

DELAWARE STATE BAR ASSOCIATION

CONTINUING LEGAL EDUCATION

PRECISE, POWERFUL, AND PERSUASIVE: LEGAL WRITING FOR LITIGATORS 2022

DSBA WEBINAR VIA ZOOM

SPONSORED BY THE LITIGATION SECTION
OF THE DELAWARE STATE BAR ASSOCIATION

TUESDAY, FEBRUARY 15, 2022 | 9:15 A.M. – 3:15 P.M.

4.5 Hours CLE credit for Delaware and Pennsylvania Attorneys

CLE SCHEDULE

9:15 a.m. – 10:00 a.m.

District Court

Moderator

Kristen S. Swift, Esquire
Weber Gallagher Simpson Stapleton Fires & Newby, LLP

Panelist

The Honorable Christopher J. Burke
United States Magistrate Judge

10:00 a.m. – 10:15 a.m. | Break

10:15 a.m. – 11:00 a.m.

Bankruptcy

Moderator

Sarah M. Ennis, Esquire
Morris James LLP

Panelist

The Honorable Karen B. Owens
United States Bankruptcy Court for the District of Delaware

11:00 a.m. – 11:45 a.m.

Supreme Court

Moderator

Stephen A. Spence, Esquire
Baird Mandalas Brockstedt, LLC

Panelist

The Honorable Gary F. Traynor
Supreme Court of the State of Delaware

11:45 a.m. – 12:45 p.m. | Lunch

12:45 p.m. – 1:30 p.m.

Superior Court

Moderator

John D. Stant II, Esquire
City of Wilmington Law Department

Panelists

The Honorable Meghan A. Adams
Superior Court of the State of Delaware

The Honorable Paul R. Wallace
Superior Court of the State of Delaware

The Honorable Mary M. Johnston
Superior Court of the State of Delaware

1:30 p.m. – 2:15 p.m.

Chancery Court

Moderator

Stephen A. Spence, Esquire
Baird Mandalas Brockstedt, LLC

Panelists

The Honorable Sam Glasscock III
Court of Chancery of the State of Delaware

The Honorable Joseph R. Slight III
Court of Chancery of the State of Delaware

2:15 p.m. – 2:30 p.m. | Break

2:30 p.m. – 3:15 p.m.

How to Get Published

Douglas J. Cummings, Jr., Esquire
Kollias Law, LLC

Visit <https://www.dsba.org/event/precise-powerful-and-persuasive-legal-writing-for-litigators-2022/>
for all the DSBA CLE seminar policies.

Please note that the attached materials are supplied by the speakers and presenters and are current as of the date of this posting.

District Court

Moderator

Kristen S. Swift, Esquire
*Weber Gallagher Simpson Stapleton
Fires & Newby, LLP*

Panelist

The Honorable Christopher J. Burke
United States Magistrate Judge

Bankruptcy

Moderator

Sarah M. Ennis, Esquire

Morris James LLP

Panelist

The Honorable Karen B. Owens

United States Bankruptcy Court for the

District of Delaware

**DSBA
LEGAL WRITING CLE**

**BANKRUPTCY
MATERIALS**

FEBRUARY 15, 2022

Rule 7007-1 Briefs: When Required and Schedule.

- (a) Briefing and Affidavit Schedule. A party filing a motion in an adversary proceeding (except for a discovery-related motion which shall be governed by Local Rule 9006-1(b)) shall not file a notice of said motion. Unless otherwise ordered by the Court or agreed by the parties, the briefing and affidavit schedule for presentation of all motions in adversary proceedings (except for discovery-related motions which shall be governed by Local Rule 9006-1(b)) shall be as follows:
- (i) The opening brief and accompanying affidavit(s) shall be served and filed on the date of the filing of the motion;
 - (ii) The answering brief and accompanying affidavit(s) shall be served and filed no later than fourteen (14) days after service and filing of the opening brief; and
 - (iii) The reply brief and accompanying affidavit(s) shall be served and filed no later than seven (7) days after service and filing of the answering brief. An appendix may be filed with any brief. Any party may waive its right to file a brief in a filed pleading or in a separate notice filed with the Court.
 - (iv) For the avoidance of doubt (if any), Fed. R. Bankr. P. 9006(f) applies to the calculation of the time period to file any brief, affidavit or appendix under this rule.
- (b) Citation of Subsequent Authorities. No additional briefs, affidavits or other papers in support of or in opposition to the motion shall be filed without prior approval of the Court, except that a party may call to the Court's attention and briefly discuss pertinent cases decided after a party's final brief is filed or after oral argument.

Rule 7007-2 Form and Contents of Briefs and Appendices.

This rule applies only to non-discovery related motions in adversary proceedings.

(a) Form.

- (i) Covers. The front cover of each brief and appendix shall contain the caption of the case, a title, the date of filing, the name and designation of the party for whom it is filed, and the name, number, address and telephone number of counsel by whom it is filed, including the bar identification number for Delaware attorneys.
- (ii) Format. All filings must be double-spaced, in Courier New font or Times New Roman and in at least 12 point typeface. All briefs and appendices shall be firmly bound at the left margin. Side margins of briefs shall not be less than 1 inch.
- (iii) Page Numbering of Appendices. Pages of an appendix shall be numbered separately at the bottom. The page numbers of appendices associated with opening, answering and reply briefs, respectively, shall be preceded by a capital letter "A," "B" or "C." Transcripts and other papers reproduced in a manner authorized by this Local Rule shall be included in the appendix, both with original and appendix pagination.
- (iv) Length. Without leave of Court, no opening or answering brief shall exceed thirty (30) pages and no reply shall exceed fifteen (15) pages, in each instance, exclusive of any tables of contents and citations.
- (v) Form of Citations. Citations will be deemed to be in acceptable form if made in accordance with "A Uniform System of Citation" published and distributed from time to time by the Harvard Law Review Association. State reporter citations may be omitted but citations to the National Reporter System must be included. United States Supreme Court decisions shall be to the official citation.
- (vi) Citation by Docket Number. References to earlier-filed papers in the case or proceeding shall include

a citation to the docket item number as maintained by the Clerk's Office, namely "D.I. 1."

(vii) Unreported Opinions. If an unreported opinion is cited which is neither reported in the National Reporter System nor available on either WESTLAW or LEXIS, a copy of such opinion shall be attached to the document which cites it or shall otherwise be provided to the Court.

(b) Contents of Briefs. If briefs are required, the following format shall apply:

(i) Opening and Answering Briefs. The opening and answering briefs shall contain the following under distinctive titles, in the listed order:

- (A) A table of contents setting forth the page number of each section, including all headings, designated in the body of the brief;
- (B) A table of citations of cases, statutes, rules, textbooks and other authorities, alphabetically arranged. If a brief does not contain any citations therein, a statement asserting this fact should be placed under this heading;
- (C) A statement of the nature and stage of the proceeding;
- (D) A summary of argument stating in separate numbered paragraphs the legal propositions upon which each side relies;
- (E) A concise statement of facts, with supporting references to appendices or record, presenting succinctly the background of the questions involved. The statement shall include a concise statement of all facts that should be known in order to determine the points in controversy. The answering counter-statement of facts need not repeat facts recited in the opening brief;
- (F) An argument divided under appropriate headings distinctly setting forth separate points; and

- (G) A short conclusion stating the precise relief sought.
- (ii) Reply Briefs. The party filing the opening brief shall not reserve material for the reply brief that should have been included in a full and fair opening brief. There shall not be repetition of materials contained in the opening brief. A table of contents and a table of citations, as required by Local Rule 7007-2(b)(i)(A)-(B), shall be included in the reply brief.
- (c) Contents of Appendices. Each Appendix shall contain a paginated table of contents and may contain such parts of the record that are material to the questions presented as the party wishes the Court to read. Duplication shall be avoided. Portions of the record shall be arranged in chronological order. If testimony of witnesses is included, appropriate references to the pages of such testimony in the transcript shall be made and asterisks or other appropriate means shall be used to indicate omissions. Appendices may be separately bound. Parts of the record not included in the appendix may be relied on in briefs or oral argument. Whenever a document, paper or testimony in a foreign language is included in any appendix or is cited from the record in any brief, an English translation made under the authority of the Court, or agreed by the parties to be correct, shall be included in the appendix or in the record.
- (d) Joint Appendix. Counsel may agree on a joint appendix that shall be bound separately.

Rule 7007-3 Oral Argument, Hearing on Adversary Proceeding Motions. No hearing will be scheduled on motions filed only in adversary proceedings, unless the Court orders otherwise, except for discovery-related motions which shall be governed by Local Rule 9006-1(b). An application to the Court for oral argument on a motion pending only in an adversary proceeding shall be in writing and shall be filed with the Court and served on counsel for all parties in the proceeding no later than seven (7) days after service of the reply brief. An application for oral argument may be granted or denied at the discretion of the Court. Hearing and argument on a motion filed both in an adversary proceeding and the main case shall be governed by Local Rule 9013-1(c) and (d).

Rule 7007-4 Notice of Completion of Briefing or Certificate of No Objection, and Notice of Completion of Briefing Binder.

No earlier than seven (7) days and no later than fourteen (14) days after completion of briefing or expiration of a deadline on an adversary proceeding motion, counsel to the movant shall file and serve on counsel for all parties in the adversary proceeding a "Notice of Completion of Briefing" containing a list of all relevant pleadings with related docket numbers or a "Certificate of No Objection" to the extent the respective motion or pleading was unopposed and no briefing occurred. Upon the filing of said notice or certificate, counsel to the movant shall have delivered to the respective Judge's chambers a copy of the Notice of Completion of Briefing or Certificate of No Objection. The Notice of Completion of Briefing shall be delivered in a binder and include copies of the pleadings identified in the notice and the relevant complaint, any answer(s), and any request(s) for oral argument.

Rule 7008-1 Statement in Pleadings Regarding Consent to Entry of Order or Judgment in Adversary Proceeding. Reference is made to the requirement of Fed. R. Bankr. P. 7008 that a pleader state whether the party does or does not consent to the entry of final orders or judgments by the Court. If no such statement is included, unless otherwise ordered by the Court, the pleader shall have waived the right to contest the authority of the Court to enter final orders or judgments.

**Rule 7012-1 Statement in Responsive Pleading Regarding
Consent to Entry of Order or Judgment in Adversary Proceeding.**

Reference is made to the requirement of Fed. R. Bankr. P. 7012(b) that a filing party state whether the party does or does not consent to the entry of final orders or judgments by the Court. If no such statement is included, unless otherwise ordered by the Court, the filing party shall have waived the right to contest the authority of the Court to enter final orders or judgments.

PART IX. GENERAL PROVISIONS

Rule 9004-1 Caption.

- (a) Documents submitted for filing shall contain in the caption the name of the debtor, the case number, the initials of the Judge to whom the case has been assigned, the docket number assigned to the case and, if applicable, the adversary proceeding number. All documents filed with the Clerk that relate to a document previously filed and docketed shall contain in its title the title of the related document and its docket number, if available.
- (b) The hearing date and time and the objection date and time of a motion shall be set forth in bold print (i) in the caption of the notice and motion and all related pleadings, below the case or adversary number and (ii) in the text of the notice.
- (c) The case caption only may be modified by order entered by the Court on separate motion filed and served in accordance with Local Rule 9006-1.

Rule 9006-1 Time for Service and Filing of Motions and
Objections.

- (a) Generally. Fed. R. Bankr. P. 9006 applies to all cases and proceedings in which the pleadings are filed with the Clerk.
- (b) Discovery-Related Motions. All motion papers under Fed. R. Bankr. P. 7026-7037 and 9016 shall be filed and served in accordance with Local Rule 7026-1.
- (c) All Other Motions.
 - (i) Service of Motion Papers. Unless the Fed. R. Bankr. P. or these Local Rules state otherwise, all motion papers shall be filed and served in accordance with Local Rule 2002-1(b) at least fourteen (14) days prior to the hearing date. Sale Procedure Motions filed pursuant to Local Rule 6004-1(c) and voting procedures motions filed pursuant to Local Rule 3017-1(b) must be filed at least twenty-one (21) days prior to the hearing date.
 - (ii) Objection Deadlines. Where a motion is filed and served in accordance with Local Rule 9006-1(c) (i) less than twenty-one days prior to the hearing date, the deadline for objection(s) shall be seven (7) days before the hearing date. To the extent a motion is filed and served in accordance with Local Rule 2002-1(b) at least twenty-one (21) days prior to the hearing date, however, the movant may establish any objection deadline that is no earlier than fourteen (14) days after the date of service and no later than seven (7) days before the hearing date. Any objection deadline may be extended by agreement of the movant; provided, however, that no objection deadline may extend beyond the deadline for filing the agenda. In all instances, any objection must be filed on or before the applicable objection deadline. The foregoing rule applies to responses/replies to (A) any Objection as defined in Local Rule 3007-1(a) (i.e., an objection to claims asserted by more than one claimant) and (B) any objection to a single claim or multiple claims filed by the same claimant.
- (d) Reply Papers. Reply papers by the movant, or any party that has joined the movant, may be filed by 4:00 p.m.

prevailing Eastern Time the day prior to the deadline for filing the agenda. If a motion for leave to file a late reply is filed, unless otherwise ordered by the Court, a motion to shorten notice shall not be required. The Court will consider the motion for leave at the hearing on the underlying motion papers and any objections to the motion for leave may be presented at the hearing. The foregoing rule applies to replies to Omnibus Objection to Claims. Del. Bankr. L.R. 3007-1.

- (e) Shortened Notice. No motion will be scheduled on less notice than required by these Local Rules or the Fed. R. Bankr. P. except by order of the Court, on written motion (served on all interested parties) specifying the exigencies justifying shortened notice. The motion requesting shortened notice shall include an averment of Delaware Counsel for the moving party that a reasonable effort has been made to notify at least counsel to the debtor, counsel to the United States Trustee, counsel to any official committee appointed in the case and any chapter 7, 11 or 13 trustee and whether such party objected to the relief sought, or not, or the basis for the moving party not making such an effort. Unless otherwise ordered, failure to so aver may result in denial of the motion to shorten. The Court will rule on such motion for shortened notice promptly without need for a hearing.

Rule 9013-1 Motions and Applications.

- (a) Scope. This Local Rule applies to any motion or application filed in a main bankruptcy case. Any motion or application filed in an adversary proceeding shall be governed by Local Rule 7007-1. References in subparts (b) through (m) of this Local Rule to "motions" should be construed as applying to "applications" to the extent context so requires.
- (b) Requests for Relief. No request for relief (not otherwise governed by Fed. R. Bankr. P. 7001) may be made to the Court, except by written motion, by oral motion in open court or by certification of Delaware Counsel. Letters from counsel or parties will not be considered.
- (c) Cases with Omnibus Hearing Dates. In any case in which future omnibus hearing dates have been scheduled pursuant to Local Rule 2002-1(a), all motions and applications and related papers shall be heard only on such dates, unless otherwise ordered by the Court. In any case in which no omnibus hearing dates have been scheduled, a hearing date may be obtained by contacting the Court.
- (d) Evidentiary Hearing. All hearings on a contested matter will be an evidentiary hearing at which witnesses will be required to testify in person in Court with respect to any factual issue in dispute unless these Rules, the parties or the Court provides otherwise.
- (e) Contents of Notice. Unless otherwise provided in these Rules or otherwise ordered by the Court, any motion shall, in substantial conformity with Local Form 106, provide:
 - (i) The title of the motion in bold print;
 - (ii) The date and time of the hearing on the motion;
 - (iii) The date and time by which objections to the motion shall be filed;
 - (iv) The names, addresses, email addresses and fax numbers of the parties on whom any objection shall be served; and
 - (v) A statement that the motion may be granted and an order entered without a hearing unless a timely objection is made.

- (f) Form of Motion. All motions shall have attached thereto a notice conforming to Local Rule 9013-1(e), a proposed form of order specifying the exact relief to be granted, and a certificate of service showing the date of service, means of service and the names and addresses of the parties served. All motions shall be titled in the form "[Motion/Application] of [Movant's Name] for [Relief Requested]". All motions filed pursuant to this Rule shall contain a statement that the movant does or does not consent to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. If no such statement is included, the movant shall have waived the right to contest the authority of the Court to enter final orders or judgments.
- (g) Service of Motion and Notice. All motions shall be served in accordance with Local Rule 2002-1(b).
- (h) Objections. Except for motions presented on an expedited basis, any objection to a motion shall be made in writing. The title of the objection shall conform to Local Rule 9004-1 and shall include the objector's name, the motion to which the objection relates and the docket number of the motion. The hearing date and time and the docket number of the related motion shall be set forth in bold print in the caption below the case number. All objections or other responses to a motion filed pursuant to this Rule shall contain a statement that the filing party does or does not consent to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. If no such statement is included, the filing party shall have waived the right to contest the authority of the Court to enter final orders or judgments.
- (i) Telephonic Appearance at Hearing. In extenuating circumstances where counsel cannot appear at a non-evidentiary hearing on a motion, counsel may make a request to the presiding Judge's chambers for leave to appear by telephone at such hearing. Any such request for a telephonic appearance shall be made by the deadline established pursuant to such Judge's chambers procedures or, if the Judge's chambers procedures contain no such deadline, by no later than 12:00 p.m. prevailing Eastern Time twenty-four (24) hours prior to the scheduled hearing

date. Upon the approval of such request by the Court, counsel shall follow the telephonic appearance procedures located on the Court's website. This Local Rule shall not apply to evidentiary hearings.

- (j) Certificate of No Objection. Twenty-four (24) hours after the objection date has passed, counting time in accordance with Fed. R. Bankr. P. 9006(a)(2), with no objection having been filed or served, Delaware Counsel for the movant may file a certificate of no objection (the "Certificate of No Objection" or "CNO"), substantially in the form of Local Form 107, stating that no objection has been filed or served on the movant. By filing the CNO, Delaware Counsel for the movant represents to the Court that the movant is unaware of any objection to the motion or application and that counsel has reviewed the Court's docket and no objection appears thereon. In any cases in which a Notice of Agenda is required under Local Rule 9029-3, Delaware Counsel for the debtor or foreign representative or trustee, as applicable, shall submit to the Court a binder that contains the Notice of Agenda, any CNOs that have been filed and any motions scheduled for such hearing that are the subject of any CNOs that have been filed. In all other cases, court documents shall be submitted in accordance with the presiding Judge's chambers procedures. Such chambers procedures, if any, are available on the Court's website. Upon receipt of the CNO, the Court may enter the order accompanying the motion without further notice or hearing and, once the order is entered, the hearing scheduled on the motion may be canceled without further notice.
- (k) Amendment of Order. Any request for amendment of an order entered by the Court shall have attached the proposed amended order and a blacklined copy reflecting the changes. Additionally, any request for amendment of an order entered by the Court shall be made only as follows:
 - (i) If the amendment is non-material, by certification of Delaware Counsel that the amendment is not material and that all parties in interest have consented to the amendment;
 - (ii) By motion under this Local Rule; or
 - (iii) By the filing of a stipulation to amend, signed by all interested parties.

- (l) Service of Order or Judgment. Service of an order or judgment shall be made in accordance with Local Rule 9022-1.
- (m) Motions Filed with the Petition in Chapter 11 Cases or Chapter 15 Cases.
 - (i) Definition. This Local Rule shall govern any motion for which the debtor (or in a chapter 15 case, the foreign representative) requests, with less than seven (7) days' notice, a hearing or the entry of an order (whether interim or final) with such hearing to occur or such order to be entered within twenty-one (21) days after the filing of the petition commencing such case.
 - (ii) Scope of Relief Requested. Requests for relief under this subpart of Local Rule 9013-1 shall be confined to matters of a genuinely emergent nature required to preserve the assets of the estate and to maintain ongoing business operations and such other matters as the Court may determine appropriate.
 - (iii) Notice to the United States Trustee, Clerk and Certain Other Parties. Once a petition is filed, counsel for the debtor or foreign representative shall have a binder containing an agenda and all applications and motions sought to be heard on an emergent basis delivered to the Clerk's Office. Once the case is assigned to a Judge, the Court will contact counsel for the debtor or foreign representative and the United States Trustee to schedule a hearing on those applications and motions. The debtor or foreign representative shall serve (a) all motions and applications that the debtor or foreign representative asks be heard under this Local Rule (in substantially final form) upon the United States Trustee and (b) the agenda upon the United States Trustee, the creditors included on any list filed under Fed. R. Bankr. P. 1007(d) and any party directly affected by the relief sought in such applications and motions, at least twenty-four (24) hours in advance of a hearing on such applications and motions, unless otherwise ordered by the Court, and shall file a certificate of service to that effect within forty-eight (48) hours.

- (iv) Notice of Entry of Orders. Within forty-eight (48) hours of the entry of an order entered under this Local Rule ("First Day Order"), the debtor or foreign representative shall serve copies of all motions and applications filed with the Court as to which a First Day Order has been entered, as well as all First Day Orders, on those parties referred to in Local Rule 9013-1(m)(iii), and such other entities as the Court may direct.
- (v) Reconsideration of Orders. Any party in interest may file a motion to reconsider any First Day Order, other than any order entered under 11 U.S.C. §§ 363 and 364 with respect to the use of cash collateral and/or approval of postpetition financing, within twenty-eight (28) days of the entry of such order, unless otherwise ordered by the Court. Any such motion for reconsideration shall be given expedited consideration by the Court. The burden of proof with respect to the appropriateness of the order subject to the motion for reconsideration shall remain with the debtor or foreign representative notwithstanding the entry of such order.

Rule 9013-3 Service Copies. Unless otherwise ordered by the Court or as provided by these Local Rules, only one (1) copy of pleadings, motions and other papers need be served upon another party.

Rule 9018-1 Exhibits; Documents under Seal; Confidentiality.

- (a) Retention of Exhibits. Unless otherwise ordered by the Court, exhibits admitted into evidence must be retained by the attorney or *pro se* party who offered them into evidence until the later of the closing of the main bankruptcy case or the entry of a final, non-appealable order regarding any pending adversary proceeding, contested matter or pending appeal to which such exhibit relates.
- (b) Access to Exhibits. Upon request, parties must make exhibits admitted into evidence (or copies thereof) available to any other party to copy at its expense, subject to any confidentiality, seal or other order or directive of the Court.
- (c) Removal of Exhibits from Court. Exhibits that are in the custody of the Clerk shall be removed by the party responsible for the exhibits (i) if no appeal has been taken, at the expiration of the time for taking an appeal, or (ii) if an appeal has been taken, within twenty-eight (28) days after the record on appeal has been returned to the Clerk. Parties failing to comply with this Local Rule shall be notified by the Clerk to remove their exhibits and, upon failure to do so within twenty-eight (28) days of such notification, the Clerk may dispose of the exhibits.
- (d) Documents under Seal.
 - (i) Except as otherwise ordered by the Court, any entity seeking to file a document (a "Proposed Sealed Document") under seal must file a motion requesting such relief (a "Sealing Motion") no later than three (3) business days after the filing of the Proposed Sealed Document. The Proposed Sealed Document shall be filed separately from the Sealing Motion as a restricted document in accordance with the Court's CM/ECF procedures.
 - (ii) The Sealing Motion (A) shall include a certification of counsel from Delaware counsel made in accordance with sub-part (d)(iv) hereof and (B) except as otherwise ordered by the Court or as provided in sub-part (d)(v) hereof, shall be accompanied by a separately filed proposed redacted version of the Proposed Sealed Document in a form suitable to appear on the Court's public docket (the "Proposed Redacted Document"). The Proposed Redacted Document

shall be filed under cover of a "Notice of Filing of Proposed Redacted Version of [Proposed Redacted Document title]".

- (iii) If the Proposed Sealed Document is known by the filer thereof to contain information that has been designated by another entity as confidential pursuant to a protective order, contract or applicable law or as otherwise requiring protection for the benefit of another entity pursuant to section 107 of the Bankruptcy Code (such rights, "Confidentiality Rights" and any such entity holding Confidentiality Rights, a "Holder of Confidentiality Rights"), the filer thereof, prior to the filing of the Sealing Motion, shall attempt to confer in good faith with the Holder of Confidentiality Rights in an effort to reach agreement concerning what information contained in the Proposed Sealed Document must remain sealed from public view.
- (iv) The certification of counsel contained in the Sealing Motion shall include the certification of Delaware counsel for the filer thereof as to one or more of the following, as appropriate: (a) that counsel for the filer of the Sealing Motion and the Holder of Confidentiality Rights (or counsel thereto) have conferred in good faith and reached agreement concerning what information contained in the Proposed Sealed Document must remain sealed from public view; (b) that counsel for the filer of the Sealing Motion and the Holder of Confidentiality Rights (or counsel thereto) have conferred in good faith and been unable to reach agreement concerning what information contained in the Proposed Sealed Document must remain sealed from public view; (c) that the filer of the Sealing Motion has been unable to confer with the Holder of Confidentiality Rights (or counsel thereto), with an explanation of the reason(s) no such conference could occur; (d) that it would be futile for the filer of the Sealing Motion to attempt to confer with the Holder of Confidentiality Rights (or counsel thereto), with an explanation of the reason(s) establishing such futility; (e) to the best of the knowledge, information and belief of counsel for the filer of the Sealing Motion, the Proposed Sealed Document does not contain information subject to

Confidentiality Rights of another Holder of Confidentiality Rights; and/or (f) that counsel for the filer of the Sealing Motion believes that the entire Proposed Sealed Document should be under seal, such that no Proposed Redacted Document can be filed with the Sealing Motion.

- (v) In the event that the filer of the Sealing Motion determines in good faith, after attempting to confer with the Holder of Confidentiality Rights as provided in sub-part (d)(iii) hereof (unless the filer of the Sealing Motion has certified that such attempt to confer is not possible or would be futile), that the entire Proposed Sealed Document should be placed under seal such that no Proposed Redacted Document can be filed with the Sealing Motion, then notwithstanding anything to the contrary in sub-part (d)(ii) hereof, the filer of the Sealing Motion shall be excused from the obligation to file a Proposed Redacted Document pending further order of the Court. For the avoidance of doubt, this sub-part (d)(v) does not excuse the filer of a Sealing Motion from the obligation to file a Proposed Redacted Document merely because of (A) the existence of a dispute with a Holder of Confidentiality Rights that involves less than the entire Proposed Sealed Document or (B) the inability of the filer of the Sealing Motion to determine whether a portion of the Proposed Sealed Document that is less than the entire Proposed Sealed Document is subject to Confidentiality Rights of another Holder of Confidentiality Rights. In either such event, the filer of the Sealing Motion shall use reasonable efforts to file a Proposed Redacted Document that leaves unredacted to the fullest extent possible those portions of the Proposed Sealed Document that the filer reasonably believes are not subject to Confidentiality Rights held or asserted by the filer or another Holder of Confidentiality Rights.
- (vi) In the event the Court grants relief concerning a Sealing Motion that requires redactions different from those contained in the Proposed Redacted Document (or if the Court grants relief requiring the filing of a redacted version of a Proposed Sealed Document where no prior Proposed Redacted

Document was filed), counsel for the movant shall file within one (1) business day after the Court's ruling is issued a final form of the publicly viewable version of the Proposed Sealed Document (the "Final Redacted Document") with the sealed portion(s) redacted consistent with the Court's ruling and filed in accordance with applicable CM/ECF procedures. The Final Redacted Document shall be filed under cover of a "Notice of Filing of Final Redacted Version of [Final Redacted Document title]".

- (vii) In the event the Court denies the Sealing Motion, the Clerk shall take such action as the Court may direct.
 - (viii) If a Sealing Motion is filed in connection with a motion or application or with an objection, reply or sur-reply related to any such motion or application, unless otherwise ordered by the Court, a motion to shorten notice shall not be required and the Court will consider the Sealing Motion at the applicable hearing date and any objections to the Sealing Motion may be presented at the hearing.
 - (ix) Except with respect to redactions subject to Local Rule 9037-1 or as otherwise ordered by this Court, no document containing any redaction(s) made by a filer of a Proposed Sealed Document may be filed with the Clerk's Office unless the filer has previously filed or simultaneously files an unredacted copy of the same under seal and follows all requirements of this subsection with respect to the same.
 - (x) For the avoidance of doubt, nothing in this sub-part 9018-1(d) is intended to or shall modify any rights or obligations any entity has in connection with confidential information or information potentially subject to protection under Section 107 of the Bankruptcy Code.
- (e) Order Authorizing Future Filing of Documents under Seal. If an order has been signed granting the filing of future documents under seal, the related docket number of the applicable order must also be included on the cover sheet. Any document filed under seal under a previously entered order of the Court shall be filed as a restricted document

and electronically docketed in accordance with CM/ECF procedures.

- (f) Confidentiality. If any information or documents are designated confidential by the producing party at the time of production and the parties have not stipulated to a confidentiality agreement, until such an agreement has been agreed to by the parties or ordered by the Court, disclosure shall be limited to members and employees of the law firm representing the receiving party and such other persons as to which the parties agree. Such persons are under an obligation to keep such information and documents confidential and to use them only for purposes of the contested matter or the proceeding with respect to which they have been produced. Additionally, parties may stipulate to the application of this rule in connection with informal discovery conducted outside a contested matter or adversary proceeding (e.g., a statutory committee's investigation of the validity, perfection or amount of a secured creditor's prepetition lien), in which case the documents and information produced shall be used only for the purpose defined by the parties' stipulation.
- (g) Use of Sealed Documents. If a party intends to use a document which has been previously placed under seal at a hearing or in connection with briefing, a copy of the sealed document (in an envelope and prominently marked "CHAMBERS COPY") shall be provided to the Court in the binder delivered to Chambers. After the hearing is concluded or the motion is decided, the Court will, at its discretion, destroy or return the Chambers copy of the sealed document to the sender.

Rule 9019-1 Certificate of Counsel. Filed objection(s) or informal objection(s) to a Motion, Omnibus Objection to Claims or other pleading filed with the Court may be resolved by submitting a revised or agreed form of order filed with a Certificate of Counsel ("CoC") consistent with all of the following requirements stated in (a) - (c) below. The CoC procedure may also be utilized under such other circumstances as the Court directs.

- (a) The CoC must be signed by Delaware Counsel (as defined in Local Rule 9010-1), and attach a proposed revised or agreed form of order as an exhibit. The CoC must state whether the revised or agreed form of order has been reviewed and approved by all the parties affected by the order. A CoC shall be served on all affected parties.
- (b) If there is an applicable objection deadline, the CoC may not be filed until twenty-four (24) hours after that deadline.
- (c) In cases in which a Notice of Agenda is required under Local Rule 9029-3 and where the revised or agreed form of order has been finalized in advance of the deadline for the filing of the Notice of Agenda, the Delaware counsel responsible for the filing of the Notice of Agenda shall include the CoC pleadings in the CNO binder that is otherwise required under these Local Rules. In all other cases, the CoC pleadings shall be submitted in accordance with each respective Judge's chambers procedures. Such chambers procedures, if any, are available on the Court's website.

Upon receipt of the CoC, the Court may enter the order attached to the CoC without further pleading or hearing or schedule the CoC for hearing.



United States Bankruptcy Court District of Delaware

824 N. Market Street
Wilmington, Delaware 19801
(302) 252-2900
www.deb.uscourts.gov

Honorable Laurie S. Silverstein

Chief Judge

Una O'Boyle
Clerk of the Court

General Chambers Procedures

[Table of Contents](#)

Click on the links below to be taken to the topic of your interest.

[General Provisions](#)

[Pleadings](#)

[Agendas and Binders](#)

[Hearings](#)

[Matters Not Requiring a Hearing](#)

[Adversary Proceedings](#)

[Fee Applications](#)

[Objections to Claims](#)

Overview

Unless otherwise ordered, the following procedures apply to all Judges and are to be followed when practicing in this Court.

For additional guidelines, click on the following links to be taken to:

- [the individual Judge's chambers page](#)
- [the chapter 13 procedures](#)
- [the general order regarding all adversaries](#)

Section 1: General Provisions

Topic	Procedure
a. Local Rules Govern	<ul style="list-style-type: none">• The Local Rules for the United States Bankruptcy Court for the District of Delaware will govern all procedural aspects of the case.
b. Deliveries to Chambers	<ul style="list-style-type: none">• Any deliveries to chambers must be made during normal business hours.
c. Orders Submitted to Chambers	<ul style="list-style-type: none">• All orders submitted to chambers following a hearing shall be accompanied by a certification of counsel (see Del. Bankr. LR 9013-1(k)) and promptly filed.• No bare orders or letters will be considered.• If orders are not submitted promptly after the hearing, there may be a delay in entry of the order.

[Click here](#) to return to Table of Contents.

Section 2: Pleadings

a. General	
Topic	Procedure
i. Documents Delivered to Chambers	<ul style="list-style-type: none"> All documents delivered to chambers shall have the docket number and date of filing in the bottom right-hand corner of the first page EXCEPT Orders, where docket reference number of the motion is to be listed in the caption. <i>Example:</i> Case No. 09-10465 (KG) Re: Docket No. 1149 Do not attach the notice of electronic filing.
ii. Motions and Stipulations	<ul style="list-style-type: none"> All motions (except those filed in adversary proceedings) and stipulations requiring notice under Fed. Rule Bankr. Proc. 9019 must be filed with a hearing date and objection deadline. (See <u>Del. Bankr. LR 9006-1(c)</u>).
iii. Stipulations	<ul style="list-style-type: none"> Stipulations must have a separate proposed order attached. "So Ordered" clauses are not permitted.
iv. Proposed Orders	<ul style="list-style-type: none"> All proposed orders shall reference the docket number of the related motion in the caption. No order shall contain a "stand-alone" signature page (including date) All orders must be paginated (and treated as if a separate document, i.e. starting with page #1, not a continuation of any CNO, COC or Motion, etc.) A paper clipped, clean, single – sided copy of the order must be included for the signature, together with any exhibits or attachments (also single – sided).
v. Certificates of No Objection	<ul style="list-style-type: none"> Certificates of no objection (CNO) shall be filed no sooner than 24 hours after the objection deadline has passed to allow for any paper filings to be entered on the docket.
vi. Briefs and Memoranda	<ul style="list-style-type: none"> All briefs and memoranda (in main bankruptcy cases and in adversary proceedings) must comply with <u>Del. Bankr. LR 7007-2, 3017-3</u> respectively (form and content of briefs). No objection to, or briefs or memoranda in support of, confirmation shall exceed 40 pages.

Section 2: Pleadings, cont.

b. First Day Pleadings	
Topic	Procedure
i. First Day Hearing Binder	<ul style="list-style-type: none"> • Click here to be taken to our Hearing Binder Guide for detailed requirements for first day hearing binders.
ii. Drafts of First Day Motions	<ul style="list-style-type: none"> • Do not deliver drafts of first day motions to the Clerk's office or chambers. They are to be delivered in final form only after those motions have been filed.
iii. Retention Applications	<ul style="list-style-type: none"> • No retention applications will be considered on the first day (except regarding a claims agent). • Such applications must be noticed for a scheduled omnibus hearing date.
iv. Proposed Budget	<ul style="list-style-type: none"> • A proposed budget must be included in the first day hearing binder.
v. Pre-Petition Obligations	<ul style="list-style-type: none"> • No motion seeking authority to pay pre-petition obligations will be considered unless the motion and attached order include the maximum amount sought to satisfy these pre-petition obligations.

[Click here](#) to return to Table of Contents.

Section 3: Agendas and Binders

Topic	Procedure
a. Notice of Agenda Binder	<ul style="list-style-type: none"> • Click here to be taken to our Hearing Guide for detailed requirements for notice of agenda binders submitted to our court.
b. Notice of Agenda	<ul style="list-style-type: none"> • A notice of agenda, which shall include the docket number and filing date of each document listed, shall be filed by 12:00 noon, two business days prior to the hearing date in accordance with Del. Bankr. LR 9029-3.
c. Timely Filing	<ul style="list-style-type: none"> • Local counsel for the debtor or trustee is responsible for the timely filing, delivery, correctness, and completeness of the notice of agenda and the related hearing binder. Piecemeal delivery of the notice of agenda and the relevant pleadings is not appropriate. • Absent compelling circumstances, only those items listed on the notice of agenda and the relevant pleadings timely delivered to chambers will be considered. If the notice of agenda and related pleadings are not delivered within the prescribed time limit, local counsel for the debtor or trustee may be assessed a fine.
d. Change of Status	<ul style="list-style-type: none"> • Counsel is required to inform the Judge's chambers immediately if the status of a matter listed on the notice of agenda as going forward has changed (e.g., settled or continued).
e. Rescheduling Hearings	<ul style="list-style-type: none"> • Counsel cannot reschedule or cancel a hearing without proper consent of all interested parties and the courtroom deputy. This includes hearings where all matters have certificates of no objection filed. Please refer to a specific Judge's chambers procedures for additional requirements. Click here to go to the Chambers' Information page on our website.
f. Tabbing Documents	<ul style="list-style-type: none"> • Hearing binders shall contain the notice of agenda, and unbound copies of all documents listed as "going forward," with each document tabbed in accordance with the notice of agenda.

Section 3: Agendas and Binders, cont.

Topic	Procedure
g. Include Only Substantive Documents	<ul style="list-style-type: none"> Hearing binders shall contain only the substantive documents necessary for the hearing (e.g., motions and responses going forward). Do not include in the binder certificates of service or the service lists filed with each pleading unless an issue has been raised about sufficiency of service, in which case only the appropriate portion of the service list shall be included.
h. CNO Binder	<ul style="list-style-type: none"> A separate CNO binder shall be filed by the debtor or trustee with the hearing binder and notice of agenda containing any uncontested matters where certificates of no objection have been timely filed. Do not send loose copies of the certificates of no objection and related motions; inclusion in the CNO binder is sufficient. Click here to be taken to our Hearing Binder Guide for detailed requirements for CNO binders submitted to our court.
i. Binder Due Dates	<ul style="list-style-type: none"> Hearing binders are to be delivered directly to chambers by 12:00 noon, two business days prior to the hearing date, <i>except for</i>: <ul style="list-style-type: none"> the first day hearing binder, which is due immediately after e-filing; the fee applications binder, which is due no later than 12:00 noon one week prior to the hearing date; the objections to claims binder, which is due no later than 12:00 noon two weeks prior to the hearing date. A late hearing binder may result in a fine for debtor's local counsel.
j. Binder Pick Up	<ul style="list-style-type: none"> Generally, binders will be available for firms to pick up in the third floor clerk's office. You will be notified when your binders are ready for pick up. Please remove them within two business days after notification.

[Click here](#) to return to Table of Contents.

Section 4: Hearings

a. General	
Topic	Procedure
i. Scheduling First Day Hearing	<ul style="list-style-type: none"> A first day hearing will be scheduled no sooner than 24 hours after receipt of the first day binder.
ii. Requesting An Expedited Hearing	<ul style="list-style-type: none"> If requesting an expedited hearing, a motion for expedited hearing shall be filed and a hard copy, together with a copy of the underlying motion to be heard, shall be delivered to chambers for review.
iii. Scheduling Omnibus Hearing Dates	<ul style="list-style-type: none"> The Court will then determine the appropriate hearing date. Please request at least three omnibus hearing dates from chambers when filing a Certification of Counseling and Proposed Omnibus Hearing Order. Please inform chambers if a hearing is no longer needed once the 21 day notice period has passed.
b. Use of Technology in the Courtroom	
i. Noticing the Court Regarding Request to Use Technology	<ul style="list-style-type: none"> According to Rule 9036-1(b) Parties intending to use any technology in the Courtroom must give the Court notice at the time the agenda is due. Operations personnel will respond to all requests promptly. Notice should be sent via email to debml_Courtroom_Technology@deb.uscourts.gov. Appropriate chambers should also be notified.
c. Proposed Orders	
i. Proposed Orders	<ul style="list-style-type: none"> Counsel presenting matters at a hearing shall bring to the scheduled hearing one unstapled copy of each proposed order with the related document number to be handed up for signature. The copy is to be the same as the proposed order filed with the motion and in the hearing binder. If the proposed order has been revised, counsel shall also present to the Court a blacklined copy showing the changes made and shall make available additional copies of both the proposed order and blacklined copy for parties in interest.

[Click here](#) to return to Table of Contents.

Section 5: Matters Not Requiring a Hearing

Topic	Procedure
a. Documents Seeking Court Approval Without a Hearing	<ul style="list-style-type: none"> The following documents that seek Court approval without a hearing shall be delivered directly to chambers immediately upon filing. <ul style="list-style-type: none"> i. Motions to Shorten Notice, along with any referenced motion ii. Stipulations (with a separate order attached) that do not require notice under Fed. Rules Bankr. Proc. 9019, along with any referenced motion iii. Certifications of Counsel, along with the referenced motion and other relevant documents
b. Properly Identifying Documents	<ul style="list-style-type: none"> All documents shall have the docket number and date filed in the bottom right-hand corner EXCEPT Orders, where docket reference number of the motion is to be listed in the caption. <i>Example:</i> Case No. 09-10465 (KG) Re: Docket No. 1149
c. Documents Must Be Delivered to Chambers	<ul style="list-style-type: none"> If the documents are not delivered to chambers, they will not be considered.
e. E-Orders	<ul style="list-style-type: none"> Pro Hac and Omnibus Hearing Orders are not to be submitted to Chambers. See instructions for Uploading A Proposed Order For Electronic Signature.

[Click here](#) to return to Table of Contents.

Section 6: Adversary Proceedings

Topic	Procedure
a. Filing Motions	<ul style="list-style-type: none">• All case dispositive motions filed in adversary proceedings shall be subject to Del. Bankr. LR 7007-1 (briefs and schedule).• No hearing will be scheduled unless the Court directs.
b. Notice of Completion of Briefing	<ul style="list-style-type: none">• Once briefing is completed, the movant shall file a notice of completion of briefing, which shall include a list of all relevant pleadings and related docket numbers.• Counsel shall then deliver a binder with the relevant pleadings to chambers. Click here for more information about assembling this binder.
c. Motions to Approve a Settlement	<ul style="list-style-type: none">• Motions to approve a settlement of an adversary proceeding shall be filed in the main bankruptcy case and the related adversary proceeding.• The Judge assigned to the main bankruptcy case is responsible for approving settlement motions.• Upon entry of an order approving a settlement, the adversary proceeding will be closed.

[Click here](#) to return to Table of Contents.

Section 7: Fee Applications

Topic	Procedure
a. Consideration of Fee Applications	<ul style="list-style-type: none"> All fee applications will be considered in accordance with the Local Rules and the respective administrative order entered in each case.
b. Certificates of No Objection	<ul style="list-style-type: none"> Certificates of no objection to monthly statements shall be filed but not delivered to chambers. When fee applications are scheduled on a quarterly basis, copies of the certificates of no objection and their respective fee applications shall be included in the hearing binders. Click here for more information about assembling this binder.
c. Interim Fee Applications	<ul style="list-style-type: none"> Interim fee applications will be scheduled on omnibus hearing dates on a quarterly basis and shall be designated on the proposed order scheduling omnibus hearings.
d. Representation at Hearing	<ul style="list-style-type: none"> A representative for each applicant personally familiar with the services rendered and costs incurred that are the subject of the application shall appear in person at the hearing in support of the application. If such person is not local counsel, then arrangements may be made through the Court-approved teleconferencing facilitator to appear telephonically.
e. Fee Applications Binder	<ul style="list-style-type: none"> Fee applications must be in a separate hearing binder containing an index and delivered to chambers one week prior to the scheduled fee hearing. Click here for information regarding assembly of fee applications binder. Please do not submit a separate fee binder for each professional.
f. When Matters Do Not Go Forward	<ul style="list-style-type: none"> Fee application binders will be returned if matters do not go forward and shall be resubmitted at the appropriate time for the rescheduled hearing.
g. Mega Cases	<ul style="list-style-type: none"> Cases with \$100 million or more in assets and/or liabilities may have fee auditors appointed by the Court.

Section 7: Fee Applications, cont.

Topic	Procedure
h. Fees Requested	<ul style="list-style-type: none">• Counsel responsible for the agenda must prepare a chart of fees requested by all Court-approved professional firms.• Such chart shall be submitted to chambers at the time the fee application binders are delivered (one week prior to the hearing).• The chart shall include the following information for each firm:<ul style="list-style-type: none">i. The firm's role in the case (e.g., Debtor's counsel, Committee counsel);ii. The fee period during which such firm was retained;iii. Total fees and expenses requested in the case;iv. Amounts approved to date;v. Amounts outstanding; andvi. Amounts of any voluntary reductions.
i. Total of Fees Requested	<ul style="list-style-type: none">• In addition, the chart shall include a grand total of all professional fees and expenses in the case.
j. Additional Information on Fee Applications	<ul style="list-style-type: none">• Refer to Del. Bankr. LR 2016-2 for additional information regarding fee applications.

[Click here](#) to return to Table of Contents.

Section 8: Objections to Claims

Topic	Procedure
a. Declarations in Support of Claims	<ul style="list-style-type: none"> Declarations must be filed in support of all claim objections, including non-substantive objections. Counsel cannot certify whether claims are duplicative, amended or late-filed unless they have personally reviewed those claims.
b. Continuing a Portion of a Particular Claim Objection to a Future Hearing Date	<ul style="list-style-type: none"> In the event a portion of a particular claim objection is continued to a future hearing date, only the claims/responses that are the subject of that hearing shall be listed on the subsequent notice of agenda. A chart showing the status of all remaining claims/responses shall also be attached.
c. Claims Binders	<ul style="list-style-type: none"> Claims binders shall be delivered to chambers two weeks prior to the scheduled hearing. The omnibus objection to claims and the declaration shall be included with any claims going forward in the binders. Click here for information regarding assembly of claims binder.
d. If Matters Do Not Go Forward	<ul style="list-style-type: none"> Claims binders will be returned if matters do not go forward and shall be resubmitted at the appropriate time for the rescheduled hearing.

[Click here](#) to return to Table of Contents.

Updated: January 28, 2022

Supreme Court

Moderator

Stephen A. Spence, Esquire
Baird Mandalas Brockstedt, LLC

Panelist

The Honorable Gary F. Traynor
Supreme Court of the State of Delaware



Justice Gary F. Traynor

Justice Traynor was sworn in for his first term as Justice of the Supreme Court of Delaware on July 5, 2017. Before his appointment, Justice Traynor was a practicing Delaware lawyer for 35 years.

A member of the Delaware Bar since 1982, Justice Traynor began his legal career with a small firm in Dover handling a diverse range of litigation matters. In 1990, he joined the firm of Prickett, Jones & Elliott, where he served as the firm's Managing Director from 2005 to 2007. For his first ten years with the Prickett firm, Justice Traynor continued to focus on general litigation matters, including criminal defense, personal injury litigation and domestic relations disputes. In 1999, he transitioned to the firm's corporate and commercial litigation practice where he remained until leaving the firm in 2014 to join the State of Delaware Office of Defense Services where he served as an Assistant Public Defender defending major felony cases until his appointment in 2017.

Justice Traynor received his undergraduate degree from Dartmouth College in 1978 and earned his law degree from Delaware Law School of Widener University in 1982.

Before joining the state's highest court, Justice Traynor served on the Delaware Supreme Court's Board on Professional Responsibility from 2011 to 2017, and was an appointed member of the U.S. 3rd Circuit Court of Appeals' Task Force on Management of Death Penalty Litigation from 1998 to 2001. Justice Traynor is a past-President of the Terry-Carey American Inn of Court.

In addition to his legal work, Justice Traynor was a commissioner on the Delaware River and Bay Authority from 2009 to 2014. He also served as an officer in the Delaware Army National Guard from 1990 to 1991. Justice Traynor and his wife, Kathleen Andrus, reside in Rehoboth Beach, Delaware.

A few observations on writing collected through the years and a bibliography

The starting point for becoming a good writer is to be a good reader.

S. Pinker, *Sense of Style* 12.

Introductions/Beginnings

Beginnings are an exercise in limits. You can't make the reader love you in the first sentence or paragraph, but you can lose the reader right away . . . There is a lot to be said for a quiet beginning.

Meek or bold, a good beginning achieves clarity.

Kidder & Todd, *Good Prose* 4, 5.

Make a fast start. In the opener, you should try to do three things: (1) swiftly identify the type of case and *state the issue*, with the key facts intertwined; (2) generate interest without resort to contrived mannerisms; and (3) state the court's resolution of the issue presented, together with a reason. If you can do those three things, your reader will grasp the whole analysis more fully than if you sideline the determinative point or launch into a laborious factual recitation. A reader seeking the core of your argument will be left feeling unfocused—and probably frustrated. Bryan Garner, *Judicial Writing Seminar* (Note that this advice applies to judicial opinions. But it could easily be adapted to introductory statements in other forms of discursive writing. See Garner, *The Winning Brief*, 98-104.)

When truth flows from a writer, fittingly clothed in style and without conscious effort, it is because the effort has been made and the work practically completed before he sat down to write. It is only out of fullness of thinking that expression drops perfect like a ripe fruit. . . . For clearness, compression or beauty of language cannot come to any living creature till after a busy and prolonged acquaintance with the subject at hand. Robert Louis Stevenson quoted by Bryan Garner in ABA Journal (Sept. 2018).

Clarity

Clarity doesn't always mean brevity, Kidder & Todd, *Good Prose* 6.

And how is clarity to be acquired? Mainly by taking trouble; and by writing to serve people rather than to impress them. Most obscurity, I suspect, comes not so much from incompetence as from ambition—the ambition to be admired for depth of sense, or pomp of sound, or wealth of ornament. It is for the writer to think and rethink his ideas till they are clear; to put them in a clear order; to prefer (other things equal, and subject to the law of variety) short words, sentences, and paragraphs; not to try to say too many things at once; to eschew irrelevancies; and, above all to put himself with imaginative sympathy in his reader's place. F.L. Lucas, *Style: The Art of Writing Well*, 59-60.

If you can't imagine yourself saying something aloud, then you probably shouldn't write it. That is not the same as saying, "Write the way you talk. If we all did that, civilization would be in even worse shape than it is. This is closer: Write the way you talk on your best day. Write the way you would like to talk." Kidder & Todd, *Good Prose* 124-125

The Principles of Super Clarity

- A. Readers absorb information best if they understand its significance as soon as they see it.
 - give them a context before inundating with details
 - provide a focus
 - make the info's structure explicit
 - begin with familiar info before moving to unfamiliar new info
- B. Readers absorb information best if its form (structure and sequence) mirrors its substance (logic of analysis, plot of story, theme of argument).
 - avoid default organizations

- C. Readers absorb information best if they can absorb it in pieces
- use headings, shorter paragraphs
 - use bullet points
 - shorter sentences
- D. Readers pay more attention if you approach your material from their perspective, not yours. Anderson & Terrell, *Thinking Like a Writer* 15-17.

Process

Liberate yourself from the delusion that ideas will come and fall in place if you just start writing. To write clearly you must have gathered your material and arranged it in some sort of order; you must also have thought through the relationship of one part to others, evaluated their relative importance, decided which one or two are primary, and worked out a logical plan of presentation. The novice might start writing immediately after finishing the research without first digesting, organizing, and considering the material. But time spent thinking, even before preparing an outline, may be the most worthwhile investment in the project. Gidi & Weihofen, *Legal Writing Style* 195-196.

Faults in English prose derive not much from lack of knowledge, intelligence or art as from lack of thought, patience or good will. Graves & Hodges, *The Reader Over Your Shoulder* 38.

Bibliography

Legal Writing:

Armstrong, Stephen V. & Terrell, Timothy P., *Thinking Like a Writer — A Lawyer's Guide to Effective Writing and Editing* (3rd ed.)

Garner, Bryan A., *Legal Writing in Plain English* (2nd ed.)

Garner, Bryan A., *The Elements of Legal Style* (2nd ed. 2002)

Garner, Bryan A., *The Winning Brief*

Garner, Bryan A., *The Redbook: A Manual on Legal Style* (3rd ed.)

Garner, Bryan A., *Dictionary of Legal Usage* (3rd ed.), by Bryan A. Garner

Gidi, Antonio & Weihofen, Henry, *Legal Writing Style*, (3rd ed. 1980)

Goldstein, Tom & Lieberman, Jethro K., *The Lawyer's Guide to Writing Well* (3rd ed. 2016)

Guberman, Ross, *Point Made* (2004)

General:

Dreyer, Benjamin, *Dreyer's English: An Utterly Correct Guide to Clarity and Style* (2019)

Farnsworth, Ward, *Farnsworth's Classical English Style* (2020)

Flesch, Rudolf & Loss, A.H., *The Classic Guide to Better Writing* (1996)

Fowler, H.W. (E. Gowers, ed.) *A Dictionary of Modern English Usage* (2d ed. 1965)

Garner, Bryan A., *Garner's American Usage* (2003)

Garner, Bryan A., *The Chicago Manual of Style*, 17th ed. (2017).

Garner, Bryan A., *The Chicago Guide to Grammar, Usage, and Punctuation* (2016)

Graves, Robert & Hodge, Alan, *The Reader Over Your Shoulder: A Handbook for Writers of English Prose* (first published 1943)

Kidder, Tracy & Todd, Richard, *Good Prose: The Art of Non-Fiction* (2013)

Lucas, F.L., *The Art of Writing Well* (first published 1955)

Pinker, Stephen, *The Sense of Style* (2014)

Strunk, Jr., William & White, E.B., *The Elements of Legal Style* (4th ed. 2000) (originally published in 1935).

Dictionaries: See Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, App. A—A Note on the Use of Dictionaries (2012).

Thesauruses: *Merriam-Webster online*, *Roget's*

And, of course, *Black's Law Dictionary*. Take care to consult the edition most likely to reflect the word's meaning at the relevant time.

Superior Court

Moderator

John D. Stant II, Esquire

City of Wilmington Law Department

Panelists

The Honorable Meghan A. Adams

Superior Court of the State of Delaware

The Honorable Paul R. Wallace

Superior Court of the State of Delaware

The Honorable Mary M. Johnston

Superior Court of the State of Delaware

Chancery Court

Moderator

Stephen A. Spence, Esquire
Baird Mandalas Brockstedt, LLC

Panelists

The Honorable Sam Glasscock III
Court of Chancery of the State of Delaware

The Honorable Joseph R. Slight III
Court of Chancery of the State of Delaware

How to Get Published

Douglas J. Cummings, Jr., Esquire
Kollias Law, LLC