

E-Filing Update

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It seems like every time I write one of these updates, I no sooner hit "Send" and then a whole new batch of changes comes along. There have been many significant changes in the Delaware courts; the most substantial of the changes being the monumental revisions to Superior Court Rule 16 which will be discussed in detail shortly.

First, I wanted to give you a brief update on the Third Circuit Court of Appeals. If you have not heard, on February 4, 2008, the Court of Appeals for the Third Circuit announced that it would begin the implementation of e-filing via the CM/ECF system. This new system will permit you to view documents on the case docket via PACER and will also generate electronic notices of docketing. You will no longer receive paper notices of Court Orders, Opinions or Letters.

While you will be able to *view* documents this way, you will not be able to *file* documents that way until later in 2008 when the system is fully implemented. Until that time, you must continue to file documents by the current procedures: briefs in paper and electronic form, other documents by regular mail, and you must continue to serve opposing parties with paper copies.

Next, I want to briefly outline some changes that occurred in the U.S. District Court which became effective on February 17, 2008. As some of you may have already noticed, the CM/ECF system has a slightly different look now. Cascading menus have been added (although you do have the option to keep your "static" menu if you prefer that format). Here are the highlights of the other changes that have been made:

1. **Notices of Appeal** can now be paid via credit card, if you or your firm has a credit card account set up. Remember, new complaints can also be paid for this way for the next six months with the pilot program, or you can continue to file complaints the old way.

2. When adding **attachments** to a document, we now must select an attachment category, add a description of the document, or both in some cases. Previously, this action was not mandatory.

3. Briefing for Bankruptcy Appeals now has special docket codes.

4. **Certificates of Service** shall NOT be filed UNLESS there are parties in the case who are NOT on the CM/ECF system. If all parties in the case receive a Notice of Electronic Filing (NEF) via CM/ECF, then no Certificate of Service is required.

5. Only **one person will be listed as counsel of record** in a case, regardless of how many names are on the signature line. The Court will take only the first name and add it to the CM/ECF system. If additional attorneys have to be added to the docket, they each must file an Entry of Appearance.

6. With regard to **courtesy copies**, if the rules require an original plus one copy to be filed, the e-filed copy will serve as the original. The NEF must be attached to the document being filed or the docket number must be included on the front page of the document.

7. If it is necessary to file a **cover letter** with a document, the cover letter must be filed as one docket entry and the document must be filed as a SEPARATE docket entry. However, cover letters can be filed as attachments to pleadings.

8. Only **one attorney can be designated as "Lead"** on an Entry of Appearance. Previously, you were able to select multiple attorneys as "Lead" attorneys.

9. **Motions, Briefs and Appendices** must now be filed as three separate docket entries using separate docket codes [Motion; Brief (Opening Brief in Support); Brief (Answering Brief in Opposition); and Brief (Reply)]. The codes for Response to Motion, Memorandum in Support and Memorandum in Opposition can no longer be used, but they will still be listed as they are now to be used for filers who are NOT a plaintiff or defendant.

10. With regard to **related/multiple case filings**, if you have to file a brief, a response to a brief, a response to a motion

or any documents that must be linked to other documents on the docket, you can no longer file them in multiple cases at the same time. They must be filed in each individual case separately.

Now, the moment you've all been waiting for has finally arrived. As most of you have surely heard, the Superior Court has enacted the biggest rule change in more than twenty years. Superior Court Rule 16 has been rewritten and Superior Court Rule 16.1 has been repealed. The new Rule 16 goes into effect March 1, 2008. I recently had the pleasure of sitting down with the Honorable Joseph R. Slights III to discuss this Rule change. His Honor was able to provide me with some insight as to why the rule was changed and how it will be implemented.

Under the new version of the Rule, ALL civil cases filed in the Superior Court, whether they are valued at \$2,000.00 or \$2,000,000.00, are subject to mandatory Alternative Dispute Resolution (ADR) unless the contrary is expressly ordered by the Court. Why? The Court felt it would be a good next step for the Court to take. There were some complaints regarding the lack of flexibility in the old Rule 16.1 in terms of timing (some cases could not go through ADR in the time allotted under the old Rule 16.1); the new Rule 16 allows the parties greater flexibility and timing in scheduling ADR.

Another reason for the change was delay. The old Rule 16 and Rule 16.1 were regularly being ignored in terms of the time frame set for ADR, and the Court had limited means for monitoring ADR cases. Under the old rules, the average elapsed time from the filing of an ADR case to its disposition (i.e., filing of the arbitrator's order) in 2007 was approximately 335 days. Under the old Rule 16, the Court really didn't receive its first notice of the case until this point arrived (i.e., after the arbitrator's order was filed and there is an appeal). It was at that point that a scheduling order was done, whereas a non-arbitration case was getting a trial date, on average, sixty days after it was filed.

The new Rule 16 requires the Court to issue a Scheduling Order that must contain a date by which ADR must occur. In most

instances, the Scheduling Order will be issued immediately after the last responsive pleading is filed.

The biggest issue of the change to Rule 16 is its affect on how we apply the Rule in practice:

1. The Civil Arbitration, Civil Non-Arbitration designation on the Lexis-Nexis File & Serve pull-down menu will be removed.

2. There is no need to put Arbitration/Non-Arbitration on the case caption anymore.

3. The Court will no longer appoint arbitrators/mediators; it will be up to the parties to select and agree to an arbitrator/mediator and make arrangements with them directly.

4. The Court will no longer be responsible for collecting the arbitrators' fees; the parties will be responsible for paying the fees directly to the ADR practitioner.

5. The Court will no longer administer the Court of Common Pleas ADR program.

6. The Prothonotary no longer has to monitor whether or not ADR has occurred within a specific time frame; the Scheduling Order will accomplish this task.

7. The parties will be given an ADR deadline in the Scheduling Order. The Court will enforce failure to comply with the deadline.

8. You no longer have to file the arbitrator's order or mediator's decision with the Court. The Court doesn't want to see them.

9. There is no need to file an appeal de novo anymore. Instead, the Court will require a status report to be filed by Plaintiff's counsel, usually within two weeks after your arbitration/mediation, which will be specified in the scheduling order. The status report essentially tells the Court if the case was resolved through ADR or not. That is all the Court needs to know. If the case is not resolved through ADR, the case moves forward with the scheduling order already in place. Plaintiff's counsel will also be responsible for paying the \$150.00 trial fee when the Status Report is filed.

10. You no longer need to file a Certifi-

cate of Value in Superior Court cases since they are all ADR matters now.

11. You no longer will have to select Arbitration/Non-Arbitration on the CIS form, which is being revised as well. The new CIS form, effective March 1, 2008, is available for download here: <http://courts.delaware.gov/forms/download.aspx?ID=29068>.

12. The Court will no longer monitor certified ADR practitioners. The parties will have the flexibility to select anyone to be their ADR practitioner, **including non-lawyers**, as long as the individual is agreed to by both parties. We are no longer limited in who we choose as an arbitrator or mediator. If you have a medical-related case and you wish to use a doctor as your arbitrator, you have latitude to do that as long as the other side agrees. If it's a financial case and you wish to use a CPA as an arbitrator, you may. The new Rule 16 allows us to think outside the box when selecting an ADR practitioner. However, please note that it will be up to each Judge to decide whether or not he or she wants you to file a Notice of Selection of Arbitrator. In more complex cases, some of the Superior Court Judges may even begin to serve as arbitrators/mediators in cases.

13. There is no need to file a request for a defense medical examination anymore. Form 30 Interrogatories, however, still apply.

With the above changes, the Court will have very little involvement in the ADR process. It will be up to the parties to abide by the new Rule 16 and the Scheduling Order that is issued. In cases where the parties believe that ADR is not practical, the Court may choose to grant an exemption to bypass the ADR process. With this new Rule 16 comes a few other changes in practice:

1. You may file a motion to have the Court select an ADR practitioner if the parties cannot agree on one. However, the Court will impose sanctions if a party acts in bad faith.

2. The Court will hear motions to pay an ADR practitioner if a party or parties do not pay the ADR fees. Again, the Court will impose sanctions on the party or parties that fail to pay.

3. You may file a motion to amend the Scheduling Order, provided there is adequate reason.

4. You may file a motion for sanctions against a party that fails to participate in ADR in good faith. The Court will take the new Rule 16 seriously. Sanctions imposed can range from costs to a default judgment against a defendant to dismissal of the case against a plaintiff.

Although not specifically spelled out in the new Rule 16, no insurance, settlement, ADR information such as arbitrators' or mediators' decisions is admissible. Revealing such information is prohibited, the same as it was under the old Rule 16.1.

In order to help understand the changes in the new Rule 16, I have compiled the following chart that addresses most of the changes:

What's Out	What's In
Having to choose arb/non-arb on File&Serve	
Putting arb/non-arb on case caption	
Court no longer appoints arbitrator/mediator	Parties have to make their own arbitration arrangements
Court no longer collects arbitration fees	Parties have to pay arbitration/mediation fees directly to ADR practitioner
Court will no longer administer Court of Common Pleas ADR program	
Court waits to issue Scheduling Order until after ADR process	Scheduling Order issued immediately after last responsive pleading filed; ADR deadline in Scheduling Order
Court does not get involved in case until after ADR process	Court will enforce failure to comply with the Scheduling Order and complete ADR process by specified deadline
No need to file arbitrator's order or mediator's decision with the Court	Court will require Plaintiff's counsel to file a status report within approximately 2 weeks after ADR indicating whether case was resolved or not; if not, case continues moving forward with dates on Scheduling Order already in place; Plaintiff's counsel also pays the \$150.00 trial fee
No trial de novo or appeal de novo anymore	
No Certificate of Value	

E-Filing Update (continued on page 17)

The First State Chapter of the Association of Legal Administrators Announces Their 2008 Officers

The Association of Legal Administrators is a professional organization committed to developing the legal management profession and the professional expertise of its members. It is our mission to:

- Improve the quality of management in legal services organizations
- Promote and enhance the competence and professionalism of legal administrators and all members of the management team
- Represent professional legal management and managers to the legal community and to the community at large

The First State Chapter of the Association of Legal Administrators was chartered in 1979 and today has more than 50 members throughout Delaware. Our membership is comprised of large and small private law firms, as well as, Corporate and Governmental legal departments. The goal of the Association is to provide personal and professional growth and educational and networking opportunities to Administrators and Legal Managers.

The Chapter is pleased to announce the following officers for 2008-2009:

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E-Filing Update (continued from page 15)

No need to select ADR on the case information sheet	A new CIS form is available
No longer limited to ADR practitioners approved/monitored by the Court	Parties can choose any ADR practitioner, including non-lawyers, as long as agreed to by the parties
No need to file a request for defense medical examination	Form 30s still apply
	Can file a motion to bypass ADR if the parties feel it is not possible to resolve a case through ADR
	Can file a motion to have the Court select an ADR practitioner if the parties cannot agree to one
	ADR practitioner can file a motion to compel payment of the ADR fees if the parties do not pay
	Can file a motion for sanctions against a party for failing to participate in ADR in good faith
	Sanctions may be imposed, and can include costs, default judgment against a defendant and dismissal against a plaintiff

I realize the new Rule 16 seems a bit overwhelming, but remember that there is going to be a learning curve involved for the Court as well as for us. Although Rule 16.1 has been repealed, there is no reason why we cannot keep it on a shelf in our office for future reference. I know I will be keeping mine!

I especially want to thank Judge Slight for taking the time to meet with me so I can disseminate information regarding the new Superior Court Rule 16 to all of you.

Finally, there is one last major news item I would like to bring to everyone's attention. Effective March 1, 2008, Superior Court Rule 107(c)(2) has been amended by adding a new subparagraph (b) and relettering subparagraphs (b) through (h) as subparagraphs (c) through (i). Similar to the Supreme Court Rule, the new Rule 107(b) requires ALL briefs, motions or other papers to be of a size type permitting not more than 11 characters or spaces per linear inch. *All printed matter must appear in 11-point type.*

As usual, if anyone has any questions, please do not hesitate to call me at 302-421-6849. Good luck, and happy e-filing!

CLE Videos

In addition to live seminars, the Delaware State Bar Association presents accredited Continuing Legal Education videos every weekday.

Call the DSBA at (302) 658-5279 for an appointment to view one of the many recorded DSBA seminars.

A complete list of all CLE videos is available on our website at www.dsba.org.

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