

# Operating Procedures for Civil Miscellaneous Division in the Court of Chancery

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## **I. General File and ServeXpress (“FSX”) Provisions**

### **A. E-file Requirements**

1. All Civil Miscellaneous filings in the Court of Chancery must be electronically filed through File & ServeXpress by an attorney licensed to practice in Delaware. Self-represented (pro se) litigants file their documents with the Register in Chancery and pay a scanning fee for their documents to be e-filed.
2. All corporate trustees for the Trust under Will division are required to use an attorney.
3. As provided in Rule 5(c), each document that must be filed under the Rules shall be eFiled unless otherwise ordered by the Court, except that supporting documentation for guardianship accountings, such as bank statements, receipts, and cancelled checks, should be delivered in paper copy directly to the Register in Chancery assigned to the case. A complete courtesy copy of the accounting is due in the Register in Chancery within 48 hours of the accounting being efiled.

### **B. Form of Documents Electronically Filed**

1. Each electronically filed document shall be filed in Word, TIFF, or .PDF format, except that each electronically filed brief, and proposed order shall be filed in editable Word format.
2. Any Word or TIFF file will automatically be converted to .PDF format by File & ServeXpress, but the original format also will be available for downloading.
3. The official record of the court is the .PDF version.
4. All documents governed under Court of Chancery Rule 7 must adhere to the described word limits and contain “Words x/x beneath the signature line or signature block.
5. The font, spacing and margin must comply with Rule 10 and pleadings are to be numbered in compliance with Rule 7.

### **C. Title of Documents on File and ServeXpress**

1. The title of each electronically filed document shall include:
  - a. Party or parties filing the document;
  - b. Descriptive title of the document;

- c. Party or parties against whom relief, if any, is sought; and
- d. Description of the relief sought (*e.g.* Petition for appointment of guardian of the person and property of a person with an alleged disability).

**D. Linking (Filing Subsequent Related Documents)**

1. All electronically filed documents in a transaction relating to a single pleading or paper shall be “electronically stapled” using the “main” and “supporting” functionality of the eFiling system. Pleadings seeking judicial action such as a proposed order shall be scanned/uploaded separately as supporting documents. In this way, multiple related documents, although scanned/uploaded separately, are logically connected together and identified as a single transaction. For example, a petition would be filed as a “main” document with the Exhibits, Proposed Order and Certificate of Service filed as “supporting” documents, having scanned/uploaded each document separately.
2. All eFiled documents, papers, or pleadings directly relating to a previously filed document, paper, or pleading shall be linked to the previously filed document, paper, or pleading using the “linked to” feature in the File & Serve system.
3. Failure to properly link documents will result in rejection of the filing by the Register in Chancery, as will failure to properly use the “main” and “supporting” document features, as described herein.

**E. Public Access to the Docket**

1. Civil Miscellaneous cases are confidential in their entirety even after they are closed. Only parties to the Civil Miscellaneous case would have access to a file. See additional instructions under entry of appearance.

**F. Case Names and Parties**

1. The guardianship case name is loaded as follows: IMO: Last Name, First name
2. The trust case name is loaded as follows: TUA or TUW: the name of the trust
3. All parties in interest must be loaded to the File and ServeXpress party list during the new-case filing using the Add a Party/Add Attorney feature.

## **II. Guardianships**

### **A. Final Order**

1. Co-guardians. When co-guardians are appointed by the Court, unless the parties specify otherwise, the Final Order of the Court shall state that “[Name inserted] and [name inserted], acting jointly or individually, are hereby appointed co-guardians of the person and property of [name of person with a disability inserted].”
2. Notification of Death. The guardian must notify the Register’s Office within ten (10) days of the death of the person with a disability. A final accounting will be required within thirty days of the date of death, unless accountings were waived, and a petition to terminate, with either a Small Estate Affidavit or Short Certificate from the Register of Wills, will be due within ninety days.
3. Certificate of Guardianship. The Register’s office can issue a Certificate of Guardianship attesting to the valid status of the Guardian’s appointment. The fee is \$25.00.
4. Extension Requests. A request for an extension of time to file an annual update and medical statement or accounting can be submitted in writing to the Register’s office.

### **B. Guardianship Accounts**

1. All guardianship accounts established for minors or a person with a disability must be titled in such a way that clearly states that withdrawals may not be made without Court order.
2. The proposed final order filed with a guardianship petition should specify the proposed title for the guardianship account, which shall follow the sample wording below:

“COURT OF CHANCERY GUARDIANSHIP ACCOUNT  
FOR JOHN DOE, [MINOR/PERSON WITH A  
DISABILITY], JANE DOE, GUARDIAN. WITHDRAWS  
ONLY BY ORDER OF THE COURT”

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

### **C. Physician’s Affidavit**

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

#### D. Real Estate

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

#### E. Routine Guardianship Hearings

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

#### F. Entry of appearance

1. Attorneys must fax an entry of appearance to the Register in Chancery's Office to be loaded by court staff for all civil miscellaneous cases.
2. It is the obligation of registered users to maintain proper delivery information within the File & ServeXpress system. Attorneys who register to use eFiling shall notify File & ServeXpress within ten (10) days of any change in firm name, delivery address, fax number, or e-mail address.

### **III. In Forma Pauperis Financial Eligibility Guidelines**

#### A. Poverty level

1. When *in forma pauperis* applicants have income and assets at or below 125% of the poverty level as published in the Code of Federal Regulations, 45 C.F.R. Pt. 1161, their applications shall be approved.

2. At income or asset levels above 125% of the poverty level, the judicial officer may use discretion in granting all or part of the application, if the applicant has unusual expenses or debts in relation to their income.

**B. IFP application**

1. Applications and affidavits to proceed *in forma pauperis* shall be presented to the Magistrate in Chancery assigned to review such applications.
2. The Magistrate may:
  - a. Enter an order waiving all fees and court costs and directing the petition be filed.
  - b. Enter an order directing certain fees and court costs be paid.
  - c. Enter an order denying the application and directing payment of fees by a specified date.
  - d. Such an order shall be considered a draft report to which the petitioner may file an exception under Chancery Court Rule 144. If no exception is filed in a timely manner, the report shall be deemed final.

**C. Denied application to proceed *in forma pauperis***

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

**IV. Trust under Will (“TUW”) Accountings**

**A. Exclusion from Rule 116**

1. TUW accountings are expressly excluded from the requirements for guardianship and trust accountings under Court of Chancery Rule 116.

**B. TUW Accounting Requirements**

1. TUW accountings are still subject to Court of Chancery Rules 114, 115, and 117-129.
2. In lieu of Rule 116, the following requirements apply:

- a. If the trustee is a professional trustee, the trustee is not required to provide bank statements or underlying receipts and invoices to the RIC with the paper courtesy copy of the accounting unless (1) the accounting reflects irregular or unusual expenditures outside the normal course of the trustee's dealings or (2) so ordered by the Court under the circumstances presented.
- b. If the trustee is not a professional trustee, the trustee shall provide bank statements, but not underlying receipts or invoices, to the RIC with the paper courtesy copy of the accounting unless (1) such requirement is expressly waived by the Court or (2) additional support is requested by the Court under the circumstances presented.