. KPMG, LLP*, 2019 WL 1856766 (Del. Ch. Apr. 25, 2019), to allow 30 days after transfer from another court for a party to determine whether to amend or stand on their pleading.

Finally, a rule regarding the effect of an amended pleading on other parties' claims (Rule 15(a)(4)) was added to clarify that (1) a complainant cannot moot a counterclaim, crossclaim, or third-party claim by amending its complaint; (2) one does not waive a counterclaim, crossclaim, or third-party claim by failing to assert it in an answer to an after-filed amended complaint; and (3) a counterclaim, crossclaim, or third-party claim remains extant until dismissed.

As a result of the abrogation of Rule 13(f), an amendment to add a counterclaim is now governed only by Rule 15.

**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(a)(5), 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 to Revisions Effective as of June 14, 2024**

In 2024, Rule 23(f)(1) was amended after revisions to Rule 15. The revisions to Rule 15 had renumbered prior Rule 15(aaa) as Rule 15(a)(5). The amendment to Rule 23(f)(1) updated the cross reference.

**Comment to Revisions Effective as of September 25, 2023**

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(a)(5), 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 To Revisions Effective as of June 14, 2024**

In 2024, Rule 23.1(d)(1) was amended after revisions to Rule 15. The revisions to Rule 15 had renumbered prior Rule 15(aaa) as Rule 15(a)(5). The amendment to Rule 23.1(d)(1) updated the cross reference.

**Comment to Revisions Effective as of September 25, 2023**

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 79 is amended as follows:**

**Rule 79. The Docket**

**(a)** *Docket.* The Register in Chancery maintains an electronic docket for all civil actions.

**(b)** *Notation of Judicial Action on Docket.* The Register in Chancery must make a brief docket entry noting any judicial action, including:

(1) For any oral argument, the date of argument, the judicial officer presiding, and the motion or issue.

(2) For any evidentiary hearing, the date of the hearing, the judicial officer presiding, and the motion or issue.

(3) For any trial, the date of the trial and the judicial officer presiding.

(4) For any oral ruling, the date of the ruling, the judicial officer making the ruling, and the motion or issue.

**Comment**

In 2024, Rule 79 was revised to reflect current administrative practice. In light of the revisions to Rule 79, Rules 79.1 and 79.2 were eliminated.

**Rule 79.1 is amended as follows:**

**Rule 79.1. Omitted**

**Comment**

In 2024, Rule 79.1 was eliminated. Its content had become

superfluous or was moved to other rules.

**Rule 79.2 is amended as follows:**

**Rule 79.2. Omitted**

**Comment**

In 2024, Rule 79.2 was eliminated. Its content had become superfluous or was moved to other rules.

**Rule 174(l) is amended as follows:**

*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 listed on the court's published fee schedule. 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 listed on the court's published fee schedule. 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.

**Comment**

In 2024, Rule 174(l) was amended to reflect that mediation fees are governed by the court's published fee schedule maintained by the Register in Chancery.

*/s/ Kathaleen St. J. McCormick*
Chancellor Kathaleen St. J. McCormick
Dated: July 12, 2024