TITLE I. SCOPE OF RULES ~~— ONE —~~ FORM OF ACTION

Rule 1. Scope and ~~purpose of Rules.~~Purpose

These ~~Rules~~rules shall govern the procedure in the Court of Chancery of the State of Delaware~~ with the exceptions stated in Rule 81.~~. They ~~shall~~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.

~~I. SCOPE OF RULES — ONE FORM OF ACTION~~

Rule 2. One Form of Action

There is one form of action~~.~~

~~There shall be 1 form of action to be known as "~~ 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.

~~II. COMMENCING AN ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS~~

~~**Rule 3. Commencement of action.**~~

~~(a)~~ **Rule 3. Commencing an Action; Related Deposits, Fees, and Charges**

(a) **Complaint.**~~**Complaint.**~~

~~(1) An~~ A civil action is commenced by filing a complaint with the Register in Chancery~~ a complaint or, if required by statute, a petition or statement of claim all hereafter referred to as "complaint." Sufficient copies of the complaint shall be filed so that 1 copy is available for service on each defendant as hereafter provided, unless the Court orders otherwise~~.

(b) ~~(2)~~ **Supplemental Information Sheet.** Each complaint~~, when accepted for filing by the Register in Chancery, shall be~~ must be accompanied by a ~~covering~~ completed supplemental information sheet in the form adopted by the Court~~ and containing information which the Court shall determine is necessary and appropriate~~.

(c) ~~(aa)~~ **Verification.** ~~All~~

(1) The following papers must be verified:

(A) complaints~~,~~;

(B) counterclaims~~, cross-claims and~~;

(C) crossclaims;

(D) third-party complaints~~,~~; and ~~any~~

(E) amendments ~~thereto, shall be verified by each of the parties filing such pleading. Every pleading, except that filed by a corporation, which is required~~or supplements to ~~be verified by statute or by these Rules shall be~~those pleadings.

(2) Each party filing the paper must verify under oath or by affirmation ~~by the party filing such pleading~~ that the matter contained ~~therein insofar as it concerns the party's act and deed is true, and so far as relates to the act and deed~~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 ~~any other person, is believed by the party~~ distribution;

(v) to ~~be true. Every pleading by a corporation which must be verified shall be verified under oath or affirmation by the chairperson or vice-chairperson~~sell real property to pay debts;

(vi) for instructions;

(vii) for an adjudication of ~~the board~~presumed death;

(viii) for an order disposing of ~~directors, by the president, by a vice president, by a secretary, by an assistant secretary, by the treasurer, or by an authorized agent and shall be under the seal~~remains;

(ix) for elective share;

(x) to admit a will to probate;

~~(i)~~(xi) for a rule to show cause to compel return of ~~the corporation.~~assets; and

(xii) ~~(b) *Nonrefundable deposit for costs*. The Register in Chancery shall not file any paper or record or docket proceeding until a nonrefundable deposit for fees and costs has been made with the Register. Such deposit is $100 for all matters except those specifically stated herein. The Register in Chancery shall apply the deposit from time to time in payment of the fees and costs of the Register's office. If the amount of the deposit is expended in payment of such fees and costs as they accrue from time to time, the Register shall demand and receive such additional amount as shall be necessary in the Register's judgment to defray fees and costs for additional services before any such services shall be performed. If the amount of the deposit is not exhausted in payment of such fees and costs, any balance is not refundable and shall be retained by the Register in Chancery at the end of the case. An additional deposit of $400 shall be required in all actions commenced by writ of sequestration, pursuant to 10 Del.~~ for a distribution order to discharge estate debt.

The initial nonrefundable deposit is in addition to any other ~~*C.* § 366; $200 of such additional deposit shall be set aside solely for the purpose of paying any fee that the Court may allow the sequestrator. For papers filed from time to time in connection with guardianship matters, the deposit for costs shall be such sum as the Register, from the Register's experience, shall deem sufficient to cover fees and costs of the Register's office for such matter. This rule shall not apply to any action or other proceeding that is exempt by law from making a deposit for costs.~~

(B) ~~(bb) *Court* 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.

~~(e)~~**(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 ~~shall assess the following court fees:~~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

a supplemental court security fee for each initial civil filing, to be deposited in the Court Security Fund, pursuant to 10 *Del. C.* § ~~FEES AND CHARGES APPLICABLE TO ALL TYPES OF ACTIONS~~

~~Issuing summonses, subpoenas, and other writs~~

~~Original~~	~~$ 50~~
~~Each copy~~	~~$ 25~~
~~Filing an exception to a Master's Final Report~~	~~$ 200~~
~~Noticing appeal (including preparation of record)~~	~~$ 500~~
~~Furnishing advertisements to publishers~~	~~$ 25~~
~~Certification of a document (excludes copy charge)~~	~~$ 25~~
~~Exemplification of a document (in addition to certification)~~	~~$ 50~~
~~Preparation of Register's certificate~~	~~$ 25~~
~~Preparation of short certificate~~	~~$ 25~~
~~Filing commission~~	~~$ 20~~
~~Filing bond~~	~~$ 25~~
~~Any court proceeding scheduled upon request of a party, whether in person or telephonic~~	~~$ 150 per day~~
~~Docketing any item, per page~~	~~$ 1~~
~~Scanning hard copy documents for docketing, per page~~	~~$ 2~~
~~Photocopies, per page~~	~~$ 1.50~~
~~Copies of opinions, per page~~	~~$ 1.50~~
~~Microfilm copies, per page~~	~~$ 2~~
~~Facsimiles, first page~~	~~$ 10~~
~~Facsimiles, per page after first~~	~~$ 2~~
~~Storage of exhibits, per exhibit (charged to party that submitted exhibit)~~	~~$ 10~~
~~Archival retrieval fees (excluding copy charge)~~	

~~One folder or less~~	~~$ 25~~
~~For each box or partial box greater than one folder~~	~~$ 50~~
~~Preparation of mailing via next day carrier (excludes copy charge)~~	~~$ 5~~

~~CIVIL ACTION FEES~~

~~Filing a new case or petition~~

~~With 1 or 2 defendants~~	~~$ 300~~
~~With 3 or more defendants~~	~~$ 450~~
~~Asserting class action or derivative claims~~	~~$ 600~~
~~Asserting technology disputes under 10 Del. C. §346~~	~~$ 600~~
~~Involving service under 10 Del. C. § 3114~~	
~~with 10 or less defendants~~	~~$ 600~~
~~with more than 10 defendants~~	~~$ 850~~
~~To confirm or vacate an arbitration award~~	~~$ 500~~
~~For partition~~	~~$ 150~~
~~For decree of distribution~~	~~$ 150~~
~~To sell real property to pay debts~~	~~$ 150~~
~~For instructions~~	~~$ 150~~
~~For adjudication of presumed death~~	~~$ 150~~
~~For order disposing of remains~~	~~$ 150~~
~~For elective share~~	~~$ 150~~

~~For admission of a copy of decedent's will to probate $ 150~~

~~For a rule to show cause to compel return of assets~~

~~Pursuant to 12 Del. C. § 2105 $ 150~~

~~To remove the personal representative of a decedent's estate $ 250~~

~~For sequestration $ 850~~

~~(In addition to filing fees an extra $ 100 is collected at time of filing as a deposit for court costs)~~

~~Counterclaims, cross-claims, or third party claims are charged at the same rates as a new case or petition~~

~~Amended complaint $ 250~~

~~An amended complaint must be separately docketed. A party cannot rely on the form of amended complaint attached to a motion for leave to amend.~~

~~Motion or application for expedited proceedings $ 500~~

~~Note: A motion or application for expedited proceedings must be filed in connection with any motion or application for a temporary restraining order or preliminary injunction or in conjunction with any summary proceeding~~

~~Petition for Mediation under Rules 93-95 $ 10,000~~

~~Each additional day of mediation $ 5,000~~

~~Service letters under 10 Del. C. § 3114 (per letter) $ 10~~

~~Filing and recording any pleading Per page $ 2.00~~

~~TRUST FEES~~

~~Petitions~~

~~For administration of new trust~~	~~$ 25~~
~~To modify a trust~~	~~$ 650~~
~~Otherwise civil action fees apply~~	
~~Trustee bond~~	~~$ 10~~
~~Filing, recording & indexing accounts of trustees and receivers~~	
~~Amount of principal and income of trust:~~	
~~Less than $ 500 to $ 1000~~	~~$ 10~~
~~$ 1001 to $ 5000~~	~~$ 20~~
~~$ 5001 to $ 15,000~~	~~$ 60~~
~~Each additional $ 1000 to $ 10,000 or part thereof~~	~~$ 15~~
~~Charge per page~~	~~$ 1~~
~~Filing inventory, charge per page~~	~~$ 2~~
~~Mailing notices to interested parties (per notice)~~	~~$ 5~~
~~Trustee release~~	~~$ 10~~
~~Registering certificates of trust~~	~~$ 25~~
~~Filing an exception to trust accounting~~	~~$ 100~~
~~Orders modifying a trust — per additional order beyond one~~	~~$ 150~~

~~GUARDIANSHIP FEES~~

~~Petition or application~~	
~~To appoint guardian for a minor (inclusive of all initial filing fees)~~	~~$ 125~~

~~To appoint guardian for a person with a disability (inclusive of all initial filing fees) $ 125~~

~~In connection with tort settlement (inclusive of all initial filing fees) $ 125~~

~~For a rule to show cause in a pending action $ 50~~

~~To remove a guardian $ 50~~

~~To appoint a successor guardian $ 50~~

~~To expend $ 35~~

~~To initiate or increase monthly allotment $ 35~~

~~To reinvest $ 35~~

~~To sell real estate $ 50~~

~~To accept foreign guardianship $ 50~~

~~To transfer guardianship $ 50~~

~~Promissory note for guardian borrowing from account $ 25~~

~~Transfer of funds $ 15~~

~~Third party certification of compliance with order $ 3~~

~~Filing an exception to guardianship accounting $ 100~~

~~RECEIVERSHIP FEES~~

~~Order appointing receiver $ 100~~

~~Processing of receivership claims~~

~~Claims under $ 100 $ 0~~

~~Claims of $ 100 to $ 999 $ 25~~

~~Claims of $ 1000 or greater 3% of amount paid~~

~~**STATEWIDE SECURITY FEE APPLICABLE TO ALL COURTS**~~

~~Pursuant to 10 Del. C. § 8505, a $10 fee is assessed in addition to any other costs imposed by Rule for each complaint, amended complaint, petition, cross-petition, counter-petition, cross-claim, counterclaim, or third-party complaint. The fee is not retained by the Court of Chancery. It is deposited in the Court Security Fund to provide supplemental funding for personnel, equipment, and/or training expenses related to judicial branch security.~~

~~THE ATTORNEY GENERAL WHEN FILING UNDER THE DELAWARE FAIR HOUSING ACT PURSUANT TO 6 Del. C. § 4614(c) OR IN VETERANS ADMINISTRATION CASES, THE OFFICE OF THE PUBLIC GUARDIAN, THE INSURANCE COMMISSIONER, AND THE HUMAN RELATIONS COMMISSION ARE EXEMPT FROM PAYING FILING FEES AND COSTS.~~

~~Charges for matters not covered by this Rule shall be filed by Order of the Court. Any charge herein may be increased or decreased by the Court for good cause.~~

(2) ~~(c) *Security for costs*. In every case in which the plaintiff is not at the time of filing the complaint a resident of this State, or being so, afterwards moves from the State, an order for security for costs may be entered upon motion after 5 days notice to the plaintiff; in default of such security the Court, on motion, may dismiss the complaint.~~ 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

~~(1)~~(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. Process.

(a) Form of Summons; ~~*issuance.* Upon commencement of an action~~**.** 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;

~~(a)~~**(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 ~~in proper form~~properly completed, the Register in Chancery ~~shall~~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~~, shall~~ must be issued for each defendant to be served.

~~(a) *Same; form.* The summons shall be signed by the Register in Chancery, be under the seal of the Court, contain the name of the Court and the names of the parties, state the name of the official or other person to whom it is directed, the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these Rules require the defendant to appear and defend, and shall notify the defendant that in case of the defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.~~

(c) ~~*By whom served.* Service of summons may be effected by any~~ **Service of Process.**

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

~~(1)~~(2) Any person who is ~~not a party and who is~~ at least 18 years ~~of age.~~old and not a party may serve process. At the plaintiff's request ~~of the plaintiff~~, the Court may ~~direct~~order that service be ~~effected~~made by the sheriff~~, the sheriff's deputy~~ or by ~~another~~a person specially appointed by the Court for that purpose. All persons~~, other than~~ except the sheriff ~~or his deputy,~~ wishing to serve process in person for ~~Court of Chancery~~ the Court's matters must be registered with the ~~Court in accordance with the procedures set out in the Court's operating procedures~~Register in Chancery.

~~(b) *Summons; personal service.* The summons and complaint shall be served together. The Register in Chancery shall furnish the person making service with such copies as are necessary. Service shall be made as follows:~~

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

(1) An individual other than ~~an infant or an incompetent~~a person without capacity, by:

(A) delivering ~~a copy of the summons and of the complaint~~ process to the individual personally~~, or by~~;

(B) leaving ~~copies thereof~~ process at the individual's dwelling ~~house~~ or usual place of abode with ~~some person~~someone of suitable age and discretion ~~then residing therein, or by~~who resides there; or

~~(A)~~(C) delivering ~~a copy of the summons and of the complaint~~ process to an agent authorized by appointment or by law to receive service of process~~.~~;

(2) ~~Upon an infant~~A person without capacity, by serving ~~the summons~~process in the manner prescribed

by law ~~for service of summons upon any such defendant.~~;

~~(1) Upon an incompetent person by serving the summons in the manner prescribed by law for service of summons upon any such defendant.~~

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

~~(2) Repealed.~~

~~(3) Repealed.~~

(4) ~~An~~Any defendant, pursuant to a Court order directing another or ~~an~~ additional mode of service ~~of a summons in a special case may be made by the Court~~.

(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.* §~~(da) *Service by publication.* No order shall be entered under 10 Del.~~ **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.

Service~~*C.* § 365 unless a verified complaint or affidavit accompanying the application for such an order contains an allegation that any defendant is a nonresident of the State and contains a further allegation as to the last known~~

~~address of such defendant or an allegation that the address of the defendant outside Delaware is unknown and cannot, with due diligence, be ascertained. In addition to the publication of the order for the appearance of a defendant prescribed by 10 Del. C. § 365, the order shall provide for sending such defendant by registered or certified mail a copy of such order and a copy of the complaint at the defendant's address outside of Delaware where the verified complaint or affidavit contains such information. The Court may direct the giving of other notice to such defendant in such manner as may be deemed appropriate under the circumstances.~~

~~(db) *Service by publication and seizure.*~~

(g) ~~No order shall be entered~~ under 10 *Del. C.* § 366 ~~unless it appears in the complaint~~.

(1) The plaintiff must file an affidavit:

(A) stating that a defendant is a nonresident;

~~(1)~~ providing a last-known address or stating that the ~~defendant or any one or more of the defendants is a nonresident of the State of Delaware and the application therefor is accompanied by the affidavit of a plaintiff or other credible person stating:~~

~~(A)~~(B) ~~As to each nonresident defendant whose appearance is sought to be compelled, the defendant's~~ last ~~-~~known address ~~or a statement that such address is~~ is unknown and cannot ~~with due diligence~~ be ascertained~~.~~ after reasonable diligence;

~~(a) The following information as to the~~ providing a reasonable description of property ~~of each such defendant sought~~ to be ~~seized:~~

~~(i) A reasonable description thereof.~~

~~(B)~~(C) ~~The~~sequestered, including the estimated ~~amount and~~ value ~~thereof.~~of the property;

~~(C)~~(D) ~~The~~ describing the nature of the defendant's title or interest ~~therein;~~in the property and ~~—~~if ~~such~~that title or interest ~~be equitable~~is

beneficial in nature~~, —~~the name of the holder of ~~the~~ legal title~~.~~;

(E) ~~The~~ identifying the source of ~~affiant's~~the information ~~as~~; and

(F) providing reasons for omitting any information.

(2) The plaintiff must obtain a Court order:

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

(B) requiring publication of the ~~items as~~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

~~(D)~~(E) specifying the property that the sequestrator must seize if the defendant fails to ~~which the affidavit is made on information and belief~~appear and the plaintiff posts sufficient security.

~~(ii) The reason for the omission of any of the required statements.~~

~~(5)~~(3) ~~Within 3 business days after the filing of such bond or bonds as may be required or within such other time as the Court may fix, the~~ Register ~~shall, in addition to making the required publication, send by registered or certified mail to each defendant whose appearance is sought to be compelled a certified copy of the order and a copy of the pleading asserting the claim.~~in Chancery will:

(A) ~~After~~ cause the ~~filing of such bond or bonds~~order to be published as ~~may be required~~directed by the ~~order, but not later than 10 days after the date of~~Court; and

(B) send the order ~~of seizure,~~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 ~~shall~~must:

(A) serve a certified copy of the Court's order ~~upon~~on the person~~, persons or corporation having~~ with possession ~~or~~, custody ~~of the property~~ , or control of ~~its transfer, and shall seize~~ the property~~. The sequestrator shall~~;

~~(A)~~(B) seize the property ~~which is, or appears, not to be susceptible of physical seizure within the State by serving a director in writing that the person, persons or corporation having possession or custody of the property or control of its transfer, shall:~~; and

~~(b) Retain the property and recognize no transfer thereof until further notice from the sequestrator or order of the Court;~~

~~(c) Forthwith make a notation upon any records pertaining to the property that such property is held pursuant to the order of the Court; and~~

~~(d) Within 10 days after the date of such service, deliver a certificate under oath to the sequestrator, specifying (i) Such defendant's property, if any, of which it has possession, custody or control or control of its transfer; (ii) whether the title or interest of each such defendant is legal or beneficial; and (iii) if legal, the name and address of the holder of any equitable title or interest therein, if known, and, if beneficial, the name and address of the holder of the legal title thereto, if known.~~

(C) ~~Within~~ report to the Court within 20 days after ~~seizure, unless otherwise specially ordered, the~~

~~sequestrator shall make a return to the Court, therein setting out all proceedings hereunder to the date of said return~~the seizure~~—or different time if the Court directs—~~regarding the property sequestered, including the date and ~~hour or~~ 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

~~(B)~~(C) within 10 days after service ~~and seizure pursuant to subparagraph (3) hereof.~~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 ~~in its discretion and subject to statutory requirements dispense with or~~ modify these procedures except as required by statute.

(7) Service is accomplished upon compliance with the ~~requirements of any part of this~~Court order.

~~(b)~~**(h) Other Means of Service.** Whenever a statute, rule ~~in any cause upon application to it stating the~~

~~reasons therefor~~, agreement, or Court order provides for other means of serving process, service may be made according to the statute, rule, agreement, or order.

~~(dc)~~ **Proof of Service** ~~pursuant to 10 Del. C. § 3114.~~ Proof of

~~(2)~~

~~(a) In every action where~~ service of process ~~is sought pursuant to 10 Del. C. § 3114 against a nonresident of Delaware by reason of such nonresident's service as officer, director, trustee or member of the governing body of a corporation organized under the laws of this State, the party seeking such service of process shall at the time when such service is applied for file with the Register in Chancery a statement signed by the attorney for the applicant or, if the applicant is not represented by counsel, by the applicant, containing the following information:~~

must be

~~(i) The name and principal business address of the corporation upon whose governing body the nonresident serves or has served, which address shall be the principal business address set forth on the most recent annual report~~ filed ~~by the corporation with the Secretary of State of Delaware, unless the statement shall also contain the basis for the applicant's conclusion that the business address set forth on the most recent annual report is not presently the principal business address of the corporation.~~

~~(ii) The name and address, including county, of the registered agent in Delaware of said corporation, or a statement that the corporation has no present registered agent.~~

(iii) The last residence address known to the applicant of each nonresident as to whom service of process is sought, which address shall be the residence address of such nonresident defendant set forth on the most recent annual report filed by the corporation with the Secretary of State of Delaware, unless the statement shall also contain the basis for the applicant's conclusion that the residence address set forth in the most recent annual report filed by the corporation is not presently the residence address of such nonresident.

(b) If any information called for by subparagraph (1)(a) is not known to the applicant, the statement shall so state and shall also state affirmatively that the applicant has made diligent efforts to ascertain such information.

(3)

(a) If the summons presented by the plaintiff applying for service pursuant to 10 Del. promptly with ~~C. §~~ 3114 is in proper form, the Register in Chancery shall sign, seal and issue it to the plaintiff for service upon the registered agent of the corporation upon whose governing board the nonresident serves or has served, or, if the corporation has no registered agent, upon the Secretary of State. The plaintiff shall file a return of service forthwith after effectuation of said service.

(b) The summons issued pursuant to subparagraph (2)(a) hereof shall, in addition to the statements called for under other provisions of law, state that it is issued pursuant to 10 Del. C. § 3114 and a copy of that statute shall be appended thereto. The summons shall direct that an answer or other

~~responsive pleading be filed in accordance with the time provisions of the statute.~~

~~(4) Within 7 days after service under subparagraph (2)(b) hereof is effected,~~ the Register ~~shall send by registered mail to each nonresident upon whom service is being effected, copies of all of the papers served upon the corporation under subparagraph (2)(a) hereof at: (a) The principal place of business of the corporation and (b) the residence address of such nonresident. The Register shall note on the docket of the cause the date upon which such mailings take place.~~

~~IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY~~

~~_____ Plaintiff,~~ ~~v.~~ ~~_____ Defendant.~~	~~CIVIL ACTION NO.~~ ~~SUMMONS PURSUANT~~ ~~TO 10 DEL. C. § 3114~~

~~THE STATE OF DELAWARE~~

~~TO THE SHERIFF OF NEW CASTLE COUNTY:~~

~~YOU ARE COMMANDED:~~

~~To Summon the above named individual defendant ( ) by service pursuant to 10 Del. C. § 3114 upon the defendant(s)' designated agent for service of process in Delaware, _____ , being the registered agent for. _____, a Delaware corporation, so that within the time required by law, such defendant ( ) shall serve upon _____, plaintiff 's attorney whose address is _____ and answer to the complaint.~~

~~To serve upon defendant ( ) a copy hereof, of the complaint, and of a statement of plaintiff filed pursuant to Chancery Court Rule 4(dc)(1).~~

~~Dated: _____~~

~~Register in Chancery~~

~~(c) Omitted.~~

~~(d) Omitted.~~

~~(c)~~(i) ~~*Return*. The summons provided for in paragraph (a) hereof shall be returnable 20 days after the issuance thereof unless otherwise specially ordered. The person serving the process shall make return thereof to the Court promptly, after service and in any event on the return day thereof. Process which cannot be served before the return day thereof shall be returned on the return day and such return shall set forth the reasons why service could not be had. If service is made by a person other than by an officer or the officer's deputy such person's return shall be verified.~~in Chancery. Except for service by the sheriff, service must be proven by affidavit. Failure to ~~make a return or proof of~~prove service ~~shall~~does not affect the validity of service.

~~(c)~~ **Amendment.** ~~**Amendment.**~~ ~~At any time in its discretion and upon such terms as it deems just, the~~ The Court may allow the amending of any process or ~~return of~~ proof of service ~~to be amended~~ unless it would clearly ~~appears that~~cause material prejudice ~~would result~~ to the substantial rights of ~~the party against whom the process issued.~~

~~(d)~~(j) 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.

COURT OF CHANCERY RULE 5

Rule 5. Service and ~~filing of pleadings and other papers; appearance and withdrawal thereof.~~**Filing; Appearance and Withdrawal**

~~(a) Service: When required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the Court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party, unless the Court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.~~

~~(aa) Appearance: When; how made; withdrawal. Except as otherwise provided by statute, a defendant may appear though a summons had not been served upon the defendant. Appearance may be made by the service and filing of notice thereof, or by the service or filing of any motion or pleading purporting to be responsive to or~~

~~affecting the complaint. An appearance must bear the name of an individual attorney and not merely a firm name. No appearance shall be withdrawn except on written motion and order of the Court.~~

(a) ~~(b) Service of pleadings and papers: How made. Whenever under these Rules~~ **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 ~~or permitted~~;

(B) a pleading filed after the original complaint;

(C) a discovery paper required to be ~~made upon~~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, ~~the~~service under this rule must be made on the attorney unless a statute or the Court requires service ~~shall be made upon the attorney unless service upon the party personally is ordered by the Court, or required by law.~~on the party. Service ~~upon~~on an attorney ~~shall have~~has the same ~~force and~~ effect as ~~if~~service made ~~upon~~on the party represented by that attorney.

(2) *Service* ~~upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney's or party's last known address or, if no address is known, by leaving it with the Register in Chancery. Delivery of a copy within this rule means:~~

~~Handing it to the attorney or to the party; or leaving it at the attorney's or party's~~ *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 ~~thereof;~~ or, if ~~there is~~ no one is in charge, ~~leaving it~~ in a conspicuous place ~~therein~~in the office; or~~,~~

(ii) if the person has no office or the office is closed ~~or the person to be served has no office, leaving it,~~ at the person's dwelling ~~house~~ or usual place of abode with ~~some person~~someone of suitable age and discretion ~~then residing therein. Service by mail~~ who resides there;

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

~~(c) Same: Numerous defendants. In any action in which there are unusually large numbers of defendants, the Court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the Court directs.~~

(E) ~~(d)~~ 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. ~~All papers~~

(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 ~~upon a party shall~~must be filed with the Court.

(2) *Method of Filing.*

(A) Any paper required to be filed with the Court ~~within a reasonable time thereafter subject~~ 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.*

The following ~~provisions.~~

(A) ~~(1) All requests for~~ discovery ~~under Court of Chancery Rules 31, 33, 34, 35~~ requests and ~~36 and answers and~~any responses ~~shall be served upon other counsel or parties but shall~~to them must not be filed with the Court~~. In lieu thereof, the~~ :

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 ~~and the party serving responses thereto shall~~or furnishing an expert report must file with the Court a ~~"Notice~~notice of ~~Service"~~service containing the following information:

(i) ~~(a)~~ a certification that the paper was served;

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

(iii) the date and manner of service.

(C) ~~a particular form of discovery~~ If a request or response ~~was served on other counsel or opposing parties, and~~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.

~~(i) (b) the date and manner of service.~~

~~(2) The party responsible for service of the request for discovery and the party responsible for the response shall retain the originals and become the custodian of them. The party taking an oral deposition shall be custodian of the original; no copy shall be filed except pursuant to subparagraph (3). In cases involving out-of-state counsel, local counsel shall be the custodian.~~

~~(3) If depositions, interrogatories, requests for documents, requests for admission, answers or responses are to be used at trial or are necessary to a pretrial or post-trial motion, the verbatim portions thereof considered pertinent by the parties shall be filed with the Court when relied upon.~~

(D) ~~(4) When discovery~~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.

Depositions need not ~~previously filed with the Court is needed for appeal purposes, the Court, on its own motion, on motion by any party or by stipulation of counsel, shall order the necessary material delivered by the custodian to~~be filed with the Court. But if used in the proceeding—or if the Court~~.~~

~~(5) The Court, on its own motion, on motion by any party or an application by a non-party, may order the custodian to file the original of any discovery document.~~

~~(D)~~(E) ~~(6) When discovery materials are to~~ orders—then the deposition transcript, or a relevant portion, must be filed with the Court ~~other than during trial, the filing party shall file the material together with a notice (a) stating in no more than one page, the reason for filing and (b) setting forth an itemized list of the material.~~.

(4) ~~(7) It shall be the duty of the party on whose behalf a deposition was taken to make certain that the officer before whom it was taken has delivered the original transcript to such party.~~*Documents Used at Hearings or Trials.* Unless otherwise ordered by the Court, a party must file:

(A) any ~~deposition which has been~~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 ~~pursuant to this Rule~~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 ~~be unsealed~~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;

~~(2)~~(3) rejection by the Register in Chancery~~.~~; or

~~(c) Filing with the Court defined. The filing of pleadings and other papers with the Court as required by these Rules shall be made by filing them with the Register in Chancery, except that the Court may permit the papers to be filed with it, in which event it shall note thereon the filing date and transmit them to the office of the Register in Chancery.~~

~~(f) Proof of service of papers. Unless otherwise ordered, no pleading or other paper, required by these Rules to be served by the party filing the paper, shall be filed unless the original thereof shall have endorsed thereon a receipt of service of a copy thereof by all parties required to be served or it shall be accompanied by affidavit showing that service has been made and how made or it shall be accompanied by a certificate of an attorney of record showing service has been made and how.~~

~~(g) Notice by publication. Whenever by statute, rule or order of this Court notice by publication is required within this state, the party required to give notice shall cause to be published such notice in The News Journal or the Delaware State News. No other newspaper shall be~~

~~used for publication of notices within this state unless, upon petition to the Court, good cause is shown to depart from this rule.~~

(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
~~(1)~~(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. Public ~~access~~Access to ~~documents filed~~Documents Filed with the Court in ~~civil actions.~~Civil Actions

(a) General ~~*principle*~~Principles of ~~*public access.*~~ ~~Except as otherwise provided in this Rule,~~Public Access.

(1) Court proceedings ~~in a civil action~~ are ~~a matter~~matters of public record. ~~All pleadings and other materials of any sort, including motions, briefs, letters, affidavits, exhibits, deposition transcripts, answers to interrogatories, answers to requests for admissions, and hearing transcripts, that are~~

(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 ~~to the~~ 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 ~~part of the record in a civil action ("Documents") shall be~~publicly available ~~for~~;

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

~~*Obtaining Confidential Treatment.* After~~ (D) where the ~~commencement~~magnitude of ~~an action pursuant to Rule 3(a), any person may request that~~ the ~~Court order the Register in Chancery to permit Documents to be filed confidentially and not available for~~harm from public access ~~("Confidential Treatment").~~

~~Except as otherwise provided in this Rule, a Document shall not receive Confidential Treatment unless the person seeking Confidential Treatment shall have first obtained an order of this Court specifying~~ to the information ~~or categories of information for which good cause exists for Confidential Treatment ("Confidential Information"). A Document shall receive Confidential Treatment only if and to the extent that it contains Confidential Information.~~

~~For purposes of this Rule, "good cause" for Confidential Treatment shall exist only if~~outweighs the public interest in ~~access to Court proceedings is outweighed by the harm that public disclosure of sensitive, non-public information would cause. Examples of categories of~~ the information ~~that may qualify as~~ .

(3) Confidential Information ~~include~~includes:

(A) trade secrets; ~~sensitive proprietary information; sensitive financial, business, or personnel information;~~

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

~~(A)~~(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. ~~The party or person seeking to obtain or maintain Confidential Treatment always bears the burden of establishing good cause for Confidential Treatment. The designation of material as Confidential Information constitutes a certification that the designating lawyer, party, or person has reviewed the~~

(1) The Register in Chancery must maintain a

docket system that permits a Filed Document ~~and believes that good cause exists for Confidential Treatment.~~

~~In connection with the entry of an order pursuant to this Rule, the Court may determine the manner and extent of Confidential Treatment for any Document, category of Documents, or type of~~containing Confidential Information~~, including limiting access to attorneys of record in the civil action. The Court may, in its discretion, review any Document *in camera* to determine whether good cause exists for Confidential Treatment.~~

~~*Filing a document entitled to Confidential Treatment.* Any Document entitled to Confidential Treatment shall~~ to be filed confidentially (a~~"~~ "Confidential Filing").

-(A) The docket system must allow the Court to restrict access to a Confidential Filing~~").~~

~~The Register in Chancery shall maintain a docket system for civil actions that permits a Confidential Filing to be viewed only by~~ to the Court, the filer, ~~and those participants in the case who have been~~persons served with the Confidential Filing~~. The title of the document, the identity of the filer~~, and ~~the identities of the participants in the case who have been served with~~persons otherwise given access to the Confidential Filing ~~shall be available for public access.~~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 ~~shall~~must have a cover page ~~bearing the~~that contains only the following information:

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

~~YOU ARE IN POSSESSION OF A CONFIDENTIAL~~

YOU ARE IN POSSESSION OF A CONFIDENTIAL FILING FROM THE COURT OF CHANCERY OF THE STATE OF DELAWARE

~~STATE OF DELAWARE.~~

~~If you are not authorized by Court Order to view~~
~~or~~

~~retrieve~~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:

~~You should contact the following person:~~

[~~Filing Attorney or Party's~~Filer's Name]

[~~Filing Attorney's Law~~Filer's Firm]

[~~Filing Attorney or Party's~~Filer's Address]

[~~Filing Attorney or Party's~~Filer's Telephone Number]

~~If~~ (B) The following additional statement, if a public version ~~of the Document will~~must be filed ~~in accordance with Rule 5.1(d), then the cover page shall also state~~:

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

~~before [DATE].~~

~~In lieu of the text "[DATE]," insert the calendar date on or before which the public version will be filed pursuant to this Rule.~~

~~No other information should appear on the cover~~ (3) Except for voluminous exhibits, every page~~.~~

~~If~~ of a Confidential Filing ~~includes multiple Documents, such as an appendix of exhibits or a brief or affidavit with exhibits attached, then the Confidential Filing shall be filed with a single cover page for the document as a whole.~~

~~Every page of a Confidential Filing shall~~ 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~~." A party may omit the footer for voluminous exhibits~~.

~~*Filing a public version.* Except as otherwise provided in this Rule, the filer of a Confidential Filing shall file a public version within five days after making the Confidential Filing. In the absence of timely compliance with this Rule, the Confidential Filing shall become part of the public record, and the Register in Chancery shall make the Confidential Filing available for public access on the docket system to the same extent as any other public filing.~~

~~Not later than 3:00 p.m. on the next business day after~~

(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~~ is filed, and contemporaneously whenever reasonably practicable~~, the filer ~~shall~~must use best efforts to give notice to ~~each attorney who has entered an appearance on behalf of each~~any person who has designated information in the Confidential Filing as Confidential Information~~. The notice shall not be~~ 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:

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

to the person at the person's principal place of business;

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

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. ~~The notice shall attach a~~

(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 ~~of the Confidential Filing ("filer's proposed public version") that redacts only the information the filer believes qualifies as Confidential Information. The notice shall refer to this Rule and state that the filer's proposed public version shall be filed in compliance with this Rule if no one designates Confidential Information~~and any additional information designated for redaction in response to the notice ~~by 3:00 p.m. on~~unless the ~~fifth day after the~~ filer and a person receiving notice agree to make fewer redactions.

(f) Challenging a Confidential Filing. ~~If no one has designated~~

(1) *Right to Challenge.* Any person may challenge the confidential treatment of a Confidential ~~Information~~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 ~~response to the notice by that time~~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.

~~(1)~~(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 ~~filed shall be~~of the ~~filer's proposed~~ challenged Confidential Filing and a public version~~; otherwise,~~ does not exist, then the filer of the Confidential Filing must file a public version ~~filed shall be a~~. The timely filing of a public version ~~that redacts only the filer's Confidential Information and the Confidential Information designated in response to the filer's~~satisfies the challenge notice. The filer must follow the procedures in Rule 5.1(e) and Rule 5.1(f), except that:

~~For administrative convenience, the filer need not file a public version of documentary exhibits or deposition transcripts. If there is a challenge to the Confidential Treatment of an exhibit or deposition transcript for which no public version has been filed, then the filer shall file a public version of the exhibit or deposition transcript in compliance with Rule 5.1(f).~~

~~*Confidential Treatment for complaints*. A plaintiff may file a complaint and any related Documents as a Confidential Filing without first obtaining an order as required by this Rule according to the following procedure.~~

~~The plaintiff shall file as a Confidential Filing (i) the complaint and any related Documents and (ii) a cover letter addressed to the Register in Chancery that certifies compliance with this Rule in accordance with Rule 5.1(e). When filing a complaint as a Confidential Filing in accordance with this Rule, the plaintiff (i) shall file publicly the covering sheet referenced in Rule 3(a)(2) and (ii) the covering~~

~~sheet shall summarize the claims asserted in the complaint in sufficient detail to inform the public of the nature of the dispute.~~

~~On the same day that the plaintiff files the complaint and any Documents as a Confidential Filing, and contemporaneously whenever reasonably practicable, the plaintiff shall use its best efforts to give actual notice to each person who could have a legitimate interest in designating information in the foregoing materials as Confidential Information. The notice shall not be filed with the Register in Chancery. If the person has a registered agent in this State, the plaintiff shall both give notice to the registered agent and use its best efforts to give notice to the person at its principal place of business, through counsel, or in accordance with the notice provision in any agreement giving rise to the confidentiality obligation. The notice shall include a copy of this Rule and a proposed public version of the complaint and any related Documents redacting only the information that the plaintiff believes qualifies as Confidential Information ("plaintiff's public versions"). The notice shall state that the plaintiff's public versions shall be filed in compliance with this Rule if no one designates Confidential Information in response to the notice by 3:00 p.m. on the third day after the giving of notice.~~

~~The plaintiff shall file public versions of the complaint and any related Documents within three days after filing the~~ (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.* ~~**Confidential Filings.** If no one has designated Confidential Information by 3:00 p.m. on the third day after giving of notice, then the public versions filed shall be the plaintiff's public versions; otherwise, the public versions filed shall be versions that redact only the plaintiff's Confidential Information and the Confidential Information designated in response to the notice.~~

~~*Challenges to Confidential Treatment.* Any person may challenge the Confidential Treatment of a Confidential Filing by filing a notice raising the challenge with the Register in Chancery.~~

~~If the Confidential Filing is a Document for which the filing of a public version was not required under Rule 5.1(d), then within five days after the filing of the challenger's notice, the person who filed the Confidential Filing shall give notice to each attorney who has entered an appearance for each person who designated Confidential Information in the Confidential Filing. The filer's notice shall not be filed with the Register in Chancery. The filer's notice shall attach a proposed public version of the Confidential Filing ("filer's public version") that redacts only the material that the filer believes qualifies as Confidential Information. The filer's notice shall refer to this Rule and state that the filer's public version shall be filed in compliance with this Rule unless additional Confidential Information is timely designated. If no one has designated additional Confidential Information within 10 days of the filing of the challenger's notice, then the filer shall file the filer's public version; otherwise the filer shall file a public version that redacts the filer's Confidential Information and any Confidential Information designated in response to the filer's notice. Once a public version is accessible, any person may challenge the omission of material from the public version by filing a notice in accordance with this Rule.~~

~~If a public version of the Confidential Filing is accessible, any person may seek continued Confidential Treatment for the Confidential Information redacted from the public version by filing a motion within five days after the filing of the challenger's notice. The filing of the motion constitutes a certification that the signer of the motion personally reviewed the Confidential Filing and that continued Confidential Treatment is appropriate. The person challenging Confidential Treatment shall have five days to file an opposition. The Court shall then determine whether Confidential Treatment will be maintained, or whether a reply, hearing or further proceedings are warranted. If a motion seeking continued Confidential Treatment is not timely filed, then the Confidential Filing shall become part of the public~~

~~record, and the Register in Chancery shall permit access to the Confidential Filing on the docket system to the same extent as any other public filing. If an opposition to the motion is not timely filed, then the challenge shall be deemed withdrawn and the Confidential Filing shall continue to receive Confidential Treatment.~~

~~*Treatment of Confidential Filings three years after final disposition.* The Confidential Treatment afforded to any Document in a civil action shall expire three years after the final disposition of the civil action.~~

At least 90 days before the expiration ~~of the three-year period~~date, the Register in Chancery ~~shall~~must file a notice on the docket advising the parties of the expiration of ~~the order providing for Confidential Treatment. Unless the Court further extends the period of Confidential Treatment by separate order issued after the filing of the Register in Chancery's notice, every Confidential Filing shall become a part of the public record three years after final disposition, and the Register in Chancery shall make all Confidential Filings available for public access on the docket system to the same extent as other public filings.~~confidential treatment.

~~Any person seeking continued~~(2) *Moving to Extend Confidential Treatment* ~~must~~. Any person may move ~~for continued Confidential Treatment~~to extend confidential treatment within ~~30~~45 days after the filing of the ~~Register in Chancery's~~expiration notice.

(A) ~~—~~The ~~motion for continued Confidential Treatment~~movant must demonstrate that the particularized harm from public disclosure of the Confidential ~~Information in the Confidential~~ Filing clearly outweighs the public interest in access to Court records. The movant must ~~file a supporting brief and affidavits providing an~~provide evidentiary ~~basis~~support for the particularized harm ~~on which the movant relies for each Document for which continued Confidential Treatment is sought.~~.

(B) The Court ~~shall then~~will determine whether ~~or to what extent Confidential Treatment will be~~

~~maintained, or whether a hearing or other~~additional proceedings are warranted.

~~*Time periods not subject to* *(i)*~~ **Rule 6(e~~).~~)**

Inapplicable. The additional time after service by mail ~~or e-File permitted by Rule 6(e) shall~~does not apply to ~~the time periods described in this Rule for the parties to take action~~this rule, regardless of the method of service.

COMMENTARY TO RULE 5.1

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.

Rule 5.1(f)(3) clarifies the authority of the Register in Chancery to file a public version if no party files redactions. In addition, it establishes 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. Computing and Extending Time.

(a) ~~*Computation.* In~~ **Computing Time.** The following rules apply in computing any time period ~~of time prescribed or allowed by~~ specified in these Rules, ~~by~~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* ~~by any applicable statute,~~*a Longer Unit.* When the period is stated in days or a longer unit of time:

(A) Exclude the day of the ~~act,~~ event~~, or default after which~~ that triggers the ~~designated~~ period ~~of time begins to run~~.

(B) Exclude intermediate Saturdays, Sundays, and legal holidays when the period is ~~not to be included. The~~less than 11 days.

(C) Include the last day of the period ~~so computed shall be included, unless~~, but if the last day is a Saturday, ~~a~~ Sunday, or ~~other~~ legal holiday, the period continues until the end of the next day that is not a Saturday, Sunday, or~~, when~~ legal holiday.

(2) *Period Stated in Hours.* When the ~~act to be done~~period is ~~the filing of a paper in court, a day~~stated in hours:

(A) Begin counting immediately on ~~which weather~~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 ~~other conditions have made the office~~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~~, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and other legal holidays shall be excluded in the computation.~~ 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~~5~~) *"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~~6~~) *"Legal Holiday" Defined.* As used in this rule, "legal ~~holidays" shall be those days provided by statute or appointed~~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 ~~**Enlargement.** When by these Rules, by a notice given thereunder, by prior agreement of the parties, or by order of Court an act is required or allowed to be done at or~~ within a specified time, the Court may, for good cause shown ~~may, at any time in its discretion (1)~~, extend the time:

(A) with or without motion or notice~~, order~~ if the ~~period enlarged~~Court acts, or if a request ~~therefor~~ is made, before the ~~expiration of the period originally prescribed~~time or ~~as extended by a previous order~~its extension expires; or ~~(2) upon~~

(B) on motion made after the ~~expiration of the specified period permit the act to be done where the failure to act was the result~~time has expired if the party failed to act because of excusable neglect~~; but it may~~.

(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.

~~(a) Repealed.~~

~~(b) Repealed.~~

(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 ~~*by mail*. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after being served~~; and ~~service~~

(B) service is made ~~by mail, 3 days shall be added after the prescribed period would otherwise expire under subdivision (a).~~ exclusively by mail.

~~(1)~~(2) The additional ~~3~~ three-day period applies only to acts ~~taken~~ by parties and ~~does~~ not ~~apply~~ to ~~actions taken by~~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. General ~~rules~~Rules of ~~pleading.~~Pleading

(a) ~~(a) *Claims*~~ **Claim for** ~~*relief*~~**Relief.** A pleading ~~which sets forth~~that states a claim for relief~~, whether an original claim, counterclaim, cross-claim or third-party claim shall~~ must contain ~~(1)~~ :

(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 ~~(2)~~

~~(1)~~ a demand for ~~judgment for~~ the relief ~~to~~sought, which ~~the party deems itself entitled. Relief~~may include relief in the alternative or ~~of several~~ different types ~~may be demanded~~of relief.

(b) ~~(b)~~ **Defenses;** ~~*form of denials.* A party shall~~**Admissions and Denials.**

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

(A) state in short and plain terms ~~the party's~~its defenses to each claim asserted against it; and ~~shall~~

(B) admit or deny the ~~averments upon which the adverse~~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 ~~relies. If the~~ or any other party ~~is without~~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 ~~as to~~about the truth of an ~~averment, the party shall~~allegation must so state, and ~~this~~the statement has the effect of a denial. ~~Denials shall fairly meet the substance of the averments~~

~~(2)~~ *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. ~~When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make the pleader's denials as specific denials of designated averments or paragraphs, or the pleader may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, the pleader may do so by general denial subject to the obligations set forth in Rule 11~~If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) ~~(c)~~ **Affirmative** ~~*defenses.*~~ **Defenses.**

(1) *In* ~~pleading~~*General.* In responding to a ~~preceding~~ pleading, a party ~~shall set forth~~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~~, and any other matter constituting an avoidance or affirmative defense. When a party has~~.

~~(3)~~ *Mistaken Designation.* If a party mistakenly ~~designated~~designates a defense as a counterclaim, or a counterclaim as a defense, the Court ~~on terms~~must, if justice ~~so~~ requires, ~~shall~~ treat the pleading as ~~if there had been a proper designation~~though it were correctly designated, and may impose terms for doing so.

~~(d) *Effect of failure to deny*. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.~~

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

~~(b)~~ (d) Pleading to ~~*be concise and direct; consistency*~~Be Concise and Direct; Alternative Statements; Inconsistency.

(1) ~~(1)~~*In General.* Each ~~averment of a pleading shall~~allegation must be simple, concise, and direct. No technical ~~forms of pleading or motions are~~form is required.

(2) ~~(2)~~*Alternative Statements of a Claim or Defense.* A party may set ~~forth 2~~out two or more statements of a claim or defense ~~alternately~~alternatively or hypothetically, either in ~~1~~a single count or defense or in separate ~~counts or defenses. When 2 or more statements are made in the~~ones. If a party makes alternative ~~and 1 of them if made independently would be sufficient~~statements, the pleading is ~~not made insufficient by the insufficiency of 1~~sufficient if any one of them is sufficient.

~~(2)~~ (3) *Inconsistent Claims or ~~more of the alternative statements.~~Defenses.* A party may ~~also~~ state as many separate claims or defenses as ~~the party~~it has, regardless of consistency. ~~All statements shall be made subject to the obligations set forth in Rule 11.~~

(e) ~~(f) *Construction of pleadings.* All pleadings shall be so~~ **Construing Pleadings.** Pleadings must be construed so as to do ~~substantial~~ 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. Pleading ~~special matters.~~Special Matters

(a) ~~(a)~~ Capacity~~. It is not necessary~~ or Authority to ~~allege~~ 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 ~~of a party~~ to sue or be sued ~~or the~~;

(B) a party's authority ~~of a party~~ 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. ~~When a party desires to~~

~~(1)~~(2) *Raising Those Issues.* To raise ~~an issue as to the legal existence of~~ any ~~party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party shall~~of

those issues, a party must do so by a specific ~~negative averment~~denial, which ~~negative averment shall include such~~ must state any supporting ~~particulars as~~ facts that are peculiarly within the ~~pleader's~~party's knowledge.

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

(c) ~~(c)~~ **Conditions** ~~*precedent*~~**Precedent.** In pleading ~~the performance or occurrence of~~ conditions precedent, it ~~is sufficient~~suffices to ~~aver~~allege generally that all conditions precedent have occurred or been performed~~ or have occurred. A denial of performance or occurrence shall be made specifically and~~. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) ~~(d)~~ **Official** ~~*document*~~**Document or** ~~*act*~~**Act.** In pleading an official document or official act, it ~~is sufficient~~suffices to ~~aver~~allege that the document was legally issued or the act legally done~~ in compliance with law~~.

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

(f) ~~(f)~~ **Time and** ~~*place. For the purpose of*~~**Place.** An allegation of time or place is material when testing the sufficiency of a pleading~~, averments of time and place are material and shall be considered like all other averments of material matter~~.

(g) ~~(g)~~ **Special Damages.** If an item of special damage~~. When items of special damage are~~ is claimed, ~~they shall~~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. Signing ~~of pleadings, motions~~Pleadings, Motions, and ~~other papers; representations to~~ Other Papers; Representations to the Court; ~~sanctions.~~Sanctions

(a) Signature. Every pleading, written motion, and other paper ~~shall~~must be signed by at least ~~1~~one attorney of record in the attorney's ~~individual~~ name~~, —~~or~~,~~ by a party personally if the party is ~~not represented by an attorney, shall be signed by the party. Each~~unrepresented. The paper ~~shall~~must state the signer's address, e-mail address, and telephone number~~, if any. Except when otherwise~~. Unless a rule or statute specifically ~~provided by statute or rule, pleadings~~states otherwise, a pleading need not be verified or accompanied by affidavit. ~~An~~ The Court must strike an unsigned paper ~~shall be stricken~~ unless ~~it~~the omission is promptly corrected ~~promptly~~ after ~~the omission of the signature is~~being called to the attorney's or party's attention ~~of the attorney of party~~.

(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~~)~~ ~~a pleading, written motion, or other paper,~~ it—an attorney or unrepresented party ~~is certifying~~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 ~~or to,~~ cause unnecessary delay, or ~~needless~~needlessly increase ~~in~~ the cost of litigation;

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

a nonfrivolous argument for ~~the extension, modification~~extending, modifying, or ~~reversal of~~reversing existing law or ~~the establishment of~~for establishing new law;

(3) the ~~allegations and other~~ factual contentions have evidentiary support or, if specifically so identified, ~~are~~will likely ~~to~~ 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 ~~or belief~~.

(c) Sanctions.

(1) *In General.* If, after notice and a reasonable opportunity to respond, the Court determines that ~~subdivision~~ Rule 11(b) has been violated, the Court may~~, subject to the conditions stated below,~~ impose an appropriate sanction ~~upon the attorneys~~on any attorney, law ~~firms~~firm, or ~~parties~~party that ~~have~~ violated ~~subdivision (b)~~ the rule or ~~are~~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.

~~*How initiated.*~~

(2)~~*By motion.*~~*Motion for Sanctions.* A motion for sanctions ~~under this rule shall~~must be made separately from any other ~~motions or requests~~ motion and ~~shall~~must describe the specific conduct ~~alleged to violate subdivision (b). It shall~~that allegedly violates Rule 11(b). The motion must be served ~~as provided in~~ under Rule 5, but ~~shall~~it must not be filed ~~with~~ or be presented to the Court ~~unless, within 21 days after service of the motion (or such other period as the Court may prescribe),~~if the challenged paper, claim, defense, contention, ~~allegation,~~ or denial is ~~not~~ withdrawn or appropriately corrected within 21 days after service or within another time the Court sets. If warranted, the Court may award to the ~~party~~ prevailing ~~on the motion~~ party the reasonable expenses ~~and~~, including attorney's fees, incurred ~~in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be~~

~~held jointly responsible for violations committed by its partners, associates, and employees~~for the motion.

(3) *On ~~the~~ Court's ~~initiative~~Initiative*. On its own ~~initiative~~, the Court may ~~enter an~~ order ~~describing the specific conduct that appears to violate subdivision (b) and directing~~ an attorney, law firm, or party to show cause why ~~it~~ conduct specifically described in the order has not violated ~~subdivision (b) with respect thereto.~~Rule 11(b).

(4) *Nature of ~~sanction; limitations.~~a Sanction.* A sanction imposed ~~for violation of~~under this rule ~~shall~~must be limited to what ~~is sufficient~~suffices to deter repetition of ~~such~~the conduct or comparable conduct by others similarly situated. ~~Subject to the limitations in subparagraphs (A) and (B), the~~The sanction may ~~consist of, or~~ include~~, directives of a~~ nonmonetary ~~nature,~~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 ~~attorneys'~~attorney's fees and other expenses ~~incurred as a direct result of~~directly resulting from the violation.

(5) *Limitations on Monetary ~~sanctions may~~Sanctions*. The Court must not ~~be awarded~~ impose a monetary sanction:

(A) against a represented party for ~~a violation of subdivision~~ violating Rule 11(b)(2)~~.~~); or

(B) ~~Monetary sanctions may not be awarded on the Court's initiative~~on its own, unless it issued the ~~Court issues its order to~~ show ~~-~~cause order under Rule 11(c)(3) before ~~a~~ voluntary dismissal or settlement of the claims made by or against the party ~~which~~that is, or whose attorneys are, to be sanctioned.

(6) *Requirements for an Order*. ~~When~~An order imposing ~~sanctions, the Court shall~~a sanction must describe the sanctioned conduct ~~determined to constitute a violation of this rule~~ and explain the basis for the sanction ~~imposed~~.

(d) Inapplicability to ~~*discovery.* Subdivisions (a) through (c) of this rule do~~Discovery. This rule does not apply to disclosures and discovery requests, responses,

objections, and motions ~~that are subject to the provisions of~~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. Defenses and ~~objections — Objections:~~ When and ~~how presented — By pleading or motion — for judgment~~How Presented; Motion for Judgment on the ~~pleadings.~~Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

~~When presented.~~ **(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 ~~shall~~must serve an answer within 20 days after ~~the service of~~ being served with the summons and complaint~~ upon the defendant, unless the Court directs otherwise when service of process is made pursuant to rules 4 (da) and 4(db).~~ ;

(B) A party ~~served with a pleading stating a cross-claim against the party shall~~must serve an answer ~~thereto~~to a counterclaim or crossclaim within 20 days after being served with the ~~service upon~~pleading that states the ~~party. The plaintiff shall serve a reply to a~~ counterclaim ~~in the answer within 20 days after service~~or crossclaim.

~~(1)~~(2) *~~Effect~~ of ~~the answer or, if a reply is ordered by~~a Motion.* Unless the Court~~, within 20 days after service of the order, unless the order otherwise directs. For cause shown the Court may shorten or enlarge the~~ sets a different time~~ periods specified herein. The service of~~, serving a motion ~~permitted~~ under this rule directed at a pleading in whole or part alters these

periods as follows~~, unless a different time is fixed by order of the Court~~:

(A) If the Court denies the motion or postpones its disposition until ~~the~~ trial ~~on the merits~~, the responsive ~~pleadings shall~~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 ~~shall~~must be served within 10 days after the ~~service of the~~ more definite statement is served.

(b) How ~~*presented*~~**to Present Defenses.** Every defense~~, in law or fact,~~ to a claim for relief in any pleading~~, whether a claim, counterclaim, cross-claim or third-party claim, shall~~ must be asserted in the responsive pleading ~~thereto~~ if one is required~~, except that~~. But a party may assert the following defenses ~~may at the option of the pleader be made~~ by motion: ~~(1) Lack~~

(1) lack of subject-matter jurisdiction ~~over the subject matter, (2) ;~~

(2) lack of personal jurisdiction ~~over the person, (3) ;~~

(3) improper venue~~, (4) insufficiency of~~;

(4) insufficient process~~, (5) insufficiency of~~;

(5) insufficient service of process~~, (6) ~~;

(6) failure to state a claim upon which relief can be granted~~, (7) ~~; and

~~(2)~~(7) failure to join a party under Rule 19. ~~A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with 1 or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.~~

~~(b)~~(c) Motion for ~~*judgment*~~Judgment on the ~~*pleadings*~~Pleadings. After the pleadings are closed ~~—~~but ~~within such time as~~early enough not to delay ~~the~~ trial~~, any~~ a party may move for judgment on the pleadings. ~~If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.~~

~~*Preliminary hearings.* The defenses specifically enumerated (1) - (7) in paragraph (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in paragraph (c) of this rule, shall be heard and determined before trial~~

~~on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.~~

~~(d)~~ ~~*Motion for more definite statement.* If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the~~ **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)~~**(e) Motion for a More Definite Statement.** A party may move for a more definite statement ~~before interposing the party's responsive pleading. The motion shall point out~~ 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 ~~complained of~~ and the details ~~desired.~~required to reasonably prepare a response. If the ~~motion is granted~~Court orders a more definite statement and the order ~~of the Court~~ is not obeyed within 10 days after notice of the order or within ~~such other~~the time ~~as~~ the Court ~~may fix,~~sets, the Court may strike the pleading ~~to which the motion was directed or make such order as it deems just~~or issue any other appropriate order.

~~(d)~~ **(f) Motion to** ~~*strike.* Upon motion made by a~~**Strike.** A party ~~before responding~~may move to strike from a pleading ~~or, if no responsive pleading is permitted by these Rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the Court's own initiative at any time, the Court may order stricken from any pleading any~~ any insufficient defense or any material that is redundant, scandalous, immaterial, ~~impertinent, or scandalous matter.~~

~~*Consolidation of defenses.* A party who makes a motion under this rule may join~~ 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 ~~it the other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on any of the defenses or objections so omitted except as provided in subparagraph (h)(2) hereof on any of the grounds there stated~~the pleading. The Court may also act on its own initiative.

~~*Waiver of defenses.*~~

~~A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in paragraph (g), or (B) if it is neither made by~~

(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 ~~nor included~~ 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.

~~(A)~~(B) A party that does not file a motion contemplated by Rule 12(h)(1)(A) may preserve a defense listed in Rule 12(b)(2)–(5) by including it in a responsive pleading or in an amendment ~~thereof~~

~~permitted~~to the responsive pleading allowed by Rule 15(a~~) to be made~~)(1) as a matter of course.

(C) ~~A defense of failure to state a claim upon which relief can be granted, a defense of failure to join~~Otherwise, a party ~~indispensable~~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 ~~19, and an objection of failure to state~~12(b)(6) by filing a ~~legal~~motion *before* a responsive pleading, if a responsive pleading is allowed. A party may preserve the defense ~~to a claim may be made~~by including it in any pleading ~~permitted~~allowed or ordered under Rule 7(a~~), or by motion for judgment on the pleadings, or~~). Otherwise, the defense is waived.

~~(2)~~(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 ~~the~~ trial ~~on the merits~~.

~~Whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.~~

(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.

~~(c)~~**(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. Counterclaim and ~~cross-claim.~~Crossclaim

(a) ~~(a)~~ Compulsory ~~counterclaims.~~Counterclaim.

(1) *In General.* A pleading ~~shall~~must state as a counterclaim any claim~~, which~~ that—at the time of ~~serving the pleading~~ its service—the pleader has against ~~any~~an opposing party~~,~~ if ~~it~~ 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 ~~for its adjudication the presence of third parties of~~adding another party over whom the ~~Court~~court cannot acquire jurisdiction~~, except that such a claim~~ .

(2) *Exceptions*. The pleader need not ~~be so stated~~ state the claim if ~~at the time~~:

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

(B) ~~(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 ~~counterclaims~~Counterclaim. A pleading may state as a counterclaim ~~any claim~~ against an opposing party ~~not arising but of the transaction or occurrence that is the subject matter of the opposing party's claim~~any claim that is not compulsory.

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

~~(d) Omitted.~~

(d) ~~(c)~~ Counterclaim ~~maturing~~Maturing or ~~acquired after pleading. A claim which either~~ Acquired After

Pleading. The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the ~~pleader~~party after serving an earlier pleading.

(e) Crossclaim Against a Coparty. A pleading may~~, with the permission of the Court, be presented~~ state as a ~~counterclaim by supplemental pleading.~~

~~(f) Omitted counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.(g) Cross-claim against coparty. A pleading may state as a cross-claim~~crossclaim any claim by ~~1~~one party against a coparty ~~arising~~if the claim arises out of the transaction or occurrence that is the subject matter ~~either~~ of the original action or of a counterclaim ~~therein~~, or ~~relating~~if the claim relates to any property that is the subject matter of the original action. ~~Such cross-claim~~The crossclaim may include a claim that the ~~party against whom it is asserted~~ coparty is or may be liable to the ~~cross-claimant~~crossclaimant for all or part of a claim asserted in the action against the ~~cross-claimant~~crossclaimant.

~~(h) Joinder of additional parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.~~

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

~~(f)~~**(g) Separate** ~~trials; separate judgments.~~**Trials; Separate Judgments.** If the ~~Court~~court orders separate trials ~~as provided in~~under Rule 42(b), it may enter judgment on a counterclaim or ~~cross-claim may be rendered in accordance with the terms of~~crossclaim under Rule 54(b) when ~~the Court~~it has jurisdiction to ~~so~~ do so, even if the opposing party's claims ~~of the opposing party~~ have been dismissed or otherwise ~~disposed of~~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. Third-~~party practice.~~ Party Practice

(a) ~~(a)~~ **When** ~~defendant may bring in third party. At any time after commencement~~**a Defending Party May Bring in a Third Party.**

(1) *Timing of the* ~~action a~~ *Summons and Complaint.* A defending party may, as ~~a~~ third-party plaintiff, ~~may cause process~~serve a summons and complaint ~~to be served upon a person not a party to the action~~on a nonparty who is or may be liable to ~~the third-party plaintiff~~it for all or part of the ~~plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make service if the third-party plaintiff files the third-party complaint not later than 10 days after serving the answer. Otherwise,~~claim against it. But the third-party plaintiff must ~~obtain leave on~~, by motion ~~upon notice to all~~

~~parties to the action.~~, 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~~, hereinafter called~~ the "third-party ~~defendant, shall make~~defendant":

(A) must assert any ~~defenses to~~defense against the third-party plaintiff's claim ~~as provided in~~under Rule 12 ~~and~~;

(B) must assert any ~~counterclaims~~counterclaim against the third-party plaintiff ~~and cross-claims~~under Rule 13(a), and may assert any counterclaim against ~~other~~the third-party ~~defendants as provided in Rule 13. The~~plaintiff under Rule 13(b) or any crossclaim against another third-party defendant under Rule 13(g);

(C) may assert against the plaintiff any ~~defenses which~~ defense that the third-party plaintiff has to the plaintiff's claim~~. The third-party defendant~~ ; and

(D) may also assert ~~any claim against the plaintiff~~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 plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff and the third-party defendant thereupon shall assert any defenses as provided in~~The third-party defendant must then assert any defense under Rule 12 and any counterclaim ~~and cross-claim as provided in Rule 13.~~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, ~~or~~

~~for its severance or separate trial.~~to sever it, or to try it separately.

~~(1)~~(5) *Third-Party Defendant's Claim Against a Nonparty.* A third-party defendant may proceed under this rule against ~~any person not a party to the action~~a nonparty who is or may be liable to the third-party defendant for all or part of ~~the~~any claim ~~made in the action~~ against ~~the third-party defendant~~it.

(b) ~~(b)~~ **When** ~~plaintiff may bring~~**a Plaintiff May Bring in** ~~third party~~**a Third Party**. When a ~~counterclaim~~claim is asserted against a plaintiff, the plaintiff may ~~cause~~bring in a third party ~~to be brought in under the circumstances which under~~if this rule would ~~entitle~~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. Amended and ~~supplemental pleadings.~~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 ~~permitted~~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 ~~so~~ amend ~~it any time within 20 days after it is served. Otherwise a party may amend the party's pleading~~ its pleading only ~~by leave of Court or by~~ with the opposing party's written consent ~~of~~or the ~~adverse party; and~~Court's leave ~~shall be~~. The Court should freely ~~given~~give leave when justice so requires. ~~A party shall plead~~

(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 ~~for response~~to respond to the original pleading or within 10 days after service of the amended pleading, whichever ~~period may be longer, unless the Court otherwise orders. If a motion to amend the~~ 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 ~~is granted, either by stipulation of the parties or by court order, the amended pleading shall be filed as a separate docket entry and shall~~ to be ~~signed and verified as required by Rules 3(aa) and 11~~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.

~~**(aa) *Form of amendments.*** A party serving an amended pleading shall indicate plainly in the amended pleading in what respect the amendment differs from the pleading which it amends.~~

~~(aaa) Notwithstanding subsection (a) of this Rule, a party that wishes to respond to a motion to dismiss under Rules 12(b)(6) or 23.1 by amending its pleading must file an amended complaint, or a motion to amend in conformity with this Rule, no later than the time such party's answering brief in response to either of the foregoing motions is due to be filed. In the event a party fails to timely file an amended complaint or motion to amend under this subsection (aaa) and the Court thereafter concludes that the complaint should be dismissed under Rule 12(b)(6) or 23.1, such dismissal shall be with prejudice (and in the case of complaints brought pursuant to Rules 23 or 23.1 with prejudice to the named plaintiffs only) unless the Court, for good cause shown, shall find that~~

~~dismissal with prejudice would not be just under all the circumstances. Rules 41(a), 23(c) and 23.1 shall be construed so as to give effect to this subsection (aaa).~~

(2) ~~***Amendments to conform to the evidence.***~~*For Issues Tried by Consent.* When ~~issues~~an issue not raised by the pleadings ~~are~~is tried ~~by~~with the parties' express or implied consent ~~of the parties, they shall~~, it must be treated in all respects as if ~~they had been~~ raised in the pleadings. ~~Such amendment of~~ A party may move—at any time, even after judgment—to amend the pleadings ~~as may be necessary to cause them~~ to conform to the evidence and to raise ~~these issues may be made upon motion of any party at any time, even after judgment; but~~ an unpled issue. But failure ~~so~~ to amend does not affect the result of the trial of ~~these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice the party in maintaining an action or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence~~that issue.

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

(1) ~~relation back is permitted by the laws~~the law that ~~provide~~provides the applicable statute of limitations ~~applicable to the action, or~~allows relation back;

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

(3) the amendment changes the party or the ~~name~~naming of the party against whom a claim is asserted ~~if the foregoing provisions of subdivision (~~, if Rule 15(c)(2) ~~of this paragraph are~~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.~~* ~~Upon~~ **Pleadings.** On a motion ~~of a party,~~ the Court may~~, upon reasonable notice and upon such terms as are just,~~ permit ~~the~~a party to serve a supplemental pleading setting ~~forth transactions~~out any transaction, occurrence or ~~occurrences or events which have~~ event that happened ~~since~~after the date of the pleading ~~sought~~ to be supplemented. The Court may permit supplementation even though the original pleading is defective in stating a claim or defense. If the Court ~~deems it advisable that~~ permits the ~~adverse party plead thereto, it shall so order, specifying~~supplemental pleading, the ~~time therefor.~~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. 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)~~aaa)~~, a class action may be dismissed or settled only if the Court approves the terms of the proposed dismissal or settlement.

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

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

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

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

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

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

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

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

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

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

(ii) the nature of the action;

(iii) the definition of the class;

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

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

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

(vii) instructions for objectors;

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

(ix) how to contact class counsel; and

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

(4) Class-Member Objections.

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

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

(i) forgoing or withdrawing an objection; or

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

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

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

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

(5) *Approval of the Proposal*. If the proposed dismissal or settlement would bind class members, the Court may

approve it only after a hearing and only on finding that it is reasonable after considering whether:

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

(B) adequate notice of the hearing was provided;

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

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

(i) the strength of the claims;

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

(iii) the scope of the release; and

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

(6) Disposition of Residual Settlement Funds.

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

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

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

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

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

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

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

Comment 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 23, 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. 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)~~aaa)~~, a derivative action may be dismissed or settled only if the Court approves the terms of the proposed dismissal or settlement.

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

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

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

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

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

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

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

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

(D) *Contents of Notice.* Unless the Court orders otherwise, the notice of a proposed dismissal or

settlement must clearly and concisely state, in plain, easily understood language:

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

(ii) the nature of the action;

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

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

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

(vi) instructions for objectors;

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

(viii) how to contact derivative counsel; and

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

(4) *Objections*.

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

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

(i) forgoing or withdrawing an objection, or

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

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

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

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

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

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

(B) adequate notice of the hearing was provided;

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

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

(i) the strength of the claims;

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

(iii) the scope of the release; and

(iv) any objections to the proposed settlement.

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

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

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

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

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

(f) Definitions. For purposes of Rule 23.1:

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

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

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

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

Comment 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 23, 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. ~~**Books and records kept by the Register and entries therein.**~~

The Docket

(a) *Docket*. The Register ~~shall maintain the~~in Chancery maintains an electronic ~~dockets containing~~docket for all ~~Chancery~~civil actions ~~as reflected in Rule 79.1~~.

~~**(aa)**~~ **(b) *Notation of judicial action on docket*.** The Register ~~shall~~in Chancery must make ~~appropriate~~a brief docket ~~entries~~entry noting ~~briefly~~any judicial action ~~in every matter whenever it occurs. Among such entries will be the following~~, including:

~~The date when an~~ (1) For any oral argument ~~is heard; by what judge and its subject matter, i.e., upon what kind of a~~, the date of argument, the judicial officer presiding, and the motion or issue.

~~The date or dates of all trials~~(2) For any evidentiary hearing, the ~~name~~date of the ~~trial judge~~hearing, the judicial officer presiding, and the ~~elapsed trial time~~motion or issue.

~~The~~ (3) For any trial, the date of ~~any decision by~~ the ~~Court~~trial and the ~~name of the judge rendering it.~~ judicial officer presiding.

~~The~~ (4) For any oral ruling, the date of the ~~filing of an opinion, its subject matter and the name of the judge rendering it.~~

~~The fact, if it be a fact, that~~ruling, the ~~opinion was written without oral argument, i.e., upon briefs, etc.~~

~~***Judicial statistics.*** The Register shall keep such judicial statistics in such form as~~judicial officer making the ~~Court shall direct.~~ ~~[Repealed.]~~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. ~~Electronic filing.~~

~~The electronic filing of documents in the Court of Chancery of the State of Delaware shall be referred to as "eFile" or "eFiling".~~

~~Every civil action and civil miscellaneous action in the Court of Chancery is subject to electronic filing ("eFiling").~~

~~Any rule or procedure that refers to or requires the filing of a document shall mean that the document must be eFiled. Each document that must be filed under the Rules shall be eFiled unless otherwise ordered by the Court. Paper copies of any complaint, praecipe, and supplemental information form also shall be filed if necessary to facilitate service of process or as required by the Rules and by statute. Exceptions for eFiling certain documents, along with the requirement for delivering paper copies to the presiding judge, are set forth in the Court's operating procedures.~~

~~The Chancellor shall establish administrative procedures for the eFiling of documents, which procedures may be found in the Court's operating procedures.~~

~~A technology surcharge of $1.25 per document shall be assessed in each eFile case for the purpose of a fund to operate the eFiling system. The Court shall expend the funds solely for the purpose of operating and maintaining the eFiling system. The technology fee is not imposed on filings by the Department of Justice or by indigent parties or their counsel. Additional fees may be charged in accordance with the Rules of the Court and the Court's operating procedures.~~

~~No Delaware lawyer shall authorize anyone to eFile on that lawyer's behalf, other than an employee of his/her law firm or service provider retained by that lawyer to assist in eFiling.~~

~~No person shall use, or allow another person to use, the password of another in connection with any eFiling.~~

~~(g) The eFiling of a document by a lawyer, or by another under the authorization of a lawyer, shall constitute a signature of that lawyer under Court of Chancery Rule 11.~~

~~Each electronically filed document shall bear an original, facsimile, or typographical signature of an attorney at the firm authorizing the filing or by the pro se party authorizing the filing. Each document eFiled by or on behalf of a party also shall include the typed name, address, and telephone number of the attorney or unrepresented party filing such document. Attorneys shall include their Delaware bar number. If an affidavit or declaration is signed by any person other than a Delaware attorney, the filing party shall maintain the original signed document during the pendency of the litigation and shall make the original available, upon reasonable notice, for~~

~~inspection by other counsel, the Register in Chancery, or the Court.~~

~~Unless otherwise ordered, the electronic service of a document, in accordance with the Court's operating procedures, shall be considered service under Court of Chancery Rule 5. Service by electronic means shall be treated in the same manner as service by hand delivery.~~

~~*Personal identifying information.* Parties shall refrain from including, or shall redact where inclusion is necessary, the following personal identifiers from all documents filed with the Court in civil actions, unless otherwise ordered by the Court: social security numbers, names of minor children, dates of birth, and complete financial account numbers. Caution also should be exercised when filing in civil actions documents that contain personal identifying numbers, such as driver's license numbers, medical records, treatment, and diagnosis, employment history, individual financial information, and proprietary or trade secret information. It is the sole responsibility of counsel and pro se parties to be sure that all pleadings comply with the rules of this Court requiring redaction of personal identifiers. The Register in Chancery will not review each pleading for redaction.~~

~~If an electronic filing is not filed and served with the Register in Chancery because of (1) an error in the transmission of the document to File & Serve Xpress, which error was unknown by the sending party, (2) a failure to process the electronic filing when received by File & Serve Xpress, (3) rejection by the Register in Chancery, or (4) other technical problems experienced by the filer, the Court may upon satisfactory proof enter an order permitting the document to be filed or served nunc pro tunc to the date it was first attempted to be sent electronically.~~
Omitted

Comment

In 2024, Rule 79.1 was eliminated. Its content had become superfluous or was moved to other rules.

COURT OF CHANCERY RULE 79.2

Rule 79.2. ~~Deadline for all documents filed and served electronically.~~

~~Except for the initial pleadings governed by Rule 7(a) and notices of appeal, all electronic transmissions of documents (including, but not limited to, motions, briefs, appendices and discovery responses) in non-expedited cases must be filed and/or served by 5:00 p.m. Eastern Time in order to be considered timely filed and/or served that day. All electronic transmissions of documents in expedited cases must be filed and/or served before midnight Eastern Time in order to be considered timely filed and/or served that day, unless otherwise agreed to by the parties and so ordered by the Court. For purposes of meeting the filing and/or service deadline set forth herein, expedited cases shall mean any case that is set for expedited treatment by an order of the Court.~~Omitted

Comment

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

COURT OF CHANCERY RULE 174

Rule 174. Mediation.

(a) *Scope and purpose.* The term "mediation" means the process by which a neutral mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution. The scope of the mediation includes all contacts and communications between the mediator and any party or parties, or among the parties, from the time of the referral to mediation until its conclusion. The purpose of mediation in the Court of Chancery is to provide the parties with convenient access to a dispute resolution mechanism that is fair, confidential, effective, inexpensive, and expeditious. This rule shall be interpreted in accordance with its purpose. This rule does not apply to mediation proceedings for technology disputes and business disputes pursuant to 10 Del. C. §§ 346 and 347, which proceedings are governed by Rules 93-95.

(b) *Voluntary mediation.* In any type of matter, with the consent of the parties, the Court may enter an order referring the matter or any issue for mediation before a judicial mediator or a non-judicial mediator. A member of the Court of Chancery or a Magistrate in Chancery sitting permanently in Chancery who

has had no prior involvement in the case may serve as a judicial mediator. Any impartial individual may serve as a non-judicial mediator. A non-judicial mediator need not be an attorney.

(c) *Mandatory mediation.*

(1) In an adult guardianship, trust, or probate matter, without the consent of the parties, the Court may enter an order referring the matter or any issue for mediation before a judicial mediator or a non-judicial mediator. If the reference is to a non-judicial mediator, then the parties shall select a mediator by stipulation within twenty (20) days of the referral. If the parties are unable to agree, the Court will appoint a non-judicial mediator.

(2) Upon the filing of any dispute involving deed covenants or restrictions under 10 Del. C. § 348, the parties to the dispute shall be assigned to mandatory mediation. The judicial officer assigned to the action shall appoint a mediator by court order. Mediation shall commence within sixty (60) days of the filing of the action. In order to receive expedited treatment under this rule, a plaintiff or petitioner must attach to the complaint a certification that the case is eligible to proceed under 10 Del. C. § 348.

(3) In any action involving mandatory mediation, the mediator shall set the date and time of the mediation and shall notify the parties of the date and time by certified and U.S. Mail at least 13 days in advance of the scheduled mediation. Parties to mandatory mediation are required to participate in the mediation in good faith and may not withdraw or adjourn the mediation without the consent of the mediator.

(d) *Stay of pending litigation.* Upon order of the Court, proceedings in a matter referred to mediation may be stayed pending the conclusion of the mediation.

(e) *Mediation agreement.* The parties to a mediation may enter into a written mediation agreement that identifies

the issues to be mediated, specifies the methods by which the parties shall attempt to resolve the issues, identifies the mediator, and addresses the parties' responsibility for any fees and costs of mediation together with such other matters as the parties may deem appropriate. The provisions of this Rule are deemed incorporated by reference in the mediation agreement.

(f) *Client participation.* An authorized representative of the client shall participate in the mediation. The client representative shall have authority to resolve the matter fully. The client representative shall not be a lawyer who has entered an appearance in the matter referred to mediation. The mediator may waive or modify the client participation requirement.

(g) *Confidentiality.*

(1) Mediation is a confidential proceeding. Unless all parties consent, only the mediator, the parties, and their representatives may participate in the mediation.

(2) Except for the order of referral, the record of the mediation is confidential and not available for public access. The Register in Chancery will not include any mediation materials as part of the public docketing system.

(3) All memoranda, work product, and other materials contained in the files of the mediator are confidential. All communications made in or in connection with the mediation that relate to the controversy being mediated, whether with the mediator or a party during the mediation, are confidential.

(4) Information received from other parties during the mediation that the recipient does not already have or that is not public shall be used only for the mediation and not for any other purpose.

(5) The confidentiality of the mediation can be waived only by a written agreement signed by all parties and the mediator.

(h) *Limitation on discovery.*

(1) Mediation proceedings are not subject to discovery.

(2) The mediator and any participant in the mediation may not be compelled to testify in any judicial or

administrative proceeding concerning any matter relating to the mediation.

(3) Any memoranda, work product, or other materials contained in the mediator's files are not subject to discovery. Any communications made during or in connection with the mediation that relate to the controversy being mediated, whether with the mediator or another participant in the mediation, are not subject to discovery.

(4) The limitation on discovery shall not extend to the mediation agreement, any settlement agreement, any evidence provided to the mediator or exchanged in the mediation that otherwise would be subject to discovery, and any memoranda, reports, or other materials provided to the mediator or exchanged in the mediation that were not prepared specifically for use in the mediation.

(i) *Scope of mediator's authority.* The mediator shall have no authority to make any adjudication relating to the matter or issue referred for mediation. The mediator shall have authority to take any of the following actions:

(1) Convene an initial conference or teleconference to obtain information from the parties and address logistical matters;

(2) Determine the time and place of mediation;

(3) Direct the mediating parties to provide submissions, including confidential submissions, to assist the mediator in the mediation;

(4) Speak privately with any participant or a subgroup of the participants in the mediation;

(5) Terminate the mediation if the parties are unable to agree;

(6) Waive, modify, or allocate the court costs in a mediation conducted by a judicial mediator in light of the parties' economic circumstances or for good cause shown; and

(7) A judicial mediator may impose the costs of the mediation on a party who the mediator believes has failed to mediate in good faith. A mediator shall not have authority to impose any other sanction or penalty.

(j) *Settlement agreement.* If the parties reach agreement regarding the matter or issue referred to mediation, then the parties shall reduce their agreement to writing in the form of a settlement agreement signed by the parties. The settlement agreement shall address the nature of any filings necessary to dismiss or proceed with the underlying action. The settlement agreement may provide for some or all of the terms of the agreement to be implemented by court order in the underlying action. If the settlement agreement resolves the entire case and does not require judicial approval, the parties may keep the terms of the settlement confidential and file a stipulation of dismissal in the underlying action.

(k) *Report to Court.* The mediator shall report to the Court that the mediation has resulted in a settlement or has not resulted in a settlement. The mediator may report to the Court that the parties are continuing to mediate, in which case the mediator may advise the Court of the schedule for the mediation. In a mediation conducted by a judicial mediator, the judicial mediator shall advise the Court of the number of days of mediation so that court costs may be assessed. If any fees or costs are shifted or allocated among the parties, whether by agreement or because of a determination by the mediator, then the mediator shall inform the Court of the scope of each party's obligation. The mediator shall not provide the Court with any information about the conduct of the mediation, including the mediator's view regarding whether any party failed to mediate in good faith.

(l) *Compensation and Court costs.* A non-judicial mediator shall be compensated at the rate and in the manner agreed upon by the parties. A judicial mediator shall not be compensated. At the conclusion of the mediation in any civil action or matter involving a trust, the parties shall be assessed an additional court cost in the amount listed on the court's published fee schedule.~~of $5,000 for each day or partial day of mediation with a judicial mediator.~~ At the conclusion of the mediation in any guardianship matter, probate dispute or dispute involving a deed covenant or restriction, the parties shall be assessed an additional court cost in the amount listed on the court's published fee schedule.~~of $1,500 for each day or partial day of mediation with a judicial mediator~~. No additional court cost shall be incurred for a judicial mediator's initial teleconference with

the parties or for time spent by a judicial mediator preparing for the mediation. Court costs relating to mediations shall be deposited in a separate account maintained by the Court of Chancery and shall be used from time to time at the discretion of the Chancellor for mediation training or other Court-related purpose. If the State or an agency of the State is a participant in mediation with a judicial mediator, the portion of the court costs allocated to the State shall be waived by the Court.

(m) *Civil immunity*. A mediator is immune from civil liability arising out of or relating to a mediation absent a showing of bad faith.