

Delaware Court of Chancery Guidelines on Attorney Civility

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I. Introduction

Attorneys practicing before the Delaware Court of Chancery must adhere to the highest standards of civility, professionalism, and respect in all proceedings, including depositions, hearings, written communications, and interactions with opposing counsel and the Court. These guidelines were prepared by the Court of Chancery Rules Committee to preserve the integrity and effectiveness of legal proceedings and practice in Delaware, including by maintaining the inveterate tradition of collegiality that remains a hallmark of the Delaware bar.

II. General Civility Requirements

Professionalism in Advocacy

- Attorneys must act with reasonable diligence and commitment while exercising professional discretion to avoid offensive or disruptive tactics.
- Attorneys should act at all times with dignity, respect, and courtesy in dealing with opposing counsel, witnesses, the Court, and staff.
- Attorneys must avoid engaging in conduct that unnecessarily delays or burdens the proceedings.

Conduct in Depositions and Hearings

- Attorneys must refrain from personal attacks, unnecessary objections, inflammatory statements, and rude gestures during depositions and hearings.
- Objections should be concise and legally grounded. Counsel should avoid repetitive or disruptive interjections. Speaking objections during depositions should be avoided.
- Focus arguments on the merits of the case without denigrating the other side.

Written Communications and Submissions

- All written communications, including letters and emails, should be professional and free of inflammatory rhetoric or disparagement. Be mindful of tone.

- Submissions to the Court must be clear, concise, respectful, and devoid of derogatory language about an opposing party or counsel.

III. Examples of Civility

- Collaborating respectfully and through courteous communications with opposing counsel to narrow issues in dispute, including good-faith communications to minimize discovery disputes.
- Making objections in depositions without unnecessary or repetitive interjections.
- Maintaining a cooperative and problem-solving approach in written communications.
- Respectfully discussing procedural disagreements and refraining from escalating disputes without cause.
- Demonstrating willingness to comply with Court orders and resolving conflicts efficiently.
- Adopting conciliatory language in contentious legal disputes to facilitate resolution.
- Attempting to resolve or minimize a disagreement through a phone call to opposing counsel before resorting to letters or email communications.
- Responding promptly to communications from opposing counsel, even if only to acknowledge the communication and to indicate that a substantive response will be forthcoming by a date certain.
- Conducting yourself as you would if you were in the presence of a member of the Court in your interactions and communications with opposing counsel.

IV. Examples of Incivility

Deposition Misconduct

- Continually stating “Move this on. Let’s speed this up” during a deposition.
- Making disparaging comments such as calling questions “ridiculous” or “incoherent.”

- Instructing witnesses not to answer questions based on relevance if the objection is not justified or if the lawyer does not intend to promptly seek a protective order in accordance with the Court of Chancery Rules.
- Excessive interruptions or coaching during depositions.
- Conducting oneself in a manner intended to delay or frustrate.
- Failing to provide reasonable scheduling accommodations.

Unprofessional Written or Oral Communications

- Engaging in “chippy” or antagonistic email exchanges with opposing counsel.
- Sending inflammatory letters designed to harass or intimidate opposing counsel.
- Shouting at counsel or repeatedly interrupting and talking over each other during conversations.

Frivolous or Overly Aggressive Litigation

- Filing unwarranted motions, including frivolous Rule 11 or fee-shifting motions.
- Burdening the Court with disputes over immaterial noncompliance with procedural rules that does not impair the fair or efficient resolution of the case.
- Issuing unnecessary discovery requests or failing to confer with opposing counsel before filing procedural or discovery motions.

V. Court-Ordered Remedies for Incivility

- The Court of Chancery has imposed remedies and sanctions for uncivil behavior in past cases, including:
 - Requiring attorneys to review and comply with the Delaware Rules of Professional Conduct.
 - Imposing fee-shifting under the bad-faith exception where appropriate.
- Courts in other jurisdictions have implemented similar remedies, such as:
 - Requiring joint statements from opposing counsel on disputed issues.

- Imposing sanctions or fines for frivolous or abusive filings.
- Ordering mandatory ethics training or continuing legal education for offending attorneys.

VI. Potential Consequences of Incivility

- Imposition of sanctions or fee-shifting for conduct deemed to be in bad faith.
- Adverse rulings due to inappropriate behavior.
- Damage to reputation and standing within the Delaware bar.
- Disciplinary action, including reporting to the Office of Disciplinary Counsel. Other jurisdictions also impose disciplinary measures, such as:
 - Mandatory ethics training or continuing legal education on professionalism.
 - Written apologies to the Court or opposing counsel as part of remedial action.
 - Suspension or revocation of *pro hac vice* admission in extreme cases of misconduct, as suggested in state ethics studies.

VII. Conclusion

The Court of Chancery expects attorneys to maintain a high standard of professional behavior in all legal proceedings. Civility is essential to ensuring the public's and litigants' confidence in the Delaware judicial system, and the just, speedy, and efficient resolution of disputes. Civility not only helps to safeguard the Court's legacy as a fair and respected forum, but also enhances the reputation of the profession as a whole.

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Addendum of Civility-Related Decisions

Civility Generally

- *Sequoia Presidential Yacht Grp. LLC v. FE P'rs LLC*, 2013 WL 3362056, at *1 (Del. Ch. July 5, 2013) (“[T]he opportunity to practice before this bar, even on a temporary basis, is a privilege. Like Delaware attorneys, attorneys from other states are expected to abide by high standards of professional conduct.”).
- *In re Hillis*, 858 A.2d 317, 323 n.23 (Del. 2004) (“Professional civility is conduct that shows respect not only for the courts and colleagues, but also for all people encountered in practice. Respect requires promptness in meeting appointments, consideration of the schedules and commitments of others, adherence to commitments whether made orally or in writing, promptness in returning telephone calls and responding to communications, and avoidance of verbal intemperance and personal attacks.”) (quotation omitted).
- *Lendus, LLC v. Goede*, 2018 WL 6498674, at *1 (Del. Ch. Dec. 10, 2018) (“Court rules and the Delaware Rules of Professional Conduct constitute the limits of behavior, and are not practice guidelines. The norms of civility and candor expected of Delaware lawyers are not only a part of the heritage of practice cherished by our bar, but are essential to the administration of justice.”).
- *Paramount Commc’ns Inc. v. QVC Network Inc.*, 637 A.2d 34, 53–55 (Del. 1994) (“[I]t is a mark of professionalism, not weakness, for a lawyer zealously and firmly to protect and pursue a client’s legitimate interests by a professional, courteous, and civil attitude toward all persons involved in the litigation process.”).

Scheduling

- *Phillips v. Firehouse Gallery, LLC*, 2010 WL 3220677, at *3 (Del. Ch. Aug. 9, 2010) (fining counsel \$5,000 in a non-expedited case for suddenly noticing a date of deposition in the middle of opposing counsel’s family vacation and refusing to constructively negotiate an alternative date; “it is incumbent upon Delaware attorneys to uphold the expectations for practitioners before this Court.”).
- *Christan v. Counseling Resource Assocs., Inc.*, 60 A.3d 1083, 1087–88 (Del. 2013) (“In Delaware, where civility is a cherished value, attorneys are likely to grant their own extensions to opposing counsel without ‘bothering’ the trial court[,]” but observing that, where litigants act without court approval, “they do so at their own risk” and “waive[] the right to contest any late filings[.]”).

Amendments to Pleadings

- *New Castle Shopping, LLC v. Perm Mart Disc. Liquors, Ltd.*, 2009 WL 5197189, at *1 (Del. Ch. Oct. 27, 2009) (observing that the Court prefers “parties stipulate to amendments to pleadings[,]” because, “[w]hile it is not improper to oppose a motion to amend on substantive grounds, it is cumbersome”).

Written or Oral Rhetoric

- *Durham v. Grapetree, LLC*, 2014 WL 1980335, at *6–7 (Del. Ch. May 16, 2014) (publicly admonishing *pro se* plaintiff for numerous emails to defense counsel “containing insults, expletives, derogatory commentary, and, most egregious, personal attacks[,]” but declining to grant sanctions at that juncture because “equity rejects incivility but abhors a forfeiture”).
- *In re Member of Bar Hurley*, 183 A.3d 703 (Del. 2018) (Table) (accepting the Office of Disciplinary Counsel’s recommendation of a public reprimand for knowingly inappropriate sexual and religious communications in the course of practicing law).
- *Ares Special Situations Fund IV, L.P. v. Mastec, Inc.*, C.A. No. 2022-1130-PAF, at 1, 4 (Del. Ch. Apr 14, 2023) (calling parties’ emails to a judicial assistant “disheartening[,]” and ordering that “[a]ll requests for judicial action shall be by motion[,]” or counsel would be held in contempt and face personal liability for any monetary sanction).

Sanctions

- *Kaung v. Cole Nat’l Corp.*, 884 A.2d 500, 508 (Del. 2005) (holding that the Court of Chancery did not abuse its discretion in shifting fees, and emphasizing “that sanctions may be imposed upon anyone participating in a Delaware proceeding who engages in abusive litigation tactics[,]” not just lawyers).
- *Paramount Commc’ns Inc. v. QVC Network Inc.*, 637 A.2d 34, 53–55 (Del. 1994) (observing that relief under Ct. Ch. R. 37 would be appropriate for “abus[ing] the privilege of representing a witness in a Delaware proceeding” for “outrageous and unacceptable” deposition conduct—notwithstanding not being a member of the Delaware bar, nor being admitted *pro hac vice*).
- *Benton v. Guitar Ctr., Inc.*, C.A. No. 3075-VCS, at 4 (Del. Ch. Sept. 7, 2007) (Transcript) (requiring Delaware counsel and non-Delaware attorney

admitted *pro hac vice* to craft a letter to disciplinary counsel regarding non-Delaware attorney's inappropriate deposition conduct, and requiring non-Delaware attorney to physically come to Delaware to "go over the appropriate rules of conduct for a deposition in Delaware.").

- *POSCO Energy Co. v. FuelCell Energy, Inc.*, 2020 WL 6194693, at *3 (Del. Ch. Oct. 22, 2020) (observing that, if a party seeks sanctions for conduct it believes violates Rule 11, "it must do so in an independent motion, not [for example] in argument opposing unconditional leave to amend"; "it is distracting, [and] detrimental to the famed collegiality of the Delaware bar . . . to summon Rule 11 in rhetoric.").
- *New Castle Shopping, LLC v. Perm Mart Disc. Liquors, Ltd.*, 2009 WL 5197189, at *2 (Del. Ch. Oct. 27, 2009) (observing that, where the basis for a sanctions request is "so tenuous[,] it may be appropriate to issue "a rule to show cause as to why some form of sanction should not be issued" against the party making the request," particularly where the non-moving party "incurred significant time and expense" responding).
- *Coughlin v. S. Canaan Cellular Invs. LLC*, 2012 WL 2903924, at *1–2 (Del. Ch. July 6, 2012) (granting fee-shifting during the "pendency of ongoing litigation" because "[t]he unjustified refusal of the [defendant LLCs] to acknowledge the fact of their dissolution forced [plaintiff] and the Court to expend resources on unnecessary litigation.").
- *In re Shorenstein Hays-Nederlander Theatres LLC Appeals*, 213 A.3d 39, 78 (Del. 2019) (observing that the trial court "appropriately awarded attorneys' fees and costs for . . . bad faith litigation tactics" (*i.e.*, failing to prevent deponent from impeding or frustrating a fair examination)).
- *Domain Assocs., L.L.C. v. Shah*, 2018 WL 3853531, at *20 (Del. Ch. Aug. 13, 2018) (holding that fee-shifting was not warranted where "[n]either side acted commendably[,] [and] [b]oth sides acted within their legal rights.").
- *K & G Concord, LLC v. Charcap, LLC*, 2018 WL 3199214, at *2–4 (Del. Ch. June 28, 2018) (denying defendants' motion for attorneys' fees and costs because, even though plaintiff's theory was "weak[,] it "does not rise to the level of bad faith required to shift fees"; but denying plaintiff's cross-motion for fees because defendants' motion was "not baseless").
- *Wilkerson v. Harleysville Mut. Auto Ins. Co.*, 1993 WL 144593, at *3 (Del. Ch. Apr. 23, 1993) (where issue raised by plaintiff "would have been of first

impression in this State[.]” defendant’s “motion for sanctions [was] therefore without merit—a circumstance that is perilously close itself to being a violation of Rule 11”).

- *Amirsaleh v. Bd. of Trade of City of New York, Inc.*, 2008 WL 241616, at *3 (Del. Ch. Jan. 17, 2008) (declining plaintiff’s requested sanction and fees under Rule 37(b) where “plaintiff did not adequately work with defendants to try to resolve this issue before coming to the Court, [so] he shares some of the blame.”).

Disqualification

- *Lendus, LLC v. Goede*, 2018 WL 6498674, at *8 (Del. Ch. Dec. 10, 2018) (granting motion to withdraw *pro hac vice* admission, and referring the matter to the disciplinary counsel for attorney who, in an attempt to “intimidate and discomfort the deponent,” “harassed opposing counsel and the deponent, us[ed] sarcasm and accusations of perjury, and [made] rude gestures and grimaces, in an unprofessional manner.”).
- *Postorivo v. AG Paintball Hldgs., Inc.*, 2008 WL 3876199, at *1, *20 (Del. Ch. Aug. 20, 2008) (disqualifying lawyers for failing to “take reasonable steps . . . to avoid unwarranted intrusions upon [plaintiffs’] colorable claims of privilege[.]” which threatened to prejudice the fairness of the proceedings, but finding misconduct not “sufficiently serious” to justify the “extreme sanction[s]” of dismissal or disqualification of entire law firm).
- *In re Rehab. of Indem. Ins. Corp., RRG*, 2014 WL 637872, at *2 (Del. Ch. Feb. 19, 2014) (“A motion to disqualify must contain clear and convincing evidence establishing a violation of the Delaware Rules of Professional Conduct so extreme that it calls into question the fairness or the efficiency of the administration of justice.”) (citation omitted).
- *Manning v. Vellardita*, 2012 WL 1072233, at *1, *4 (Del. Ch. Mar. 28, 2012) (declining to revoke attorney’s *pro hac vice* status for failing to disclose an “obvious potential conflict” because “[his] representation of the [p]laintiffs will not work undue prejudice,” but referring the matter to the appropriate disciplinary authorities).