

FUNDAMENTALS OF CIVIL LITIGATION 2022

LIVE SEMINAR AT DSBA WITH ZOOM OPTION

SPONSORED BY THE CIVIL LITIGATION SECTION OF THE
DELAWARE STATE BAR ASSOCIATION

WEDNESDAY, NOVEMBER 9, 2022 | 9:00 A.M. – 4:30 P.M.

6.0 hours of CLE credit for Delaware and Pennsylvania Attorneys

ABOUT THE PROGRAM

This course, one of the seven Fundamentals courses, will give an overview of civil litigation best practices for each of the courts in Delaware, from the filing of a complaint to the completion of an appeal.

PROGRAM HIGHLIGHTS

- Delaware Court of Common Pleas Practice
- U.S. District Court Practice
- Delaware Court of Chancery Practice
- Delaware Family Court Practice
- Delaware Supreme Court Practice
- Delaware Superior Court Practice
- Delaware Justice of the Peace Court Practice
- U.S. Bankruptcy Court Practice

Visit <https://www.dsba.org/event/fundamentals-of-civil-litigation-2022/>
for all the DSBA CLE seminar policies.

FUNDAMENTALS OF CIVIL LITIGATION 2022

MODERATOR

Sarah M. Ennis, Esquire
Morris James LLP

CLE SCHEDULE

9:00 a.m. – 9:45 a.m.

Delaware Court of Common Pleas Practice

The Honorable Monica A. Horton
Court of Common Pleas of the State of Delaware

Seth H. Yeager, Esquire
Reger Rizzo & Darnall LLP

9:45 a.m. – 10:30 a.m.

U.S. District Court Practice

The Honorable Sherry R. Fallon
United States District Court for the District of Delaware

Adam V. Orlacchio, Esquire
Blank Rome LLP

10:30 a.m. – 10:45 a.m. | Break

10:45 a.m. – 11:30 a.m.

Delaware Court of Chancery Practice

The Honorable Selena E. Molina
Court of Chancery of the State of Delaware

James H.S. Levine, Esquire
Troutman Pepper Hamilton Sanders LLP

11:30 a.m. – 12:15 p.m.

Delaware Family Court Practice

The Honorable Michael K. Newell
Family Court of the State of Delaware

Andrew W. Gonser, Esquire
Gonser and Gonser, P.A.

12:15 p.m. – 1:15 p.m. | Lunch (on your own)

1:15 p.m. – 2:00 p.m.

Delaware Supreme Court Practice

TBD

2:00 p.m. – 2:45 p.m.

Delaware Superior Court Practice

The Honorable Patricia A. Winston
Superior Court of the State of Delaware

William B. Larson, Esquire
Manning Gross & Massenburg LLP

2:45 p.m. – 3:00 p.m. | Break

3:00pm-3:45pm

Delaware Justice of the Peace Court Practice

The Honorable Susan Ufberg
*Justice of the Peace Court of the
State of Delaware*

William Patrick Brady, Esquire
The Brady Firm, P.A.

3:45 p.m. – 4:30 p.m.

U.S. Bankruptcy Court Practice

The Honorable John T. Dorsey
*United States of Bankruptcy for the
District of Delaware*

Eric J. Monzo, Esquire
Morris James LLP

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

Moderator

Sarah M. Ennis, Esquire
Morris James LLP

Delaware Court of Common Pleas Practice

The Honorable Monica A. Horton
Court of Common Pleas of the State of Delaware



Seth H. Yeager, Partner in Reger Rizzo & Darnall's Wilmington and Rehoboth Beach, Delaware offices, concentrates his practice in the area of civil litigation. He has extensive experience vigorously representing clients in civil litigation matters, as well as subrogation actions. He has also handled appellate matters before the Delaware Supreme Court. Mr. Yeager also focuses his practice on representing creditors in multiple jurisdictions and possesses significant trial experience in this area of the law. Mr. Yeager regularly appears in the Delaware Court of Common Pleas in all Delaware counties.

While in law school, Mr. Yeager interned for the Office of the Public Defender in Ft. Lauderdale, FL and also clerked for Pepco Holdings, Inc. in Wilmington, DE. After graduating from Widener University School of Law and Business Administration in 2010, he served as the Judicial Law Clerk to The Honorable Charles W. Welch, III and The Honorable Anne Hartnett Reigle of the Kent County Court of Common Pleas in Dover, DE. Mr. Yeager also previously worked with the Office of the Child Advocate of Delaware where he served as Guardian Ad Litem for children in New Castle County, DE Family Court. Mr. Yeager is also a member of the Defense Counsel of Delaware.

Education

J.D., Widener University School of Law, (2010)

M.B.A., Widener University School of Business Administration, (2010)

B.A., University of Pittsburgh, (2005)

Publications & Press Mentions

Author, [**Delaware Minor Tort Claim Settlement Approval Process Requirements Become More Rigorous.**](#) [**Reger Rizzo & Darnall Client Alert.**](#) (February 2022).

Featured, [**Yeager joins Reger Rizzo & Darnall**](#). Delaware Business Now. (December 19, 2016)

Featured, [**Civil Litigation Associate Joins Reger Rizzo's Wilmington Office**](#). The Delaware Law Weekly. (December 6, 2016)

Author, *In re New Motor Vehicles Canadian Export Antitrust Litigation: Examining the Requisite Levels of Inquiry into the Merits of a Case at the Class Certification Stage*. Delaware Journal of Corporate Law. (2009)



Hon. Monica A. Horton



- Judge, Court of Common Pleas
 - Civil Assignment Judge
- Adjunct Professor, University of Delaware PCS

EDUCATION

- University of Delaware (B.A. Biology, B.S.N. Nursing)
- Temple University Beasley School of Law



Front row: J. Robert H. Surles; J. Kenneth S. Clark, Jr.; C.J. Alex Smalls (ret.); J. Anne Hartnett; J. Carl C. Danberg (C.J. 2021-)

Back row: J. Monica A. Horton; J. Bradley V. Manning; J. Kathleen Amalfitano; J. Rae Mims

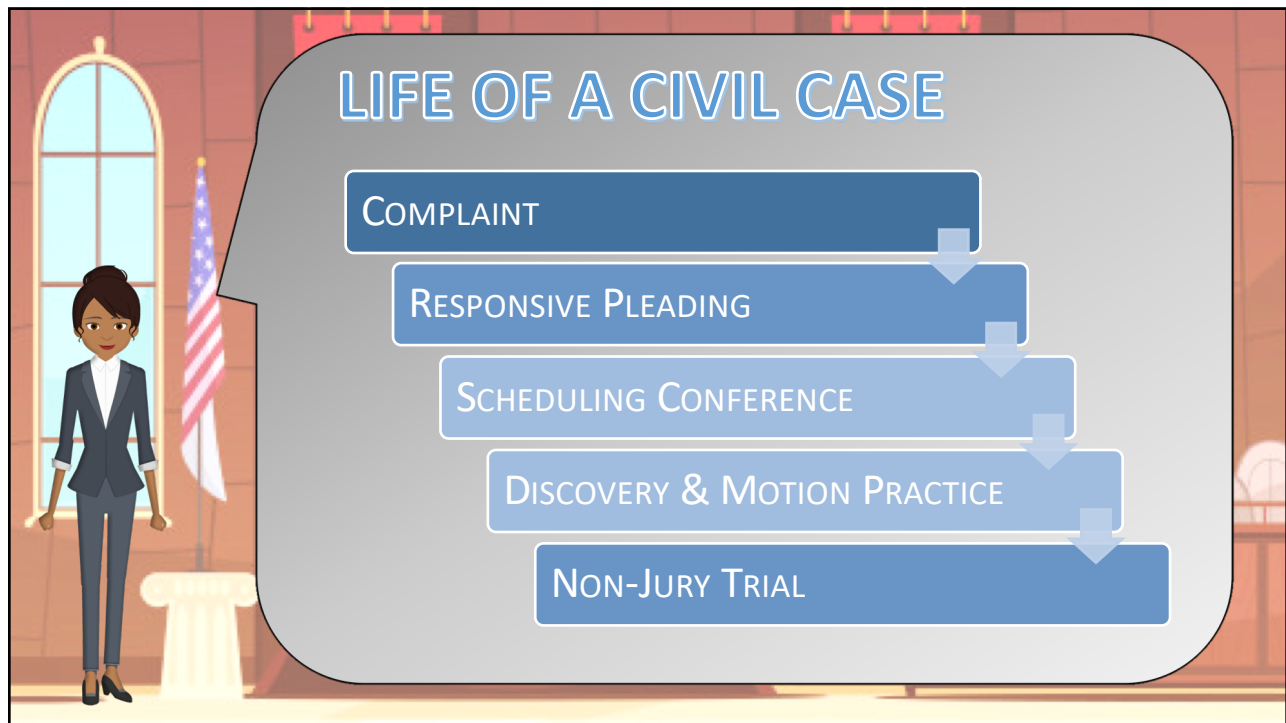


Judge Katharine L. Mayer
(2021-)

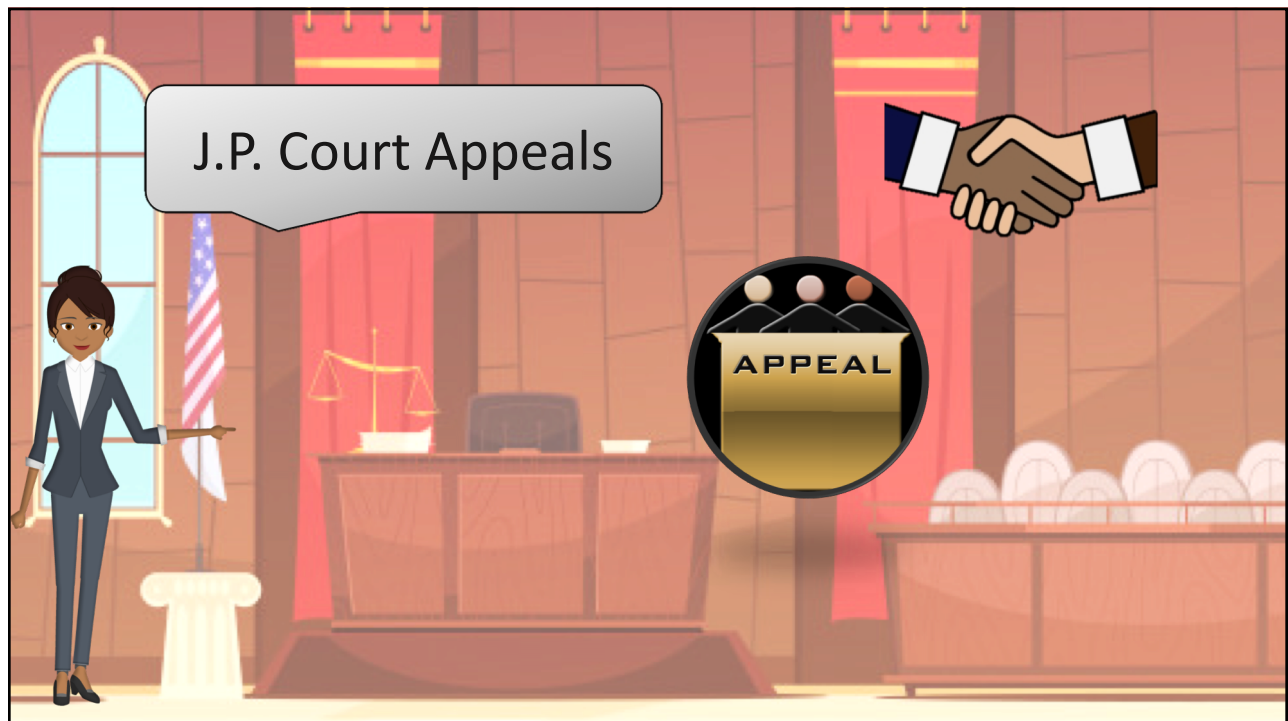
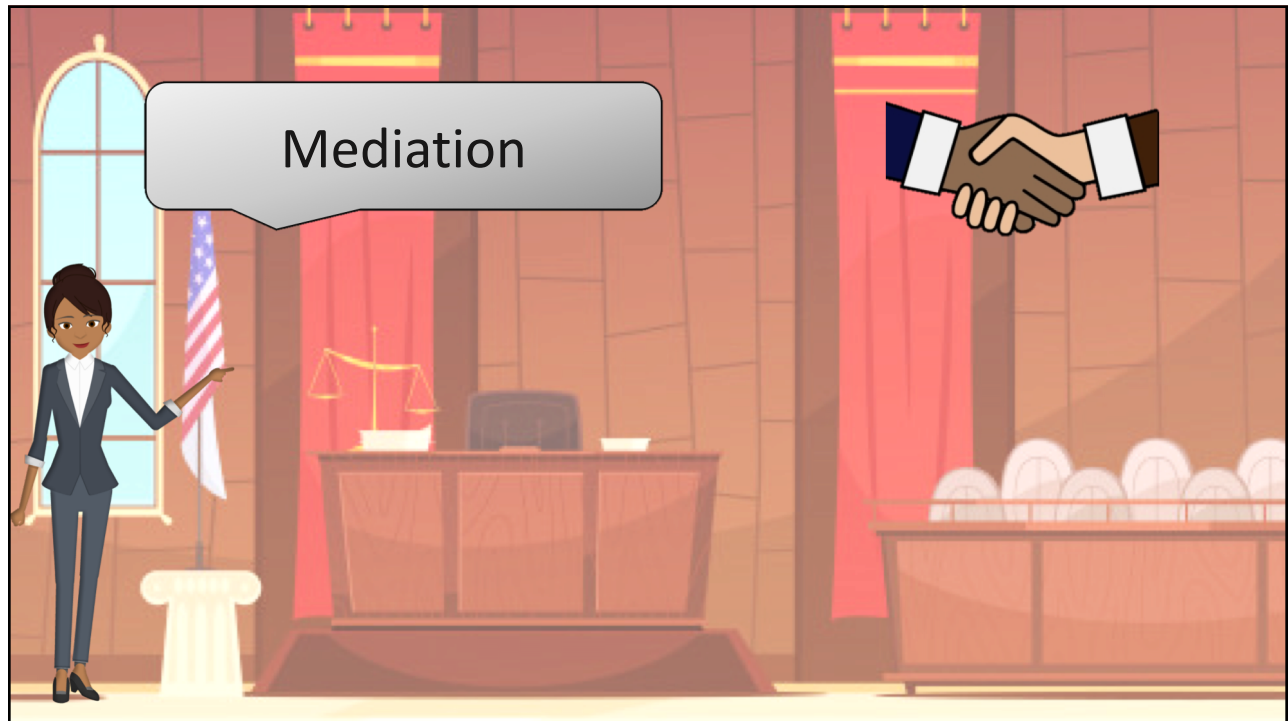


Commissioners: Emily Ferrell (NCC); Gregory Babowal (KC); Donald R. Bucklin (SC)



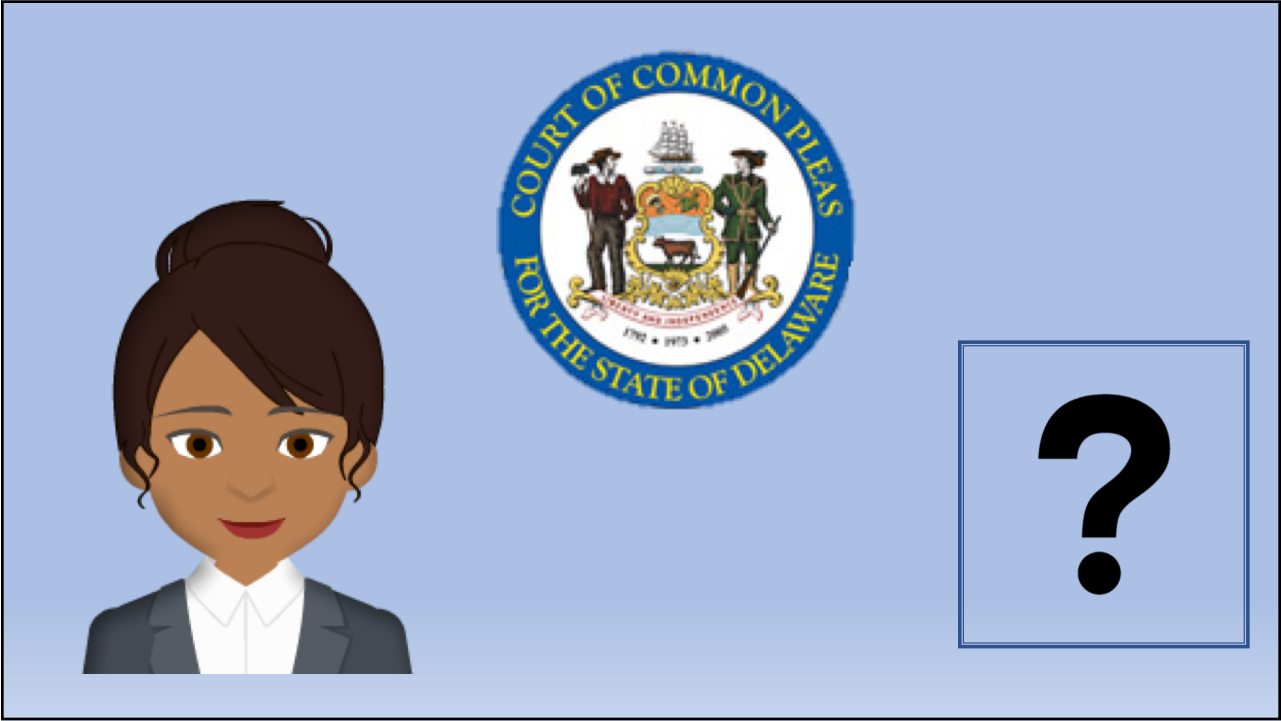












U.S. District Court Practice

The Honorable Sherry R. Fallon
U.S. District Court for the District of Delaware

Adam V. Orlacchio, Esquire
Blank Rome LLP

U.S. District Court Practice

The Honorable Sherry R. Fallon, Judge
U.S. District Court for the District of Delaware

Adam V. Orlacchio, Esquire

Blank Rome LLP

FEDERAL PRACTICE IN THE DISTRICT OF DELAWARE¹

I. ROLE OF DELAWARE COUNSEL

- A. Why do we have Delaware counsel?
- B. Delaware counsel are not just a mail drop
 - 1. Compliance with Rules and Practices of D. Del. - required and expected
 - a. Advise
 - b. Guide
 - c. Enforce
 - 2. Help the Court
- C. Must ensure that all submissions are in accord with D. Del. Local Rules, Federal Rules of Civil Procedure and each district judge's rules and practices
 - 1. Counsel must be familiar and fully informed of each Judge's specific practices
 - 2. Read local rules
 - 3. Visit each judge's website: www.deduscourts.gov/ChambersMain.htm
- D. Delaware counsel are gate keepers and should not risk credibility
- E. Written work must be read and reviewed by Delaware counsel with a critical eye
- F. Advise non-Delaware counsel to tone down rhetoric or inflammatory language
- G. All submissions must pass the "red-faced" test
- H. Delaware counsel must volunteer to be sounding board for pro hac counsel
- I. Extensions should generally be agreed to by Delaware counsel
 - 1. Reasonable extension requests should be liberally granted
 - 2. There is no need to condition requests -no quid pro quo

¹ "Federal Practice in the District of Delaware" was presented in 2015 by Judge Sleet and Monte Squire, Esq., and this outline is their outline with some modest updating.

J. Best Practices

1. Meet and confer
2. Be concise and focus arguments/issues for Court
3. Don't waste time
4. Educate pro hac counsel
5. Make realistic requests

II. ELECTRONIC FILING

- A. Delaware counsel and their respective firms/staff are responsible for knowing CM-ECF procedures, each Judge's practices and procedures
- B. All information is posted and available on D. Del. website:

www.ded.uscourts.gov

1. Pro Hac attorney must register for notice rights
2. Follow Fed. R. Civ. P., D. Del. Local Rules and Standing Orders
3. CM/ECF Guidelines
4. Guidelines for use of Courthouse Facilities (Tab 2)

III. COURT'S DOCKET

- A. Complex cases
1. >50% Patent and IP cases
- B. Large number of filings (Tab 3)
1. # 1 weighted case average during recent years
 2. Large civil docket (>1200 new filings in 2015)
- C. Each Judge has large docket/case load- mostly complex cases
1. >300 open civil cases per judge
 2. >175 patent/IP cases per judge
 3. Trials, civil motions, discovery, claim construction, scheduling, duty

matters, criminal cases

4. Judicial reporting obligations - CJRA; 6 month motions; bench trials/bankruptcy appeals/social security appeals > 6 months old; cases > 3 years old

D. Very limited resources

1. Small court - 4 district judges, 3 magistrate judges
2. Small staff
3. Vastly outnumbered by counsel

IV. COURTROOM DECORUM, Demeanor AND ETHICS

A. There is a duty of candor to the Court and opposing counsel.

1. See Judge Sleet's *Santarus* opinion (April 14, 2010) (Tab 4)

B. Duty of fairness to opposing counsel

C. Impartiality and decorum of Court

1. Never make effort to communicate with Court Ex Parte
2. Even on Scheduling Matters
3. If counsel won't agree to call together, then contact the Court in writing
(depending on each Judge's procedures) and cc: all counsel

D. Stand when Judge and Jury enter and exit courtroom

E. No talking while standing (or packing up, moving) ("R-E-S-P-E-C-T")

F. No first names*

G. Promptness and punctuality is expected

1. Be sitting in courtroom at least 15 minutes (better 30) prior to hearing time*

H. Dress code for lawyers - modest and professional

I. Maintain Confidence, Politeness and Courtesy

J. Well of the courtroom- Do not enter without permission of Judge

K. Always address Judge as Your Honor*

1. Don't interrupt the judge
2. Always be respectful to the Court in all actions at all times
3. Never address opposing counsel unless through the judge or judge directs you to do it

V. TRIAL PRACTICE IN FEDERAL COURT

A. The focus of the Court is three-fold:

1. Value jurors' time
2. Value the Court's limited time and resources
3. Fed. R. Civ. P. 1-"secure the just, speedy, and inexpensive determination of every action and proceeding"

B. Jury Trial Practice and Courtroom Presentation

1. Timed trials
2. Evidence/Exhibits
 - a. Judge expects the parties will exchange witness and exhibit lists prior to trial.
 - b. Judge also expects that the parties will exchange final witness order and documents for those witnesses 1-2 days before they will testify
 - c. Issues must be raised in advance
 - d. Exhibits need to be marked by the lawyers
 - e. Demonstratives- Need to be exchanged so objections can be worked-out in advance
3. Witnesses
 - a. Should be identified in the pretrial order

- b. All witnesses are sequestered except a corporate representative and experts
- 4. Documents identified in the pretrial order
 - a. Documents cannot be admitted except through witness testimony
 - b. Documents cannot be shown to the jury unless they are formally admitted
- 5. Impeachment by deposition
 - a. Deposition excerpts
 - b. Designations need to be exchanged and disputes brought to the Court's attention prior to the time they are going to be played
 - c. Video excerpts need to be exchanged even sooner so they can be edited
- 6. Transition statements
- 7. Expert Testimony- "Beyond the Scope" Objections
- 8. Jury Instructions
 - a. Remember the judge has to read these out loud
 - b. Be concise and give only what is necessary and what is important
- 9. Order of presentation
 - a. Direct
 - b. Cross
 - c. Re-Direct
 - d. No re-cross, unless exceptional circumstance arises (this is very rare)

VI. OPENING STATEMENTS

A. Preliminary Considerations

1. Trying a case is not a "brief with legs;" very different skill set
 2. Remember jurors bring to the decision making process
 3. Most people learn visually (so use simple, bold, graphic demonstratives)
 4. What people generally remember:
 - a. Primacy = What they see/hear first (i.e., the first impression)
 - b. Recency = What they saw/heard last
 - c. Frequency = Repeat concepts (i.e., repeat the most important concepts; keep this organic from the witnesses)
- B. Opening Statement- Your job in your opening statement is to tell a credible story that will (eventually) be supported by the evidence you present
1. First consideration = What is your theme?
 2. Use your witnesses to present the evidence that proves your theme
 3. Use your closing to state your theme again, perhaps with more detail
 4. Read the transcript of your opening statement to draft your closing argument, because your opening statement is an essential predicate to your closing argument.
 5. Remember that the jury is "cold" to your story, and you need to warm them up gracefully
 6. To test your theme, find no more than 10 key documents, and use them to draft your story
 7. Purpose of an Opening Statement
- C. Using Demonstratives
1. First find out if you are allowed, and if you are, under what conditions
 2. Share with opposing counsel (best practice)
 3. Whether or not exhibits be used (not usually, unless it is an obvious one)

that both sides agree will eventually be admitted into evidence)

4. Limit the number of demonstratives used in opening statement

VII. DIRECT EXAMINATION

A. Fact Witnesses

B. Expert Witnesses

C. Case-in-Chief / Rebuttal

1. Take the time to lay a foundation with each witness, for each document or piece of evidence, including experts

D. Transition Statements

1. Use them (all of the Judges like them)
2. Prepare enough so that when your witness gives you the answer you want, you know when to stop
3. Watch the jury when the witness is answering your questions so you can gauge whether they are (1) paying attention and (2) anything makes a particular impact

VIII. CROSS EXAMINATION

A. Preliminary Considerations

1. Structure the exam according to your purpose
2. Less is more
3. Cover less material very slowly
4. Only ask leading questions
5. Keep control
6. Questions should be longer than answers
7. Consider whether you need to lay a foundation
8. How to Impeach (Know each judge's preference)

B. Experts on Cross Examination

1. Less is almost always more
2. Expert is not going to change their mind or opinion, live with it because it is pointless to argue
3. Limit your cross examination to the likely productive areas:

C. Redirect

1. Limited to the scope of cross
2. Prepare in advance
3. Typical purpose: showing witness rest of document/testimony that was used in attempted impeachment
4. It is unlikely there will be any questioning after redirect

IX. CLOSING STATEMENTS

A. Building Your Closing Statement

1. "Rule of 3" - most people understand concepts in groups of three, so break your theme or important concept into three parts
2. Before drafting your closing argument, put yourself in the jury box and be thoughtful about what they learned from your trial presentation
3. Go back and read your opening statement and make sure you delivered what you promised

X. BASIC TRIAL DO'S AND DON'TS FOR ATTORNEYS

A. Opening Statements

1. Don't skimp on your opening statement in a bench trial, because Judge wants to hear your theme
2. Not many lawyers give a good theme or tell a good story, whether it's a jury or bench trial

3. Don't use demonstratives in an opening unless both sides agree on them
- B. Exhibits/Evidence
1. All exhibits must come through a witness
- C. Direct Exam
1. Don't make the facts boring
 2. Don't lead the witness- it shows the judge and the jury that your witness is not knowledgeable, not credible
 3. Don't ask unnecessary preliminary questions (e.g., what is your address)
 4. Don't allow your witness to be friendly and cooperative on direct, but evasive and non-responsive on cross
- D. Cross Examination
1. Impeachment opportunities are rare and lawyers try it too much
 2. Bad impeachment can do more harm than good
 3. Must give witness opportunity to refresh recollection
- E. Closing Statements
1. Try to tell the jury which 1-2 exhibits are the most important. If you can, tie it to a question on a jury verdict form
 2. Keep it simple
- X. PROCEDURES / CASE ADMINISTRATION**
- A. Regularly review the "Local Rules & General Orders" issued by the Court to ensure compliance with Court's expectations.
1. See <http://www.ded.uscourts.gov/court-info/local-rules-and-orders>
- B. Review the web page for each Judge for applicable forms, guidelines and standing orders. Don't assume each Judge follows the same procedures.

1. See e.g. <http://www.ded.uscourts.gov/judge/judge-richard-g-andrews>

C. Patent vs. Non-Patent cases

1. Most Judges have adopted different pre-trial procedures for patent cases and non-patent cases. This can include distinct approaches to:
 - a. Scheduling Orders (Tabs 5 & 6)
 - b. Pretrial Orders
 - c. Voir Dire Procedures
 - d. Jury Instructions
2. Be familiar with Chief Judge Stark's new (2014) patent procedures (Tab 7)
 - a. <http://www.ded.uscourts.gov/judge/chief-judge-leonard-p-stark>

D. Be familiar with the Default Standards for discovery

1. Default Standards for Discovery or Electronically Stored Information (Tab 8)
2. Default Standard for access to Source Code (Tab 8)
 - a. <http://www.ded.uscourts.gov/court-info/local-rules-and-orders>

TAB-1



Sherry R. Fallon was appointed as a U.S. Magistrate Judge for the District of Delaware on April 25, 2012. She is a former partner in the Wilmington, Delaware law firm of Tybout, Redfearn & Pell, where she practiced for 26 years as a general litigator with a jury trial practice in Delaware state and federal courts.

Judge Fallon has been a member of the American Board of Trial Advocates (ABOTA), since 2003, and served as President of the Delaware Chapter from 2009-2010. She is a Fellow of the American Bar Foundation. She is a member of the Richard S. Rodney Inn of Court, the Richard K. Herrmann Technology Inn of Court, and the Federal Magistrate Judges Association.

Judge Fallon earned her Bachelor of Arts degree from the University of Pennsylvania in 1983. She is a 1986 graduate of the Delaware Law School of Widener University.

TAB-2

BLANKROME

Adam V. Orlacchio | Partner
Business Litigation

1201 N. Market Street
Wilmington, DE 19801
+1.302.425.6431
orlacchio@blankrome.com



With a focus on Delaware corporate litigation, Adam Orlacchio maintains a national litigation practice and provides legal counsel to clients on a wide range of business issues. Adam takes pride in providing his clients with thorough pre-litigation counseling and attempting to obtain business resolutions in a timely and cost-effective manner. He frequently advises clients on complex commercial, corporate, and employment litigation matters, including:

- breach of contract matters
- breach of fiduciary duty and corporate governance claims
- shareholder/stockholder disputes, including derivative, appraisal, and quasi-appraisal claims
- alternative entity disputes
- merger and acquisition litigation
- requests to inspect companies' books and records
- business torts
- class actions
- mass torts and products liability defense
- employment discrimination, harassment, and retaliation litigation
- wage/hour compliance, employee separations/terminations, and personnel policies/procedures
- patent infringement and intellectual property
- trade secret and non-compete litigation
- real estate and construction litigation
- cybersecurity and data privacy

Adam regularly represents clients in both state and federal courts nationwide, particularly:

- the Delaware Court of Chancery, which is internationally recognized as the preeminent forum for the resolution of corporate disputes and development of corporate law
- the Superior Court for the State of Delaware, including its Complex Commercial Litigation Division
- the United States District Court for the District of Delaware

Adam has also handled appeals to the Supreme Court for the State of Delaware and before the United States Court of Appeals for the Third Circuit.

Adam is experienced with motions practice, oral argument, written discovery and taking/defending depositions, trial practice, post-trial work, and appellate work. He also has experience resolving litigation for clients via alternative dispute resolution, such as mediation and arbitration.

Outside The Firm

When he is away from the office, Adam focuses on spending time with his wife, daughter, and son. Adam is also an avid sports fan and enjoys playing pick up basketball.

Select Engagements

- Jury trial experience in the United States District Court for the District of Delaware representing a defendant majority shareholder against a breach of contract action asserted by a minority shareholder; post-trial motions for judgment as a matter of law granted in favor of client.
- Obtained dismissal with prejudice in Delaware's Court of Chancery of a putative shareholder class action suit filed against Directors alleging breach of fiduciary duties in a merger transaction.
- Obtained a significant monetary recovery for a global chemical company in an International Centre for Dispute Resolution arbitration governed by Delaware law.
- A minority LLC member, obtained a Status Quo Order to immediately restore client as the sole provider of the LLC's management/operations; Court also granted client's Motion to Expedite and ordered a full trial on the merits of all of client's claims to be held within 60 days; matter resolved via settlement.
- Bench trial experience in the United States District Court for The District of Delaware representing a maritime defense contractor in a suit brought against the United States of America alleging wrongful termination of a government contract; matter resolved during trial via a settlement for \$5.2 million.
- Successfully obtained a judgment in the Delaware Court of Chancery for the full amount of damages sought by members of a limited liability company based on breaches of fiduciary duties and fraudulent inducement claims asserted against the company's managing member.
- Lead counsel in a construction defect arbitration before the American

- Arbitration Association; matter resolved via settlement.
- A Delaware limited liability company and its managing members, defended in an action alleging breaches of fiduciary duties and breaches of the company's operating agreement; matter resolved via settlement.
- A shipbuilding contractor, defended in a breach of contract and conspiracy action before the Superior Court of Delaware stemming from a \$122 million shipbuilding project; matter resolved via settlement.
- Successfully moved for reconsideration of an order issued by the United States District Court for the District of Delaware that had effectively revised a \$1 verdict against Blank Rome's client to be a \$200,000 judgment.
- An international roofing supply manufacturer, defended in breach of contract, negligence, and products liability actions in the U.S. District Court for the District of Maryland and the Circuit Court for Baltimore County, Maryland; matters resolved via settlement.
- An apparel company, in a commercial arbitration before the American Arbitration Association concerning a software development dispute; matter resolved via settlement.
- A distributor of agricultural products, in Pennsylvania state court and before OSHA; matter resolved via settlement.
- A commercial data services company, in a breach of contract, breach of warranty and negligence action in the United States District Court for the Eastern District of Virginia; matter resolved via settlement.
- A global chemical manufacturer as a member of a national coordinating legal team, defended in multidistrict environmental pollution and product liability litigation involving water contamination.
- A cemetery services company, defended in a labor and employment class action suit involving discrimination, harassment, retaliation, and wage/hour claims; matter resolved via settlement.
- Residential and commercial mortgage lenders, in federal and state courts throughout the nation and successfully obtained dismissals of various federal and state law claims.
- Successfully argued before the Delaware Board of Examiners of Private Investigators and Private Security Agencies and convinced the Board to unanimously agree to rescind its intent to revoke client's private investigator license.
- Obtained settlement for an employer in connection with a sexual harassment charge before the EEOC.
- Obtained settlement for an employer in connection with a disability discrimination charge before the EEOC.
- A manufacturer of medical devices, in prosecuting violations of non-compete and non-solicit agreements and theft of trade secrets and confidential information in state and federal courts throughout the United States.
- A payment processing company, in prosecuting violations of non-compete and non-solicit agreements.

Admissions

- Pennsylvania

- 
- New Jersey
 - United States Court of Appeals for the Third Circuit
 - U.S. District Court - Eastern District of Pennsylvania
 - U.S. District Court - New Jersey
 - Delaware
 - U.S. District Court - Delaware

Memberships

- American Bar Association
- Delaware State Bar Association
- Pennsylvania Bar Association

Education

- Susquehanna University, BA, summa cum laude
- Rutgers University School of Law, Camden, JD, honors

Recognitions

In 2016, Adam was elected to serve as chair for the Litigation Section of the Delaware State Bar Association. He previously served one term as vice-chair, one term as secretary, and two terms as a council member for the Section. Adam remains active with the Section, currently serving as its immediate-past chair.

Professional Activities

Adam handles a number of pro bono matters each year on behalf of indigent clients. In conjunction with the SeniorLaw Center in Philadelphia, Adam represents senior citizens facing eviction and defends their interests in Landlord/Tenant Court in order to keep the seniors in their homes. He has also taught a landlord/tenant law continuing legal education seminar with Philadelphia VIP, as well as volunteered at the Landlord/Tenant Help Center. In recognition of his service, Adam has been named to the First Judicial District of Pennsylvania Pro Bono Roll of Honor every year since 2011.

Adam also serves on Blank Rome's Pro Bono Committee for its Wilmington, Delaware, office and previously served on the Firm's Associates Committee.

TAB-3

Table C-3.
U.S. District Courts—Civil Cases Commenced, by Nature of Suit and District,
During the 12-Month Period Ending June 30, 2022

| Circuit and District | Total Civil Cases | U.S. Cases | | | | | | | | | | | | | | | | | Private Cases | | | | | | | | | | | | | | |
|----------------------|-------------------|------------------------|----------|---------------|--------------|--------------|---------------------------|-----------------------|---------------|---------------------|------------------|---------------------|---------------------------------|---------------------------|-------------|-----------------|---------------------------|----------|---------------|-------------------|------------------------|-------------------------------|-----------------------|--------------------|--------------|--------------------|-----------------------|---------------|-----------------------------------|-----------------------|-------------|------------|---------------------|
| | | Total U.S. Civil Cases | Contract | Real Property | Tort Actions | Civil Rights | Prisoner Petitions | | | | | | | | | | Total Private Civil Cases | Contract | Real Property | FELA ¹ | Marine Personal Injury | Motor Vehicle Personal Injury | Other Personal Injury | Other Tort Actions | Civil Rights | Prisoner Petitions | | | | Intellectual Property | Labor Suits | All Others | |
| | | | | | | | Motion to Vacate Sentence | Habeas Corpus General | Death Penalty | Prison Civil Rights | Prison Condition | Mandamus and Others | HABEAS Corpus - Alien Detainees | Forfeitures and Penalties | Labor Suits | Social Security | | | | | | | | | | All Others | Habeas Corpus General | Death Penalty | Prison Condition and Civil Rights | | | | Mandamus and Others |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Total | 293,762 | 36,961 | 306 | 334 | 1,826 | 1,584 | 3,265 | 2,127 | 5 | 847 | 328 | 694 | 378 | 1,052 | 231 | 13,347 | 10,639 | 256,801 | 25,808 | 3,417 | 313 | 735 | 4,998 | 93,529 | 3,866 | 38,008 | 11,011 | 105 | 26,175 | 845 | 12,384 | 12,949 | 22,680 |
| DC | 3,619 | 2,293 | 69 | - | 35 | 288 | 13 | 38 | - | 138 | 3 | 20 | 1 | 5 | 4 | 34 | 1,645 | 1,328 | 65 | 20 | 5 | - | 26 | 197 | 38 | 419 | 35 | - | 105 | 5 | 60 | 102 | 249 |
| 1st | 4,741 | 819 | 8 | 10 | 53 | 25 | 72 | 22 | - | - | 1 | 7 | 35 | 50 | 13 | 279 | 244 | 3,922 | 525 | 265 | 4 | 39 | 59 | 955 | 102 | 816 | 137 | - | 177 | 11 | 186 | 255 | 391 |
| ME | 409 | 93 | - | 3 | 5 | - | 8 | - | - | - | - | - | - | 2 | - | 66 | 9 | 316 | 32 | 59 | - | 4 | 4 | 32 | 3 | 87 | 5 | - | 40 | - | 7 | 24 | 19 |
| MA | 2,411 | 378 | 4 | 3 | 29 | 14 | 15 | 5 | - | - | - | 4 | 31 | 4 | 9 | 74 | 188 | 2,033 | 322 | 85 | 4 | 27 | 28 | 350 | 76 | 412 | 92 | - | 78 | 5 | 145 | 175 | 236 |
| NH | 728 | 68 | 1 | 1 | 1 | 3 | 6 | 17 | - | - | 1 | 1 | 2 | 5 | 1 | 16 | 13 | 680 | 36 | 15 | - | 1 | 5 | 418 | 8 | 88 | 19 | - | 21 | 1 | 12 | 11 | 25 |
| RI | 491 | 106 | 3 | 1 | 2 | 1 | 7 | - | - | - | - | 1 | 2 | 4 | 1 | 66 | 18 | 385 | 55 | 48 | - | 7 | 10 | 43 | 6 | 97 | 10 | - | 27 | 2 | 11 | 25 | 44 |
| PR | 702 | 174 | - | 2 | 16 | 7 | 38 | - | - | - | - | 1 | - | 35 | 2 | 57 | 18 | 528 | 80 | 58 | - | - | 14 | 112 | 9 | 132 | 11 | - | 11 | 3 | 11 | 20 | 67 |
| 2nd | 24,085 | 4,707 | 7 | 19 | 170 | 96 | 201 | 86 | - | 10 | 8 | 76 | 58 | 80 | 21 | 1,534 | 2,341 | 19,378 | 1,873 | 282 | 119 | 33 | 373 | 1,027 | 440 | 6,390 | 434 | - | 1,313 | 78 | 1,531 | 2,140 | 3,345 |
| CT | 1,732 | 321 | 1 | 3 | 13 | 30 | 18 | 39 | - | 1 | 5 | 3 | - | 19 | 5 | 150 | 34 | 1,411 | 160 | 16 | 12 | 2 | 30 | 121 | 56 | 488 | 29 | - | 194 | - | 76 | 94 | 153 |
| NY,N | 1,528 | 334 | - | - | 13 | 7 | 24 | 2 | - | - | - | - | - | 12 | 2 | 248 | 26 | 1,194 | 82 | 16 | 5 | - | 10 | 88 | 26 | 413 | 115 | - | 293 | - | 40 | 47 | 81 |
| NY,E | 7,426 | 1,590 | 1 | 4 | 75 | 21 | 34 | 13 | - | 3 | 1 | 82 | - | 7 | 7 | 253 | 1,509 | 5,436 | 429 | 133 | 47 | 17 | 151 | 356 | 122 | 1,316 | 94 | - | 174 | 33 | 449 | 984 | 1,131 |
| NY,S | 11,483 | 1,212 | 2 | 3 | 50 | 22 | 89 | 18 | - | 2 | 2 | 11 | 26 | 14 | 6 | 276 | 691 | 10,271 | 1,114 | 100 | 54 | 12 | 180 | 373 | 215 | 3,910 | 135 | - | 433 | 44 | 903 | 972 | 1,846 |
| NY,W | 1,668 | 749 | 3 | 2 | 16 | 12 | 31 | 14 | - | 4 | - | - | 32 | 24 | 1 | 579 | 31 | 919 | 78 | 15 | 1 | 2 | 17 | 90 | 16 | 220 | 57 | - | 208 | 1 | 60 | 32 | 124 |
| VT | 248 | 101 | - | 7 | 3 | 4 | 5 | - | - | - | - | - | - | 4 | - | 28 | 50 | 147 | 12 | 2 | - | - | 5 | 21 | 5 | 63 | 4 | - | 11 | - | 3 | 11 | 10 |
| 3rd | 26,302 | 2,126 | 19 | 32 | 138 | 116 | 163 | 282 | - | 93 | 19 | 13 | 31 | 35 | 23 | 744 | 426 | 24,175 | 2,127 | 187 | 65 | 29 | 728 | 8,542 | 450 | 3,746 | 1,839 | 9 | 1,959 | 19 | 1,693 | 1,001 | 2,584 |
| DE | 1,819 | 45 | - | - | 3 | 4 | 1 | 1 | - | 1 | - | - | - | 1 | - | 25 | 9 | 1,774 | 151 | 6 | - | 1 | 3 | 47 | 74 | 143 | 30 | - | 104 | - | 866 | 30 | 319 |
| NJ | 13,311 | 836 | 10 | 3 | 57 | 49 | 45 | 94 | - | 32 | 7 | 4 | 8 | 4 | 10 | 278 | 237 | 12,475 | 786 | 71 | 45 | 14 | 283 | 7,067 | 210 | 1,080 | 184 | - | 543 | 1 | 489 | 418 | 1,284 |
| PA,E | 5,500 | 466 | 5 | 2 | 50 | 28 | 53 | 12 | - | 4 | 1 | 6 | 4 | 2 | 4 | 170 | 127 | 5,432 | 728 | 61 | 19 | 3 | 324 | 879 | 102 | 1,242 | 355 | 6 | 498 | 13 | 238 | 328 | 836 |
| PAM | 2,105 | 469 | 2 | 5 | 11 | 10 | 36 | 161 | - | 55 | 5 | 3 | 17 | 4 | 5 | 162 | 23 | 1,606 | 144 | 18 | - | - | 61 | 107 | 28 | 466 | 177 | - | 339 | 3 | 39 | 70 | 134 |
| PA,W | 2,982 | 248 | 1 | 14 | 13 | 16 | 22 | 14 | - | - | 6 | - | 2 | 18 | 3 | 111 | 28 | 2,734 | 292 | 19 | 1 | 7 | 54 | 347 | 35 | 786 | 292 | 3 | 474 | 2 | 59 | 154 | 209 |
| VI | 185 | 30 | 1 | 8 | 2 | 3 | 6 | - | - | 1 | - | - | - | 6 | 1 | - | 2 | 155 | 28 | 12 | - | 4 | 1 | 95 | 1 | 9 | 1 | - | 1 | - | 2 | 1 | 2 |
| 4th | 16,714 | 3,745 | 21 | 14 | 143 | 120 | 475 | 883 | 1 | 95 | 70 | 109 | 18 | 107 | 21 | 1,265 | 703 | 12,969 | 1,375 | 375 | 7 | 42 | 412 | 2,315 | 204 | 1,988 | 805 | 2 | 2,717 | 127 | 520 | 892 | 1,218 |
| MD | 3,427 | 790 | 8 | 3 | 31 | 35 | 66 | 3 | - | 1 | - | 16 | 2 | 16 | 6 | 238 | 385 | 2,637 | 312 | 63 | 1 | 5 | 121 | 285 | 65 | 449 | 121 | - | 444 | 63 | 141 | 245 | 322 |
| NC,E | 1,571 | 548 | - | 3 | 5 | 13 | 66 | 116 | - | 20 | 41 | 59 | - | 18 | 3 | 188 | 36 | 1,023 | 125 | 14 | - | 15 | 8 | 60 | 18 | 172 | 103 | - | 368 | 3 | 19 | 46 | 74 |
| NC,M | 948 | 304 | 1 | 1 | 7 | 10 | 96 | 24 | - | 4 | - | 1 | - | 14 | - | 114 | 32 | 644 | 64 | 9 | - | - | 12 | 37 | 11 | 109 | 54 | - | 237 | - | 23 | 34 | 54 |
| NC,W | 1,136 | 338 | - | 3 | 8 | 11 | 52 | 8 | - | 1 | - | 1 | - | 37 | 1 | 185 | 31 | 798 | 112 | 8 | 1 | - | 9 | 35 | 15 | 248 | 42 | - | 105 | - | 38 | 71 | 114 |
| SC | 4,309 | 523 | 4 | 3 | 35 | 4 | 54 | 71 | 1 | 2 | 3 | - | - | 11 | - | 286 | 49 | 3,786 | 357 | 105 | 2 | 14 | 151 | 1,839 | 34 | 317 | 179 | 2 | 508 | 3 | 42 | 244 | 171 |
| VA,E | 2,979 | 466 | 7 | 1 | 39 | 31 | 86 | 2 | - | 4 | 2 | 8 | 16 | - | 8 | 135 | 157 | 2,483 | 235 | 37 | 3 | 7 | 50 | 114 | 39 | 453 | 186 | - | 510 | 53 | 235 | 157 | 404 |
| VA,W | 1,095 | 216 | - | - | 4 | 5 | 26 | 41 | - | 23 | - | 3 | - | 3 | 1 | 89 | 21 | 879 | 50 | 113 | - | - | 25 | 42 | 15 | 106 | 71 | - | 355 | - | 9 | 29 | 34 |
| WV,N | 846 | 372 | 1 | - | 5 | 5 | 19 | 253 | - | 31 | 8 | 21 | - | 1 | - | 21 | 7 | 274 | 59 | 16 | - | - | 18 | 22 | 1 | 37 | 24 | - | 46 | 3 | 12 | 16 | 20 |
| WV,S | 603 | 158 | - | - | 9 | 6 | 10 | 85 | - | 9 | 16 | - | - | 7 | 2 | 29 | 5 | 445 | 81 | 10 | - | 1 | 18 | 81 | 6 | 67 | 25 | - | 98 | 2 | 1 | 50 | 25 |
| 5th | 29,094 | 3,213 | 45 | 47 | 232 | 141 | 555 | 220 | 3 | 112 | 5 | 296 | 46 | 110 | 20 | 553 | 820 | 25,881 | 7,238 | 690 | 22 | 234 | 1,319 | 2,419 | 408 | 2,840 | 1,786 | 28 | 3,513 | 66 | 2,196 | 1,030 | 2,124 |
| LA,E | 2,681 | 116 | 6 | 2 | 26 | 8 | 15 | 2 | - | - | - | 8 | - | 4 | - | 23 | 22 | 2,565 | 1,031 | 16 | 6 | 143 | 188 | 453 | 76 | 175 | 126 | 1 | 190 | 2 | 19 | 64 | 75 |
| LAM | 845 | 37 | - | - | 6 | - | 4 | - | - | - | - | 1 | 1 | 4 | 1 | 10 | 10 | 808 | 202 | 4 | 1 | 16 | 123 | 83 | 7 | 97 | 36 | 1 | 169 | 4 | 8 | 32 | 25 |
| LAW | 4,503 | 188 | 2 | 3 | 22 | 9 | 25 | 30 | - | 8 | 3 | 4 | 9 | 6 | 1 | 39 | 27 | 4,315 | 3,008 | 29 | 5 | 29 | 183 | 206 | 43 | 210 | 111 | - | 361 | 4 | 11 | 82 | 53 |
| MS,N | 623 | 134 | 3 | 10 | 6 | 4 | 9 | - | - | 1 | - | - | - | 2 | 1 | 78 | 20 | 489 | 86 | 2 | - | - | 48 | 61 | 6 | 131 | 49 | - | 53 | - | 4 | 19 | 30 |
| MS,S | 1,382 | 149 | 2 | 4 | 14 | 10 | 32 | 8 | - | - | 1 | 1 | - | 16 | 1 | 41 | 19 | 1,213 | 191 | 10 | 1 | - | 85 | 191 | 24 | 247 | 116 | 3 | 256 | 2 | 5 | 27 | 55 |
| TX,N | 5,420 | 1,130 | 1 | 8 | 28 | 33 | 217 | 53 | - | 31 | 1 | 263 | 17 | 29 | 4 | 100 | 345 | 4,290 | 712 | 138 | 1 | - | 165 | 389 | 83 | 699 | 499 | 8 | 603 | 27 | 262 | 172 | 582 |
| TX,E | 3,057 | 300 | 2 | - | 16 | 5 | 48 | 56 | 3 | 27 | - | 3 | - | 15 | 3 | 71 | 49 | 2,757 | 338 | 56 | 4 | 5 | 109 | 131 | 47 | 248 | 235 | 2 | 675 | 4 | 565 | 58 | 250 |
| TX,S | 5,860 | 630 | 16 | 17 | 66 | 18 | 68 | 33 | - | 10 | - | 3 | 14 | 29 | 2 | 126 | 208 | 5,330 | 1,172 | 281 | 1 | 41 | 239 | 658 | 92 | 594 | 347 | 7 | 738 | 14 | 176 | 349 | 622 |
| TX,W | 4,643 | 529 | 13 | 3 | 48 | 54 | 117 | 36 | - | 35 | - | 13 | 5 | 13 | 7 | 85 | 120 | 4,114 | 498 | 124 | 3 | - | 169 | 247 | 30 | 469 | 267 | 4 | 488 | 9 | 1,147 | 227 | 452 |
| 6th | 17,968 | 2,385 | 31 | 40 | 124 | 77 | 327 | 107 | - | 28 | 17 | 21 | 14 | 103 | 17 | 1,180 | 299 | 15,583 | 1,408 | 255 | 10 | 26 | 400 | 4,657 | 262 | 2,742 | 998 | 5 | 1,790 | 15 | 513 | 1,144 | 1,369 |
| KY,E | 989 | 288 | - | 4 | 15 | 3 | 37 | 71 | - | 18 | 16 | 1 | - | 18 | 1 | 68 | 16 | 721 | 110 | 5 | - | 1 | 55 | 90 | 12 | 101 | 46 | - | 138 | - | 14 | 83 | 86 |
| KY,W | 1,182 | 139 | 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|------|--------|-------|----|----|-----|-----|-----|-----|---|-----|----|----|----|-----|----|-------|-------|--------|-------|-----|----|-----|-----|--------|-----|-------|-------|----|-------|-----|-------|-------|-------|
| | 2,444 | 252 | 1 | 20 | 15 | 6 | 21 | 50 | - | 25 | 27 | - | 3 | 17 | - | 57 | 10 | 2,192 | 55 | 4 | 4 | 1 | 37 | 1,505 | 24 | 89 | 24 | - | 380 | 1 | 2 | 26 | 40 |
| IN,N | 1,865 | 335 | 4 | - | 11 | 6 | 27 | - | - | 1 | - | - | - | 18 | 2 | 248 | 18 | 1,530 | 133 | 6 | 14 | - | 57 | 77 | 10 | 302 | 200 | 1 | 596 | 1 | 10 | 50 | 73 |
| IN,S | 3,683 | 418 | - | 2 | 17 | 5 | 60 | 2 | 1 | 2 | 6 | - | - | 33 | 3 | 262 | 25 | 3,245 | 144 | 16 | 2 | 1 | 40 | 1,055 | 12 | 488 | 318 | 1 | 756 | - | 34 | 111 | 269 |
| WLE | 1,507 | 224 | 1 | - | 9 | 4 | 13 | - | - | - | - | - | 2 | 28 | 2 | 137 | 28 | 1,283 | 86 | 5 | 4 | - | 7 | 46 | 25 | 228 | 121 | - | 422 | 11 | 30 | 172 | 116 |
| WL,W | 784 | 158 | 5 | 3 | 9 | 12 | 8 | 16 | - | - | 1 | - | - | 7 | 1 | 75 | 19 | 628 | 50 | 2 | 2 | - | 3 | 45 | 9 | 126 | 40 | - | 195 | - | 32 | 55 | 69 |
| 8th | 16,749 | 2,364 | 11 | 19 | 87 | 82 | 394 | 96 | - | 87 | 17 | 4 | 20 | 61 | 22 | 960 | 504 | 14,385 | 1,174 | 85 | 14 | 5 | 246 | 6,577 | 197 | 1,338 | 604 | 2 | 2,165 | 20 | 224 | 863 | 931 |
| AR,E | 1,818 | 342 | - | 3 | 6 | 27 | 27 | 28 | - | 55 | 17 | - | - | 2 | 1 | 164 | 12 | 1,476 | 107 | 9 | 2 | 1 | 54 | 83 | 24 | 182 | 81 | 1 | 768 | 2 | 20 | 115 | 27 |
| AR,W | 841 | 238 | 2 | - | 5 | 6 | 13 | - | - | 1 | - | - | - | 7 | - | 202 | 2 | 603 | 77 | 8 | - | 1 | 25 | 29 | 6 | 61 | 26 | - | 302 | - | 8 | 52 | 10 |
| IAN | 414 | 123 | - | - | 1 | 2 | 37 | - | - | 1 | - | - | - | 2 | 1 | 75 | 4 | 291 | 87 | 2 | - | - | 2 | 20 | 4 | 48 | 26 | - | 86 | - | 4 | 15 | 17 |
| IAS | 528 | 111 | - | 1 | 5 | 4 | 61 | 2 | - | - | - | 1 | - | 9 | - | 21 | 7 | 417 | 71 | 2 | 1 | - | 4 | 35 | 4 | 70 | 45 | - | 110 | 3 | 23 | 24 | 25 |
| MN | 8,193 | 450 | 2 | 2 | 37 | 8 | 37 | 42 | - | 28 | - | 1 | 19 | 10 | 5 | 109 | 150 | 7,743 | 232 | 17 | 2 | 1 | 18 | 6,043 | 42 | 265 | 134 | - | 139 | 3 | 71 | 443 | 333 |
| MO,E | 1,656 | 287 | 2 | 6 | 12 | 12 | 65 | 3 | - | 2 | - | 1 | - | 11 | 5 | 139 | 29 | 1,389 | 213 | 16 | - | - | 50 | 122 | 34 | 229 | 101 | - | 349 | 4 | 34 | 83 | 134 |
| MO,W | 1,828 | 384 | 1 | 1 | 9 | 9 | 83 | 4 | - | - | - | 1 | - | 12 | 7 | 195 | 62 | 1,544 | 208 | 17 | - | 1 | 59 | 159 | 56 | 296 | 92 | 1 | 197 | 5 | 34 | 92 | 337 |
| NE | 802 | 285 | 2 | 2 | 4 | 4 | 22 | 4 | - | - | - | - | 1 | 6 | 3 | 23 | 214 | 517 | 97 | 4 | 8 | 1 | 12 | 43 | 13 | 118 | 53 | - | 92 | 2 | 24 | 21 | 29 |
| ND | 203 | 62 | - | 2 | 1 | 4 | 17 | - | - | - | - | - | - | 2 | - | 17 | 19 | 141 | 32 | 6 | 1 | - | 5 | 18 | 4 | 21 | 15 | - | 21 | - | 1 | 10 | 7 |
| SD | 366 | 82 | 2 | 2 | 7 | 6 | 32 | 13 | - | - | - | - | - | - | - | 15 | 5 | 284 | 50 | 4 | - | - | 17 | 25 | 10 | 58 | 31 | - | 61 | 1 | 7 | 8 | 12 |
| 9th | 41,493 | 6,977 | 47 | 44 | 420 | 286 | 284 | 236 | - | 99 | 67 | 64 | 67 | 164 | 37 | 3,207 | 1,955 | 34,516 | 3,858 | 652 | 14 | 75 | 298 | 4,245 | 893 | 9,004 | 2,044 | 16 | 4,282 | 329 | 2,669 | 1,820 | 4,315 |
| AK | 401 | 81 | 2 | 2 | 10 | 3 | 11 | 1 | - | 7 | - | 1 | - | 2 | 1 | 27 | 24 | 310 | 55 | 3 | - | 4 | 9 | 14 | 8 | 74 | 24 | - | 62 | - | 1 | 5 | 51 |
| AZ | 3,123 | 776 | 5 | 3 | 48 | 56 | 39 | 87 | - | 36 | 65 | 8 | 5 | 16 | 2 | 334 | 72 | 2,347 | 291 | 24 | - | 2 | 41 | 146 | 32 | 317 | 207 | 6 | 629 | 13 | 83 | 238 | 316 |
| CAN | 8,760 | 597 | 6 | 4 | 34 | 30 | 16 | 4 | - | 1 | - | 4 | 15 | 11 | 1 | 122 | 349 | 8,163 | 480 | 56 | - | 2 | 10 | 2,642 | 207 | 2,202 | 203 | 2 | 545 | 137 | 699 | 346 | 632 |
| CA,E | 3,858 | 708 | 1 | 6 | 27 | 22 | 32 | 38 | - | 18 | - | 2 | 2 | 6 | 2 | 486 | 89 | 3,190 | 253 | 68 | 2 | - | 20 | 142 | 52 | 808 | 400 | 2 | 950 | 3 | 128 | 135 | 229 |
| CA,C | 13,447 | 2,133 | 12 | 12 | 123 | 67 | 44 | 68 | - | 12 | - | 11 | 19 | 87 | 12 | 665 | 1,001 | 11,314 | 1,408 | 286 | 5 | 26 | 74 | 586 | 349 | 3,824 | 522 | 4 | 521 | 2 | 1,288 | 568 | 1,851 |
| CA,S | 2,060 | 375 | 9 | 3 | 42 | 30 | 18 | 1 | - | - | - | 37 | 2 | 3 | 7 | 109 | 114 | 1,685 | 233 | 12 | - | 5 | 3 | 99 | 69 | 306 | 141 | - | 194 | 3 | 172 | 95 | 353 |
| HI | 531 | 118 | 1 | - | 12 | 7 | 22 | 22 | - | 23 | - | - | - | - | 2 | 17 | 12 | 413 | 47 | 14 | - | 8 | 2 | 40 | 10 | 140 | 7 | - | 43 | - | 30 | 25 | 47 |
| ID | 518 | 87 | - | 1 | 6 | 1 | 16 | - | - | 2 | - | - | - | 1 | - | 48 | 12 | 431 | 49 | 7 | - | - | 4 | 30 | 8 | 107 | 46 | - | 111 | - | 12 | 19 | 38 |
| MT | 603 | 98 | - | 3 | 17 | 2 | 19 | - | - | 1 | 1 | - | - | 4 | 1 | 28 | 24 | 505 | 98 | 8 | 1 | - | 21 | 49 | 11 | 65 | 51 | - | 155 | 2 | 2 | 14 | 28 |
| NV | 2,619 | 219 | 3 | 5 | 21 | 18 | 19 | 1 | - | - | - | 1 | 2 | 5 | 4 | 85 | 57 | 2,400 | 324 | 122 | 1 | - | 75 | 227 | 42 | 447 | 209 | 2 | 423 | 8 | 70 | 61 | 389 |
| OR | 1,883 | 425 | 3 | - | 19 | 13 | 16 | - | - | - | - | - | - | 15 | 1 | 314 | 44 | 1,458 | 196 | 18 | - | 4 | 23 | 104 | 23 | 294 | 78 | 2 | 289 | 161 | 44 | 79 | 183 |
| WA,E | 940 | 582 | 2 | 2 | 8 | 6 | 16 | - | - | - | - | - | - | 2 | 1 | 530 | 15 | 358 | 49 | 2 | 5 | - | 5 | 27 | 9 | 72 | 43 | - | 102 | - | 14 | 11 | 19 |
| WA,W | 2,657 | 757 | 3 | 3 | 49 | 33 | 15 | 14 | - | 1 | 1 | - | 22 | 11 | 3 | 464 | 138 | 1,930 | 407 | 30 | - | 24 | 11 | 133 | 71 | 338 | 113 | - | 252 | - | 126 | 220 | 175 |
| GU | 26 | 6 | - | - | 1 | - | 1 | - | - | - | - | - | - | - | - | 4 | 20 | 3 | 1 | - | - | - | 4 | 1 | 5 | - | - | 4 | - | - | - | 2 | |
| NMI | 27 | 5 | - | - | 3 | - | - | - | - | - | - | - | - | 1 | - | 1 | 22 | 5 | 1 | - | - | - | - | 1 | 7 | - | - | 2 | - | - | - | 4 | 2 |
| 10th | 8,125 | 1,560 | 9 | 21 | 81 | 82 | 115 | 40 | - | 10 | 28 | 24 | 5 | 85 | 8 | 821 | 231 | 7,655 | 1,496 | 69 | 15 | 1 | 267 | 616 | 133 | 1,679 | 724 | 5 | 1,191 | 12 | 287 | 439 | 631 |
| CO | 3,324 | 396 | 1 | 3 | 20 | 22 | 16 | 9 | - | 4 | 5 | 10 | - | 40 | 1 | 181 | 86 | 2,926 | 676 | 16 | 5 | - | 37 | 219 | 40 | 677 | 225 | - | 559 | 1 | 121 | 119 | 231 |
| KS | 1,233 | 242 | - | 7 | 9 | 12 | 14 | 24 | - | 2 | 22 | - | - | 13 | 4 | 93 | 42 | 891 | 129 | 14 | - | - | 64 | 82 | 15 | 288 | 79 | - | 159 | - | 20 | 36 | 103 |
| NM | 1,113 | 216 | 2 | 2 | 18 | 7 | 27 | 4 | - | 1 | - | 13 | 1 | 19 | - | 105 | 17 | 897 | 148 | 10 | 2 | - | 48 | 93 | 11 | 218 | 52 | - | 195 | 3 | 22 | 49 | 56 |
| OK,N | 587 | 130 | - | 3 | 3 | 2 | 11 | - | - | - | - | - | - | 3 | - | 99 | 9 | 457 | 102 | 2 | 3 | - | 17 | 36 | 16 | 63 | 106 | 1 | 47 | 3 | 9 | 27 | 25 |
| OK,E | 395 | 154 | - | 3 | 8 | 5 | 10 | 1 | - | - | - | - | 4 | 1 | - | 117 | 5 | 241 | 33 | 8 | 1 | - | 11 | 17 | 5 | 60 | 67 | - | 29 | - | 1 | 3 | 8 |
| OK,W | 1,127 | 191 | 3 | - | 7 | 18 | 18 | 2 | - | 1 | 1 | - | - | - | 2 | 113 | 28 | 936 | 205 | 8 | 1 | 1 | 43 | 72 | 18 | 173 | 138 | 4 | 127 | 5 | 21 | 42 | 78 |
| UT | 1,051 | 200 | 2 | 2 | 13 | 14 | 15 | - | - | 2 | - | 1 | - | 8 | 1 | 101 | 41 | 851 | 159 | 10 | - | - | 20 | 60 | 11 | 158 | 30 | - | 35 | - | 84 | 152 | 112 |
| WY | 295 | 29 | 1 | 1 | 3 | 2 | 6 | - | - | - | - | - | 1 | - | 12 | 3 | 266 | 44 | 3 | 3 | - | 27 | 37 | 17 | 42 | 27 | - | 30 | - | 9 | 9 | 18 | |
| 11th | 85,067 | 4,061 | 24 | 30 | 238 | 197 | 468 | 292 | - | 137 | 21 | 56 | 74 | 126 | 21 | 1,476 | 901 | 81,006 | 3,389 | 486 | 3 | 243 | 638 | 58,691 | 444 | 4,734 | 1,484 | 36 | 3,539 | 146 | 1,304 | 2,130 | 3,739 |
| AL,N | 1,701 | 282 | 1 | 4 | 8 | 25 | 33 | 42 | - | 3 | - | - | 3 | 3 | - | 123 | 37 | 1,419 | 174 | 21 | - | 2 | 76 | 105 | 32 | 373 | 82 | 2 | 221 | 1 | 11 | 117 | 202 |
| AL,M | 828 | 102 | 1 | - | 9 | 6 | 16 | 8 | - | 2 | 1 | 4 | - | 7 | - | 37 | 11 | 726 | 44 | 13 | - | - | 33 | 30 | 4 | 172 | 42 | 3 | 277 | 36 | 6 | 23 | 43 |
| AL,S | 532 | 57 | 2 | 1 | 1 | 4 | 16 | 1 | - | - | - | - | - | 2 | 1 | 25 | 4 | 475 | 132 | 7 | - | 5 | 14 | 55 | 13 | 89 | 32 | 3 | 79 | - | 5 | 12 | 29 |
| FL,N | 56,761 | 134 | 1 | 4 | 14 | 9 | 27 | 9 | - | 3 | 4 | - | 1 | 10 | 1 | 38 | 13 | 56,627 | 212 | 92 | - | 12 | 26 | 55,111 | 11 | 278 | 176 | 2 | 482 | | | | |

* FECLA = Federal Employers Liability Act

TAB-4

Revised March 2, 2020

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PLAINTIFF,

Plaintiff,

v.

DEFENDANT,

Defendant.

:
:
:
:
:
:
:
:
:

Civil Action No. []

SCHEDULING ORDER [NON-PATENT CASE]

This ___ day of _____, 20___, the Court having conducted an initial Rule 16(b) scheduling conference pursuant to Local Rule 16.1(b), and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration:

IT IS ORDERED that:

1. Rule 26(a)(1) Initial Disclosures. Unless otherwise agreed to by the parties, the parties shall make their initial disclosures required by Federal Rule of Civil Procedure 26(a)(1) within five days of the date of this Order.

2. Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before

_____.

3. Discovery.

a. Discovery Cut Off. All discovery in this case shall be initiated so that it will be completed on or before _____.

b. Document Production. Document production shall be completed on or before _____.

c. Requests for Admission. A maximum of ___ requests for admission are permitted for each side.

d. Interrogatories. A maximum of ___ interrogatories, including contention interrogatories, are permitted for each side.

e. Depositions.

i. Limitation on Hours for Deposition Discovery. Each side is limited to a total of ___ hours of taking testimony by deposition upon oral examination.

ii. Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this District Court must ordinarily be required, upon request, to submit to a deposition at a place designated within this District. Exceptions to this general rule may be made by order of the Court or by agreement of the parties. A defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

4. Pinpoint Citations. Pinpoint citations are required in all briefing, letters, and concise statements of facts. The Court will ignore any assertions of controverted facts and controverted legal principles not supported by a pinpoint citation to, as applicable: the record, an attachment or exhibit, and/or case law or appropriate legal authority. *See United States v. Dunkel*, 927 F.2d 955, 956 (“Judges are not like pigs, hunting for truffles buried in briefs.”).

5. Application to Court for Protective Order. Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, counsel should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within ten days from the date of this Order.

Any proposed protective order must include the following paragraph:

Other Proceedings. By entering this Order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this Order who becomes subject to a motion to disclose another party’s information designated as confidential pursuant to this Order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

6. Disputes Relating to Discovery Matters and Protective Orders.

Should counsel find they are unable to resolve a dispute relating to a discovery matter or protective order, the parties shall contact the Court's Case Manager to schedule an in-person conference/argument.

a. Unless otherwise ordered, by no later than 72 hours prior to the conference/argument, the party seeking relief shall file with the Court a letter, not to exceed 750 words pages, outlining the issues in dispute and the party's position on those issues. The party shall submit as attachments to its letter (1) an averment of counsel that the parties made a reasonable effort to resolve the dispute and that such effort included oral communication that involved Delaware counsel for the parties, and (2) a draft order for the Court's signature that identifies with specificity the relief sought by the party. The party shall file concurrently with its letter a motion that in no more than one paragraph sets forth the relief sought. The motion also shall have attached to it the draft order for the Court's signature that identifies with specificity the relief sought by the party.

b. By no later than 48 hours prior to the conference/argument, any party opposing the application for relief may file a letter, not to exceed 750 words, outlining that party's reasons for its opposition.

c. Two hard copies of the parties' letters and attachments must be provided to the Court within one hour of e-filing the document(s). The hard copies shall comply with paragraphs 4, 9, and 16 of this Order.

7. If a motion concerning a discovery matter or protective order is filed without leave of the Court that does not comport with the procedures set forth in this paragraph, the motion will be denied without prejudice to the moving party's right to bring the dispute to the Court through the procedures set forth in this paragraph.

8. Papers Filed Under Seal. When filing papers under seal, counsel shall deliver to the Clerk an original and two copies of the papers. A redacted version of any sealed document shall be filed electronically within seven days of the filing of the sealed document.

9. Hard Copies. The parties shall provide to the Court two hard copies of all letters filed pursuant to paragraph 6 of this Order, all briefs, and any other document filed in support of any such letters and briefs (i.e., the concise statement of facts filed pursuant to paragraph 11 of this Order, appendices, exhibits, declarations, affidavits, etc.). This provision also applies to papers filed under seal. Exhibits and attachments shall be separated by tabs. Each exhibit and attachment shall have page numbers of some sort such that a particular page of an exhibit or attachment can be identified by a page number. The parties shall take all practical measures to avoid filing multiple copies of the same exhibit or attachment. The

parties should highlight the text of exhibits and attachments they wish the Court to read. The parties are encouraged to include in an exhibit or attachment only the pages of the document in question that (1) identify the document (e.g., the first page of a deposition transcript or the cover page of a request for discovery) and (2) are relevant to the issue(s) before the Court

10. Disclosure of Expert Testimony.

a. Expert Reports. For the party who has the initial burden of proof on the subject matter, the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before _____. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before _____. Reply expert reports from the party with the initial burden of proof are due on or before _____. No other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall advise of the dates and times of their experts' availability for deposition. Depositions of experts shall be completed on or before _____.

b. Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence

702, it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court.

11. Case Dispositive Motions.

a. No Early Motions Without Leave. All case dispositive motions and the opening briefs and affidavits supporting such motions shall be served and filed on or before _____. No case dispositive motion under Rule 56 may be filed more than ten days before this date without leave of the Court.

b. Motions to be Filed Separately. A party shall not combine into a single motion multiple motions that rely in whole or in part on different facts.

c. Concise Statement of Facts Requirement. Any motion for summary judgment shall be accompanied by a separate concise statement detailing each material fact as to which the moving party contends that there are no genuine issues to be tried that are essential for the Court's determination of the summary judgment motion (not the entire case).¹ A party must submit a separate concise statement of facts for each summary judgment motion. Any party who opposes the motion shall file and serve with its opposing papers a separate document containing a single concise statement that admits or disputes the facts set forth in

¹ The party must detail each material *fact* in its concise statement of facts. The concise statements of facts play an important gatekeeping role in the Court's consideration of summary judgment motions.

the moving party's concise statement, as well as sets forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated.

d. Focus of the Concise Statement. When preparing the separate concise statement, a party shall reference only the material facts that are absolutely necessary for the Court to determine the limited issues presented in the motion for summary judgment (and no others), and each reference shall contain a citation to a particular affidavit, deposition, or other document that supports the party's interpretation of the material fact. Documents referenced in the concise statement may, but need not, be filed in their entirety if a party concludes that the full context would be helpful to the Court (e.g., a deposition miniscript with an index stating what pages may contain key words may often be useful). The concise statement shall particularly identify the page and portion of the page of the document referenced. The document referred to shall have relevant portions highlighted or otherwise emphasized. The parties may extract and highlight the relevant portions of each referenced document, but shall ensure that enough of a document is attached to put the matter in context. If a party determines that an entire deposition transcript should be submitted, the party should consider whether a miniscript would be preferable to a full-size transcript. If an entire miniscript is submitted, the index of terms appearing in the transcript must be included, if it exists. When multiple pages from a single document are submitted, the pages shall be grouped in

a single exhibit. Concise statements of fact shall comply with paragraphs 4, 9, and 16 of this Order.

e. Word Limits for Concise Statement. The concise statement in support of or in opposition to a motion for summary judgment shall be no longer than 1,500 words.

f. Affidavits and Declarations. Affidavits or declarations setting forth facts and/or authenticating exhibits, as well as exhibits themselves, shall be attached only to the concise statement (i.e., not briefs).

g. Scope of Judicial Review. When resolving motions for summary judgment, the Court shall have no independent duty to search and consider any part of the record not otherwise referenced in the separate concise statements of the parties. Further, the Court shall have no independent duty to review exhibits in their entirety, but rather will review only those portions of the exhibits specifically identified in the concise statements. Material facts set forth in the moving party's concise statement will be deemed admitted unless controverted by a separate concise statement of the opposing party.

12. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

13. Pretrial Conference. On _____, the Court will hold a Rule 16(e) final pretrial conference in court with counsel beginning at _____ .m. The parties shall file a joint proposed final pretrial order in compliance with Local Rule 16.3(c) no later than 5:00 p.m. on _____ [21 days before the Pretrial Conference]. Unless otherwise ordered by the Court, the parties shall comply with the timeframes set forth in Local Rule 16.3(d) for the preparation of the proposed joint final pretrial order.

14. Motions in Limine. Motions *in limine* shall not be separately filed. All *in limine* requests and responses thereto shall be set forth in the proposed pretrial order. Each party shall be limited to three *in limine* requests, unless otherwise permitted by the Court. The *in limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of 750 words of argument and may be opposed by a maximum of 750 words of argument, and the party making the *in limine* request may add a maximum of 250 words in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be combined in a single 750-word submission (and, if the moving party, a 250-word reply). No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court.

15. Page/Word Limitations. Where page limits are specified by order or rule, the parties shall use a word-count limit. For each page allowed by order or rule, the parties shall use up to 250 words. For example, where the page limit specified by rule is 20 pages, the maximum number of words for a party's submission would be 5,000 (20 x 250). A certification as to the total number of words must be included in any submission.

16. Font. The text for all briefs, letters, motions, and concise statements of fact shall be 14-point and in Times New Roman or similar typeface. Each such filing must include a certification by counsel that the filing complies with the type, font, and word limitations set forth in this Order. The person who prepares the certification may rely on the word count of the word-processing system used to prepare the filing.

17. Compendium of Cases. A party may submit with any briefing two courtesy copies of a compendium of the selected authorities on which the party would like the Court to focus. The parties should not include in the compendium authorities for general principles or uncontested points of law (e.g., the standards for summary judgment or claim construction). An authority that is cited only once by a party generally should not be included in the compendium. An authority already provided to the Court by another party should not be included in the compendium. Compendiums of cases shall not be filed electronically with the

Court, but a notice of service of a compendium of cases shall be filed electronically with the Court. Compendiums shall comply with paragraph 9 of this Order.

18. Jury Instructions, Voir Dire and Special Verdict Forms. Where a case is to be tried to a jury, pursuant to Local Rules 47.1(a)(2) and 51.1, the parties should file (i) proposed voir dire, (ii) preliminary jury instructions, (iii) final jury instructions, and (iv) special verdict forms no later than 5:00 p.m. on _____ [21 days before the Pretrial Conference].

The parties shall submit simultaneously with filing each of the foregoing four documents in Word format to cfc_civil@ded.uscourts.gov.

19. Trial. This matter is scheduled for a ____-day _____ trial beginning at 8:30 a.m. on _____ with the subsequent trial days beginning at 9:00 a.m. Until the case is submitted to the jury for deliberations, the jury will be excused each day at 4:30 p.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases.

20. ADR Process. This matter is referred to a magistrate judge to explore the possibility of alternative dispute resolution.

21. Relevant Deadlines and Dates. All relevant deadlines and dates established

by this Order are set forth in the chart attached as Exhibit A.

The Honorable Colm F. Connolly
United States District Court Judge

TAB-5

Revised April 18, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PLAINTIFF,

Plaintiff,

v.

DEFENDANT,

Defendant.

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:
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:
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:
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Civil Action No. []

**FORM SCHEDULING ORDER FOR NON-HATCH-WAXMAN
PATENT CASES IN WHICH INFRINGEMENT IS ALLEGED**

This __ day of _____, 20__, the Court having conducted an initial Rule 16(b) scheduling conference pursuant to Local Rule 16.1(b), and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration:

IT IS ORDERED that:

1. Relevant Deadlines and Dates. All relevant deadlines and dates established by this Order are set forth in the chart attached as Exhibit A.
2. Rule 26(a)(1) Initial Disclosures. Unless otherwise agreed to by the parties, the parties shall make their initial disclosures required by Federal Rule of Civil Procedure 26(a)(1) within five days of the date of this Order.

3. Disclosure of Asserted Claims and Infringement Contentions. Unless otherwise agreed to by the parties, no later than 30 days after the date of this Order, a party claiming patent infringement shall serve on all parties a “Disclosure of Asserted Claims and Infringement Contentions.” Separately for each opposing party, the Disclosure of Asserted Claims and Infringement Contentions shall contain the following information:

(a) Each claim of each asserted patent that is allegedly infringed by each opposing party, including for each claim the applicable statutory subsections of 35 U.S.C. § 271 asserted;

(b) Separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality (“Accused Instrumentality”) of each opposing party of which the party is aware. This identification shall be as specific as possible. Each product, device, and apparatus shall be identified by name or model number, if known. Each method or process shall be identified by name, if known, or by any product, device, or apparatus that, when used, allegedly results in the practice of the claimed method or process;

(c) A chart identifying specifically where and how each limitation of each asserted claim is found within each Accused Instrumentality, including for each limitation that such party contends is governed by 35

U.S.C. § 112(f), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;

(d) For each claim alleged to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. Insofar as alleged direct infringement is based on joint acts of multiple parties, the role of each such party in the direct infringement must be described;

(e) Whether each limitation of each asserted claim is alleged to be present in the Accused Instrumentality literally or under the doctrine of equivalents;

(f) For any patent that claims priority to an earlier application, the priority date to which each asserted claim is alleged to be entitled;

(g) If a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that its own or its licensee's apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party shall identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim ("Embodying Instrumentality");

(h) The timing of the point of first infringement, the start of claimed damages, and the end of claimed damages; and

(i) If a party claiming patent infringement alleges willful infringement, the basis for such allegation.

4. Document Production Accompanying Disclosure of Asserted Claims and Infringement Contentions. With the Disclosure of Asserted Claims and Infringement Contentions, the party claiming patent infringement shall produce to each opposing party or make available for inspection and copying:

(a) Documents (e.g., contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, and third party or joint development agreements) sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or each sale of or offer to sell, or any public use of, the claimed invention prior to the date of application for the asserted patent(s);

(b) All documents evidencing the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application for the asserted patent(s) or the priority date identified pursuant to paragraph 3(f) of this Order, whichever is earlier;

(c) A copy of the file history for each asserted patent;

(d) All documents evidencing ownership of the patent rights by the party asserting patent infringement;

(e) If a party identifies instrumentalities pursuant to paragraph 3(g) of this Order, documents sufficient to show the operation of any aspects or elements of such instrumentalities the patent claimant relies upon as embodying any asserted claims;

(f) All agreements, including licenses, transferring an interest in any asserted patent;

(g) All agreements that the party asserting infringement contends are comparable to a license that would result from a hypothetical reasonable royalty negotiation;

(h) All agreements that otherwise may be used to support the party asserting infringement's damages case;

(i) If a party identifies instrumentalities pursuant to paragraph 3(g) of this Order, documents sufficient to show marking of such Embodying Instrumentalities; and if the party wants to preserve the right to recover lost profits based on such products, the sales, revenues, costs, and profits of such Embodying Instrumentalities; and

(j) All documents comprising or reflecting a F/RAND commitment or agreement with respect to the asserted patent(s).

The producing party shall separately identify by production number the documents that correspond to each category set forth in this paragraph. A party's production of a document as required by this paragraph shall not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102.

5. Invalidity Contentions. Unless otherwise agreed to by the parties, no later than 45 days after service upon it of the Disclosure of Asserted Claims and Infringement Contentions, each party opposing a claim of patent infringement shall serve on all parties its "Invalidity Contentions," which shall contain the following information:

(a) The identity of each item of prior art that the party alleges anticipates each asserted claim or renders the claim obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication shall be identified by its title, date of publication, and, where feasible, author and publisher. Each alleged sale or public use shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person(s) or entity(ies) that made the use or made and received the offer, or the person(s) or entity(ies) that made the information known or to whom it was made known. For pre-AIA claims, prior art under 35 U.S.C. § 102(f) shall be identified by providing the name

of the person(s) from whom and the circumstances under which the invention or any part of it was derived. For pre-AIA claims, prior art under 35 U.S.C. § 102(g) shall be identified by providing the identities of the person(s) or entity(ies) involved in and the circumstances surrounding the making of the invention before the patent applicant(s);

(b) Whether each item of prior art anticipates each asserted claim or renders it obvious. If obviousness is alleged, an explanation of why the prior art renders the asserted claim obvious, including an identification of any combinations of prior art showing obviousness;

(c) A chart identifying specifically where and how in each alleged item of prior art each limitation of each asserted claim is found, including, for each limitation that such party contends is governed by 35 U.S.C. § 112(f), the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and

(d) Any grounds of invalidity based on 35 U.S.C. § 101, indefiniteness under 35 U.S.C. § 112(b), or lack of enablement or insufficient written description under 35 U.S.C. § 112(a) of any of the asserted claims.

6. Document Production Accompanying Invalidity Contentions. With the Invalidity Contentions, the party opposing a claim of patent infringement shall produce or make available for inspection and copying:

(a) Source code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its chart produced pursuant to paragraph 3(c) of this Order;

(b) A copy or sample of the prior art identified pursuant to paragraph 5(a) that does not appear in the file history of the patent(s) at issue. To the extent any such item is not in English, an English translation of the portion(s) relied upon shall be produced;

(c) All agreements that the party opposing infringement contends are comparable to a license that would result from a hypothetical reasonable royalty negotiation;

(d) Documents sufficient to show the sales, revenue, cost, and profits for Accused Instrumentalities identified pursuant to paragraph 3(b) of this Order for any period of alleged infringement; and

(e) All agreements that may be used to support the damages case of the party opposing infringement.

The producing party shall separately identify by production number the documents that correspond to each category set forth in this paragraph.

7. Amendment to Contentions. Amendment of the Infringement Contentions or the Invalidity Contentions may be made only by order of the Court upon a timely showing of good cause. Non-exhaustive examples of circumstances that may, absent undue prejudice to the non-moving party, support a finding of good cause include (a) recent discovery of material prior art despite earlier diligent search and (b) recent discovery of nonpublic information about the Accused Instrumentality that was not discovered, despite diligent efforts, before the service of the Infringement Contentions. The duty to supplement discovery responses does not excuse the need to obtain leave of the Court to amend contentions.

8. Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before _____.

9. Discovery.

(a) Discovery Cut Off. All discovery in this case shall be initiated so that it will be completed on or before _____.

(b) Document Production. Document production shall be completed on or before _____.

(c) Requests for Admission. A maximum of ___ requests for admission is permitted for each side.

(d) Interrogatories. A maximum of ___ interrogatories, including contention interrogatories, is permitted for each side.

(e) Depositions.

(1) Limitation on Hours for Deposition Discovery. Each side is limited to a total of ___ hours of taking testimony by deposition upon oral examination.

(2) Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this District Court must ordinarily be required, upon request, to submit to a deposition at a place designated within this District. Exceptions to this general rule may be made by order of the Court or by agreement of the parties. A defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

10. Pinpoint Citations. Pinpoint citations are required in all briefing, letters, and concise statements of facts. The Court will ignore any assertions of controverted facts and controverted legal principles not supported by a pinpoint

citation to, as applicable: the record, an attachment or exhibit, and/or case law or appropriate legal authority. *See United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) (“Judges are not like pigs, hunting for truffles buried in briefs.”).

11. Application to Court for Protective Order. Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, counsel should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within ten days from the date of this Order.

Any proposed protective order must include the following paragraph:

Other Proceedings. By entering this Order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that the information may be relevant and subject to disclosure in another case. Any person or party subject to this Order who becomes subject to a motion to disclose another party’s information designated as confidential pursuant to this Order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

12. Disputes Relating to Discovery Matters and Protective Orders.
Should counsel find that they are unable to resolve a dispute relating to a discovery matter or protective order, the parties shall contact the Court’s Case Manager to schedule an in-person conference/argument.

(a) Unless otherwise ordered, by no later than 72 hours prior to the conference/argument, the party seeking relief shall file with the Court a letter, not to exceed three pages, outlining the issues in dispute and the party's position on those issues. The party shall submit as attachments to its letter (1) an averment of counsel that the parties made a reasonable effort to resolve the dispute and that such effort included oral communication that involved Delaware counsel for the parties, and (2) a draft order for the Court's signature that identifies with specificity the relief sought by the party. The party shall file concurrently with its letter a motion that in no more than one paragraph sets forth the relief sought.

(b) By no later than 48 hours prior to the conference/argument, any party opposing the application for relief may file a letter, not to exceed three pages, outlining that party's reasons for its opposition.

(c) Two hard copies of the parties' letters and attachments must be provided to the Court within one hour of e-filing the document(s). The hard copies shall comply with paragraphs 10 and 14 of this Order.

(d) If a motion concerning a discovery matter or protective order is filed without leave of the Court and does not comport with the procedures set forth in this paragraph, the motion will be denied without prejudice to the

moving party's right to bring the dispute to the Court through the procedures set forth in this paragraph.

13. Papers Filed Under Seal. When filing papers under seal, counsel shall deliver to the Clerk an original and two copies of the papers. A redacted version of any sealed document shall be filed electronically within seven days of the filing of the sealed document.

14. Hard Copies. The parties shall provide to the Court two hard copies of all letters filed pursuant to paragraph 12 of this Order, all briefs, and any other documents filed in support of any such letters and briefs (i.e., the concise statement of facts filed pursuant to paragraph 20 of this Order, appendices, exhibits, declarations, affidavits, etc.). This provision also applies to papers filed under seal.

(a) Exhibits and Attachments. Each exhibit and attachment to a letter, brief, or pretrial order shall be separated by a tab. (Accordingly, each brief filed in connection with a motion *in limine* in a pretrial order must be separated by a tab.) Each exhibit and attachment shall have page numbers of some sort such that a particular page of an exhibit or attachment can be identified by a page number. The parties shall take all practical measures to avoid filing multiple copies of the same exhibit or attachment. The parties should highlight the text of exhibits and attachments they wish the Court to read. The parties are encouraged to include in an exhibit or attachment only

the pages of the document in question that (1) identify the document (e.g., the first page of a deposition transcript or the cover page of a request for discovery) and (2) are relevant to the issue(s) before the Court.

(b) Colors of Front Covers. The covers of briefs filed in connection with all motions except for motions *in limine* included in a pretrial order shall be as follows:

- (1) Opening brief – Blue
- (2) Answering brief – Red
- (3) Reply brief – Gray

15. Claim Construction Issue Identification. On or before _____, the parties shall exchange a list of those claim term(s)/phrase(s) that they believe need construction and their proposed claim construction(s) of those term(s)/phrase(s). This document will not be filed with the Court. Subsequent to exchanging that list, the parties will meet and confer to prepare a Joint Claim Construction Chart to be filed no later than _____. The Joint Claim Construction Chart, in Word format, shall be e-mailed simultaneously with filing to cfc_civil@ded.uscourts.gov. The text for the Joint Claim Construction Chart shall be 14-point and in Times New Roman or a similar typeface. The parties' Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) in issue and should include each party's proposed

construction of the disputed claim language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. A separate text-searchable PDF of each of the patent(s) in issue shall be submitted with this Joint Claim Construction Chart. In this joint submission, the parties shall not provide argument. Each party shall file concurrently with the Joint Claim Construction Chart a “Motion for Claim Construction” that requests the Court to adopt the claim construction position(s) of that party set forth in the Joint Claim Construction Chart. The motion shall not contain any argument and shall simply state that the party “requests that the Court adopt the claim construction position[s] of [the party] set forth in the Joint Claim Construction Chart (D.I. []).”

16. Claim Construction Briefing. The Plaintiff shall serve, but not file, its opening brief, not to exceed 5,500 words, on _____. The Defendant shall serve, but not file, its answering brief, not to exceed 8,250 words, on _____. The Plaintiff shall serve, but not file, its reply brief, not to exceed 5,500 words, on _____. The Defendant shall serve, but not file, its sur-reply brief, not to exceed 2,750 words, on _____. The text for each brief shall be 14-point and in Times New Roman or a similar typeface. Each brief must include a certification by counsel that the brief complies with the type and number limitations set forth above. The person who prepares the

certification may rely on the word count of the word-processing system used to prepare the brief.

No later than _____ [four weeks before the claim construction hearing], the parties shall file a Joint Claim Construction Brief. (Should the parties later stipulate or otherwise request to have this deadline extended, the parties will presumptively lose their claim construction hearing date upon the Court's granting the extension.) The parties shall copy and paste their untitled briefs into one brief, with their positions on each claim term in sequential order, in substantially the form below.

JOINT CLAIM CONSTRUCTION BRIEF

I. Agreed-upon Constructions

II. Disputed Constructions

A. [TERM 1]

1. Plaintiff's Opening Position
2. Defendant's Answering Position
3. Plaintiff's Reply Position
4. Defendant's Sur-Reply Position

B. [TERM 2]

1. Plaintiff's Opening Position
2. Defendant's Answering Position
3. Plaintiff's Reply Position
4. Defendant's Sur-Reply Position

Etc. The parties need not include any general summaries of the law relating to claim construction. If there are any materials that would be submitted in an appendix, the parties shall submit them in a Joint Appendix. Citations to intrinsic evidence shall be set forth in the Joint Claim Construction Brief. Citations to expert declarations and other extrinsic evidence may be made in the Joint Claim Construction Brief as the parties deem necessary, but the Court will review such extrinsic evidence only if the Court is unable to construe the disputed claim terms based on the intrinsic evidence. *See Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1584 (Fed. Cir. 1996). Declarations shall not contain legal argument or be used to circumvent the briefing word limitations imposed by this paragraph. The Joint Claim Construction Brief and Joint Appendix shall comply with paragraphs 10 and 14 of this Order.

17. Meet and Confer Confirmation and Amended Claim Chart. On or before _____ [no earlier than three weeks before the claim construction hearing and no later than two weeks before the claim construction hearing], Delaware and lead counsel for the parties shall meet and confer and thereafter file an Amended Joint Claim Construction Chart that sets forth the terms that remain in dispute. During the meet and confer, the parties shall attempt to reach agreement on any disputed terms where possible and to narrow the issues related to the remaining disputed terms. The parties shall file with the Amended Joint Claim

Construction Chart a letter that identifies by name each individual who participated in the meet and confer, when and how (i.e., by telephone or in person) the meet and confer occurred, and how long it lasted. If no agreements on constructions have been reached or if no dispute has been narrowed as a result of the meet and confer, the letter shall so state, and the parties need not file an Amended Joint Claim Construction Chart.

18. Hearing on Claim Construction. Beginning at _____ .m. on _____, the Court will hear argument on claim construction. Absent prior approval of the Court (which, if it is sought, must be done by joint letter submission no later than the date on which answering claim construction briefs are due to be served), the parties shall not present testimony at the argument, and the argument shall not exceed a total of three hours.

19. Disclosure of Expert Testimony.

(a) Expert Reports. For the party with the initial burden of proof on the subject matter, the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before _____. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before _____. Reply expert reports from the party with the initial burden of proof are due on or before _____. No other expert reports will be permitted without

either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall provide the dates and times of their experts' availability for deposition. Depositions of experts shall be completed on or before _____.

(b) Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court.

20. Case Dispositive and *Daubert* Motions.

(a) No Early Motions Without Leave. All case dispositive motions and the opening briefs and affidavits supporting such motions shall be served and filed on or before _____. No case dispositive motion under Rule 56 may be filed more than ten days before this date without leave of the Court. Reply briefs for any motions under Rule 56 shall be due on or before _____ [three months before the pretrial conference]. Should the parties later stipulate or otherwise request to have the reply brief deadline extended, the parties will lose their trial date upon

the Court's granting the extension, and no new trial date will be given until the dispositive motion(s) has(have) been decided.

(b) Motions to Be Filed Separately. A party shall not combine into a single motion multiple motions that rely in whole or in part on different facts.

(c) Word Limits. Each party is permitted to file as many case dispositive motions as desired, provided, however, that each SIDE will be limited to a combined total of 10,000 words for all opening briefs, a combined total of 10,000 words for all answering briefs, and a combined total of 5,000 words for all reply briefs, regardless of the number of case dispositive motions that are filed. In the event that a party files, in addition to a case dispositive motion, a *Daubert* motion to exclude or preclude all or any portion of an expert's testimony, the total amount of words permitted for all case dispositive and *Daubert* motions shall be increased for each SIDE to 12,500 words for all opening briefs, 12,500 words for all answering briefs, and 6,250 words for all reply briefs. The text for each brief shall be 14-point and in Times New Roman or a similar typeface. Each brief must include a certification by counsel that the brief complies with the type and number limitations set forth above. The person who prepares the certification may

rely on the word count of the word-processing system used to prepare the brief.

(d) Ranking of Summary Judgment Motions. A party that files more than one summary judgment motion shall number each motion to make clear the order in which the party wishes the Court to consider the motions in question. The first motion the party wishes the Court to consider shall be designated #1, the second motion shall be designated #2, and so on. The Court will review the party's summary judgment motions in the order designated by the party. If the Court decides to deny a motion filed by the party, barring exceptional reasons determined sua sponte by the Court, the Court will not review any further summary judgment motions filed by the party.

(e) Ranking of *Daubert* Motions. A party that files more than one *Daubert* motion shall number each motion to make clear the order in which the party wishes the Court to consider the motions in question. The first motion the party wishes the Court to consider shall be designated #1, the second motion shall be designated #2, and so on. The Court will review the party's *Daubert* motions in the order designated by the party. If the Court decides to deny a motion filed by the party, barring exceptional reasons determined sua sponte by the Court, the Court will not review any further

Daubert motions filed by the party. If the Court denies a *Daubert* motion and the party that brought the motion does not cross examine the expert witness at trial about the matters raised in the *Daubert* motion, the Court will reduce by an appropriate amount the time allotted to that party at trial.

(f) Concise Statement of Facts Requirement. Any motion for summary judgment shall be accompanied by a separate concise statement detailing each material fact as to which the moving party contends that there are no genuine issues to be tried that are essential for the Court's determination of the summary judgment motion (not the entire case).¹ A party must submit a separate concise statement of facts for each summary judgment motion. Any party that opposes the motion shall file and serve with its opposing papers a separate document containing a single concise statement that admits or disputes the facts set forth in the moving party's concise statement, as well as sets forth all material facts as to which it is contended that there exists a genuine issue necessary to be litigated.

(g) Focus of the Concise Statement. When preparing the separate concise statement, a party shall reference only the material facts that are

¹ The party must detail each material *fact* in its concise statement of facts. The concise statements of facts play an important gatekeeping role in the Court's consideration of summary judgment motions.

absolutely necessary for the Court to determine the limited issues presented in the motion for summary judgment (and no others), and each reference shall contain a citation to a particular affidavit, deposition, or other document that supports the party's interpretation of the material fact. Documents referenced in the concise statement may, but need not, be filed in their entirety if a party concludes that the full context would be helpful to the Court (e.g., a deposition miniscript with an index stating what pages may contain key words may often be useful). The concise statement shall particularly identify the page and portion of the page of the document referenced. The document referred to shall have relevant portions highlighted or otherwise emphasized. The parties may extract and highlight the relevant portions of each referenced document, but they shall ensure that enough of a document is attached to put the matter in context. If a party determines that an entire deposition transcript should be submitted, the party should consider whether a miniscript would be preferable to a full-size transcript. If an entire transcript is submitted, the index of terms appearing in the transcript must be included, if it exists. When multiple pages from a single document are submitted, the pages shall be grouped in a single exhibit. Concise statements of fact shall comply with paragraphs 10 and 14 of this Order.

(h) Word Limits for Concise Statement. The concise statement in support of or in opposition to a motion for summary judgment shall be no longer than 1,750 words. The text for each statement shall be 14-point and in Times New Roman or a similar typeface. Each statement must include a certification by counsel that the statement complies with the type and number limitations set forth above. The person who prepares the certification may rely on the word count of the word-processing system used to prepare the statement.

(i) Affidavits and Declarations. Affidavits or declarations setting forth facts and/or authenticating exhibits, as well as exhibits themselves, shall be attached only to the concise statement (i.e., not briefs).

(j) Scope of Judicial Review. When resolving motions for summary judgment, the Court shall have no independent duty to search and consider any part of the record not otherwise referenced in the separate concise statements of the parties. Further, the Court shall have no independent duty to review exhibits in their entirety, but rather the Court will review only those portions of the exhibits specifically identified in the concise statements. Material facts set forth in the moving party's concise statement will be deemed admitted unless controverted by a separate concise statement of the opposing party.

21. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

22. Pretrial Conference. On _____, the Court will hold a Rule 16(e) final pretrial conference in court with counsel beginning at _____ .m. The parties shall file a joint proposed final pretrial order in compliance with Local Rule 16.3(c) no later than 5:00 p.m. on _____ [21 days before the pretrial conference]. Unless otherwise ordered by the Court, the parties shall comply with the timeframes set forth in Local Rule 16.3(d) for the preparation of the proposed joint final pretrial order. The joint pretrial order shall comply with paragraphs 10 and 14 of this Order.

23. Motions in Limine. Motions *in limine* shall not be separately filed. All *in limine* requests and responses thereto shall be set forth in the proposed pretrial order. Each party shall be limited to three *in limine* requests, unless otherwise permitted by the Court. Each *in limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three pages of argument and may be opposed by a maximum of three pages of argument, and the party making the *in limine* request may add a maximum of one additional page in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be

combined in a single three-page submission (and, for the moving parties, a single one-page reply). No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court. Motions *in limine* shall comply with paragraphs 10 and 14 of this Order.

24. Compendium of Cases. A party may submit with any briefing two courtesy copies of a compendium of the selected authorities on which the party would like the Court to focus. The parties should not include in the compendium authorities for general principles or uncontested points of law (e.g., the standards for summary judgment or claim construction). An authority that is cited only once by a party generally should not be included in the compendium. An authority already provided to the Court by another party should not be included in the compendium. Compendiums of cases shall not be filed electronically with the Court, but a notice of service of a compendium of cases shall be filed electronically with the Court. Compendiums shall comply with paragraph 14 of this Order.

25. Jury Instructions, Voir Dire, and Special Verdict Forms. Where a case is to be tried to a jury, pursuant to Local Rules 47.1(a)(2) and 51.1, the parties should file (i) proposed voir dire, (ii) preliminary jury instructions, (iii) final jury instructions, and (iv) special verdict forms no later than 5:00 p.m. on _____ [21 days before the pretrial conference]. The

parties shall submit simultaneously with filing each of the foregoing four documents in Word format to cfc_civil@ded.uscourts.gov.

26. Trial. This matter is scheduled for a ____-day _____ trial beginning at 8:30 a.m. on _____, with the subsequent trial days beginning at 8:30 a.m. Until the case is submitted to the jury for deliberations, the jury will be excused each day at 4:30 p.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases.

27. Willfulness and Damages. Unless otherwise agreed to by the parties and the Court, the trial will be phased such that the issues of willful infringement and damages will be tried only if there is a finding of infringement.

The Honorable Colm F. Connolly
United States District Court Judge

Revised April 18, 2022

EXHIBIT A

Counsel Shall Provide a Chart of All Relevant Deadlines

[illegible]

TAB 6

**DEFAULT STANDARD FOR DISCOVERY,
INCLUDING DISCOVERY OF ELECTRONICALLY STORED INFORMATION
("ESI")**

1. General Provisions

a. **Cooperation.** Parties are expected to reach agreements cooperatively on how to conduct discovery under Fed. R. Civ. P. 26-36. In the event that the parties are unable to agree on the parameters and/or timing of discovery, the following default standards shall apply until further order of the Court or the parties reach agreement.

b. **Proportionality.** Parties are expected to use reasonable, good faith and proportional efforts to preserve, identify and produce relevant information.¹ This includes identifying appropriate limits to discovery, including limits on custodians, identification of relevant subject matter, time periods for discovery and other parameters to limit and guide preservation and discovery issues.

c. **Preservation of Discoverable Information.** A party has a common law obligation to take reasonable and proportional steps to preserve discoverable information in the party's possession, custody or control.

(i) Absent a showing of good cause by the requesting party, the parties shall not be required to modify, on a going-forward basis, the procedures used by them in the ordinary course of business to back up and archive data; provided, however, that the parties shall preserve the non-duplicative discoverable information currently in their possession, custody or control.

¹Information can originate in any form, including ESI and paper, and is not limited to information created or stored electronically.

(ii) Absent a showing of good cause by the requesting party, the categories of ESI identified in Schedule A attached hereto need not be preserved.

d. Privilege.

(i) The parties are to confer on the nature and scope of privilege logs for the case, including whether categories of information may be excluded from any logging requirements and whether alternatives to document-by-document logs can be exchanged.

(ii) With respect to information generated after the filing of the complaint, parties are not required to include any such information in privilege logs.

(iii) Activities undertaken in compliance with the duty to preserve information are protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

(iv) Parties shall confer on an appropriate non-waiver order under Fed. R. Evid. 502. Until a non-waiver order is entered, information that contains privileged matter or attorney work product shall be immediately returned if such information appears on its face to have been inadvertently produced or if notice is provided within 30 days of inadvertent production.

2. Initial Discovery Conference.

a. **Timing.** Consistent with the guidelines that follow, the parties shall discuss the parameters of their anticipated discovery at the initial discovery conference (the "Initial Discovery Conference") pursuant to Fed. R. Civ. P. 26(f), which shall take place before the Fed. R. Civ. P. 16 scheduling conference ("Rule 16 Conference").

b. Content. The parties shall discuss the following:

(i) The issues, claims and defenses asserted in the case that define the scope of discovery.

(ii) The likely sources of potentially relevant information (i.e., the "discoverable information"), including witnesses, custodians and other data sources (e.g., paper files, email, databases, servers, etc.).

(iii) Technical information, including the exchange of production formats.

(iv) The existence and handling of privileged information.

(v) The categories of ESI that should be preserved.

3. Initial Disclosures. Within 30 days after the Rule 16 Conference, each party shall disclose:

a. Custodians. The 10 custodians most likely to have discoverable information in their possession, custody or control, from the most likely to the least likely. The custodians shall be identified by name, title, role in the instant dispute, and the subject matter of the information.

b. Non-custodial data sources.² A list of the non-custodial data sources that are most likely to contain non-duplicative discoverable information for preservation and production consideration, from the most likely to the least likely.

c. Notice. The parties shall identify any issues relating to:

(i) Any ESI (by type, date, custodian, electronic system or other criteria)

²That is, a system or container that stores ESI, but over which an individual custodian does not organize, manage or maintain the ESI in the system or container (e.g., enterprise system or database).

that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(C)(i).

(ii) Third-party discovery under Fed. R. Civ. P. 45 and otherwise, including the timing and sequencing of such discovery.

(iii) Production of information subject to privacy protections, including information that may need to be produced from outside of the United States and subject to foreign laws.

Lack of proper notice of such issues may result in a party losing the ability to pursue or to protect such information.

4. Initial Discovery in Patent Litigation.³

a. Within 30 days after the Rule 16 Conference and for each defendant,⁴ the plaintiff shall specifically identify the accused products⁵ and the asserted patent(s) they allegedly infringe, and produce the file history for each asserted patent.

b. Within 30 days after receipt of the above, each defendant shall produce to the plaintiff the core technical documents related to the accused product(s), including but not limited to operation manuals, product literature, schematics, and specifications.

c. Within 30 days after receipt of the above, plaintiff shall produce to each defendant an initial claim chart relating each accused product to the asserted claims each product allegedly infringes.

³As these disclosures are "initial," each party shall be permitted to supplement.

⁴For ease of reference, "defendant" is used to identify the alleged infringer and "plaintiff" to identify the patentee.

⁵For ease of reference, the word "product" encompasses accused methods and systems as well.

d. Within 30 days after receipt of the above, each defendant shall produce to the plaintiff its initial invalidity contentions for each asserted claim, as well as the related invalidating references (e.g., publications, manuals and patents).

e. Absent a showing of good cause, follow-up discovery shall be limited to a term of 6 years before the filing of the complaint, except that discovery related to asserted prior art or the conception and reduction to practice of the inventions claimed in any patent-in-suit shall not be so limited.

5. Specific E-Discovery Issues.

a. **On-site inspection of electronic media.** Such an inspection shall not be permitted absent a demonstration by the requesting party of specific need and good cause.

b. **Search methodology.** If the producing party elects to use search terms to locate potentially responsive ESI, it shall disclose the search terms to the requesting party. Absent a showing of good cause, a requesting party may request no more than 10 additional terms to be used in connection with the electronic search. Focused terms, rather than over-broad terms (e.g., product and company names), shall be employed. The producing party shall search (i) the non-custodial data sources identified in accordance with paragraph 3(b); and (ii) emails and other ESI maintained by the custodians identified in accordance with paragraph 3(a).

c. **Format.** ESI and non-ESI shall be produced to the requesting party as text searchable image files (e.g., PDF or TIFF). When a text-searchable image file is produced, the producing party must preserve the integrity of the underlying ESI, i.e., the

original formatting, the metadata (as noted below) and, where applicable, the revision history. The parties shall produce their information in the following format: single page TIFF images and associated multi-page text files containing extracted text or OCR with Concordance and Opticon load files containing all requisite information including relevant metadata.

d. **Native files.** The only files that should be produced in native format are files not easily converted to image format, such as Excel and Access files.

e. **Metadata fields.** The parties are only obligated to provide the following metadata for all ESI produced, to the extent such metadata exists: Custodian, File Path, Email Subject, Conversation Index, From, To, CC, BCC, Date Sent, Time Sent, Date Received, Time Received, Filename, Author, Date Created, Date Modified, MD5 Hash, File Size, File Extension, Control Number Begin, Control Number End, Attachment Range, Attachment Begin, and Attachment End (or the equivalent thereof).

SCHEDULE A

1. Deleted, slack, fragmented, or other data only accessible by forensics.
2. Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system.
3. On-line access data such as temporary internet files, history, cache, cookies, and the like.
4. Data in metadata fields that are frequently updated automatically, such as last-opened dates.
5. Back-up data that are substantially duplicative of data that are more accessible elsewhere.
6. Voice messages.
7. Instant messages that are not ordinarily printed or maintained in a server dedicated to instant messaging.
8. Electronic mail or pin-to-pin messages sent to or from mobile devices (e.g., iPhone and Blackberry devices), provided that a copy of such mail is routinely saved elsewhere.
9. Other electronic data stored on a mobile device, such as calendar or contact data or notes, provided that a copy of such information is routinely saved elsewhere.
10. Logs of calls made from mobile devices.
11. Server, system or network logs.
12. Electronic data temporarily stored by laboratory equipment or attached electronic

equipment, provided that such data is not ordinarily preserved as part of a laboratory report.

13. Data remaining from systems no longer in use that is unintelligible on the systems in use.

TAB-7

LOCAL RULES
OF
CIVIL PRACTICE AND PROCEDURE
OF THE
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF DELAWARE

(Amended Effective August 1, 2016)

Preface to the 2016~~09~~ Amendments

It has been ~~six~~ two years since the Local Rules of Civil Practice and Procedure were amended by the Court. Since the last amendments were made effective, the Federal Rules of Civil Procedure have been amended in several respects, including rules relating to computation of time. The amendments made herein are meant to reflect these amendments and to address other practices of the Court and of the Bar.

The Judges of the Court take this opportunity to thank the members of the Bar named below who gave the Court their time and advice regarding this project.

Members of the U. S. District Advisory Committee

~~Kathleen Furey McDonough, Esquire, Chair~~

~~Richard G. Andrews, Esquire~~

~~Neal C. Belgam, Esquire~~

~~Edson A. Bostic, Esquire~~

~~Richard K. Herrmann, Esquire~~

~~Kathleen M. Jennings, Esquire~~

~~Richard D. Kirk, Esquire~~

~~William J. Marsden, Jr., Esquire~~

~~Pauline K. Morgan, Esquire~~

~~Maryellen Noreika, Esquire~~

~~Collins J. Seitz, Jr., Esquire~~

~~David Weiss, Esquire~~

~~Gregory B. Williams, Esquire~~

~~Gregg E. Wilson, Esquire~~

Colm F. Connolly, Esquire (Chair)

Steven J. Balick, Esquire

Edson Bostic, Esquire

Mary W. Bourke, Esquire

Steven B. Brauerman, Esquire

Kelly E. Farnan, Esquire

Aaron R. Goldstein

Shannon T. Hanson, Esquire

AnnaMartina Tyreus Hufnal, Esquire

Pilar Gabrielle Kraman

Mary Matterer, Esquire

Kathleen Fury McDonough, Esquire

Noel E. Primos, Esquire

Patricia S. Rogowski, Esquire
Rodger D. Smith, II, Esquire
Gregory B. Williams, Esquire

TABLE OF CONTENTS

| | | |
|--------|---|---|
| I. | SCOPE OF THE RULES | 1 |
| 1.1. | Scope of the Rules | 1 |
| 1.2. | Availability of the Local Rules | 1 |
| 1.3. | Sanctions | 1 |
| II. | COMMENCEMENT OF ACTION; PROCESS; SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS | 2 |
| 3.1. | Civil Cover Sheet | 2 |
| 3.2. | Patent Cases | 2 |
| 4.1. | Service of Process | 2 |
| 5.1. | Filing | 3 |
| 5.1.1. | General Format of Papers Presented for Filing | 3 |
| 5.1.2. | The Filing of Nonconforming Papers | 3 |
| 5.1.3. | Filing Documents Under Seal | 4 |
| 5.2. | Service | 4 |
| 5.3. | Originals and Copies of Filed Documents | 4 |
| 5.4. | Discovery Materials | 4 |
| III. | PLEADINGS AND MOTIONS | 5 |
| 7.1.1. | Statement Required to be Filed with Nondispositive Motions | 5 |
| 7.1.2. | Motions | 5 |
| 7.1.3. | Form and Contents of Briefs, Memoranda of Points and Authorities, and Appendices | 6 |
| 7.1.4. | Oral Argument | 8 |
| 7.1.5. | Reargument | 8 |

| | | |
|-------|--|----|
| 9.2. | Request for Three-Judge District Court | 9 |
| 9.4. | Pleading Claim for Unliquidated Damages | 9 |
| 15.1. | Form of a Motion to Amend and Its Supporting Documentation | 9 |
| 16.1. | Fed. R. Civ. P. 16(b) Scheduling Conference | 9 |
| 16.2. | Exemptions from Fed. R. Civ. P. 16(b) and 26(f) | 10 |
| 16.3. | Pretrial Conference and Procedure | 11 |
| 16.4. | Requests for Extensions of Deadlines | 13 |
| IV. | PARTIES | 13 |
| 23.1. | Designation of "Class Action" in the Caption | 13 |
| V. | DEPOSITIONS AND DISCOVERY | 13 |
| 26.1. | Form of Certain Discovery Papers | 13 |
| 26.2. | Confidentiality | 13 |
| 30.1. | Reasonable Notice for Taking Depositions | 14 |
| 30.2. | Deposition Motions | 14 |
| 30.3. | Who May Attend Deposition | 14 |
| 30.4. | Procedures for Recording Depositions | 14 |
| 30.5. | Original Deposition Transcripts | 15 |
| 30.6. | Depositions Upon Oral Examination | 15 |
| 37.1. | Discovery Motions to Include the Discovery at Issue | 15 |
| VI. | TRIALS | 16 |
| 38.1. | Notation of "Jury Demand" on the Pleading | 16 |
| 40.1. | Assignment of Cases; Duty Judge | 16 |
| 41.1. | Dismissal for Failure to Prosecute | 16 |

| | | |
|---------|---|----|
| 43.1. | Witnesses Conferring with Counsel During Testimony | 16 |
| 47.1. | Voir Dire of Jurors | 17 |
| 47.2. | Communication with Jurors | 17 |
| 48.1. | Number of Jurors | 17 |
| 51.1. | Instructions to the Jury and Special Verdicts and Interrogatories | 17 |
| VII. | JUDGMENTS | 18 |
| 54.1. | Taxation of Costs | 18 |
| 54.2. | Jury Cost Assessment | 20 |
| 54.3. | Award of Attorneys' Fees | 20 |
| VIII. | PROVISIONAL AND FINAL REMEDIES | 21 |
| 58.1.1. | Entry of Judgment by Confession and Execution Thereon | 21 |
| 58.1.2. | Entry of Judgment by Confession in Open Court | 24 |
| 67.2. | Moneys Deposited in the Custody of the Court | 25 |
| 67.3. | Withdrawal of a Deposit Pursuant to Fed. R. Civ. P. 67 | 26 |
| 68.1. | Offers of Judgment Filed Only if Accepted | 26 |
| 69.1. | Execution | 26 |
| 71A.1. | Condemnation Cases | 26 |
| IX. | UNITED STATES MAGISTRATE JUDGES | 26 |
| 72.1. | Magistrate Judges; Pretrial Orders | 26 |
| 73.1. | Magistrate Judges; Trial by Consent | 28 |
| X. | DISTRICT COURTS AND CLERKS | 29 |
| 77.1. | Hours of the Clerk's Office | 29 |
| 77.2. | Orders and Judgments by the Clerk | 29 |

| | | |
|-------|---|----|
| 79.1. | Custody and Return of Exhibits | 29 |
| 79.2. | Custody of Files and Documents not in Electronic Format | 30 |
| 80.1. | Court Reporting Fees | 30 |
| XI. | MISCELLANEOUS PROVISIONS | 30 |
| 81.1. | Caption on Removed Cases | 30 |
| 81.2. | Cases Transferred or Removed to this Court | 30 |
| 83.2. | Photographs and Broadcasting | 31 |
| 83.4. | Security of the Court | 31 |
| XII. | ATTORNEYS | 31 |
| 83.5. | Bar Admission | 31 |
| 83.6. | Attorney Discipline | 32 |
| 83.7. | Substitution and Withdrawal of Attorney | 39 |
| XIII. | FORM FOR MOTION FOR ADMISSION <i>PRO HAC VICE</i> | 40 |

I. SCOPE OF THE RULES

RULE 1.1. Scope of the Rules.

(a) **Title and Citation.** The rules that follow shall be known as the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware (hereinafter referred to as "the Rules"). The Rules shall be cited as "D. Del. LR ____."

(b) **Effective Date.** The Rules become effective on _____. The Rules supercede any local rules effective prior thereto and shall govern all civil proceedings pending on the effective date, unless otherwise ordered.

(c) **Application.** The Rules shall be construed consistent with 1 U.S.C. §§ 1-5 and shall be followed insofar as they are not inconsistent with the Federal Rules of Civil Procedure (hereinafter "Fed. R. Civ. P."). The Rules, as well as all procedures promulgated by either the Clerk of Court ("the Clerk") or any Judge's chambers, shall be on the Court's website at www.ded.uscourts.gov.

(d) **Modification.** The application of the Rules in any case or proceeding may be modified by the Court in the interests of justice.

RULE 1.2. Availability of the Local Rules.

(a) **Copies.** Copies of the Rules, as amended and with any appendices attached hereto, can be viewed on and downloaded from the Court's website, www.ded.uscourts.gov. Paper copies are available from the Clerk for a reasonable charge to be determined by the Court.

(b) **Amendments.** Consistent with Fed. R. Civ. P. 83 and 28 U.S.C. § 2071, notice shall be provided of:

- (1) Any amendments to the Rules;
- (2) The ability of the public to comment thereon; and
- (3) Final adoption of the amendments.

RULE 1.3. Sanctions.

(a) **In General.** Sanctions may be imposed, at the discretion of the Court, for violations of the Rules, as well as for violations of the Fed. R. Civ. P. and any order of the Court. Such sanctions may include, but are not limited to, costs, fines and attorneys' fees imposed on the offending party and that party's attorney.

(b) **Substantive Sanctions.** In addition to financial penalties, failure of counsel to comply with the Rules relating to trial preparation may be considered an abandonment or a failure to prosecute or defend diligently, and judgment may be entered against the

defaulting party either with respect to a specific issue or the entire case. Likewise, failure of counsel to comply with the Rules relating to motions may result in the determination of the motion against the offending party.

II. COMMENCEMENT OF ACTION; PROCESS; SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

RULE 3.1. Civil Cover Sheet.

(a) In General. Except for civil actions initiated by prisoners who are not represented by counsel, every party initiating a civil action in the Court shall complete and file with the Clerk a civil cover sheet, a form available from the Clerk. To the extent that counsel for a plaintiff has not completed the entire civil cover sheet accurately, counsel for a defendant shall bring such missing or inaccurate information to the attention of the Clerk, all parties, and the Court.

(b) Indication of Related Actions. Counsel for a plaintiff in a civil action shall indicate on the civil cover sheet if said action is related to any other civil action previously decided or pending in this or any other federal district court. Civil actions are related if they:

- (1) Arise from the same or substantially identical transactions, happenings, or events as the case at bar;
- (2) Involve the same or substantially the same parties or property;
- (3) Involve the same patent or the same trademark; or
- (4) For other reasons would entail substantial duplication of labor if heard by different judges.

RULE 3.2. Patent Cases.

In all patent cases, copies of the patents at issue shall be attached and filed with the complaint.

RULE 4.1. Service of Process.

(a) Summons. Except as to those cases proceeding pursuant to 28 U.S.C. § 1915(d), upon or after the filing of a complaint, plaintiff or plaintiff's counsel must present to the Clerk, for the Clerk's signature and seal, a completed form of summons for each named defendant. Upon issuance, the Clerk shall provide the summons to plaintiff or plaintiff's counsel who shall be responsible for prompt service of the summons and a copy of the complaint on each named defendant.

(b) Affidavit of Mailing. In an action in which the plaintiff serves process pursuant to 10 Del. C. § 3104, or § 3113, plaintiff or plaintiff's counsel shall file an affidavit stating that a nonresident defendant has been served by mail and has either accepted or refused the notice required by statute. The affidavit, along with the defendant's return receipt, shall be filed within 14 days of the receipt by plaintiff or by plaintiff's counsel of that return receipt. The affidavit and return receipt need not be served upon the parties.

RULE 5.1. Filing.

(a) Unless specifically exempted by Court order or rule, all documents submitted for filing with the Court shall be filed in accordance with the Court's Administrative Procedures Governing Filing and Service by Electronic Means, which may be amended from time to time by the Court (the "CM/ECF Procedures").

(b) When computing time periods for filing pursuant to Fed. Civ. P. 6(a)(3), the Clerk's Office shall be deemed inaccessible at any time when the Clerk's office is closed due to inclement weather.

RULE 5.1.1. General Format of Papers Presented for Filing.

(a) General Format. To the extent applicable and consistent with CM/ECF Procedures, all pleadings, motions, and other papers presented for filing shall be on 8½ by 11 inch white paper and shall be plainly typewritten or printed and double-spaced, except for quoted material and footnotes. All printed matter must appear in at least 12 point type and all margins shall not be less than 1 inch. Each page shall be numbered consecutively. Such papers shall set forth the date of filing and a brief descriptive title indicating the purpose of the paper. Unless otherwise ordered, the name, Delaware state bar identification number, address, telephone number, and email address of local counsel shall be typed or printed under the signature line.

(b) Exceptions. This rule does not apply to:

- (1) Exhibits submitted for filing;
- (2) Letters submitted to the Court;
- (3) Documents filed in removed actions prior to removal from the state courts.

(c) Additional requirements applicable to briefs, memoranda of points and authorities and appendices are set forth in D. Del. LR 7.1.3.

RULE 5.1.2. The Filing of Nonconforming Papers.

If a document is filed that does not conform to the Rules governing the form of papers, the Court, in its discretion:

(a) May give notice to the filing party that no action will be taken by the Court on the matter raised in the paper until the defect is corrected; or

(b) Take such other action as the Court deems appropriate.

RULE 5.1.3. Filing Documents under Seal.

Documents placed under seal must be filed in accordance with CM/ECF Procedures, unless otherwise ordered by the Court.

RULE 5.2. Service.

(a) CM/ECF. If all parties to a case are participants in CM/ECF, the Court's Notice of Electronic Filing ("NEF"), automatically generated for each document filed, shall serve as the certificate of service; *i.e.*, no separate certificate of service shall be filed.

(b) Non-CM/ECF. If the parties to a case are not all participants in CM/ECF, or if a document is not filed electronically because, *e.g.*, it is filed under seal or is voluminous, the original of any pleading or other paper filed with the Court and required to be served shall have attached either:

(1) A certificate of service by a member of the Bar of this Court; or

(2) In *pro se* cases, a certification by the *pro se* party showing how service has been made.

RULE 5.3. Originals and Copies of Filed Documents.

When a party electronically files a document, the electronically filed copy is deemed the original. One paper copy of the following papers shall be furnished to the Clerk, unless otherwise ordered by the Court: pleadings, stipulations, motions, responses to motions, briefs, memoranda of points and authorities, appendices, and proposed pretrial orders in conformance with D. Del. LR 16.3(c).

RULE 5.4. Discovery Materials.

(a) Service With Filing. In cases involving *pro se* parties, all requests for discovery under Fed. R. Civ. P. 26, 30, 31, 33 through 36, and answers and responses thereto, shall be served upon other counsel or parties and filed with the Court.

(b) Service Without Filing. Consistent with Fed. R. Civ. P. 5(a), in cases where all parties are represented by counsel, all requests for discovery under Fed. R. Civ. P. 26, 30, 31, 33 through 36 and 45, and answers and responses thereto, and all required disclosures under Fed. R. Civ. P. 26(a), shall be served upon other counsel or parties but shall not be filed with the Court. In lieu thereof, the party requesting discovery and the

party serving responses thereto shall file with the Court a "Notice of Service" containing a certification that a particular form of discovery or response was served on other counsel or opposing parties, and the date and manner of service.

(1) Filing the notice of taking of oral depositions required by Fed. R. Civ. P. 30(b)(1) and 30(b)(6), and filing of proof of service under Fed. R. Civ. P. 45(b)(3) in connection with subpoenas, will satisfy the requirement of filing a "Notice 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 custodians of them. The party taking an oral deposition shall be custodian of the original deposition transcript; no copy shall be filed except pursuant to subparagraph (3). Unless otherwise ordered, in cases involving out-of-state counsel, local counsel shall be the custodians.

(3) If depositions, interrogatories, requests for documents, requests for admissions, 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.

(4) When discovery 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 the Court.

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

III. PLEADINGS AND MOTIONS

RULE 7.1.1. Statement Required to be Filed with Nondispositive Motions.

Except for civil cases involving *pro se* parties or motions brought by nonparties, every nondispositive motion shall be accompanied by an averment of counsel for the moving party that a reasonable effort has been made to reach agreement with the opposing party on the matters set forth in the motion. Unless otherwise ordered, failure to so aver may result in dismissal of the motion. For purposes of this Rule, "a reasonable effort" must include oral communication that involves Delaware counsel for any moving party and Delaware counsel for any opposing party.

RULE 7.1.2. Motions.

(a) In General. Unless otherwise ordered, all requests for relief shall be presented to the Court by motion. A moving party must clearly articulate within the body of the motion the relief requested and the grounds in support thereof, or must accompany the motion with either a supporting brief or a memorandum of points and authorities. Unless otherwise ordered, the responsive papers shall be in the form adopted by the

moving party; *i.e.*, if the moving party files a motion accompanied by a brief, the responsive paper should be a brief. An appendix may be filed with any brief.

(b) **Schedule.** Unless otherwise ordered, once a motion has been deemed served, the response thereto shall be filed within 14 days, as calculated consistent with Fed. R. Civ. P. 6(a) and CM/ECF Procedures. Once the responsive papers have been deemed served, the moving party may file a reply within 7 days, as calculated consistent with Fed. R. Civ. P. 6(a) and CM/ECF Procedures. Except for the citation of subsequent authorities, no additional papers shall be filed absent Court approval.

(c) **Bankruptcy Appeals.** Bankruptcy appeals shall be exempt from the requirements of this Rule, and shall instead conform to the requirements of the Federal Rules of Bankruptcy Procedure and Part VIII of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

RULE 7.1.3. Form and Contents of Briefs, Memoranda of Points and Authorities, and Appendices.

(a) To the extent applicable and consistent with CM/ECF Procedures, papers shall comply with the following requirements regarding form, unless otherwise ordered:

(1) **Covers.** On the front cover of each brief, memorandum of points and authorities, and appendix, there shall be the name of the Court, the caption of the case, the civil action number, a description of the paper's nature, the date of filing, the name and designation of the party for whom the paper is filed, and the name, Delaware bar identification number, address, and telephone number of counsel by whom it is filed.

(2) **Format.** All briefs and memoranda shall be printed in at least 12 point type, and shall be double-spaced with at least 1 inch margins. To the extent paper copies of briefs, memoranda, and/or appendices are filed with the Court, they shall be firmly bound at the left margin.

(3) **Page Numbering of Appendices.** Pages of an appendix shall be numbered separately at the bottom. Transcripts and other papers reproduced in a manner authorized by this Rule shall be included in the appendix both with original and appendix pagination.

(4) **Length.** No opening or answering brief shall exceed 20 pages, and no reply brief shall exceed 10 pages, in each instance exclusive of any table of contents or table of citations.

(5) **Form of Citations.** Citations shall be made in accordance with "A Uniform System of Citation," published and distributed from time to time by the Harvard Law Review Association. Citations to the National Reporter System must be included,

except as to United States Supreme Court decisions where the official citation shall be used.

(6) Citation by Docket Number. References to earlier-filed papers in any civil action shall include a citation to the docket item number as maintained by the Clerk in the following format: "D.I." followed by the docket item number of the paper.

(7) Unreported Opinions. If an 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 Memoranda of Points and Authorities. Memoranda of points and authorities shall include the legal propositions urged by the party, succinctly stated, as well as citations to those cases and legal authorities supporting each such legal proposition. No further legal argument shall be included.

(c) Contents of Briefs.

(1) Opening and Answering Briefs. The opening and answering brief 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 and/or numerically arranged. If a brief does not contain any citations therein, a statement to this effect should be placed under this heading.

(C) A statement of the nature and stage of the proceedings.

(D) A summary of argument, setting forth in separately numbered paragraphs the legal propositions upon which the party relies.

(E) A concise statement of facts, with supporting references to the record, presenting the background of the questions at issue. Each party shall be referred to as "plaintiff" or "defendant," as the case may be, or by the name or other appropriate designation which makes identity clear. The answering counterstatement of facts need not repeat facts recited in the opening brief.

(F) An argument, divided under appropriate headings distinctly setting forth separate points.

(G) A short conclusion stating the precise relief sought.

(2) Reply Briefs. The party filing the opening brief shall not reserve material for the reply brief which should have been included in a full and fair opening

brief. There shall not be a repetition of materials contained in the opening brief. A table of contents and a table of citations, as required above, shall be included in the reply brief.

(d) **Contents of Appendices.** Each appendix shall contain a paginated table of contents and may contain such parts of the record relevant to the questions presented. The portions of the record included in the appendix shall be arranged in chronological order. Duplication of material shall be avoided. If evidence in a foreign language is included in any appendix, an English translation (along with a certification that the translation is true and correct) shall also be included in the appendix.

(e) **Joint Appendix.** The parties may agree on a joint appendix, which shall be bound separately.

(f) **Bankruptcy Appeals.** Bankruptcy appeals shall be exempt from the requirements of this Rule, and shall instead conform to the requirements of the Federal Rules of Bankruptcy Procedure and Part VIII of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, provided, however, that this Court may accept documents that do not meet all of the requirements of Federal Rule of Bankruptcy Procedure 8015.

RULE 7.1.4. Oral Argument.

Oral argument on any motion may be scheduled upon the application of a party, or *sua sponte* by Court order. An application for oral argument shall be in writing and shall be made no later than 7 days after service of a reply brief. An application for oral argument may be granted or denied, in the discretion of the Court. Bankruptcy appeals shall be exempt from the requirements of this Rule, and shall instead conform to the requirements of the Federal Rules of Bankruptcy Procedure and Part VIII of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

RULE 7.1.5. Reargument.

(a) **Motions for reargument** shall be sparingly granted. If a party chooses to file a motion for reargument, said motion shall be filed within 14 days after the Court issues its opinion or decision, with the exception of motions filed pursuant to Fed. R. Civ. P. 59(e), which shall be filed in accordance with the time limits set forth in Fed. R. Civ. P. 59(e). The motion shall briefly and distinctly state the grounds therefor. Within 14 days after filing of such motion, the opposing party may file a brief answer to each ground asserted in the motion. Motions for reargument and any answers thereto shall not exceed 10 pages. The Court will determine from the motion and answer whether reargument will be granted.

(b) Motions for reargument on a ruling made by a Magistrate Judge pursuant to Fed. R. Civ. P. 72 are not permitted. A party seeking review of an order, decision or recommendation disposition issued by a Magistrate Judge pursuant to Fed. R. Civ. P. 72 shall be limited to the filing of objections permitted under Fed. R. Civ. P. 72 and D. Del. LR 72(b), and shall not be permitted to file a motion for reargument before either the Magistrate Judge or the District Court Judge pursuant to D. Del. LR 7.1.5(a). In conformance with D. Del. LR 72(b), a party filing such objections shall identify the appropriate standard of review in presenting such objections.

(c) Bankruptcy appeals shall be exempt from the requirements of this Rule, and shall instead conform to the requirements of the Federal Rules of Bankruptcy Procedure and Part VIII of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

RULE 9.2. Request for Three-Judge District Court.

If a party believes a civil action or proceeding must be heard by a three-judge district court, the notation "Three-Judge District Court Requested" or the equivalent shall be included on the front page immediately following the title of the first pleading filed in such action or proceeding. The basis for the request shall be set forth in the pleading or in a brief statement attached thereto. The words "Three-Judge District Court Requested" or the equivalent on a pleading is a sufficient request under 28 U.S.C. § 2284.

RULE 9.4. Pleading Claim for Unliquidated Damages.

(a) Demand for damages. A pleading setting forth a claim for relief in the nature of unliquidated monetary damages shall state in the *ad damnum* clause a demand specifying the nature of the damages claimed, e.g., "compensatory," "punitive," or both, but shall not claim any specific sum. The statement of jurisdiction required by Fed. R. Civ. P. 8(a)(1) shall set forth any minimum amount needed to invoke jurisdiction of the Court, but no other.

(b) Statement of damages. Within 14 days after service of a written request by another party, the party filing the pleading shall furnish the requesting party with a written statement of the amount of damages claimed. Unless required by Court order, such statement shall not be filed with the Court.

RULE 15.1. Form of a Motion to Amend and Its Supporting Documentation.

A party who moves to amend a pleading shall attach to the motion:

(a) The proposed pleading as amended, complete with a handwritten or electronic signature; and

(b) A form of the amended pleading which shall indicate in what respect it differs from the pleading which it amends, by bracketing or striking through materials to be deleted and underlining materials to be added.

If the motion to amend is granted, the proposed amended pleading, as executed above, shall be docketed by the Court as the amended pleading. Service shall be accomplished consistent with the Fed. R. Civ. P. and these Rules.

RULE 16.1. Fed. R. Civ. P. 16(b) Scheduling Conference.

(a) Parties to confer. When, in its discretion, the Court directs counsel for the parties and any unrepresented parties to participate in a Fed. R. Civ. P. 16(b) scheduling conference, the parties shall confer prior to the conference to discuss pretrial management issues, including the possibility of settlement.

(b) Matters to consider. Matters to be considered at the scheduling conference may include, in addition to the items specified in Fed. R. Civ. P. 16(b) and 16(c), the following matters:

- (1) The schedule applicable to the case, including a trial date, if appropriate;
- (2) The number of interrogatories and requests for admissions to be allowed by any party and the number and location of depositions;
- (3) How discovery disputes are to be resolved;
- (4) The briefing practices to be employed in the case, including what matters are or are not to be briefed and the length of briefs; and
- (5) The possibility of settlement.

RULE 16.2. Exemptions from Fed. R. Civ. P. 16(b) and 26(f).

The following categories of action are exempt from the scheduling conference and order requirements of Fed. R. Civ. P. 16(b) and 26(f):

- (a) All actions in which one of the parties appears *pro se* and is incarcerated;
- (b) All actions for judicial review of administrative decisions of government agencies or instrumentalities where the review is conducted on the basis of the administrative record;

(c) Prize proceedings, actions for forfeitures and seizures, for condemnations, or for foreclosure of mortgages or sales to satisfy liens of the United States;

(d) Bankruptcy appeals;

(e) Proceedings for admission to citizenship or to cancel or revoke citizenship;

(f) Proceedings for *habeas corpus* or in the nature thereof, whether addressed to federal or state custody;

(g) Proceedings to compel arbitration or to confirm or set aside arbitration awards;

(h) Proceedings to compel the giving of testimony or production of documents under a subpoena or summons issued by an officer, agency or instrumentality of the United States not provided with authority to compel compliance;

(i) Proceedings to compel the giving of testimony or production of documents in connection with discovery, or testimony *de bene esse*, or for perpetuation of testimony for use in a matter pending or contemplated in a United States District Court of another District;

(j) Proceedings for the temporary enforcement of orders of the National Labor Relations Board;

(k) Civil actions for recovery of erroneously paid educational assistance; and

(l) Proceedings for execution on a judgment pursuant to Fed. R. Civ. P. 64 or 69 or 28 U.S.C. Chapter 127.

RULE 16.3. Pretrial Conference and Procedure.

(a) In general. Unless otherwise ordered, in all civil cases for which a trial is scheduled, a pretrial conference shall be held. If no trial date has been scheduled, any party may request a pretrial conference following the completion of discovery and any scheduled motion practice.

(b) Attendance by counsel. Unless otherwise ordered, counsel who will conduct the trial are required to attend the pretrial conference. Failure to so attend or to otherwise cooperate in trial preparation may result, after notice, in the imposition of sanctions.

(c) Proposed pretrial order. Prior to the pretrial conference, counsel for all parties shall meet and confer in order to premark and exchange all trial exhibits and otherwise discuss the contents of the proposed pretrial order, which shall include the following:

(1) A statement of the nature of the action, the pleadings in which the issues are raised (e.g., third amended complaint and answer) and whether counterclaims, crossclaims, etc., are involved;

(2) The constitutional or statutory basis of federal jurisdiction, together with a brief statement of the facts supporting such jurisdiction;

(3) A statement of the facts which are admitted and require no proof;

(4) A statement of the issues of fact which any party contends remain to be litigated;

(5) A statement of the issues of law which any party contends remain to be litigated, and a citation of authorities relied upon by each party;

(6) A list of premarked exhibits which each party intends to offer at trial, along with citations to the Federal Rules of Evidence to note any objections thereto lodged by any other party;

(7) The names of all witnesses a party intends to call to testify, whether the witness will testify in person or by deposition and, if by depositions signiation, a list of deposition designations;

(8) A brief statement of what plaintiff intends to prove in support of plaintiff's claims, including the details of the damages claimed or of other relief sought;

(9) A brief statement of what the defendant intends to prove as defenses;

(10) Statements by counterclaimants or crossclaimants comparable to that required of plaintiff;

(11) Any amendments of the pleadings desired by any party with a statement whether it is unopposed or objected to and, if objected to, the grounds therefore;

(12) A certification that the parties have engaged in a good faith effort to explore the resolution of the controversy by settlement;

(13) Any other matters which the parties deem appropriate.

(d) Unless otherwise ordered or agreed to by the parties and approved by the Court:

(1) The plaintiff shall provide a draft pretrial order to all other parties no less than 30 days before the pretrial order is to be filed with the Court. The draft shall include proposed language for the sections of the pretrial order jointly submitted by all parties, as well as the sections relating to the plaintiff's case. If the parties have not yet exchanged trial exhibits, the plaintiff shall provide all other parties with a copy of, or reasonable access to, the plaintiff's proposed trial exhibits.

(2) No less than 14 days before the pretrial order is to be filed with the Court, all other parties shall provide the plaintiff and each other party with their responses to the plaintiff's draft order. Such responses shall include the party's response to the plaintiff's proposed language for the sections of the pretrial order to be jointly submitted by all parties, as well as the sections relating to the party's case. If the parties have not yet exchanged trial exhibits, the party shall provide plaintiff and each other party with a copy of, or reasonable access to, the party's proposed trial exhibits.

(3) The parties shall thereafter meet and confer in good faith such that the plaintiff may file the pretrial order in conformity with this Rule.

(4) At least 7 days prior to the pretrial conference, the plaintiff shall file with the Clerk an executed copy of the proposed pretrial order, which shall include the matters described in subsection (c) above, as well as the following language:

"This order shall control the subsequent course of the action, unless modified by the Court to prevent manifest injustice."

RULE 16.4. Requests for Extensions of Deadlines.

Unless otherwise ordered, a request for an extension of deadlines for completion of discovery or postponement of the trial shall be made by motion or stipulation prior to expiration of the date deadline, and shall include the following:

- (a) The reasons for the request; and
- (b) Either a supporting affidavit by the requesting counsel's client or a certification that counsel has sent a copy of the request to the client.

IV. PARTIES

RULE 23.1. Designation of "Class Action" in the Caption.

In any case sought to be maintained as a class action, the complaint or other pleading asserting a class action shall include, next to its caption, the legend "Class Action."

V. DEPOSITIONS AND DISCOVERY

RULE 26.1. Form of Certain Discovery Papers.

(a) Sequential Numbering. Each party shall number sequentially each interrogatory or request it submits; the responses thereto shall be numbered consistently. Each subpart of an interrogatory or request shall be counted as a separate interrogatory or request.

(b) Form of Responses. The party answering, responding, or objecting to interrogatories or requests served pursuant to Fed. R. Civ. P. 33, 34 or 36 may state any general objections and then shall quote each such interrogatory or request in full immediately preceding the substance of the answer, response, or objection thereto.

RULE 26.2. Confidentiality.

If any documents are deemed confidential by the producing party and the parties have not stipulated to a confidentiality agreement, until such an agreement is in effect, disclosure shall be limited to members and employees of the firm of trial counsel who have entered an appearance and, where appropriate, have been admitted *pro hac vice*. Such persons are under an obligation to keep such documents confidential and to use them only for purposes of litigating the case.

RULE 30.1. Reasonable Notice for Taking Depositions.

Unless otherwise ordered by the Court, "reasonable notice" for the taking of depositions under Fed. R. Civ. P. 30(b)(1) and 30(b)(6) shall be not less than 10 days.

RULE 30.2. Deposition Motions.

Pending resolution of any motion under Fed. R. Civ. P. 26(c) or 30(d), or such other form of application for relief as the Court may prescribe, neither the objecting party, witness, nor any attorney is required to appear at a deposition to which a motion is directed until the motion is resolved.

RULE 30.3. Who May Attend Deposition.

Unless otherwise ordered by the Court, or agreed to by all parties, a deposition may be attended only by:

- (a) The deponent;
- (b) Counsel for any party and members and employees of their firms;
- (c) A party who is a natural person;
- (d) An individual who has been designated by counsel to represent a party that is not a natural person;
- (e) Counsel for the deponent; and
- (f) Any consultant or expert designated by counsel for any party.

If a protective order has been entered, any person who is not authorized under the order to have access to documents or information designated confidential may be

excluded while a deponent is being examined about such confidential document or information.

RULE 30.4. Procedures for Recording Depositions.

(a) **Beginning.** An oral deposition to be electronically or magnetically recorded shall begin by the operator stating on the record:

- (1) The operator's name and address;
- (2) The name and address of the operator's employer;
- (3) The date, time and place of the deposition;
- (4) The caption of the case;
- (5) The name of the deponent; and
- (6) The party on whose behalf the deposition is being taken.

(7) The officer before whom the deposition is taken shall then identify himself or herself and swear the deponent on the record.

(b) **Conclusion.** At the conclusion of the deposition, the operator shall state on the record that the deposition is concluded. When the length of the deposition requires the use of more than one electronic file or recorded media, the end of each file or recorded media and the beginning of each succeeding file or recorded media shall be announced on the record by the operator.

(c) **Timing by Digital Clock.** The deposition shall be timed by a digital clock on the record which shall record and show continually each hour, minute and second of the deposition.

(d) **Custody.** Counsel for the party taking the deposition shall take custody of and be responsible for the safeguarding of the recorded media. The custodian shall permit the viewing of the electronic file or recorded media, and shall provide a copy of such upon the request and at the cost of a party.

RULE 30.5. Original Deposition Transcripts.

It shall be the duty of the party on whose behalf the deposition was taken to make certain that the officer before whom it was taken has delivered the original transcript to such party.

RULE 30.6. Depositions Upon Oral Examination.

From the commencement until the conclusion of deposition questioning by an opposing party, including any recesses or continuances, counsel for the deponent shall

not consult or confer with the deponent regarding the substance of the testimony already given or anticipated to be given, except for the purpose of conferring on whether to assert a privilege against testifying or on how to comply with a court order.

RULE 37.1. Discovery Motions to Include the Discovery at Issue.

Any discovery motion filed pursuant to Fed. R. Civ. P. 26 through 37 shall include, in the motion itself or in a memorandum, a verbatim recitation of each interrogatory, request, answer, response, or objection which is the subject of the motion or shall have attached a copy of the actual discovery document which is the subject of the motion.

VI. TRIALS

RULE 38.1. Notation of "Jury Demand" on the Pleading.

If a party demands a jury trial by endorsing it on a pleading, as permitted by Fed. R. Civ. P. 38(b), a notation shall be placed in the caption of the pleading stating "Demand For Jury Trial" or the equivalent. This notation will serve as a sufficient demand under Fed. R. Civ. P. 38(b).

RULE 40.1. Assignment of Cases; Duty Judge.

(a) Assigned Judge. Each case will be assigned to a Judge. All matters pertaining to a case will be heard by the Judge to whom it has been assigned, unless otherwise ordered.

(b) Duty Judge. Each week on a rotating basis, one judge will be designated as "Duty Judge." The Duty Judge may perform the following functions, among others:

- (1) Act upon any motion for a preliminary injunction, temporary restraining order or other relief in a case which has not yet been assigned to a Judge;
- (2) Act in lieu of the Judge to whom a case is assigned, whenever the assigned Judge is absent from the courthouse and cannot feasibly return prior to the expiration of the time within which judicial action is required;
- (3) Admit attorneys to the Bar of this Court.

RULE 41.1. Dismissal for Failure to Prosecute.

Subject to the provisions of Fed. R. Civ. P. 23 and 23.1, in each case pending wherein no action has been taken for a period of 3 months, the Court may, on its motion or upon application of any party, and after reasonable notice and opportunity to be heard, enter an order dismissing such case unless good reason for the inaction is given. After any such application or notice from the Court, no application for a continuance or any

proceeding taken under the discovery rules shall be deemed to toll the operation of this Rule.

RULE 43.1. Witnesses Conferring with Counsel During Testimony.

Once direct examination of a witness is concluded and until cross examination of that witness is concluded, counsel offering the witness on direct examination shall not:

- (a) Consult or confer with the witness regarding the substance of the witness' testimony already given or anticipated to be given, except for the purpose of conferring on whether to assert a privilege against testifying or on how to comply with a court order; or
- (b) Suggest to the witness the manner in which any questions should be answered.

RULE 47.1. Voir Dire of Jurors.

- (a) Voir Dire Conducted by the Court. Unless otherwise ordered by the Court:
 - (1) The voir dire of the petit jury panel shall be conducted by the Court:
 - (2) Any party desiring special voir dire questions of the jury panel must file a suggested form of voir dire questions at least 3 business days before the pretrial conference.
- (b) Challenges. After all challenges for cause have been exercised and determined, the deputy clerk shall draw and announce the members of the panel as to which peremptory challenges may be exercised. Except when the Court has directed otherwise, peremptory challenges to which each party may be entitled under 28 U.S.C. § 1870 shall be exercised as follows: The plaintiff and defendant each may exercise 3 challenges, with plaintiff having the first, third and fifth opportunities to challenge and the defendant having the second, fourth, and last opportunities.

RULE 47.2. Communications with Jurors.

Unless otherwise permitted to do so by the Court, a lawyer shall not communicate with a prospective juror, or with a juror after discharge of the jury.

RULE 48.1. Number of Jurors.

The jury in all civil jury cases shall consist of not fewer than 6 and not more than 12 members, except that the parties may stipulate that the jury in any such case shall consist of any number less than 6.

RULE 51.1. Instructions to the Jury and Special Verdicts and Interrogatories.

Unless otherwise ordered by the Court:

(a) Instructions 3 Business Days Before Pretrial Conference. Prior to the pretrial conference of any jury trial, counsel for all parties must confer about the instructions and, at least 3 business days before the pretrial conference, counsel for plaintiff shall file written instructions reasonably anticipated to be made upon which all parties agree. If there are differences that cannot be resolved, each party shall submit its own form of proposed jury instructions in the specific area or areas where there is disagreement, accompanied by citation to supporting authority.

(b) Format. The written instructions shall contain a table of contents. All proposed jury instructions shall carry a descriptive title and all pages of the proposed jury instructions shall be numbered in such a way as to identify, next to each number, whether it has been submitted jointly, by plaintiff(s) or by defendant(s).

(c) Special Verdict or Interrogatories 3 Business Days Before Pretrial Conference. Any party desiring a special verdict or interrogatories, as provided for in Fed. R. Civ. P. 49, must file a suggested form of special verdict or suggested interrogatories at least 3 business days before the pretrial conference.

VII. JUDGMENTS

RULE 54.1. Taxation of Costs.

(a) Costs.

(1) Unless otherwise ordered by the Court, the prevailing party shall be entitled to costs. The party shall, within 14 days after the time for appeal has expired or within 14 days after the issuance of the mandate of the appellate court, file a bill of costs. Failure to comply with the time limitations of this Rule shall constitute a waiver of costs, unless the Court otherwise orders or counsel are able to agree on the payment of costs. In the latter case, no bill of costs need be filed.

(2) The bill of costs shall clearly describe each item of cost and comply with the provisions of 28 U.S.C. § 1924.

(3) Within 14 days after service by any party of a bill of costs, any other party may serve and file specific objections to any item, with detailed justification.

(4) Not less than 28 days after receipt of a party's bill of costs, the Clerk, after consideration of any objections, shall tax costs and serve copies of the bill of costs as allowed on all parties in accordance with Fed. R. Civ. P. 5.

(b) Items Taxable as Costs.

(1) In General. Costs shall be taxed in conformity with the provisions of 28 U.S.C. §§ 1920, 1921, and 1923-, and such other provisions of law as may be applicable and the remaining paragraphs of subpart (b) of this Rule.

(2) Transcripts Fees. The costs of the originals of a trial transcript, a daily transcript and of a transcript of matters prior or subsequent to trial, furnished to the Court, are taxable when requested by the Court or prepared pursuant to stipulation. Mere acceptance by the Court does not constitute a request. Copies of transcripts for counsel's own use are not taxable.

(3) Deposition Costs. The reporter's reasonable charge for the original and one copy of a deposition and the reasonable cost of taking a deposition electronically or magnetically recorded are taxable only where a substantial portion of the deposition is used in the resolution of a material issue in the case. Charges for counsel's copies and the expenses of counsel in attending depositions are not taxable, regardless of which party took the deposition. Notary fees incurred in connection with taking depositions are taxable.

(4) Witness Fees, Mileage and Subsistence. The rates for witness fees, mileage and subsistence are fixed by 28 U.S.C. § 1821. Such fees are taxable even though the witness does not take the stand, provided the witness attends Court. Witness

fees and subsistence are taxable only for the reasonable period during which the witness is within the district.

Subsistence to the witness under 28 U.S.C. § 1821 is allowable if the distance from the Court to the residence of the witness is such that mileage fees would be greater than subsistence fees, if the witness were to return to his/her residence from day to day.

No party shall receive witness fees for testifying in its own behalf, but this shall not apply where a party is subpoenaed to attend Court by the opposing party. Witness fees for officers of a corporation are taxable if the officers are not defendants and recovery is not sought against the officers individually. Unless otherwise provided by statute, fees of expert witnesses are not taxable in an amount greater than that statutorily allowable for ordinary witnesses. The reasonable fee of an interpreter is taxable if the fee of the witness involved is taxable.

(5) **Exemplification and Copies of Papers.** The cost of copies of an exhibit necessarily attached to a document required to be filed and served is taxable. The cost of one copy of a document is taxable when admitted into evidence. The cost of copies obtained for counsel's own use is not taxable. The fee of an official for certification or proof concerning the nonexistence of a document is taxable. The reasonable fee of a translator is taxable if the document translated is taxable. Notary fees are taxable if actually incurred, but only for documents which are required to be notarized and filed.

The cost of patent file wrappers and prior art patents are taxable at the rate charged by the Patent Office. Expenses for services of persons checking Patent Office records to determine what should be ordered are not taxable.

(6) **Cost of Maps and Charts.** The cost of maps and charts is taxable if they are admitted into evidence. The cost of photographs, 8" x 10" in size or less, is taxable if admitted into evidence, or attached to documents required to be filed and served on opposing counsel. Enlargements greater than 8" x 10" are not taxable except by order of the Court. The cost of models, compiling summaries, computations, and statistical comparisons are not taxable.

(7) **Fees to Masters.** Fees to masters shall be assessed in accordance with Fed. R. Civ. P. 53(a).

(8) **Removed Cases.** In a case removed from the state court, costs incurred in the state court prior to removal, including but not limited to the following, are taxable in favor of the prevailing party in this Court:

- (A) Fees paid to the clerk of the state court;
- (B) Fees for services of process in the state court;

(C). Costs of exhibits attached to documents required to be filed in the state court.

(9) Admiralty. Fees for compensation for keepers of boats and vessels attached or libeled are taxable in accordance with 28 U.S.C. § 1921.

(10) Bonds. The reasonable premiums or expenses paid on bonds or security stipulations shall be allowed when furnished by requirements of the law or rule of Court, by an order of the Court or where required to enable a party to receive or preserve some right accorded the party in an action or proceeding.

(11) Other Costs. Claims for costs other than those specifically mentioned in the preceding paragraphs of subpart (b) of this Rule ordinarily will not be allowed, unless the party claiming such costs substantiates the claim by reference to a statute or binding court decision.

(c) Party Entitled to Costs. The determination of the prevailing party shall be within the discretion of the Court in all cases except where such determination is inconsistent with statute or the Fed. R. Civ. P. or the rules of the appellate courts. If each side recovers in part, ordinarily the party recovering the larger sum will be considered the prevailing party. The defendant is the prevailing party upon a dismissal or summary judgment or other termination of the case without judgment for the plaintiff on the merits. No costs shall be allowed to either party if the Court is unable to determine the prevailing party.

(d) Review of Costs. In accordance with Fed. R. Civ. P. 54(d), the opposing party may, within 7 days of service, file a motion for review of the decision of the Clerk in the taxation of costs.

(e) Appellate Costs. The certified copy of the judgment or the mandate of the Court of Appeals, without further act by the District Court, is sufficient basis for issuance by the Clerk of a writ of execution to recover costs taxed by the appellate court.

RULE 54.2. Jury Cost Assessment.

Juror costs, including Marshal's fees, mileage and per diem, may be assessed against the parties and/or their counsel in any civil action that is settled or otherwise resolved less than 3 full business days before jury selection is scheduled to begin.

RULE 54.3. Award of Attorney's Fees.

(a) Judgment on Less than all Claims. Where a judgment is not a final judgment on all claims, failure to apply for attorneys' fees shall not prevent a party from applying for fees after entry of final judgment.

(b) Settled Cases. Applications for attorneys' fees in connection with settled cases shall be filed no later than 21 days after the settlement is approved by the Court.

Where Court approval is not sought, motions for fees shall be filed no later than 21 days after the settlement agreement is executed by the parties.

(c) Applicable Statute or Regulation. The time provisions specified above shall control unless an applicable statute or regulation provides a different period of time (e.g., ~~inter alia~~, The Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(B)).

VIII. PROVISIONAL AND FINAL REMEDIES

RULE 58.1.1. Entry of Judgment by Confession and Execution Thereon.

(a) Judgment by confession as authorized by 10 Del. C. § 2306 shall be entered by the Clerk, provided that the following documents are filed:

(1) A notice directed to the Clerk that includes:

(A) A short and plain statement of the grounds upon which the Court's jurisdiction depends; and

(B) The following form signed by the person exercising the warrant of attorney:

"Please commence proceedings pursuant to D. Del. LR 58.1.1 to confess judgment on behalf of [Plaintiff] against [Debtor's Name] of [Address] for \$ [Real Debt] and \$ _____ accrued interest to date together with interest thereon at ____% per annum from _____ plus attorneys' fees of \$ _____ and costs of \$ _____.
Date: _____

Person exercising warrant of attorney?

(2) The original document authorizing confession of judgment together with a photocopy for the Clerk.

(3) In the case of a debtor who was a nonresident at the time of the execution of the original document authorizing confession of judgment, plaintiff shall also file the affidavit required by 10 Del. C. § 2306(c), together with a photocopy, for the Clerk.

(4) A completed notice letter as required by 10 Del. C. § 2306(b) for each debtor against whom judgment is requested.

(b) The Clerk shall return the original document authorizing confession of judgment and, if applicable, the original affidavit required by 10 Del. C. § 2306(c) to the plaintiff presenting it and file the copy or copies as the authority for commencing the procedure set forth in this Rule.

(c) The Clerk shall docket a "tentative" judgment as of the date of filing. Subsequently, the Clerk shall make a notation on the docket of the mailing and publication dates provided for in paragraphs (d) and (f).

(d) The notice letter required by paragraph (a)(4) shall be mailed by the plaintiff to each debtor by certified mail, return receipt requested, together with a copy of the instrument authorizing confession of judgment and, where applicable, a copy of the affidavit required by 10 Del. C. § 2306(c). An affidavit of mailing shall be filed by the plaintiff with the Clerk. The notice letter, on a form supplied by the Clerk, shall contain the following information:

(1) Plaintiff intends to obtain judgment against the debtor in the United States District Court for the District of Delaware based on the enclosed document for the following amounts:

Principal: _____
Accrued Interest: _____
Attorneys' Fees: _____
Plus Interest and Costs: _____

(2) Plaintiff alleges the debtor has waived any rights to notice and hearing prior to the entry of judgment.

(3) The entry of such a judgment will result in a lien against all the debtor's real estate and the means in default of payment, whereby the Marshal can levy against and ultimately sell at public auction the debtor's personal property and real estate for credit against the debt.

(4) In default of payment in appropriate cases, the Marshal may seize some portion of the debtor's wages for credit against the debt.

(5) The debtor may file with the Court (giving an address for the Clerk) an objection to the entry of judgment by a date 2 weeks following the date on which the notice letter for the entry of judgment was mailed. When the objection is filed, a hearing will be scheduled by the Court. At the hearing, the plaintiff will be required to prove that the debtor has effectively waived any rights to notice and a hearing prior to the entry of judgment.

(6) No objection is required but, if no objection is made, judgment will be entered by default.

(e) When service is effected by certified mail, the person exercising the warrant of attorney shall file the return receipt with the Clerk.

(f) If the certified mail sent pursuant to paragraph (d) is returned undelivered, the person exercising the warrant of attorney shall notify the Clerk accordingly in writing and shall accomplish service by publication of the notice provided for in paragraph (a)(4) once per week for 2 weeks in a newspaper of general circulation in the county in which the instrument is to be recorded. If the residence of the debtor is other than the county in

which the judgment is sought to be entered, then publication shall also be made once per week for 2 weeks in a newspaper of general circulation in the county in Delaware in which the debtor resides or is last known to have resided. The notice shall include the date on which debtor must file objections to the entry of judgment, which date shall be at least 2 weeks following the last publication. An affidavit of publication shall be filed by the plaintiff with the Clerk.

(g) Judgment shall be entered against a debtor who fails to object after service as provided for herein.

(1) If the debtor objects, a hearing date will be scheduled by the Court. At the hearing, the burden shall be on the plaintiff to prove that the debtor effectively waived any right to notice and a hearing prior to the entry of judgment against the debtor. Costs are to be assessed against the plaintiff if the plaintiff fails to carry that burden. Costs are to be assessed against the debtor if judgment is entered against the debtor.

(2) When a judgment is obtained pursuant to this Rule, a notation to that effect shall then be entered in the judgment records and said judgment shall be final to the same extent as a judgment entered after trial. The lien of said judgment shall relate back to the time of its original docketing.

(h) The following procedure must be complied with prior to the issuance of the first writ of execution on a confessed judgment:

(1) The judgment creditor shall file the following with the Clerk:

(A) A praecipe directed to the Clerk requesting the particular execution writ, together with a form of that writ obtained from the Superior Court of the State of Delaware.

(B) A notice letter as required by 10 Del. C. § 2306(j) for each debtor against whom execution is requested.

(2) The Clerk shall docket the praecipe. Subsequently, the Clerk shall make a notation on the docket of the mailing and publication dates as provided for in paragraph (h)(3) and (h)(5).

(3) The notice letter required by paragraph (h)(1)(B) shall be mailed by the plaintiff to each debtor by certified mail, return receipt requested. An affidavit of mailing shall be filed with the Clerk. The notice letter, on a form supplied by the Clerk, shall contain the following information:

(A) The judgment creditor has requested the Court to issue a writ of execution against the debtor based on the confessed judgment entered on a certain date.

(B) A writ of execution can be used to attach wages in appropriate cases and seize the debtor's personal property and real estate and ultimately sell them for credit against the debt.

(C) The debtor may file with the Court (giving an address for the Clerk) an objection to the issuance of the execution process by a date 2 weeks following the date on which the notice letter for the issuance of the execution process was mailed. When the objection is filed, a hearing will be scheduled by the Court. At said hearing, the debtor may raise any appropriate defenses.

(D) No objection is required but, if no objection is made, a warning that the writ of execution sought by the judgment creditor and other subsequent writs will be issued whereby the Marshal could attach the debtor's wages in appropriate cases, or seize the debtor's personal property and real estate and ultimately sell them for credit against the debt.

(E) The judgment creditor is claiming the debtor owes \$ _____ plus accrued interest of \$ _____ to the date of judgment, plus interest at the legal rate from the date of judgment plus attorneys' fees of \$ _____ plus costs.

(F) If the debtor has any questions about these matters, an attorney should be consulted immediately.

(4) When service is effected by certified mail, the plaintiff shall file the return receipt with the Clerk.

(5) If the certified mail sent pursuant to paragraph (h)(3) is returned undelivered, the judgment creditor shall notify the Clerk accordingly in writing and shall accomplish service by publication of the notice provided for in paragraph (h)(1)B once per week for 2 weeks in a newspaper of general circulation in the county in which execution is to occur. If the residence of the debtor is other than the county in which execution is sought, then publication shall also be made once per week for 2 weeks in a newspaper of general circulation in the county in Delaware in which the debtor resides or is last known to have resided. The notice shall include the date by which debtor must file objections to the issuance of the execution process, which date shall be at least 2 weeks following the last publication. An affidavit of publication shall be filed by the plaintiff with the Clerk.

(6) The writ of execution requested and any appropriate writ thereafter shall issue against a debtor who fails to object after service as provided for herein.

(7) If the debtor objects, a hearing date will be scheduled by the Court. At the conclusion of the hearing, the Court shall make such orders as are appropriate, including for the assessment of costs.

RULE 58.1.2. Entry of Judgment by Confession in Open Court.

(a) A judgment by confession may be entered in open court, either for money due or to become due, or to secure the obligee against a money contingent liability or both, on the application by the obligee or assignee of a bond, note or other obligation containing a warrant for an attorney-at-law or other person to confess judgment.

(b) Application for the entry of judgment by confession in open court shall be as follows:

(1) The plaintiff may appear at a time set by the Court, together with the defendant obligor.

(2) A court reporter shall make a record of the proceedings.

(3) The plaintiff shall provide the Court with the following:

(A) A notice in the form prescribed by D. Del. LR 58.1.1(a)(1).

(B) The original document authorizing confession of judgment, together with a photocopy for the Clerk and each defendant obligor against whom judgment is requested.

(4) The plaintiff shall prove:

(A) The genuineness of the obligation, the signature of the defendant obligor against whom judgment is sought and the identity of the defendant obligor appearing in the Court.

(B) The defendant obligor has effectively waived any constitutional rights concerning the entry of judgment and the right to execution thereon.

(5) The Court shall make such orders as are appropriate, including for the assessments of costs. Any judgment entered shall be final to the same extent as a judgment entered after a trial.

(c) Execution of judgments confessed hereunder shall be as provided for in D. Del. LR 58.1.1(h).

RULE 67.2. Moneys Deposited in the Custody of the Court.

(a) Cases Not Covered by Fed. R. Civ. P. 67 -- Registry Accounts. The funds shall be kept in a registry account and shall be deposited into an interest bearing account in accordance with the general policy governing registry funds, unless otherwise ordered by the Court.

(b) Cases Covered by Fed. R. Civ. P. 67. The party depositing the money shall prepare a proposed order to be submitted to the Court which instructs the Clerk to deposit the funds. All orders to deposit money must be personally served on either the Clerk, Chief Deputy Clerk or Financial Administrator. It is recommended that the Clerk's Office be contacted for information and copies of proposed orders for depositing funds with the Court.

(c) Money Invested at Interest. The Clerk shall make the investment promptly after being advised the check has cleared. If the funds deposited into the Court must be held pending verification that the institution depositing the funds has pledged sufficient collateral pursuant to Treasury Circular No. 176, the Clerk shall have 7 days

from the date of notice that the designated depository has complied with the collateralization requirements to make the investment, during which time the obligation to invest at interest shall not attach.

(d) **Fee Deducted by the Clerk.** In all cases or proceedings where money is to be invested at interest, the Clerk shall deduct from the income earned on the investment a fee, whenever such income becomes available and without further order of the Court. In cases where funds are ultimately disbursed to the United States or to agencies or officials thereof, the Clerk shall refund the registry fee to those agencies or officials of the United States upon application filed with the Court.

RULE 67.3. Withdrawal of a Deposit Pursuant to Fed. R. Civ. P. 67.

Any person seeking withdrawal of money which was deposited in the Court pursuant to Fed. R. Civ. P. 67 and which was subsequently deposited into an interest bearing account or instrument as required by Fed. R. Civ. P. 67, shall file a motion to withdraw the funds. In addition, the filing party shall file separately, under seal, a notice which includes the social security number or tax identification number of the ultimate recipient of the funds. This separate notice, without retention of a copy by the Court, shall be forwarded by the Court directly to the institution holding the money.

RULE 68.1. Offers of Judgment Filed Only if Accepted.

An offer of judgment made pursuant to Fed. R. Civ. P. 68 shall not be filed with the Court unless it is accepted, in which event filing may be made as provided for in that rule.

RULE 69.1. Execution.

Proceedings on executions shall be in accordance with Fed. R. Civ. P. 69. In all cases in which a party seeks a writ of execution, the parties shall submit the completed proposed form of the writ to the Clerk.

RULE 71A.1. Condemnation Cases.

When the United States files separate land condemnation actions and concurrently files a single declaration of taking relating to those separate actions, the Clerk is authorized to establish a master file so designated, in which the declaration of taking shall be filed, and the filing of the declaration of taking therein shall constitute a filing of the same in each of the actions to which it relates when reference is made thereto in the separate actions.

IX. UNITED STATES MAGISTRATE JUDGES

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RULE 72.1. Magistrate Judges; Pretrial Orders.

A Magistrate Judge is authorized to perform all judicial duties assigned by the Court that are consistent with the Constitution and the laws of the United States which include, but are not limited to, the following described civil duties. The method for assignment of duties to a Magistrate Judge shall be made in accordance with orders of the Court or by special designation or reference by a District Judge.

(a) Duties in Civil Matters.

(1) Alternative Dispute Resolution Processes. Conduct various alternative dispute resolution processes, including but not limited to judge-hosted settlement conferences, mediation, arbitration, early neutral evaluation, and summary trials (jury and nonjury).

(2) Nondispositive Motions. Hear and determine any pretrial motion or other pretrial matter, other than those motions specified in subsection (a)(3) below, in accordance with 28 U.S.C. §636(b)(1)(A) and Fed. R. Civ. P. 72.

(3) Dispositive Motions. Hear and conduct such evidentiary hearings as are necessary or appropriate and submit to a District Judge proposed findings of fact and recommendations for the disposition of motions for proposed injunctive relief (including temporary restraining orders and preliminary injunctions), for judgment on the pleadings, for summary judgment, to dismiss or permit maintenance of a class action, to dismiss for failure to state a claim upon which relief may be granted, to involuntarily dismiss an action, for judicial review of administrative determinations, for review of default judgments, and for review of prisoners' petitions challenging conditions of confinement, in accordance with 28 U.S.C. § 636(b)(1)(B) and (C) and Fed. R. Civ. P. 72.

(4) Civil Case Management.

(A) Exercise general supervision of the civil calendars of the Court, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the District Judges.

(B) Conduct scheduling and pretrial conferences as set forth in Fed. R. Civ. P. 16 and 26(f), which include but are not limited to scheduling, settlement, discovery, preliminary and final pretrial conferences, and entry of appropriate orders.

(5) Other Duties.

(A) Issue subpoenas, writs of habeas corpus *ad testificandum* or *habeas corpus ad prosequendum*, or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings.

(B) Conduct examinations of judgment debtors, in accordance with Fed. R. Civ. P. 69.

(C) Issue warrants or entering orders permitting entry into and inspection of premises, and/or seizure of property, in noncriminal proceedings, as authorized by law, when properly requested by the IRS or other governmental agencies.

(D) Serve as a special master in an appropriate civil action pursuant to 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53. A Magistrate Judge may, where the parties consent, serve as a special master in any civil action. The entry of final judgment in the civil action, however, shall be made by a District Judge or at the direction of a District Judge with the consent of the parties.

(E) Administer oaths and affirmations and take acknowledgments, affidavits, and depositions.

(F) Supervise proceedings conducted pursuant to 28 U.S.C. § 1782 with respect to foreign tribunals and to litigants before such tribunals.

(G) Adjudicate nondispositive sanctions under the Fed. R. Civ. P., rules of this Court or applicable statutes.

(b) Objections to a Magistrate Judge's Rulings. Objections to an order, decision or recommendation disposition made by a Magistrate Judge pursuant to Fed. R. Civ. P. 72 shall identify the appropriate standard of review.

(c) Duties in Proceedings for Postconviction Relief. A Magistrate Judge may perform any or all of the duties imposed upon a District Judge by the rules governing proceedings in the United States district courts under § 2254 and § 2255 of Title 28, United States Code. In so doing, a Magistrate Judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a District Judge a report containing proposed findings of fact and recommendations for disposition of the petition by the District Judge. Any order disposing of the petition may only be made by a District Judge.

RULE 73.1. Magistrate Judges; Trial by Consent.

Where the parties consent, a Magistrate Judge may conduct a jury or nonjury trial in any civil action and order the entry of final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73-76. In the course of conducting proceedings in any civil action upon the consent of the parties, a Magistrate Judge may hear and determine any and all pretrial and post trial motions including case dispositive motions.

(a) The Clerk shall notify the parties in all cases that they may consent to have a Magistrate Judge conduct any or all proceedings in the case and order the entry of a final judgment.

(b) The Clerk shall not accept a consent form for filing unless it has been signed by all the parties in a case. Plaintiff shall be responsible for securing execution and filing of such a consent form. No consent form will be made available, nor will its contents be made known to any District Judge or Magistrate Judge, unless all stated parties have consented to the reference to a Magistrate Judge.

(c) The consent form shall be filed with the Clerk not later than the final pretrial conference, unless otherwise ordered.

(d) After the consent form has been executed and filed, the Clerk shall so advise the District Judge to whom the case has been assigned. At the direction of the District Judge, the Clerk shall prepare, for the District Judge's signature, an order referring the case to the Magistrate Judge. Once the case has been referred, a Magistrate Judge shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the Clerk to enter a final judgment in the same manner as if a District Judge presided.

X. DISTRICT COURTS AND CLERKS

RULE 77.1. Hours of the Clerk's Office.

The business hours of the Clerk's office shall be 8:30 a.m. to 4:030 p.m., Monday through Friday, except legal holidays.

RULE 77.2. Orders and Judgments by the Clerk.

(a) Orders by the Clerk. The Clerk is authorized, without further direction of a judge, to sign and enter orders specifically delineated as allowed to be signed by the Clerk under the Fed. R. Civ. P. , and also the following:

(1) Orders specifically appointing persons to serve process in accordance with Fed. R. Civ. P. 4.

(2) Orders on consent noting satisfaction of a judgment, providing for the payment of money, withdrawing stipulations, annulling bonds, exonerating sureties or setting aside a default.

(3) Orders of dismissal on consent, with or without prejudice, except in cases to which Fed. R. Civ. P. 23, 23.1 or 66 apply.

(4) Orders entering default for failure to plead or otherwise defend in accordance with Fed. R. Civ. P. 55.

(5) Any other orders which, pursuant to Fed. R. Civ. P. 77(c), do not require direction by the Court.

(6) Consent orders extending, for not more than 21 days in any instance, the time to file the record on appeal in the appellate court.

(b) Action by the Court. Any order entered by the Clerk under this Rule may be suspended, altered or rescinded by the Court upon cause shown.

RULE 79.1. Custody and Return of Exhibits.

(a) **Custody.** The Clerk shall have custody of every exhibit admitted in evidence, or which is the subject of an offer of proof. The Court may, upon stipulation or application, order an original exhibit returned to the party to whom it belongs with a copy of the exhibit approved and initialed by the opponent to be filed in place of the original.

(b) **Return.** Upon the conclusion of an action (as defined hereinafter) and unless the Court otherwise orders:

(1) Any party shall be entitled to have such exhibits returned to the party or person to whom they belong, without the necessity of filing any copies thereof; and

(2) The Clerk shall notify counsel to remove the exhibits within 30 days and, upon counsel's failure to do so, the Clerk may dispose of them as the Clerk sees fit and at the expense of counsel.

(c) **Conclusion of an Action.** An action shall be deemed concluded when:

(1) A stipulation is filed that serves to waive or abandon the right to a rehearing or new trial or to an appeal; or

(2) The time to file an appeal has expired; or

(3) The action has been fully resolved on appeal.

RULE 79.2. Custody of Files and Documents not in Electronic Format.

All files of the Court shall remain in the custody of the Clerk and no record or paper belonging to the Court's files shall be taken from the Clerk's custody without a special order of the Court and a proper receipt signed by the person obtaining the record or paper. No such order will be entered except in extraordinary circumstances.

RULE 80.1. Court Reporting Fees.

A current schedule of transcript fees, as established by the Judicial Conference, is posted in the Clerk's Office and is available from the official court reporters.

XI. MISCELLANEOUS PROVISIONS

RRULE 81.1. Caption on Removed Cases.-

In a removed case, the caption on any pleading, including the petition, shall be identical, insofar as the parties are concerned, as in the state court.

RULE 81.2. Cases Transferred or Removed to this Court.

In any case transferred or removed to this Court, within 21 days of the filing of the case with the Clerk, the parties shall submit a statement identifying all pending matters which require judicial action.

RULE 83.2. Photographs and Broadcasting.

Broadcasting, televising, recording or taking of photographs in connection with any judicial proceedings within the United States Courthouse at Wilmington, Delaware, whether or not such judicial proceedings are actually in session, is prohibited, except that the Court may authorize:

(a) The use of electronic or photographic means as a presentation of evidence and for the perpetuation of a record; and

(b) The broadcasting, televising, recording or photographing of investiture, ceremonial or naturalization proceedings, law school moot court proceedings, and activities sponsored by the bar association for continuing legal education.

RULE 83.4. Security of the Court.

The Court or any Judge may, from time to time, make such orders or impose such requirements as may be reasonably necessary to assure the security of the Court and of all persons in attendance.

XII. ATTORNEYS

RULE 83.5. Bar Admission.

(a) The Bar of this Court. The Bar of this Court shall consist of those persons heretofore admitted to practice in this Court and those who may hereafter be admitted in accordance with these Rules.

(b) Admission. Any attorney admitted to practice by the Supreme Court of the State of Delaware may be admitted to the Bar of this Court on motion of a member of the Bar of this Court made in open court and upon taking the following oath and signing the roll:

"I, _____, do solemnly swear (or affirm) that I will conduct myself, as an attorney and counselor of this Court, uprightly, and according to law; and that I will support the Constitution of the United States."

(c) Admission *Pro Hac Vice*. Attorneys admitted, practicing, and in good standing in another jurisdiction, who are not admitted to practice by the Supreme Court of the State of Delaware, may be admitted *pro hac vice* to the Bar of this Court in the discretion of the Court, such admission to be at the pleasure of the Court. Unless otherwise ordered by the Court, or authorized by the Constitution of the United States or acts of Congress, an applicant is not eligible for permission to practice *pro hac vice* if the applicant:

- (1) Resides in Delaware; or
- (2) Is regularly employed in Delaware; or
- (3) Is regularly engaged in business, professional, or other similar activities in Delaware.

Any judge of the Court may revoke, upon hearing after notice and for good cause, a *pro hac vice* admission. The form for admission *pro hac vice*, which may be amended by the Court as prescribed by standing order, is appended to these rules.

(d) Association with Delaware counsel required. Unless otherwise ordered, an attorney not admitted to practice by the Supreme Court of the State of Delaware may not be admitted *pro hac vice* in this Court unless associated with an attorney who is a member of the Bar of this Court and who maintains an office in the District of Delaware for the regular transaction of business ("Delaware counsel"). Consistent with CM/ECF Procedures, Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. Unless otherwise ordered, Delaware counsel shall attend proceedings before the Court.

(e) Time to Obtain Delaware Counsel. A party not appearing *pro se* shall obtain representation by a member of the Bar of this Court or have its counsel associate with a member of the Bar of this Court in accordance with D. Del. LR 83.5(d) within 30 days after:

- (1) The filing of the first paper filed on its behalf; or
- (2) The filing of a case transferred or removed to this Court.

Failure to timely obtain such representation shall subject the defaulting party to appropriate sanctions under D. Del. LR 1.3(a).

(f) Association with Delaware counsel not required.

(1) Attorneys who are members in good standing of the bar of the highest Court of any state, territory, or the District of Columbia may, after submitting themselves to the jurisdiction of this Court in writing, act as an attorney in this Court on behalf of the United States or any of its departments, agencies or officials (in their official or individual capacities).

(2) Attorneys who are admitted to the Bar of this Court and in good standing, but who do not maintain an office in the District of Delaware, may appear on behalf of parties upon application to the Court.

RULE 83.6. Attorney Discipline.

(a) Attorneys Convicted of Crimes.

(1) Upon the filing of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted of a serious crime in any Court of the United States or the District of Columbia, or of any state, territory, commonwealth or possession of the United States:

(A) The Court shall enter an order immediately suspending that attorney from the practice of law before the Court. A copy of such order shall be served upon the attorney.

(B) A certified copy of a judgment of conviction shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against the attorney based upon the conviction, whether the conviction resulted from a plea of guilty or *nolo contendere* or from a verdict after trial or otherwise, and regardless of the pendency of any appeal.

(C) The term "serious crime" shall include any felony and any lesser crime, a necessary element of which involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime." The elements of the crime of conviction shall be determined by the statutory or common law definition of such in the jurisdiction where the judgment was entered.

(D) The Court shall, in addition to suspending that attorney, also refer the matter to counsel for the institution of a disciplinary proceeding before the Court. The sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

(2) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime", the Court may refer the matter

to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the Court; provided, however, that the Court may, in its discretion, make no reference with respect to convictions for minor offenses.

(3) An attorney suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction has been reversed. The reinstatement, however, will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

(b) Discipline Imposed by Other Courts.

(1) ~~Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other Court of the United States or the District of Columbia, or by a Court of any state, territory, commonwealth or possession of the United States, promptly inform the Clerk of such action. When another jurisdiction imposes discipline against an attorney admitted to practice in this Court, the same discipline is automatically effective in this Court without further action by this Court and shall remain in effect in this Court unless and until this Court issues an order that renders the discipline ineffective or imposes different discipline pursuant to these rules.~~

(2) Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other Court of the United States or the District of Columbia, or by a Court of any state, territory, commonwealth or possession of the United States, promptly inform the Clerk of such action.

~~(32)~~ Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that any attorney admitted to practice before this Court has been disciplined by another Court or upon becoming informed of such a judgment or order, this Court shall forthwith issue a notice directed to the attorney containing:

(A) A copy of the judgment or order from the other Court; and

(B) An order to show cause directing that the attorney inform this Court within 30 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in ~~(54)~~ hereof that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.

~~(43)~~ In the event the discipline imposed in the other jurisdiction has been stayed, any reciprocal discipline imposed in this Court shall be deferred until such stay expires.

~~(54)~~ Upon expiration of 30 days from service of the notice issued pursuant to the provisions of ~~(32)~~ above, this Court shall maintain the imposition of ~~e-the~~ identical discipline unless the Court finds that:

(A) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(B) There was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or

(C) The imposition of the same discipline by this Court would result in grave injustice; or

(D) The misconduct established is deemed by this Court to warrant substantially different discipline.

To the extent the Court finds any of the above, it shall enter such other order as it deems appropriate.

(65) In all other respects, a final adjudication in another Court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this Court.

(76) This Court may at any stage appoint counsel to prosecute the disciplinary proceedings.

(c) Disbarment on Consent or Resignation in Other Courts. Any attorney admitted to practice before the Court who has been disbarred on consent or who has resigned for disciplinary reasons from the bar of any other Court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States, shall promptly inform the Clerk of such. Upon the filing of a certified copy of the judgment or order accepting such disbarment on consent or resignation, the attorney shall cease to be permitted to practice before the Court and shall be stricken from the roll of attorneys admitted to practice before the Court.

(d) Standards for Professional Conduct. Subject to such modifications as may be required or permitted by federal statute, court rule, or decision, all attorneys admitted or authorized to practice before this Court, including attorneys admitted on motion or otherwise, shall be governed by the Model Rules of Professional Conduct of the American Bar Association ("Model Rules"), as amended from time to time.

(e) Disciplinary proceedings.

(1) Professional Misconduct Complaint. Where the Rules do not already provide a procedure, the Chief Judge of this Court shall evaluate information coming to the Court's attention, by complaint or from other sources, alleging misconduct by, or in the incapacity of, a lawyer subject to the jurisdiction of this Court (herein, the "respondent"). The Chief Judge or another Judge of the Court shall determine as a threshold matter whether the information, if true, would constitute misconduct or incapacity such as to warrant investigation. If an investigation is warranted, the Chief Judge or another Judge of the Court may ~~shall~~ appoint counsel from the Bar of this Court

to conduct a confidential investigation of the matter. Complaints, and any files based on them, shall be treated as confidential unless otherwise ordered for good cause shown.

(2) Investigation and Recommendation. If the Court appoints counsel pursuant to paragraph (e)(1), such counsel shall conduct an investigation as directed by the Court. As part of the investigation, at a time deemed appropriate by counsel, counsel shall notify the respondent in writing of the substance of the matter and afford the respondent an opportunity to be heard. At the conclusion of the investigation, counsel shall prepare a confidential report and recommendation for the Court. The report and recommendation shall set forth the results of counsel's investigation and shall state whether cause exists to find that a violation of the Model Rules has occurred. If counsel recommends that cause does not exist to find a violation of the Model Rules, and the Court accepts counsel's recommendation, the complaint shall be dismissed.

(3) Show Cause Hearing. If counsel recommends that cause exists to find a violation of the Model Rules, and the Court accepts counsel's recommendation, then the Court shall issue a confidential order for the respondent to show cause within 30 days after service of that order upon respondent, personally or by mail, why the respondent should not be disciplined. For good cause shown, the time to show cause may be extended. The respondent shall be provided a copy of counsel's recommendation and may submit a written response to counsel's recommendation in advance of the show cause hearing. The show cause hearing shall be conducted by one or more Judges of the Court, as determined by the Chief Judge, and may include the Chief Judge. If the hearing results from an allegation of misconduct brought by a Judge of this Court, that Judge shall not participate in the show cause hearing. The show cause proceedings shall be confidential, unless the attorney subject to discipline requests that the proceedings be public.

(4) Sanctions. After a show cause hearing, the Court may impose such sanctions as the circumstances warrant, including private admonition, public reprimand, suspension, or disbarment.

(f) Disbarment on Consent While under Disciplinary Investigation or Prosecution.

(1) Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and that the attorney:

(A) Is not being subjected to coercion or duress and is fully aware of the implications of so consenting, which consent is freely and voluntarily rendered;

(B) Is aware that there is a presently pending investigation or proceeding involving specifically identified allegations of the misconduct;

(C) Acknowledges that the material facts so alleged are true; and so consents because the attorney knows that, if charges were predicated upon the matters under investigation or if the proceeding were prosecuted, the attorney could not successfully maintain a defense.

(2) Upon receipt of the required affidavit, this Court shall enter an order disbarring the attorney.

(3) The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

(g) Reinstatement.

(1) After Disbarment or Suspension. An attorney suspended for 3 months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the Court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than 3 months or disbarred may not resume practice until reinstated by order of this Court.

(2) Time of Application Following Disbarment. A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least 5 years from the effective date of the disbarment.

(3) Hearing on Application. Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the Chief Judge of this Court. Upon receipt of the petition, the Chief Judge shall promptly refer the petition to counsel and shall assign the matter for prompt hearing before 1 or more Judges of this Court provided, however, that if the disciplinary proceeding was predicated upon the complaint of a Judge of this Court, the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge or, if there are less than 3 Judges eligible to serve, or the Chief Judge was the complainant, by the Chief Judge of the Court of Appeals for this Circuit. The Judge or Judges assigned to the matter shall, within 30 days after referral, schedule a hearing at which the petitioner shall have the burden of demonstrating, by clear and convincing evidence, that petitioner has the moral qualifications, competency and learning in the law required for admission to practice law before this Court and that petitioner's resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

(4) Duty of Counsel. In all proceedings upon a petition for reinstatement, cross examination of the witnesses of the respondent-attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel.

(5) Deposit for Costs of Proceeding. Petitions for reinstatement under this Rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the Court to cover anticipated costs of the reinstatement proceeding.

(6) Conditions of Reinstatement. If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him or her provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further, that if the respondent-attorney has been suspended or disbarred for 5 years or more, reinstatement may be conditioned, in the discretion of the Judge or Judges before whom the matter is heard and upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction, of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

(h) Successive Petitions. No petition for reinstatement under this Rule shall be filed within 1 year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

(i) Attorneys Specially Admitted. Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (*pro hac vice*), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

(j) Service of Papers and Other Notices. Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at the address shown on the records of this Court. Unless stated otherwise, service of any other papers or notices required by these Rules shall be deemed to have been made if such service is made by method permissible under the Rules of the Court.

(k) Appointment of Counsel. Whenever counsel is to be appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this Court shall appoint as counsel one or more members of the Bar of this Court. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

(l) Duties of the Clerk.

(1) Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk shall determine whether the clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk shall promptly obtain a certificate and file it with this Court.

(2) Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another court, the Clerk shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court and, if not, the Clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this Court.

(3) Whenever it appears that any attorney who has been convicted of any crime or disbarred or suspended, or censured or disbarred on consent by this Court, is admitted to practice law in any other jurisdiction or before any other Court, the Clerk shall, within 14 days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other Court, a certificate of the conviction or a certified or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence address of the defendant or respondent.

(4) The Clerk, likewise, shall promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this Court.

(m) Jurisdiction. Nothing contained in these Rules shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure.

(n) Pre-existing Proceedings. If any formal disciplinary proceeding is pending before this Court on the effective date of these Rules, it shall be concluded under the procedure existing prior to the effective date of these Rules.

RULE 83.7. Substitution and Withdrawal of Attorney.

An attorney may withdraw an appearance for a party without the Court's permission when such withdrawal will leave a member of the Bar of this Court appearing as counsel of record for the party. Otherwise, no appearance shall be withdrawn except by order on a motion duly noticed to each party and served on the party client, at least 14 days before the motion is presented, by registered or certified mail addressed to the client's last known address.

Form for Motion for Admission *Pro Hac Vice*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

)
) Civil Action No.
)

**MOTION AND ORDER FOR
ADMISSION *PRO HAC VICE***

Pursuant to Local Rule 83.5 and the attached certification, counsel moves
the admission *pro hac vice* of _____ to represent _____ in this matter.

Signed: _____
(Movant's Name and Delaware State
Bar Identification Number)
(Movant's Address)
(Movant's Telephone Number)

Date: _____ Attorney for _____

ORDER GRANTING MOTION

IT IS HEREBY ORDERED counsel's motion for admission *pro hac vice* is
granted.

Date: _____
United States District Judge

CERTIFICATION BY COUNSEL TO BE ADMITTED *PRO HAC VICE*

Pursuant to Local Rule 83.5, I certify that I am eligible for admission to this
Court, am admitted, practicing and in good standing as a member of the Bar of
_____ and pursuant to Local Rule 83.6 submit to the disciplinary jurisdiction
of this Court for any alleged misconduct which occurs in the preparation or course of this
action. I also certify I am generally familiar with this Court's Local Rules. In accordance
with Standing Order for District Court Fund effective 4/1/057/23/09, I further certify that
the annual fee of \$25.00 has been paid G to the Clerk of Court, or, if not paid previously,
the fee payment will be submitted G to the Clerk's Office upon the filing of this motion.

Dated: _____ Signed: _____
(Applicant's Address)

TAB-8

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE


In re:)
)
Referrals to Magistrate Judges for)
Alternative Dispute Resolution)
)

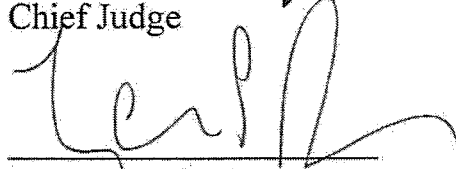
STANDING ORDER No. 2022-2


For the reasons explained in the Court's March 3, 2022 Announcement, at
Wilmington on this Fourteenth day of March in 2022, it is HEREBY ORDERED
that:

1. Unless otherwise directed by the Court, all currently scheduled mediations except for mediations in bankruptcy appeals are CANCELED.
2. Unless otherwise directed by the Court, Magistrate Judges will no longer engage in alternative dispute resolution of patent and securities cases.
3. Except in bankruptcy appeal cases, the Court will no longer automatically refer cases to a Magistrate Judge for alternative dispute resolution. Parties in nonpatent and nonsecurities cases may request, and the Court may in its discretion make, a referral to a Magistrate Judge for alternative dispute resolution.

FOR THE COURT:


Colm F. Connolly
Chief Judge


Leonard P. Stark
Judge


Richard G. Andrews
Judge


Maryellen Noreika
Judge

Delaware Court of Chancery Practice

The Honorable Selena E. Molina
Court of Chancery of the State of Delaware

James H.S. Levine, Esquire
Troutman Pepper Hamilton Sanders LLP

Court of Chancery Fundamentals

Master in Chancery Selena E. Molina
Delaware Court of Chancery

James H. S. Levine, Esq.
Troutman Pepper Hamilton Sanders LLP

Court of Chancery Structure

- 1 Chancellor, 6 Vice Chancellors, 2 Masters
 - Chancellor Kathaleen McCormick (New Castle)
 - Vice Chancellor J. Travis Laster (New Castle)
 - Vice Chancellor Sam Glasscock III (Sussex)
 - Vice Chancellor Morgan T. Zurn (New Castle)
 - Vice Chancellor Paul A. Fioravanti, Jr. (New Castle)
 - Vice Chancellor Lori W. Will (New Castle)
 - Vice Chancellor Nathan A. Cook (New Castle)
 - Master in Chancery Patricia W. Griffin (Sussex)
 - Master in Chancery Selena E. Molina (New Castle)

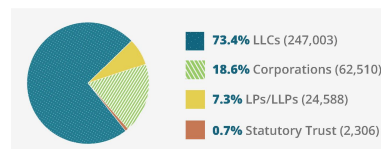
History and Background of Delaware and the Court of Chancery

- Delaware's Court of Chancery was established in 1792
- Chancellors/Vice Chancellors serve 12-year terms
- Presently, there are two Masters serving on the Court of Chancery
- The Court of Chancery hears cases in Wilmington, Dover and Georgetown



History and Background of Delaware and the Court of Chancery

- Over half of all publicly traded companies on U.S. stock exchanges are incorporated in Delaware
- More than two-thirds of Fortune 500 companies are incorporated in Delaware
- Delaware consistently ranks in the top five states for entity formations per year
- Approximately 93% of all U.S. initial public offerings in 2021 were registered in Delaware



Equity Jurisdiction

- “The Court of Chancery shall have jurisdiction to hear and determine all matters and causes in equity.”
– 10 *Del. C.* § 341
- “The Court of Chancery shall not have jurisdiction to determine any matter wherein sufficient remedy may be had by common law, or statute, before any other court or jurisdiction of this State.”
– 10 *Del. C.* § 342

Equity Jurisdiction

- The traditional bases for equity jurisdiction fall into two categories:
 - (1) actions involving equitable subjects, claims, or rights
e.g., fiduciary relations, trusts
 - (2) actions seeking an equitable remedy
e.g., injunctive relief, specific performance

Equity Jurisdiction

- The Court will determine if equitable jurisdiction exists when questions arise (either raised by party or sua sponte)
- The Court will examine the allegations to determine what the plaintiff really seeks
- The prayer for relief does not control the subject matter jurisdiction analysis
- The plaintiff has the burden of establishing jurisdiction before the Court of Chancery
- “Clean-up” doctrine allows Court to obtain subject matter jurisdiction over legal claims part of the same controversy over which the Court originally had subject matter jurisdiction
- If after the complaint is filed, events occur which make equitable relief impracticable, the Court has the discretion to retain jurisdiction of the dispute

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

VINTAGE RODEO PARENT, LLC, a
Delaware limited liability company,)
VINTAGE RODEO ACQUISITION)
INC., a Delaware corporation, and)
VINTAGE CAPITAL)
MANAGEMENT, LLC, a Delaware)
limited liability company,)
Plaintiffs,) C.A. No. _____
v.)
RENT-A-CENTER, INC., a Delaware)
corporation,)
Defendant.

VERIFIED COMPLAINT

Plaintiffs Vintage Rodeo Parent, LLC (“Vintage Parent”), Vintage Rodeo Acquisition, Inc. (“Vintage Merger Sub”), and Vintage Capital Management, LLC (“Vintage Capital,” and collectively with Vintage Parent and Vintage Merger Sub, “Plaintiffs”), by and through their undersigned counsel, for their Verified Complaint against defendant Rent-A-Center, Inc. (“Rent-A-Center” or the “Company”), allege, upon knowledge as to themselves and their own acts and upon information and belief as to all other matters, as follows:

Separate Statutory Jurisdiction

DGCL, LLCs, LPs

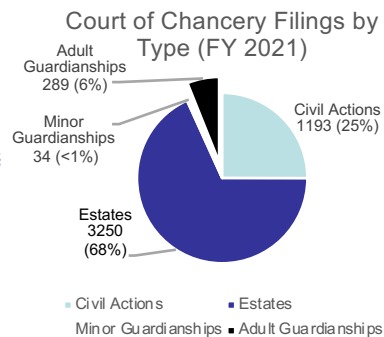
- 8 Del. C. § 111 – Court of Chancery has jurisdiction in actions to interpret, apply, enforce, or determine the validity of:
 - Certificate of incorporation
 - Bylaws
 - Instruments selling or creating stock
 - Proxies
 - Agreements/certifications of mergers
 - Interpretation, application, or enforcement of any provision of the DGCL
- 6 Del. C. § 17-1101, et seq. (LPs)
- 6 Del. C. § 18-1101, et seq. (LLCs)

Special Jurisdiction

- 10 *Del. C.* § 346 – adjudication of technology disputes
- 10 *Del. C.* § 347 – mediation for business disputes
- 10 *Del. C.* § 348 – mediation/adjudication of disputes involving deed covenants/restrictions
- Delaware Rapid Arbitration Act (DRAA) (10 *Del. C.* § 5801)
 - Available to parties that sign an agreement to arbitrate under DRAA when at least one party is a Delaware entity or has its principal place of business in Delaware and is not a consumer
- Rule 174 Mediation
 - If parties agree, Court may refer case to mediation before another member of the Court

Masters in Chancery

- Serve at the pleasure of the Chancellor
- Masters supervise:
 - Adult guardianship / guardianship of adult or minor property
 - Register of Wills docket
- Other civil actions as assigned, often including:
 - Deed restriction cases (10 *Del. C.* § 348)
 - Partition and related matters
 - Trust cases
- Rule 144
 - Trial before Master → Draft & Final Reports
 - Exceptions
 - *De novo* review before Chancellor / VC



Unique Chancery Proceedings

- Actions for advancement and indemnification of fees and costs (§ 145)
- Actions compelling the issuance of stock certificates / Actions rectifying defective corporate acts (§ § 204, 205)
- Actions to compel annual meetings of stockholders (§ § 211, 215)
- Actions to compel the inspection of books and records (§ 220)
- Actions for review of elections, votes and other corporate acts (§ 225)
- Actions for appointment of custodians for solvent companies to resolve deadlock (§ § 226, 352, 353)
- Actions seeking appraisal rights (§ 262)
- Actions seeking dissolution (§ 279)
- Petitions for presumption of death (12 *Del. C.* § 1702)
- Matters concerning disposition of human remains (12 *Del. C.* § 264)
- Equitable foreclosure actions under DUCIOA (25 *Del. C.* § 18-101, *et seq.*)

Expedited Proceedings

- Temporary Restraining Orders
- Preliminary Injunctions
- Summary Proceedings under DGCL
 - Aspirationally resolved within 45-90 days
 - § 145(e) – Advancement
 - § 211 – Request for annual meeting
 - § 220 – Books & records
 - § 225 – Identity of directors/officers

Guidelines for Practitioners

- Updated August 2021
- Available on the Court's website
- Procedure "plus"
 - Courtroom protocols
 - Filing protocols
 - Scheduling
 - Discovery – standard and expedited
 - Privilege issues
 - Pretrial and Trial practice
- Includes sample forms that are conventionally accepted by the Court

Guidelines for Persons Litigating in the Court of Chancery

These Guidelines [§](#), updated August 2021, reflect some suggested best practices for moving cases forward to completion in the Court of Chancery. Included are guidelines for in-court hearings, trials, and other procedural issues for litigating cases before the Court of Chancery. These Guidelines are intended to ensure that all attorneys are aware of the expectations of the Court and to provide helpful guidance in practicing in our Court. These Guidelines are not binding Court Rules. They are intended as a practice aid that will allow our excellent Bar to handle cases even more smoothly and to minimize disputes over process, rather than the substantive merits. Links to sample documents appear below.

- [Ex. 1 Sample Scheduling Stipulation for Motion to Dismiss](#) [§](#)
- [Ex. 2 Sample Scheduling Stipulation for Cross-Motions on Summary Judgment](#) [§](#)
- [Ex. 3 Sample Case Scheduling Stipulation for Summary Proceeding](#) [§](#)
- [Ex. 4 Sample Scheduling Stipulation for a Motion for Preliminary Injunction](#) [§](#)
- [Ex. 5 Sample Case Scheduling Stipulation for Plenary Action](#) [§](#)
- [Ex. 6 Sample Expert Discovery Stipulation](#) [§](#)
- [Ex. 7 Sample Confidentiality Stipulation](#) [§](#)
- [Ex. 8 Sample Two-Tier Confidentiality Stipulation](#) [§](#)
- [Ex. 9 Sample Settlement Scheduling Order](#) [§](#)
- [Ex. 10 Sample Document Collection Outline](#) [§](#)
- [Ex. 11 Sample Quick-Peek Stipulation](#) [§](#)
- [Ex. 12 Sample Scheduling Order for Cases Filed Under 10 DEL. C. § 348](#) [§](#)

Role of Delaware Counsel

(Guidelines § C(1))

- "Delaware counsel" ≠ "Local counsel"
- Delaware attorneys appearing in the Court of Chancery are responsible to the Court for the case and its presentation
- When a Delaware attorney signs a pleading, brief, discovery request or response, it is that Delaware attorney making the representations set forth in the documents
- Non-Delaware counsel are not permitted to directly make filings or initiate contact with the Court, absent extraordinary circumstances

Pleadings – Complaints

- Complaints filed in the Court of Chancery must be verified (Rule 3(aa))
- If a complaint seeks expedited relief, it must be accompanied by a Motion to Expedite
- If a complaint contains non-public, confidential information, it can be filed under seal as a Confidential Filing (Rule 5.1)
- If, after filing the complaint, no confidentiality stipulation is entered and a subsequent filing needs to be filed confidentially, a Motion for Confidential Treatment must be filed first

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DELAWAREANS FOR
EDUCATIONAL OPPORTUNITY and
NAACP DELAWARE STATE
CONFERENCE OF BRANCHES,

Plaintiffs,

v.

JOHN CARNEY, Governor of the State
of Delaware; SUSAN BUNTING,
Secretary of Education of the State of
Delaware; KENNETH A. SIMPLER,
Treasurer of the State of Delaware;
SUSAN DURHAM, Director of Finance
of Kent County, Delaware; BRIAN
MAXWELL, Chief Financial Officer of
New Castle County, Delaware; and
GINA JENNINGS, Finance Director
for Sussex County,
Delaware,
Defendants.

Civil Action No. _____

VERIFIED COMPLAINT

Introduction

1. The Delaware Constitution's requirement of a "general and efficient system of free public schools" guarantees all children a meaningful opportunity to

Pleadings – Answers

- Answers to complaints should repeat the allegations of the complaint and then set forth the response below each allegation (Guidelines, § C(5)(g)(i))
- Counterclaims, cross-claims and third-party complaints must be verified (Rule 3(aa))
- Parties should adhere to Court of Chancery Rule 8(b) and not deny basic facts absent a good faith basis for doing so (Guidelines, § C(5)(g)(i))
- Parties must have a Rule 11 good faith basis in asserting an affirmative defense (Guidelines, § C(5)(g)(i))

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JOHN SCHNATTER,

Plaintiff,

v.

PAPA JOHN'S INTERNATIONAL, INC.,

Defendant.

C.A. No. 2018-0542-AGB

DEFENDANT'S ANSWER TO VERIFIED COMPLAINT FOR INSPECTION OF BOOKS AND RECORDS

Defendant Papa John's International, Inc. ("Defendant" or the "Company"),
by and through its undersigned counsel, responds to the Verified Complaint for
Inspection of Books and Records (the "Complaint") filed by Plaintiff John Schnatter

Motions & Briefs – Form and Procedure

- Rule 171 governs briefs, their contents and page limitations
 - Opening briefs shall not exceed 14,000 words (dispositive and merits-based motions and opening pre-trial and post-trial briefs)
 - Answering briefs shall not exceed 14,000 words
 - Reply briefs shall not exceed 8,000 words
- All other applications shall be made by motion (no brief needed)
 - Motion and opposition shall not exceed 3,000 words
 - Reply shall not exceed 2,000 words
- Letters to the Court are limited to 1,000 words and should not seek relief
- There is no rule specifying the time in which a party must respond to a motion
 - However, the general expectation is that, absent an agreement by the parties, answering papers would be submitted 30 days after the opening papers and reply papers would be filed 15 days after receipt of the answering papers (Guidelines, § C(5)(a)(i))

Motions – Motions to Expedite

(Guidelines, § C(5)(b))

- A Motion to Expedite is essential to seeking expedited relief from the Court
- The motion should lay out the basis for which the movant believes expedition should be granted as well as provide a proposed schedule taking into consideration discovery, pre-hearing/trial submissions, etc.
- A motion should address the merits of the action, demonstrate that the movement has a sufficiently colorable claim and allege a sufficient possibility of a threatened irreparable injury

Motions – Motions to Expedite

- A Motion to Expedite should also accompany a complaint in a summary proceeding, but need only reference the statutory authority for the summary proceeding while providing a proposed schedule
- These motions are given preferential treatment by the Court, so be prepared to respond quickly and the parties should be prepared for a teleconference with the Court in a matter of days.

Motions – Temporary Restraining Orders

- To obtain a TRO, a party must establish that:
 - There is an imminent threat of irreparable injury
 - There exists a reasonable probability of success on the merits
 - The balance of the hardships favors the movant
- Typically, the Court considers the irreparable harm element as the most important
- TROs issue for a limited duration and may be issued *ex parte* and without a hearing
- Designed to preserve the status quo

Motions – Preliminary Injunctions

- The movant must prove similar elements to those necessary to receive a TRO
- However, a preliminary injunction will be considered after a record is developed and the Court holds a hearing
- The parties typically fully brief the issues before the Court's hearing and often conduct discovery and take depositions
- Likelihood of success on the merits is often the predominant factor in granting a preliminary injunction
- Designed to preserve the status quo until the final trial on the merits

Discovery

(Guidelines § C(7))

- Discovery, particularly document production, has evolved dramatically with advancement in technology
- Electronic discovery includes:
 - Preservation
 - Collection
 - Application of Search Parameters
 - Review
 - Production

Discovery

- There is no “one-size-fits-all” approach to document collection and review
- However, client self-selection and self-collection of documents or information is viewed critically by the Court
- The Court expects Delaware counsel to play an active role in identifying, collecting and reviewing potentially relevant information
 - Particularly with respect to assertions of privilege and preparation of privilege logs
 - Delaware counsel are expected to actively participate in meet and confer process and in negotiation of ESI protocols, custodians, and search terms
- The Court expects discovery to be a collaborative process where the parties attempt, in good faith, to resolve disputes over scope, search parameters and document custodians before seeking the Court’s input
 - Proactive negotiation of discovery parameters early in the case will be well-received by the Court

Discovery Masters/Facilitators

- The Court may appoint a discovery master or “facilitator” where appropriate to assist the parties in the discovery process
 - Discovery master and discovery facilitator are not the same
- Discovery facilitators are most often appointed in cases with highly complex facts, an extensive discovery burden, an expedited schedule, difficult privilege questions, or a pattern of discovery disputes between counsel
- The role of the discovery master is to promote transparency, act as an honest broker, mediate compromises, and document agreements and disagreements
- The fees and expenses associated with a discovery master or facilitator shall be borne by the parties as directed by the Court

Trials – Pretrial Submissions

(Guidelines § C(9)(a)-(b))

- Before going to trial, the parties submit pretrial briefs and a pretrial order
 - Pretrial order – contains undisputed facts and presents the legal, factual, and other issues for trial
 - Pretrial briefs – set forth a party's legal positions and what the party expects to prove at trial
- The Court expects the parties to engage in a good faith effort to arrive at a reasonable number of stipulated facts, especially where there is a large record and a multi-day trial
- Joint exhibits should be arranged chronologically and the parties should actively avoid the unnecessary proliferation and duplication of exhibits

Trials – Procedure

- All Court of Chancery trials are bench trials
- Trial days typically follow strict schedules – breaks are predetermined and are seldom delayed
- Time is typically allocated evenly between the parties; the parties track time usage
- The party with the burden of proof generally controls the order of the witnesses
- However, the Court prefers, when possible, for a witness to be called only once
 - Parties are expected to work in good faith on witness order and efficiency
- Following trial, the Court has the discretion to allow for post-trial briefing and argument

Questions?

Delaware Family Court Practice

The Honorable Michael K. Newell
Family Court of the State of Delaware

Andrew W. Gonser, Esquire
Gonser and Gonser, P.A.

Fundamentals of Civil Litigation- Family Court Practice

*Chief Judge Michael K. Newell
Andrew W. Gonser, Esquire*

1



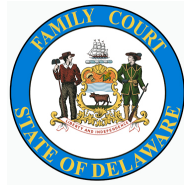
Overview of Family Court

2

Overview – Statutory References

Statutory Mission of Unified Family Court

*“In the firm belief that compliance with the law by the individual and preservation of the family as a unit are fundamental to the maintenance of a stable, democratic society, the General Assembly intends by enactment of this chapter that **1 court shall have original statewide civil and criminal jurisdiction over family and child matters and offenses** as set forth herein. The court shall endeavor to provide for each person coming under its jurisdiction such control, care, and treatment as will best serve the interests of the public, the family, and the offender, to the end that the home will, if possible, remain unbroken and the family members will recognize and discharge their legal and moral responsibilities to the public and to one another.” 10 Del. C. § 902(a).*



3

Overview – Statutory References

Family Court Jurisdiction – 10 Del. C. § 921

- ▶ Delaware Family Court exercises jurisdiction over:
 - Juvenile delinquency
 - Child abuse/neglect/dependency
 - Adult misdemeanor crimes against juveniles
 - Child and spousal support
 - Paternity of children
 - Custody and visitation of children
 - Adoptions
 - Terminations of parental rights
 - Property division and alimony
 - Specific enforcement of agreements (separation, pre-marital)
 - Guardianship over minors
 - Imperiling the family relationship
 - Orders of protection from abuse
 - Intra-family misdemeanor crimes
- ▶ The Family Court does not have jurisdiction over adults charged with felonies or juveniles charged with certain statutorily enumerated felonies.
- ▶ Cases are appealed to the Supreme Court with the exception of adult criminal cases which are appealed to the Superior Court

4



Areas of Civil Litigation: Divorce and Ancillary Matters

5

Statutory References

Chapter 15 of 13 Del. C. addresses divorce, including matters ancillary to divorce, and annulment.

- **13 Del. C. § 1504:** Jurisdiction for divorce proceedings including residency requirements
- **13 Del. C. § 1505:** Grounds for divorce
- **13 Del. C. § 1507:** Contents of petition for divorce (See Family Court forms on website).
- **13 Del. C. § 1508:** How to obtain jurisdiction over the respondent
- **13 Del. C. § 1509:** Preliminary injunction issued upon filing of petition for divorce
- **13 Del. C. § 1511:** Answering a Petition for Divorce and filing a counterclaim
- **13 Del. C. § 1512:** Establishes when alimony is awarded; what factors are considered in awarding it; and when it terminates
- **13 Del. C. § 1513:** Property Division
 - ❖ Definition of marital property
 - ❖ Factors considered in equitable division of marital property

6

Guidelines / Rules / Process: Divorce

- ▶ A petition for divorce may be filed at any time following separation, as defined by **13 Del. C. § 1503(7)**, provided either party at the time the action was commenced resided in Delaware, or was stationed in Delaware as a member of the U.S. armed services, for 6 or more months immediately preceding the commencement of the action.
- ▶ Preliminary Injunction referenced above is effective against the petitioner upon the filing of a petition for divorce and upon the respondent upon: service of a copy of the petition; the entry of appearance by respondent or an attorney for respondent; the filing of a responsive pleading in the action by a respondent or respondent's attorney; or any other written acknowledgement of the filing of the petition for divorce or annulment by the respondent or the respondent's attorney.
- ▶ Where the date of separation and the grounds for divorce are **admitted** by respondent, the divorce action is ripe after a minimum of **6 months** of separation.

7

Guidelines / Rules / Process: Divorce

- ▶ Before the divorce will proceed, the petitioner must complete the divorcing and separating parents' education program required by **Fam. Ct. Civ. R. 16.2(a)**.
- ▶ When a divorce proceeding is ripe, Family Court will issue a notice of trial readiness requesting the petitioner complete affidavits necessary to finalize the divorce. Failure to complete and file the affidavits within 20 days, results in the scheduling of a hearing on the petition for divorce.
- ▶ Upon receipt of the required affidavits to finalize the divorce, Family Court will enter a final decree of divorce.

8

Guidelines / Rules / Process: Ancillary

- Following the entry of the final decree of divorce, a petitioner requesting **ancillary relief**, including the division of marital property, alimony and/or legal fees and costs, completes an **Ancillary Financial Disclosure Report ("AFDR")** and forwards an original notarized copy to the respondent or attorney for respondent within 30 days of the granting of the final decree of divorce.
 - ❖ Respondent then completes his or her portion of the form and files the form with the Court within 30 days of receipt. **Fam. Ct. Civ. R. 16(c)(1)**.
- The judge assigned to decide the ancillary matters incident to the parties' divorce will schedule a **teleconference** to address case management, including discovery and the scheduling of a pre-trial conference and final ancillary hearing.
- The **scheduling order** issued after the case management teleconference addresses the manner in which the **Fam. Ct. Civ. R. 16(d) Ancillary Pretrial Stipulation** submission will be completed and filed with the Court in advance of the pre-trial conference. Like the AFDR, the Ancillary Pretrial Stipulation is completed by both parties. It sets forth areas of agreement and disagreement on the valuation of property; character as marital or non-marital; percentage division of marital property; alimony; and legal fees and costs.

9

Guidelines / Rules / Process: Ancillary

- ▶ If the case has not resolved by the time of the ancillary hearing, the Court will hear testimony from witnesses along with argument from attorneys, upon which its decision will be based.
- ▶ A motion seeking a new trial or Reargument must be filed not later than 15 days after the entry of judgment. **Fam. Ct. Civ. R. 59**.
- ▶ **Appeals** from Family Court are taken within 30 days of the entry of judgment to the Delaware Supreme Court.

10

Substantive Highlights / Practice Tips

- ▶ Divorce will be granted by the Court whenever it finds that the marriage is irretrievably broken and reconciliation is improbable.
 - ❖ A marriage is *irretrievably broken* when characterized by separation caused by (i) respondent's misconduct; (ii) separation caused by respondent's mental illness; (iii) separation caused by incompatibility; and/or (iv) voluntary separation.
- ▶ **Interim relief** for alimony and/or violations of 13 Del. C. § 1509 preliminary injunction is available. Motion practice is the appropriate mechanism to seek relief.

11

Substantive Highlights / Practice Tips: Marital Property

- ▶ In divorce, marital property subject to division in divorce includes all property acquired by either party during the marriage **except**:
 - ❖ Property acquired by gift from a third party and maintained in the name of the spouse. (Gifts between spouses are marital property.)
 - ❖ Property acquired in exchange for property acquired prior to marriage;
 - ❖ Property excluded by valid agreement of the parties;
 - ❖ Inherited property maintained in the sole name of the donee spouse; and
 - ❖ The increase in the value of property acquired prior to marriage. (Please note there are many exceptions to this rule.)
- ▶ Marital property is subject to equitable division in divorce proceedings, without regard to marital misconduct, in proportions deemed by the Court to be just after consideration of the factors set forth in 13 Del. C. §1513.

12

Substantive Highlights / Practice Tips: **Alimony**

- ▶ A party may be awarded **alimony** in divorce if he or she is dependent upon his or her spouse for support after consideration of the factors set forth in **13 Del. C. § 1512(c)**.
 - ❖ Dependence is found where the requesting party is (i) dependent upon the other party for support and the other party is not contractually or otherwise obligated to provide support after the entry of the decree of divorce; (ii) lacks sufficient property, including an award of marital property, to provide for his or her reasonable needs; and (iii) is unable to support himself or herself through appropriate employment or is the custodian of a child whose condition makes it appropriate that he or she not be required to seek employment.
- ▶ Alimony is available for a period not to exceed 50% of the term of the marriage except that if the marriage exceeds 20 years, there shall be no time limit as to the period of eligibility. **13 Del. C. § 1512(d)**.
- ▶ Unless otherwise agreed in writing, alimony **terminates** upon the death of either party or the remarriage or cohabitation of the party receiving alimony. **13 Del. C. § 1512(g)**.
- ▶ Alimony awarded in a judicial decree is modifiable upon a substantial change in circumstances. This modification standard will also apply if it is specifically set forth in a stipulated order. **13 Del. C. § 1519(a)(4)**.



13

Substantive Highlights / Practice Tips: **Discovery**

- ▶ Any party may serve a **request for production of documents** on another party or take the **deposition** of another party pursuant to **Fam. Ct. Civ. R. 26(a), 30, and 34**.
- ▶ Other discovery requires permission of the Court requested by motion. **Fam. Ct. Civ. R. 26(a)**.
- ▶ Seek discovery orders and orders for vocational evaluations early in proceeding, if needed.
- ▶ Complete necessary business valuations, vocational evaluations and appraisals *prior to pre-trial conference* so you have the information necessary to complete the Ancillary Pretrial Stipulation.



14

Substantive Highlights / Practice Tips

- ▶ Come to Court with **exhibits prepared**, including credit card statements, mortgage balance statements, bank account statements, etc., if you are unable to stipulate to these facts.
- ▶ **Stipulate** to as many points as possible including values of assets; balances of debts; incomes of parties; and any percentage divisions and alimony issues.

15



Areas of Civil Litigation: Child Support and Spousal Support

16

Statutory References

- ▶ **Chapter 5 of 13 Del. C.** addresses child support and spousal support.
- ▶ **Chapter 6 of 13 Del. C.** is the Uniform Interstate Family Support Act.
- ▶ **13 Del. C. § 511:** establishes the ability to commence a support action by petition (see forms on Family Court website) and the manner in which jurisdiction may be obtained over the respondent.
 - ❖ The bases for obtaining jurisdiction over a non-resident set forth in **13 Del. C. § 6-201**. Service upon the non-resident respondent is pursuant to the long-arm statute at **10 Del. C. § 3104**.
- ▶ **13 Del. C. § 513:** sets forth the relief the Court may award when a duty of support is found to exist; establishes the mechanism for ensuring the payment, including attachment of income; and defines income available for support purposes.

17

Guidelines / Rules / Process

- ▶ **Fam. Ct. Civ. Rules 300-303** set forth various rules for support proceedings including the following:
 - ❖ **Rule 300** sets forth expedited procedures for support actions
 - ❖ **Rule 301** requires the inclusion of social security numbers for parties and children in child support actions
 - ❖ **Rule 302** addresses various issues related to income attachment
 - ❖ **Rule 303** establishes the public nature of child support proceedings subject to be closed at the discretion of the Court

18

Guidelines / Rules / Process: **Child Support**

- ▶ **Fam. Ct. Civ. Rule 500-510** sets forth the detail of the Delaware Child Support Formula or Melson Formula.
 - ❖ Among other things, these Rules provide that the Formula is a *rebuttable presumption*.
- ▶ **Fam. Ct. Civ. R. 506** sets forth the *minimum* support orders of not less than 20% of the primary allowance for one child and 20% for two or more children unless the parties have a shared custodial arrangement.
- ▶ **Fam. Ct. Civ. R. 507** sets forth the circumstances under which medical support, or health insurance, must be provided by parents for children as part of child support.
- ▶ **Fam. Ct. Civ. R. 508** sets forth the standard for modification of child support.

19

Guidelines / Rules / Process

- ▶ The Family Court evaluates and updates the Delaware Child Support Formula every 4 years.
 - ❖ A report is issued that is available on the Family Court website. It provides valuable information on various aspects of the Formula and the law regarding child support.
- ▶ Under Delaware law, both parents have a duty to support their child until the child is 18 years of age, **or**, if the child is still in high school, until the child graduates or turns 19 years of age, whichever comes first.
- ▶ A child support action begins when a parent files a support action asking the other parent to pay child support.

20

Guidelines / Rules / Process: **Mediation**

- ▶ Following the filing of the Petition and service on the respondent, Family Court will schedule **mediation** with a Family Court mediator.
- ▶ Parties to a child support proceeding are required to complete and bring to mediation a **Child Support Financial Disclosure Report pursuant to Fam. Ct. Civ. Rule 16(a)**.
 - ❖ This form may be found on the Family Court website and requires parties to provide information about their income, cost of health insurance premiums, disability insurance, union dues, pension contributions and any other mandatory income deductions.
 - ❖ The form also requires disclosure of any school year child care, summer child care and private school expenses. Documentation supporting the information included in the form is to be attached.
- ▶ If the matter is not successfully resolved at mediation, a child support hearing before a **Family Court Commissioner** will occur.



21

Guidelines / Rules / Process: **Spousal Support**

- ▶ Parties to a spousal support proceeding are also scheduled for **mediation** following the filing of a petition.
- ▶ Unresolved spousal support mediations result in the **scheduling of a hearing** on the issue.

22

Substantive Highlights / Practice Tips: Child Support

- ▶ The Delaware Child Support Formula, more commonly known as the **Melson Formula**, is a *rebuttable presumption*.
- ▶ The Melson Formula is calculated using **objective criteria**, like income and certain allowable deductions, like health insurance premiums, disability insurance premiums, pension/retirement contribution up to 5% of gross income, union dues, and any other mandatory income deductions.
- ▶ Child support is paid to the party with whom the child resides more than half the time.
 - ❖ Where parties share residential custody of children, a reduced amount of child support is paid by the higher income earner to the lower income earner in recognition of the sharing of the children's expenses that occurs when the children reside half the time with each parent.
 - ❖ Parenting time adjustments are also provided by the Formula for parents who have their children less than half time but 80 or more overnights in a year.



23

Substantive Highlights / Practice Tips: Child Support

- ▶ Unreimbursed medical expenses are paid in accordance with percentages found on line 9 of the Melson Formula calculation. These percentages are referred to as "*primary shares*."
- ▶ Because both parents are responsible for the support of their children, income attribution will be used if a parent is able to work and unemployed or working below capacity.
 - ❖ The Court may take judicial notice of occupational wage surveys compiled by the United States Bureau of Labor Statistics (BLS) and the Office of Occupational and Labor Market Information (OOLMI) in the Delaware Department of Labor to impute or corroborate reasonable earning capacity. **Rule 501**. The Delaware Wage Survey or a vocational evaluation can provide evidence of the appropriate level of income attribution, where appropriate.

24

Substantive Highlights / Practice Tips

- ▶ Private or parochial school expenses shall only be included in a child support calculation where:
 - ❖ The parties have **adequate financial resources**; and
 - ❖ After consideration of the **general equities** of the particular case, including consideration of whether:
 - The parents *previously agreed* to pay for their child(ren)'s attendance at private school;
 - The child has *special needs* that cannot be accommodated in a public school setting; or
 - Immediate family history indicates the child *likely would have attended private or parochial school* but for the parties' separation.



25

Substantive Highlights / Practice Tips: **Modification**

- ▶ A petition for modification of child support filed **within 2½ years** of the date of the last order must plead with particularity a ***substantial change in circumstances***.
 - ❖ These may include changes in income brought on by no fault of the petitioner, changes in daycare expenses, or other changes in other child support obligations of the obligor.
 - ❖ There will be no modification of an existing order if filed within 2½ years of the prior order, unless the calculation indicates an **increase or decrease** of at least 10% of the current obligation. "No modification will be ordered unless the new calculation produces a change of more than 10%" **Rule 508(a)**.
 - There is no need for the 10% modification threshold to be met when the prior order was entered **more than 2½ year ago**.

26



Areas of Civil Litigation: Custody, Visitation, & Guardianship

27

Statutory References

- ▶ **Chapter 7 of 13 Del. C.** addresses custody and visitation of minor children.
- ▶ **Chapter 19 of 13 Del. C.** is the Uniform Child Custody Jurisdiction and Enforcement Act.
- ▶ **Chapter 23 of 13 Del. C.** addresses guardianship of minor children.
- ▶ **Chapter 24 of 13 Del. C.** provides for third-party visitation.

28

Statutory References

Custody

- ▶ **13 Del. C. § 721** provides for the commencement of a child custody proceeding by a parent in the county where the child is permanently a resident or where he or she is found.
 - ❖ **13 Del. C. § 1920** further delineates the jurisdictional requirements for a child custody determination.
 - ❖ **13 Del. C. § 1921** sets forth the continuing jurisdiction of the State following an initial determination of custody.
 - ❖ **13 Del. C. § 1922** sets forth the circumstances under which the Delaware Family Court has jurisdiction to modify a custody determination in another state.

29

Statutory References

Custody

- ▶ **13 Del. C. § 722** sets forth the “*best interest of the child*” standard and the factors considered by the Court in determining the legal custody and residential arrangements for a child.
- ▶ **13 Del. C. § 727** establishes the right of parents to receive information from the other parent, whether they have sole legal or joint legal custody, and sets forth the types of relief available in custody orders.
- ▶ **13 Del. C. § 729** sets forth the standard for the modification of prior custody and visitation orders.

30

Statutory References

Guardianship

- ▶ **13 Del. C. § 2303** establishes jurisdiction for guardianship proceedings and addresses venue.
- ▶ **13 Del. C. § 2320** sets forth persons who are eligible to file for guardianship.
- ▶ **13 Del. C. § 2322** establishes the contents of a Petition for Guardianship (See Family Court forms on website).
- ▶ **13 Del. C. § 2330** sets forth the grounds for guardianship.
- ▶ **13 Del. C. § 2331** the duties and rights of parents while guardianship is in effect.

31

Statutory References

Guardianship

- ▶ **13 Del. C. § 2332** – basis upon which guardianship terminates and/or may be modified
- ▶ **13 Del. C. § 2340** – powers and duties of guardians of children
- ▶ **Subchapter V of 13 Del. C.** addresses permanent guardianships for children, which has similarities to adoption without the termination of parental rights.
- ▶ **Subchapter VI of 13 Del. C.** addresses standby guardianships, which are intended to enable a parent, custodian, or guardian suffering from a progressive chronic condition or terminal illness to make plans for the permanent future care or interim care of a child.

32

Guidelines/Rules/Process: Custody & Visitation

- ▶ An **initial petition for custody** may be filed in Delaware if there is no custody order from another state or custody proceeding pending in another state, and the child has resided in Delaware for six months **OR** is less than six months old.
- ▶ In all custody and visitation proceedings, a **mediation conference** with the parties shall be held by a Court staff mediator to identify the specific areas at issue and to attempt amicable settlement of all unresolved issues, or in the alternative, to limit the issues submitted to the Court for determination. **Fam. Ct. Civ. Rule 16.1(b)(1)**.
 - Prior to the mediation conference, each party must complete a **Custody, Visitation, and Guardianship Disclosure Report** and bring the completed report to the mediation. **Fam. Ct. Civ. Rule 16(b)(1)**.
- ▶ If the matter is not resolved at the mediation conference by a permanent, temporary, or interim agreement of the parties, the mediator may recommend an **interim contact schedule**, subject to review and approval by a judge. **Fam. Ct. Civ. Rule 16.1(b)(4)**.
- ▶ Following a mediation that does not result in a permanent order, the custody proceeding is sent on for **judicial scheduling**.

33

Guidelines/Rules/Process

- ▶ Both parties to a custody or visitation proceeding shall participate in a DSCYF certified parent education program. **Fam. Ct. Civ. R. 16.4**.
 - ❖ Completion of program -- All participants completing a DSCYF certified program shall be given a certificate of completion verified by the provider. The petitioner, by the filing of a custody petition, voluntarily submits to the jurisdiction of the Court, and shall complete the education program. The petitioner and respondent shall each submit his or her original copy of the certificate of completion prior to the final hearing. **Fam. Ct. Civ. R.16.4(a)(3)**.
- ▶ Judicial case management of custody and visitation proceedings varies, as there are few provisions in the Rules related to pre-trial process.
- ▶ If service is completed by publication, **guardianship petitions** proceed directly to scheduling before a judge without the requirement of attendance at mediation. However, if personal service is made, the parties must attend mediation.

34

Guidelines/Rules/Process

- ▶ The **Family Court Contact Guidelines** are available on the website. They are based on the assumption that *both parents* are competent and effective parents and that the child is safe with each parent.
 - ❖ In the event the parties attend a mediation conference and are unsuccessful in reaching either an interim or permanent agreement on the issue of parental contact, the mediator may enter the Contact Guideline schedule or another schedule based on the facts and circumstances of the case.
 - ❖ The Contact Guidelines are based on a **shared residential arrangement** for children 18 months and older.

35

Substantive Highlights/Practice Tips: Best Interests of the Child

- ▶ The Court determines the legal custody and residential arrangements, including visitation, in accordance with the best interests of the child. **13 Del. C. § 722**.
 - ❖ In determining the best interests of the child, the Court considers all relevant factors, including those set forth with particularity at **13 Del. C. § 722(a)**.
- ▶ Expert reports in the form of custody evaluations conducted by psychologists may be presented in custody proceedings. A custody evaluation may be conducted by agreement of the parties or order of the Court. Custody evaluations take months to complete. It is important to allow sufficient time for completion in advance of a scheduled hearing.

36

Substantive Highlights/Practice Tips: **Modification**

- ▶ An order concerning visitation may be modified at any time if it is in the best interests of the child. **13 Del. C. § 729(a).**
- ▶ An order entered by consent of the parties, an interim order, or a written agreement between the parties concerning the legal custody of a child or his or her residence may be modified at any time in accordance with the best interests of the child standard. **13 Del. C. § 729(b).**
- ▶ The standard for modification of the legal custody of a child or his or her residential arrangements is enhanced after a full hearing on the merits. **13 Del. C. § 729(c):**
 - ❖ If modification is requested within 2 years of the Court's Order, modification will only be granted if *continuing enforcement of the prior order may endanger the child's physical health or significantly impair his or her emotional development*.
 - ❖ If the application for modification is filed more than 2 years after the Court's most recent order concerning these matters, the Court may modify its prior order after considering:
 - a. Whether any harm is likely to be caused to the child by a modification of its prior order, and, if so, whether that harm is likely to be outweighed by the advantages, if any, to the child of such a modification;
 - b. The compliance of each parent with prior orders of the Court concerning custody and visitation and compliance with his or her duties and responsibilities under § 727 of this title including whether either parent has been subjected to sanctions by the Court under § 728(b) of this title since the prior order was entered; and
 - c. The factors set forth in § 722 of this title.

37



Areas of Civil Litigation: Dependency, Abuse, & Neglect Proceedings

38

Dependency, Abuse, Neglect Definitions: 10 Del. C. § 901

- “**Dependency**” and “**dependent child**” is defined in 10 Del. C. § 901(8).
- “**Abuse**” or “**abused child**” is defined in 10 Del. C. § 901(1).
- “**Neglect**” or “**neglected child**” is defined in 10 Del. C. § 901(18).

39

Appointment of Counsel



- The Delaware Supreme Court has recognized that a parent has a **compelling interest** in maintaining a familial relationship with his or her child under the Constitution.
- Thus, courts generally rule that **counsel must be appointed** for **indigent parents** in any proceeding which may result in **termination of parental rights**.

40

Appointment of Counsel

- *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981) – A parent's due process right to appointment of counsel in termination proceedings must be decided on a case-by-case basis by weighing the following factors:
 - The **private interest** at stake;
 - The **government interest**; and
 - The **risk** that the procedures used will lead to **erroneous decisions**.
- *In re Carolyn S.S. & Michael J.S.*, 498 A.2d 1095 (Del. 1984) – The Delaware Supreme Court held that indigent parents do not have an absolute right to counsel in termination proceedings. Rather, the three-part due process analysis must be conducted on a case-by-case basis.
- *Hughes v. DFS*, 836 A.2d 498, 509 (Del. 2003) – The Delaware Supreme Court noted that, although the right is not absolute, a proper case-by-case application of the three-part analysis will routinely require appointment of counsel for indigent parents in dependency/neglect proceedings.

41

Appointment of Counsel – Family Court Civil Rule 206

- The Court may appoint counsel for a parent found to be **indigent** in dependency proceedings pursuant to the three-prong procedural due process test.
- If a parent is entitled to appointment of counsel but declines, the **waiver** must be noted on the record or in the Court's order.

42

Appointment of a Child Attorney or Court Appointed Special Advocate (“CASA”)

➤ Family Court Civil Rule 207

- (a) The Court shall appoint an attorney authorized to practice law in this state or a CASA to represent the **best interests of the child**.
 - (b) The Court may appoint an attorney authorized to practice law in this state to represent the **wishes of the child**.
- The duties and rights of a Child Attorney are set forth in 29 Del. C. § 9007A(c).

43

Timeline for Proceedings/Permanency

Ex Parte Petition for Custody – Fam. Ct. Civ. R. 212

- When emergency removal of a child from the home is requested, DSCYF must file a petition and affidavit with the Court no later than noon of the following business day.
- Standard of Proof – 13 Del. C. § 2512:
 - ❖ The Court may issue an *ex parte* order awarding emergency custody to DSCYF and order removal of a child from the home upon the establishment that:
 - Continuation in the home is contrary to the welfare of the child; and
 - **Probable cause** exists to believe that:
 - A child continues to be in actual physical, mental, or emotional danger or there is a substantial imminent risk thereof or;
 - Immediate or irreparable harm may result to the child if such an order is not issued.
- The Court shall schedule the DSCYF petition for either a *Preliminary Protective Hearing* within 10 days or an *Adjudicatory Hearing* within 30 days of the filing. **Rule 212(c)**.

44

Timeline for Proceedings/Permanency

Preliminary Protective Hearing – Fam. Ct. Civ. R. 214

- A PPH must be held before a Judge within 10 days of the entry of the *ex parte* order.
 - ❖ If an *ex parte* order is not granted but the Court finds that priority scheduling is warranted, a PPH shall be scheduled within 10 days of the filing of the petition.
- At the PPH, the Court must determine, in writing, whether the evidence establishes that **probable cause** exists to believe that:
 - ❖ As to each parent, the child is dependent, neglected, or abused, or there is a substantial imminent risk thereof, and
 - ❖ It is in the best interest of the child to be in the custody of DSCYF.

45

Timeline for Proceedings/Permanency

Adjudicatory Hearing – Fam. Ct. Civ. R. 215

- An Adjudicatory Hearing must be held within 30 days of the conclusion of the PPH.
- The Court must find by a **preponderance of the evidence** that the child is dependent, neglected, or abused, and that it is in the child's best interest for custody to be awarded to DSCYF.

46

Timeline for Proceedings/Permanency

Dispositional Hearing – Fam. Ct. Civ. R. 216

- A Dispositional Hearing must be held within 70 days of the physical or constructive removal of the child from the home.
- At the Dispositional Hearing, the Court shall establish a **permanency plan** (or concurrent plans) for the child. The permanency plans available are:
 - ❖ Reunification with a parent;
 - ❖ Termination of Parental Rights/Adoption;
 - ❖ Guardianship;
 - ❖ Permanent guardianship; and/or
 - ❖ Placement in Another Planned Permanent Living Arrangement (“APPLA”), where DSCYF has documented to the Court a compelling reason why every other permanency plan is not in the child's best interest.
- Rule 213(b) – Following the establishment of a permanency plan at the Dispositional Hearing, a party may file a **Motion to Change Permanency Goals** 15 days prior to the next scheduled hearing. The motion must state the basis for the requested change in permanency plans.

47

Timeline for Proceedings/Permanency

Dispositional Hearing – Cont’d

- 42 U.S.C. § 675(a) APPLA findings
 - ❖ In each subsequent proceeding after APPLA has been established as the permanency plan, DSCYF must establish that APPLA continues to be in the child's best interest pursuant to the guidelines set forth in this federal statute.

48

Timeline for Proceedings/Permanency

Review Hearing – Fam. Ct. Civ. R. 217

- A Review Hearing shall be held within 90 days of the Dispositional Hearing.
 - ❖ Further Review Hearings are held at the Court's discretion until the Permanency Hearing.
- At the Review Hearing, the Court shall evaluate and issue a written order regarding:
 - ❖ The safety of the child;
 - ❖ The necessity for and appropriateness of the child's placement;
 - ❖ The delivery of services to the child and whether the needs of the child, including but not limited to educational, medical and mental health, are being met;
 - ❖ Where the permanency plan is reunification with a parent, the extent of compliance with the case plan by the parent and DSCYF;
 - ❖ The extent of progress made toward alleviating or mitigating the causes necessitating the placement of the child into care;
 - ❖ The projected date of the safe return of the child to the parent or placement for adoption, guardianship, or permanent guardianship; and
 - ❖ Whether independent living services are appropriate and are being provided pursuant to Rule 222 and 29 Del. C. § 9003(14).

49

Timeline for Proceedings/Permanency

Permanency Hearing – Fam. Ct. Civ. R. 218

- A Permanency Hearing may be held upon motion by any party or scheduled by the Court, but in no event shall be later than 12 months from the time the child has “**entered foster care**,” or within 30 days of a judicial determination that DSCYF is not obligated to provide a permanency plan of reunification under Rule 213, unless the requirements of the Permanency Hearing are fulfilled at the hearing in which the Court determines reasonable reunification efforts are not required.
- Pursuant to Rule 210(d), the date a child has “**entered foster care**” means the *earlier* of:
 - A judicial finding in an adjudicatory order that the child is dependent, neglected or abused; **or**
 - 60 days after DSCYF is granted custody and the court orders physical or constructive removal of the child from his or her parent or relative.

50

Timeline for Proceedings/Permanency

Permanency Hearing – Fam. Ct. Civ. R. 218 *Cont'd*

- In determining whether DSCYF exercised reasonable efforts, the Court must consider the factors set forth in Rule 218.
- At the Permanency Hearing or through separate interview, the Court must consult with the child regarding the permanency plan in an age appropriate manner, including consultation with the CASA or Child Attorney if appropriate.
- In any case where the permanency plan of reunification continues, the Court shall schedule a Review Hearing within 90 days.

51

Timeline for Proceedings/Permanency

Post-Permanency Review Hearing – Fam. Ct. Civ. R. 219

- Post-Permanency Review Hearings shall be held at least every 6 months after the Permanency Hearing while the child remains in DSCYF custody.
- The Court shall determine at each Post-Permanency Review Hearing the appropriateness of the permanency plan and consider any motions to change the permanency plan filed pursuant to Rule 213.
- The Court's written Order shall address the same findings as Rule 218.

52

Timeline for Proceedings/Permanency

Post-TPR Review Hearing (if applicable) – Fam. Ct. Civ. R. 220

- If a case is resolved by termination of parental rights, the Court may convene a hearing to review the proposed placement plan the child within 60 days after the entry of the final TPR Order. The placement plan must be provided to the Court and opposing parties 10 days prior to the hearing. The plan must include the following:
 - A description of the agency's progress toward arranging an adoptive placement for the child;
 - Where adoptive parents have not already been selected, a description of steps to be taken to place the child for adoption; and
 - A description of any barriers preventing placement of the child for adoption and how they should be overcome.

53

Reasonable Efforts Requirement

- 41 U.S.C.A. § 671(a)(15)(B) / 29 Del. C. § 9003:
 - ❖ DSCYF shall make reasonable efforts to preserve and reunify families:
 - Prior to the placement of a child in foster care, to prevent or eliminate the need for removal; and
 - To make it possible for a child to return safely home.
- Fam. Ct. Civ. R. 210: The Court must make a written determination at regularly scheduled hearings whether DSCYF has used reasonable efforts to effect the safe reunification of the child and family.

54

Reasonable Efforts NOT Required

- ▶ 41 U.S.C.A. § 671(a)(15)(D)(iii) / 13 Del. C. § 1103(d):
 - ❖ Reasonable efforts are not required to be made with respect to a parent:
 - Who has subjected the child to **aggravated circumstances** defined by State law;
 - *Delaware* – such aggravated circumstances include chronic abuse and serious unexplained injuries to the child. 13 Del. C. § 1103.
 - Who has (1) committed murder or voluntary manslaughter of another child of the parent, (2) aided or abetted in such, or (3) committed a felony assault that resulted in serious bodily injury to the child or another child of the parent; or
 - Whose parental rights to a sibling have been terminated involuntarily.
- ▶ **Fam. Ct. Civ. R. 213(c):** The burden of proof on a motion for relief from reasonable effort requirements is “clear and convincing evidence” of existence of aggravating circumstances.

55

Resolution of Dependency/Neglect Petitions

- ▶ A dependency/neglect petition for custody can be resolved as follows:
 - ❖ Reunification with parents (petition dismissed)
 - ❖ Guardianship (regular or permanent)
 - ❖ APPLA / Aging Out
 - If the child ages out and wishes to continue to receive services through DSCYF, a Petition for Extended Jurisdiction must be filed.
 - ❖ Termination of Parents Rights & Adoption [see next topic]

56

Extended Jurisdiction

- ▶ **10 Del. C. § 929:** Upon a petition by a youth who was an abused, dependent, or neglected child in DSCYF's custody at the time he or she attained the age of 18, the Court can enter an Order extending jurisdiction over the youth until he or she turns 21.
- ▶ The purpose of extended jurisdiction is to enable youth who are provided independent living services from age 14 to 21 to assist with their successful transition into adulthood.



57



Areas of Civil Litigation: Termination of Parental Rights

58

TPR – Statutory References

Initiation of Action – 13 Del. C. § 1104

- ▶ A petition for the termination of parental rights may be filed by any of the following:
 - The mother, father, or presumed father of a child;
 - Both parents of a child;
 - A blood relative of a child;
 - The Department or a licensed agency;
 - A guardian or permanent guardian of a child.
- ▶ The necessary contents of a TPR petition are listed in 13 Del. C. § 1105.

59

TPR – Statutory References

Statutory Grounds for TPR

- ▶ The grounds for TPR are set forth in 13 Del. C. § 1103.
- ▶ Most Common:
 - Failure to Plan
 - Abandonment
 - Prior Involuntary TPR
 - Voluntary Consent

60

TPR – Statutory References

Consent / Revocation of Consent to TPR

- ▶ In cases where the ground for TPR is voluntary relinquishment, the individuals from whom consent is required are set forth in **13 Del. C. § 1106**.
 - The Court may accept verbal consent after a verbal review on the record and a finding that the consent was knowingly and voluntarily given.
 - The required contents of a consent are set forth in **13 Del. C. § 1106A**.
- ▶ Once accepted by the Court, consent to TPR is irrevocable unless the requirements of **13 Del. C. § 1106(f)** and **§ 1106B(a-b)** have been met.

61

TPR – Statutory References

Effect of TPR – 13 Del. C. § 1113

- ▶ Both the individual whose parental rights were terminated and his or her relatives lose all rights of inheritance from the child.
- ▶ The child will no longer have rights of inheritance from the individual whose rights were terminated and that individual's relatives unless otherwise provided for by will.

62

TPR – Statutory References

Appeal of TPR

- ▶ **13 Del. C. § 1110:** The petitioner or any person/organization whose parental rights have been terminated may appeal to the Supreme Court within 30 days of the entry of a TPR Order.
- ▶ **13 Del. C. § 1108(c):** After 6 months have expired from the date of the TPR Order, any irregularities in the proceedings are deemed cured and the decree is not subject to attack either through collateral or direct proceedings by named parties.

63

TPR – Statutory References

Placement for Adoption

After the issuance of a TPR Order, DSCYF or the agency receiving rights must promptly attempt to place the child for adoption in accordance with **13 Del. C. § 1114**.

64

TPR – Substantive Highlights

Fundamental Rights of Parents

Parental rights are “fundamental liberties” which may not be abrogated absent compelling circumstances. *Troxel v. Granville*, 530 U.S. 57 (2000); *In re Stevens*, 652 A.2d 18 (Del. 1995).

65

TPR – Substantive Highlights

Appointment of Counsel

- ▶ The right to counsel applies in State and private TPR proceedings.
 - *Walker v. Walker*, 892 A.2d 1053, 1055 (Del. 2006) – The Delaware Supreme Court found that a parent’s compelling interest with respect to his or her child does not diminish where the termination proceedings are initiated by a private party rather than the State. Thus, a court must advise parents of their right to seek court-appointed counsel and determine whether to appoint counsel, if requested, in all termination proceedings.



66

TPR – Substantive Highlights

Required Court Findings / Burden of Proof

- ▶ Burden of Proof – “Clear and convincing evidence”
- ▶ Existence of Statutory Grounds for TPR
- ▶ TPR is in the Child’s Best Interest

67



Areas of Civil Litigation: Adoption

68

Adoption – Statutory References

Who Can Adopt?

- ▶ Adoption of a Minor – A single individual, a married couple (including same sex), or a divorced or legally separated person. Adopting parent(s) must be a resident of Delaware age 21 or older. **13 Del. C. § 903.**
- ▶ Adoption of an adult (age 18+) – Any individual or married couple may adopt. **13 Del. C. § 951.**
 - ❖ An adult adoption petition must state the name, sex, and date of birth of the person whose adoption is sought and that the petitioner(s) desire to adopt such. **13 Del. C. § 952.**
 - ❖ The Court will issue a Decree of Adoption of an adult where the petition is compliant and person to be adopted has consented in Court. **13 Del. C. § 953.**

69

Adoption – Statutory References

Consent Requirements / Freeing Child for Adoption

- ▶ Parents of child to be adopted must give consent. **13 Del. C. § 908(a).**
 - ❖ Where TPR has been ordered through an action initiated by the State, DSCYF or the agency in whom the parental rights are vested must consent. **13 Del. C. § 908(a).**
- ▶ In the case of adoption by stepparent or blood relative, consent must be obtained from:
 - ❖ The mother of the child, and
 - ❖ The biological father and any presumed father of a child, provided that the consent need not contain an admission of paternity. If paternity is disclaimed, a signed affidavit to that effect must be attached to the petition in lieu of consent. **13 Del. C. § 908(b).**
- ▶ If a child is age 14 or older, the child must consent to the adoption unless the Court waives such consent in the best interest of the child. **13 Del. C. § 907(b).**

70

Adoption – Statutory References

Revocation of Consent – 13 Del. C. § 909

- ▶ A parent, child 14+ years old, or agency holding parental rights may file a petition to revoke consent to the adoption within 60 days.
- ▶ The Court must refer the petition to DSCYF or licensed agency, which shall submit a report to the Court within 30 days, upon which the Court must promptly rule.

71

Adoption – Statutory References

Filing of Adoption Petition

- ▶ The required contents of a Petition for Adoption are set forth in 13 Del. C. § 906.
- ▶ The requirements for placement of the child and supervision prior to the filing of an adoption petition are set forth in 13 Del. C. § 904.
- ▶ The requirements for the **Social Report**, which must be filed by the agency after the adoption petition has been verified, are set forth in 13 Del. C. § 912.

72

Adoption – Statutory References

Home Residency/Supervision Requirements Prior to Adoption Finalization

- ▶ Once the adoption petition has been filed and the child has been freed for adoption, the adoptive placement must be supervised by the Department or licensed agency for 6 months. **13 Del. C. § 913(a).**
- ▶ In the case of a child to be adopted by a stepparent, guardian, permanent guardian, or blood relative, the adoption petition may be filed only after the child has resided in the petitioner's home for at least **1 year OR 6 continuous months** on recommendation of the licensed agency. **13 Del. C. § 913(b).**



73

Adoption – Statutory References

Decree of Adoption

- ▶ The Court must render a decision on an adoption petition within 60 days.
- ▶ **13 Del. C. § 915(a):** The Court will enter a Decree of Adoption if it finds:
 - ❖ The **petitioner(s) are qualified** properly to maintain, care for, and educate the child; and
 - ❖ The child is suitable for adoption and the **best interest of the child** will be promoted by the adoption.
- ▶ If the Court finds that a decree **should not** be entered, it must notify the petitioner(s) and conduct a hearing for further presentation of evidence if requested by any petitioner. **13 Del. C. § 915(a).**
- ▶ Any irregularities in the proceedings shall be deemed **cured** after 6 months from the date of the decree, after which the validity of the decree is not subject to attack. **13 Del. C. § 918.**



74

Adoption – Statutory References

Effect of Adoption – 13 Del. C. §§ 919-920

- ▶ The adopted child is considered the child of the adopting parent(s) and is entitled to the same rights and privileges (including inheritance), and subject to the same duties and obligations, as if he/she had been the adoptive parent(s)' birth child.
 - ❖ The adoptive parents also acquire any rights/privileges (including inheritance) and duties/obligations of a natural parent with respect to the child.
- ▶ The adopted child is no longer considered the child of his/her birth parent(s), and any related rights/privileges or duties/obligations are no longer effective for either the birth parent or child.
 - ❖ However, in the case of stepparent adoption, a child's relationship to the birth parent who is married to the stepparent remains intact.

75



Areas of Civil Litigation: Protection from Abuse

76

PFA – Statutory References

Who can file for Protection From Abuse (“PFA”)? 10 Del. C. § 1041(2)

A member of a protected class which includes:

- Family, regardless of the state of residence of the parties or whether parental rights have been terminated; OR
 - 10 Del. C. § 901(12) – “**Family**” means spouses; a couple cohabitating in a home in which there is a child of either/both; custodian and child; or any group of persons related by blood or marriage who are residing in 1 home under 1 head, or who are related by any of the enumerated degrees of relationships, both parties being residents of this State.
- Former spouses; persons cohabiting together who are holding themselves out as a couple, with or without a child in common; persons living separate and apart with a child in common; or persons who are or were involved in a substantive dating relationship.

77

PFA – Statutory References

What is “Abuse”?

- “**Abuse**” is defined in 10 Del. C. §1041(1).

78

PFA – Statutory References

Emergency Hearings and *Ex Parte* Orders

- A petitioner may request an emergency *Ex Parte* Order by filing an affidavit pursuant to **10 Del. C. § 1043** alleging that there is an immediate and present danger of domestic violence.
- An *ex parte* hearing must be held either the same day the petition is filed or the next business day.
 - All other emergency hearings must be scheduled for an expedited hearing within 15 calendar days after the petition is filed.
- When an *Ex Parte* Order is issued, a full hearing must be held within 15 days.
 - The *Ex Parte* Order remains in effect until the full hearing is conducted.
 - Standard of Proof – If the Court finds by a preponderance of the evidence that the alleged domestic violence has occurred, or if the respondent consents to entry of a protective order, the Court shall grant any appropriate relief, including, but not limited to, the relief set forth in **10 Del. C. § 1045**.

79

PFA – Statutory References

Non-Emergency Hearings – 10 Del. C. § 1044

- a. The Court must conduct a hearing within 30 days of receipt of a PFA petition.
- b. Standard of Proof: If the Court finds by a **preponderance of the evidence** that the alleged domestic violence has occurred, or if the respondent **consents** to entry of a protective order, the Court shall grant any appropriate relief, including, but not limited to, the relief set forth in § 1045.
- c. A certified copy of the order shall be given to the parties after the hearing before leaving the courthouse.

80

PFA – Statutory References

Relief – 10 Del. C. § 1045

PFA Orders may provide for any or all of the following relief:

- i. Restraint from further acts of domestic violence;
- ii. No contact with the petitioner;
- iii. Exclusive use of the home or certain possessions by petitioner;
- iv. Temporary custody of a child and any appropriate visitation provisions;
- v. Child support;
- vi. Financial support for petitioner;
- vii. Payment of expenses;
- viii. Surrender of firearms;
- ix. Prohibition against transferring, encumbering, concealing, or in any way disposing of property owned or leased by the parties;
- x. Participation in counseling;
- xi. Any other relief that might help prevent future violence.

81

PFA – Statutory References

Relief – 10 Del. C. § 1045 (*Cont'd*)

- Relief is effective for a fixed period of time, not to exceed **1 year**.
- **Exception** – No contact orders and restraint from further acts of domestic violence may be granted for a fixed period not to exceed **2 years**.
 - Upon a finding that aggravating circumstances exist, the Court may grant no contact relief *as long as reasonably necessary to prevent further acts of abuse or domestic violence*, up to and including the entry of a permanent order of the Court.
 - **Aggravating Circumstances** – physical injury or serious physical injury; use of a deadly weapon or dangerous instrument; history of repeated violations of PFA orders; prior convictions for crimes against the petitioner; exposure of petitioner's family/household member to physical injury; or any other acts of abuse which constitute an immediate and ongoing danger to the petitioner or petitioner's family or household members.
- Such an order may only be modified upon motion of a party for good cause shown.

82

PFA – Statutory References

Extension of Relief / Modification of Order 10 Del. C. § 1045(c)

- Motions to Extend or Modify a PFA Order may be heard on an emergency basis if filed pursuant to the provisions on *ex parte* petitions.
- Standard of Proof:
 - ❖ Orders may be extended if the Court finds by a preponderance of the evidence that: (1) domestic violence has occurred since the entry of the order, (2) a violation of the order has occurred, (3) respondent consents to extension of the order, or (4) for good cause shown.
- Only the Court may modify or rescind a PFA Order, after notice to all parties is affected and a hearing.
- A PFA Order remains valid and effective even if the parties reconcile. 10 Del. C. § 1045(d).

83

PFA – Statutory References

Enforcement of a PFA Order – 10 Del. C. § 1046

- A copy of any PFA Order must be entered into DELJIS by the Court on or before the next business day to notify law enforcement agencies of the Order's existence.
- A law enforcement officer must arrest, with or without a warrant, any individual the officer has probable cause to believe has violated a PFA Order.
 - Presentation of a PFA Order, which on its face has not expired and identifies the protected person and the respondent, constitutes probable cause to believe a PFA Order exists.
 - Probable cause for arrest may also be established by a good faith reliance on information contained in DELJIS.
- If an officer determines that an otherwise valid PFA Order is unenforceable for lack of notice/service upon respondent, the officer must inform respondent of the order, make a reasonable effort to serve it, and allow respondent a reasonable opportunity to comply prior to enforcement.

84

PFA – Statutory References

Violation of a PFA Order



▶ Arrest– § 1046(e)

- After an arrest for violation of a PFA Order, the respondent must immediately be taken before the Family Court (or the nearest justice of the peace if court is not in session) to establish bail.

▶ Notice of Penalties – § 1046(h)

- All PFA Orders must state that a violation may result in:
 - A finding of contempt;
 - Criminal prosecution; and
 - Imprisonment, fine, or both.

▶ Criminal Prosecution – § 1046(i)

- *"It shall be unlawful for a respondent to knowingly violate a protective order. Violations shall be punishable as a class A misdemeanor. Nothing in this subsection shall preclude the filing of a civil contempt petition by the petitioner for violations of a protective order issued under this part."*

85

PFA – Statutory References

Appeals

- ▶ **10 Del. C. § 915(d)** – PFA Orders entered by a Commissioner may be appealed to a **judge** of the **Family Court** by filing a Request for Review of a Commissioner's Order ("ROCO").

- ❖ ROCOs must be filed within 30 days of the Order.

- ▶ Orders entered by a judge may be appealed to the **Delaware Supreme Court**.

- ❖ A Notice of Appeal must be filed within 30 days of the Family Court judge's Order.

86

PFA – Substantive Highlights

Procedural Matters

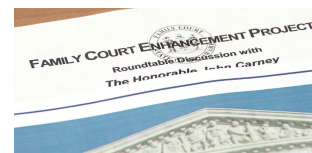
- ▶ PFA proceedings are heard before **Commissioners** of the Family Court by and through their duties and authorities under 10 Del. C. § 915.
- ▶ **Mediation** of other actions that would otherwise be mandatory may be **bypassed** in any case where a protective order has been entered between the parties.

87

PFA – Substantive Highlights

Improvements to the Process: Family Court Enhancement Project

- ▶ In 2014, Delaware's Family Court was among four courts nationwide to receive federal funding from the Department of Justice's Office on Violence Against Women.
- ▶ The goal of the project was to improve the court's response to custody cases involving domestic violence.
- ▶ A diverse group of stakeholders from the Family Court Court, Attorney General's office, law enforcement, advocacy groups, and legal community identified areas of need and discussed the implementation of possible solutions.



88

PFA – Substantive Highlights

Family Court Enhancement Project: Outcomes

- ▶ Designated “PFA Days”- varies by county
 - New Castle: Wednesdays and Fridays
 - Kent: Tuesdays
 - Sussex: Thursdays
- ▶ Infographics and written information explaining the PFA process and applicable legal concepts.
- ▶ Upon arrival at the courthouse and prior to their appearance before a commissioner, all litigants view a video entitled “The PFA Hearing: What You Can Expect, *A step-by-step guide through the PFA process.*”
- ▶ Comprehensive [Protection from Abuse Case Instruction Packet](#) on the Family Court website.

Delaware Supreme Court Practice

TBD

Eric Hacker Bio

Eric Hacker is a litigator with Morris James LLP in the firm's Business Litigation and Business Law Counseling groups. Eric's practice includes both appeals and trial-level representations. Eric currently serves on the Delaware Supreme Court Rules Committee, and his peers have selected him four times as the top appellate attorney in Delaware Today's annual survey of Delaware attorneys. At the trial level, Eric primarily handles corporate and commercial litigation in the Delaware Court of Chancery and the Complex Commercial Litigation Docket of the Delaware Superior Court.

Delaware Superior Court Practice

The Honorable Patricia A. Winston
Superior Court of the State of Delaware

William B. Larson, Esquire
Manning Gross & Massenburg LLP

The Honorable Patricia A. Winston was appointed to the Superior Court of Delaware by Governor John Carney on June 1, 2022. Judge Winston received her J.D., *cum laude*, in 2008 from Widener University School of Law. During law school, she served as Internal Managing Editor for *The Delaware Journal of Corporate Law*. Judge Winston received her B.A. in Psychology from the University of Delaware, in 1999 and is a native Delawarean.

Prior to joining the bench, Judge Winston practiced corporate and commercial litigation as an Associate with the law firm of Morris James from 2008 to 2016, becoming a Partner in 2016. While in private practice, Judge Winston litigated cases in the U.S. District Court, Delaware Supreme Court, Superior Court, and Court of Chancery.

Judge Winston is currently a member of the National Bar Association's Commercial Law Section. In the past, she served as Chair of the Delaware State Bar Association's Litigation Section, a Board Member of the Delaware Supreme Court's Board of Bar Examiners, a member of the Delaware Supreme Court's Permanent Advisory Committee on the Delaware Lawyers' Rules of Professional Conduct, and as a member of the Delaware Superior Court Complex Commercial Litigation Division Advisory Committee.

Judge Winston's present term ends June 1, 2034.

Delaware Superior Court Practice

The Honorable Patricia A. Winston
Superior Court of the State of Delaware

William B. Larson, Jr., Esquire
MG+M The LAW FIRM

PRACTICAL POINTERS ON LITIGATING CIVIL CASES IN THE SUPERIOR COURT¹

1. The Superior Court is a serious Constitutional court, treat it seriously.
2. Know what the jurisdiction of the Superior Court is and what it can and cannot do.
3. Know where the Court is and how you are to appear.
4. Know who your Judge is.
 - Have you checked judge's judicial preference page?
5. Know when you are to appear.
6. Before filing anything, read the applicable rules. Do not rely on Court staff to tell you how to do something.
7. Once your case is assigned, find out who the Judge's case manager is and call that person, not the Judge's secretary, when you have questions.
 - You should only be contacting the judge's case manager after you have diligently researched whatever you are looking for and cannot find the answer. Also, keep in mind that case managers are busy and sometimes short-staffed, so they may not be able to respond to your question immediately.
8. Always treat Court staff with the utmost courtesy and respect.
 - Remember, the Court staff are essentially extensions of the Judge. You should speak to them and treat them like you would a judge.
9. Do not have staff e-mail or correspond directly with the Court.
10. Do not copy the Court on or e-file correspondence between counsel.
 - With that being said, always treat every correspondence with opposing counsel as though the Court would be reading it.
 - Always include opposing counsel when emailing the Court.
11. Take your signature on a pleading very seriously.
 - NEVER BLAME ANYTHING ON THE SUPPORT STAFF. At the end of the day, it is your signature on the document and you are the attorney representing the case.

¹ Original Pointers created by Hon. Jan R. Jurden (2010). 2012 Revisions: Hon. Joseph R. Slights, III and James W. Semple. 2016 Revisions: Hon. Jan R. Jurden and Hon. Joseph R. Slights, III. 2017 Revisions: Hon. Jan R. Jurden and David J. Soldo. 2020 Revisions: Hon. Vivian L. Medinilla and Tara Bustard. 2022 Revisions: Hon. Patricia A. Winston and William B. Larson, Jr.

- Under the Rules of Professionalism, you are responsible for any actions made by your subordinates, which includes paralegals, law clerks, etc.
12. Do not exceed page limitations without your opponent's agreement **and** prior Court approval.
 13. File motions, not letters.
 14. Attach copies of documents the Court likely may not access such as foreign statutes, unreported decisions, and treatises. The Court only has Westlaw access, not Lexis.
 15. Make your request for relief clear in the Motion and the proposed order. You have a much better chance of the Court granting your requested relief, if the Court knows what you want.
 16. Include Transaction ID numbers when referencing other filings.
 17. Do not respond to or oppose a motion with enumerated paragraphs referencing movant's motion (e.g. "1. Denied; 2. Admitted, except...")
 18. Consider asking the Court for omnibus motions on Motions in Limine and include all MILs in a single filing.
 19. Apply for extensions of time before deadlines run (e.g. Rule 4, TSOs)
 20. Provide the Judge with courtesy copies of your motions or briefs well before your hearing date.
 21. Be magnanimous responding to requests for extensions, but never stipulate beyond a Court imposed deadline without prior Court approval.
 22. It takes years to build a good reputation and one act to destroy it.
 23. Do not be late. Get to the Courthouse well in advance of your court appearance – you have no idea how long the back up at security will be.
 24. Do not interrupt your opponent.
 25. Do not interrupt the Judge.
 26. Direct all objections and argument to the judge. Do not directly address your opponent in Court.
 27. Test technology. You may contact the Bailiffs in advance of a hearing or trial to schedule time to test courtroom technology.
 28. Use a stable internet connection for remote Court proceedings.
 29. Do not use hyperbole.

30. Do not accuse your opponent of intentional wrongdoing unless you are prepared to report them to disciplinary counsel.
31. Remember that your written advocacy is subject to the same rules as your oral advocacy.
 - Refrain from injecting your emotions into your writing and oral arguments.
32. Make sure the case you are citing supports the proposition and read the case before citing it. Attach it to your papers if it is unreported. Even better, cite a case that also has the outcome you seek.
33. Always dress appropriately for court or have a spare suit hanging in your closet.
34. If you are local counsel, make sure your out-of-town counsel has read, actually read, our professional rules and the principles of lawyer conduct before you move their admission.
 - Pro Hac counsel should not directly contact the Court. Only Delaware Counsel should be directly contacting the Court regarding a matter. Pro Hac counsel should relay whatever message they want to Delaware Counsel and then Delaware Counsel may relay that message to the Court.
35. Never assume, as local counsel, that you are excused from Court proceedings once the Court grants the *pro hac vice* motion.
36. Never leave the Courtroom before asking if you may be excused.
37. Do not wear an overcoat while addressing the Court.
38. Do not speak directly to the jury except in openings and closings.
39. Do not write something that you would not want to see on the front page of the newspaper.
40. Conduct yourself in a way that shows the public that lawyers are good people who do good things for society. Do pro bono work. Become involved in your community. Help others for free.
41. Your adversaries are real persons and usually won't bite – use the phone, rather than email, to talk to them. Better yet, go to lunch.
42. Get a mentor.
43. Have fun. If you do not enjoy your work, you should take a hard look at where you are and what you are doing. Life is too short to not do what you love.

SUPERIOR COURT CIVIL LITIGATION PRACTICE²

| | |
|--|----|
| I. Civility | 1 |
| II. Civil Jurisdiction | 2 |
| III. Commencement of a Civil Action | 3 |
| IV. Service of Process | 6 |
| V. Responsive Pleadings/Answer..... | 8 |
| VI. Discovery..... | 10 |
| VII. Motion Practice | 12 |
| VIII. Scheduling and Pretrial Activities | 14 |
| IX. Trial..... | 16 |
| X. Post-Trial Motions | 20 |
| XI. Executions | 21 |
| XII. Appeals to Supreme Court | 22 |
| XIII. The Superior Court Complex Commercial Litigation Division | 23 |
| XIV. Superior Court Automatic Residential Mortgage Foreclosure Mediation Program | 25 |

² Original Materials by Mark L. Reardon (2006). 2007 & 2008 Revisions: Thomas H. Kovach. 2016 Revisions: Patricia A. Winston. 2017 Revisions: David J. Soldo. 2022 Revisions: William B. Larson Jr.

Appendix Materials

New Castle Co. Civil Case Management Plan (See Superior Court website)

Kent Co. Civil Case Management Plan (See Superior Court website)

Sussex Co. Civil Case Management Plan (See Superior Court website)

Administrative Directive 2022-1 (Assignment of Judges)

Administrative Directive 2022-2 (Assignment of Judge – CCLD)

Civil Case Information Statement (CIS)

Sample Trial Scheduling Order (Superior Court)

Administrative Directive 2013-2 (Automatic Residential Mortgage Foreclosure Mediation Program)

Administrative Directive 2010-3 (Complex Commercial Litigation Division)

Administrative Directive 2017-4 (Superior Court Bench/Bar Program)

Chambers Phone Listing (New Castle, Kent & Sussex Counties)

New Castle Co. Civil Motion Schedule

Expectations of Superior Court for Attorneys' Professionalism and Civility in a Courtroom Setting (New Castle County Resident Judge Richard R. Cooch)

SUPERIOR COURT CIVIL LITIGATION PRACTICE

I. CIVILITY

Civility is an important component of the practice of law in the Superior Court. Recognizing a need to remind counsel of the Court's expectations for civility, the Superior Court published its expectations for "Attorney's Professionalism and Civility in a Courtroom Setting," which was formally adopted by the Court in April 2004. In its statement of expectation, the Superior Court endorsed the concept of civility as set forth in the November 2003 "Principles of Professionalism for Delaware Lawyers." In addition, the Superior Court noted particular courtroom practices for professionalism. The Court's expectation of civility is included in the appendix materials.

The requirement of civility extends to *pro hac vice* counsel. Superior Court Civil Rule 90.1 and Form 40 regarding *pro hac vice* have been adopted to comply with the requirements of Supreme Court Rule 72. Out of state (*pro hac vice*) counsel are required to review the Statement of Principles of Lawyer Conduct and execute the application set out before appearing in any proceedings in a Delaware action, including out of state depositions. *See Paramount v. QVC*, Del. Supr., 637, A.2d. 34 (1994).

II. CIVIL JURISDICTION

A. General Civil Jurisdiction - Del. Const. Art. IV § 7; 10 *Del. C.* §§ 541-565.

1. Exclusive jurisdiction over all civil matters where the amount in controversy exceeds \$75,000 (as of October 21, 2019).
2. On December 7th 2017, Rule 16.1 was amended. The new Rule 16.1 took effect on January 1, 2018 and required that certain actions be subject to Mandatory Non-Binding Arbitration (“MNA”). Notwithstanding and in addition to the ADR provisions contained in Rule 16, all civil actions, except those actions listed in subsection (b) hereof, in which (1) trial is available; (2) monetary damages are sought; (3) any nonmonetary claims are nominal; and (4) counsel for claimant has made an election on the Civil Case Information Sheet for mandatory non-binding arbitration (hereinafter "MNA"), are subject to mandatory non-binding arbitration. The jurisdictional authority of the arbitrator for any case in which such election has been made shall be limited to fifty thousand dollars (\$50,000), exclusive of costs and interest.

B. Appellate Jurisdiction - 29 *Del. C.* § 10161; Rules 3 and 72.

C. Extraordinary Writs - 10 *Del. C.* § 562.

1. Certiorari.
2. Prohibition.
3. Mandamus. 10 *Del. C.* § 564.
0. *Quo Warranto*.

D. Declaratory Judgment - 10 *Del. C.* § 6501 *et seq.*; Rule 57.

E. Interpleader - 10 *Del. C.* § 3910; Rule 22.

F. Health Care Malpractice - 18 *Del. C.* § 6802(a); 10 *Del. C.* § 566(a).

G. Condemnation Proceedings - 10 *Del. C.* § 6101 *et seq.*; Rule 71.1 (formerly Rule 71A).

H. Ejectment - 10 *Del. C.* § 6701.

I. Involuntary Medical Commitments (to a state mental hospital).

J. Mechanic’s Liens – 25 *Del. C.* § 2701, *et seq.*

K. Settlement for minors and disabled persons – 12 *Del. C.* § 3926.

L. Uniform Transfer to Minors Act – 12 *Del. C.* § 3901; Rule 133

III. COMMENCEMENT OF A CIVIL ACTION

A. Required Filings - Rule 3.

1. Complaint - filed with the Prothonotary.

The complaint is a short and plain statement of the claim showing that the party pleading is entitled to relief and includes a demand for judgment (“Notice Pleading” standard). Rule 8.

2. Praecipe - Directs the Prothonotary to issue the writ specified in the praecipe.
3. Case Information Statement (“CIS”) - Form containing basic information about the case.
4. Summons – A summons will need to be included in the documents served on the Defendant(s).

B. Pleading Requirements

1. Special Matters - Fraud, Negligence and Mistake must be pled with specific detail. State of mind (malice, intent, etc.) can be pled generally. Rule 9(b).
2. Damages
 - a. Unliquidated damages, *i.e.*, pain and suffering, etc., should be pled generally. A specific amount demanded may not be claimed.
 - b. Liquidated damages - *i.e.*, money owed, medical expenses, economic loss, etc. may be specifically set forth or demanded.
 - c. A defendant may serve a pleading upon the plaintiff requesting that within ten days the plaintiff serve upon the defendant a written statement of the amount of damages claimed. Neither the demand nor the statement should be filed with the Court, except upon a specific order. Rule 9(g).
3. All pleadings are to be on 8-1/2 by 11 inch paper. Backers are not used.

C. Affidavits of Defense - In suits for money owed, evidenced by a written instrument, the complaint may be filed with a specific notation upon the face of the complaint that certain allegations must be answered with an affidavit setting forth the specific defense. *See 10 Del. C. § 3901.* The complaint must also attach a copy of the instrument. The defendant must file an Affidavit of Defense or judgment will be entered on the amount claimed.

- D. In any case where the existence of a partnership, a corporation, agency in operation of a motor vehicle or the validity of authenticity of a signature on a document is in question, the paragraph alleging that fact may specifically require denial by an affidavit. If the complaint states it requires the denial by affidavit, and no affidavit is filed by the defendant, the Court will deem that fact admitted, even if the fact is denied in the body of the Answer. *See 10 Del. C. §§ 3914, 3915, 3916 and 3917.*
- E. Personal Injury Cases Require Expedited Discovery. Rule 3(h).
If the complaint seeks recovery for personal injuries, the Answer must include:
1. Answers to Form 30 Interrogatories;
 2. Photocopies of documentary evidence or sworn statements as to document to be provided (regarding police report, medical records, etc.); and
 3. Copies of last three years of tax returns or sworn statement that copies are available and will be provided on appearance of defendant.
- F. Mandatory Non-Binding ADR “MNA” - Rule 16.1 -
1. New Rule 16.1 Ordered December 7, 2017
 2. New Rule 16.1 effective January 1, 2018.
- G. Scheduling of ADR Included in Rule 16(b)
1. Under the new Civil Rule 16.1 (effective January 1, 2018) The Parties shall confer and select an arbitrator within twenty (20) days of the filing of the close of all initial pleadings by the parties. Unless otherwise ordered by the Court, if an arbitrator is not selected within twenty (20) days, the parties may not utilize arbitration under this rule. Counsel must confer as to arbitrators in good faith following the filing of the initial pleadings.
- H. Demand for Jury Trial - Rules 38 and 39.
1. Timing is important. A demand must be made no later than ten days after service of the last pleading directed to such issue.
 2. Demand is made either by serving a written demand on the parties or endorsing the demand upon a pleading by typing it on the first page of the pleading, immediately following the caption of the case. NOTE - if the pleading states only “a jury trial is demanded” you will receive only a six person jury. You must demand “trial by a jury of twelve” to receive twelve jurors.

I. Superior Court is Always Open - Rule 77(a).

This can be a life saver.

J. E-Filing. Rule 79.1.

Effective April 1, 2007, all new civil actions filed with the Prothonotary shall be e-filed. *See* Administrative Directive No. 2007-2.

Under Administrative Directive No. 2007-4, effective January 1, 2008, all new Civil Complaints, Mechanic's Liens, and Mortgage cases filed with the Prothonotary in any county, whether subject to ADR or not, shall be filed and/or served electronically using the LexisNexis® File & Serve*Xpress* e-Filing system. Directive 2007-4 expands the use of e-filing to all Civil Complaints including Mechanic's Liens and Mortgages.

Administrative Directive No. 2007-4 rescinds prior Administrative Directive No. 2003-8 and sets administrative procedures for electronic filing or eFiling pursuant to Civil Rule 79.1.

Under Administrative Directive No. 2009-4, beginning on January 1, 2010, all Judgment cases filed with the Prothonotary in any county shall be filed electronically using the LexisNexis® File & Serve*Xpress* e-Filing system.

K. Summary Proceedings for Commercial Disputes - Expedites Business Disputes. Rule 124, *et seq.*

The dispute must be concerning over a commercial (non-personal, non-physical/mental injury) matter, in excess of \$100,000.00, the parties must consent to the summary proceedings, and one of the parties must be a Delaware citizen or business entity.

L. The Complex Commercial Litigation Division.

M. The Superior Court's Website: <http://courts.delaware.gov/superior/>

- Judicial officers/preferences
- Court calendars
- Orders and Opinions
- Bench Bar Liaisons
- Rules Committees
- Rules
- Administrative Orders
- DE Code Online
- DRE

IV. SERVICE OF PROCESS

A. General Filing Information

The praecipe, the CIS and two copies of the complaint for each defendant are to be filed with the Prothonotary, together with the filing fee of \$175.00. If the case involves personal injuries, the Form 30 Interrogatories and other Rule 3(h) materials (see above) must be provided. As of August 1, 2007, there is a \$225.00 additional docket fee for e-filed cases.

B. Cost for Sheriff's Service

Service fees are \$30.00 for the first-named defendant and \$5.00 for each additional defendant, if residing at the first-named defendant's address, and \$30.00 for each named defendant residing at different addresses. Note: two separate checks are required; one for the Prothonotary and one for the Sheriff.

C. Long Arm Service

1. 10 *Del. C.* § 3104, amended effective October 7, 2008, abrogated the former requirement to serve the Delaware Secretary of State before "serving" an out-of-state defendant with copies of the Summons and Complaint. Service may now be made directly on a non-resident, either by return-receipt mail or by personal delivery as authorized by the laws of Delaware, or "in the manner provided or prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction." *See* 10 *Del. C.* § 3104(d). (*See* statute for proof of service requirements and acts subjecting non-residents to personal jurisdiction).
2. Note that 10 *Del. C.* § 3112 – "Service of Process on Non-resident operators of motor vehicles" was repealed effective October 7, 2008. That section also previously had required service upon the Secretary of State.

D. Special Process Server - Rule 4(a).

Sometimes the Sheriff will be unable to serve an elusive defendant. There are a number of local businesses which specialize in process service at very reasonable rates. You must file a Motion to Appoint a Special Process Server. On July 8, 2004, Rule 4 regarding service of process was amended so that the Court does not routinely require a "special process server" be appointed unless: (1) the Sheriff has been unsuccessful in making service; (2) service is required after 10:00 p.m., or on a holiday or weekend; or (3) some other exigent circumstance.

E. Process (Summons and Complaint)

Must be served within 120 days – if not, action shall be dismissed, unless good cause shown. Rule 4(j).

V. RESPONSIVE PLEADINGS/ANSWER

A. Pleadings

Complaint, Answer, Reply to Counterclaim, Answer to Crossclaim, Third-Party Complaint, and Third-Party Answer. Rule 7.

B. Answer

An Answer must be filed within twenty days after service of process. Rule 12(a).

C. The Responding Party

The responding party shall state in plain terms the defenses to each claim and shall admit or deny the averments on which the plaintiff relies or, if the defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of the averment, the defendant should so state – which has the effect of a denial. If a part of the averment can be and should be admitted, that part of the averment should be admitted and the remainder of the averment denied. Rule 8(b).

D. Affirmative Defense

Affirmative Defenses must be set forth in the answer and must be specifically plead to include: accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge and bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, license, payment, release, *res judicata*, statute of frauds, statute of limitations, waiver, and any other affirmative matter. Rule 8(c).

E. Certain Admitted Allegations

Certain allegations are admitted unless denied by affidavit, including: the existence of a partnership or corporation, signature on a document upon which the action is brought, agency in the operation of motor vehicle, and an action on books and records where an affidavit of demand has been filed. Rule 8(dd).

F. Motion to Dismiss

In lieu of an answer, or in conjunction with an answer, a defendant may serve a Motion to Dismiss based upon a lack of particularity under Rule 9(b); lack of jurisdiction, insufficiency of process, insufficiency of service of process, failure to state a claim upon which relief can be granted under Rule 12(b)(6); or failure to join a necessary party under Rule 19. Rule 12(b).

G. Waiver of defense

Failure to raise lack of jurisdiction over the person, improper venue, insufficiency of process or insufficiency of service of process waives the objection if not initially raised by Motion within the twenty day period for answers or Motions to Dismiss.

H. Compulsory Counterclaim

A compulsory counterclaim, a claim against the opposing party which arises out of the same incident or occurrence which does not require a third party, must be asserted. Rule 13. Permissive counterclaims and crossclaims may also be asserted. A defending party may file a third-party complaint against a person who may be liable for all or part of plaintiff's claim against defendant. Rule 14.

I. Amendment of Pleading

Amendment of the pleadings is allowed once a matter of right before a responsive pleading is filed. After that time, amendment can only be made by leave of court, which is freely given when justice so requires. Rule 15. An amendment can relate back to the date of the original pleading under certain circumstances. Rule 15(c).

J. Time

In the computation of time, the day of the act is not included, but the last day of the period is included, unless the last day is a weekend or legal holiday. When the prescribed period of time is less than 11 days, weekends and legal holidays do not count in the time computation. Rule 6(a). When service is by mail, three days are added to the time to respond. Rule 6(e). The additional three day period applies only to actions taken by parties and does not apply to actions taken by the Court. Rule 6(e).

VI. DISCOVERY

A. Standards.

Standards governing the discovery process are set out in Rules 26 through 37. In general, there are no prescribed time limits set for completion of discovery, and there are no specific limitations on the number of interrogatories which may be propounded. However, limits for both time and numbers/length could be set in the case scheduling order.

B. Scope.

The Scope of permissible discovery is broad – discovery is permitted on any non-privileged, relevant matter, relating to the claims or defenses. It is not a valid objection that the requested discovery will not be admissible at trial, so long as the requesting party can show that the discovery is reasonably calculated to lead to the discovery of admissible evidence. Rule 26(b)(1).

Not discoverable: Draft reports or disclosures required under Rule 26. Rule 26(b)(5); and Communications between a party's attorney and any witness required to provide an opinion under Rule 26(b)(4). Rule 26(b)(6). Regardless of the form of communication, except to the extent the communications between a party's attorney and expert witness: (i) relate to the expert witness' compensation; (ii) facts or data provided by the attorney that the expert considered in forming the opinion; and (iii) assumptions provided by the attorney that the expert considered in forming the opinion. Rule 26(b)(6).

C. Service/No Filing.

Depositions upon oral examination, interrogatories, requests for documents, requests for admissions and answers and responses thereto are not to be filed with the Court unless on order of the Court or for use in the proceeding. All that is filed with the Court is a notice of service signed by either the attorney of record or a secretary attesting to the fact that copies of the discovery requests and responses were served on a specific date. Rule 5(d).

D. Protective Orders.

Disputes often arise as to whether or not requested discovery delves into areas which may involve confidential information such as trade secrets, employee confidences, etc. Assuming that the request is otherwise unobjectionable, an application can be made for a protective order. Rule 26(c). An alternative for moving for a protective order is for the attorneys to agree upon the form of a confidentiality stipulation, which essentially serves the same purpose as a protective order, but is agreed upon by counsel.

Rule 26(b)(7) – Claims of Privilege and Privilege Logs.

E. Forms of Discovery.

1. Depositions: Oral - Rule 30, Written - Rule 31. The use of deposition testimony at trial is governed by Rule 32.
2. Interrogatories - Rule 33.
3. Production of Documents and Things/Entry onto Land - Rule 34.
4. Physical and Mental Exams - Rule 35.
5. Requests for Admissions - Rule 36.

F. Timeliness of Response.

1. It is not uncommon for parties to have difficulty complying with the default time limits for responding to discovery requests. If you are having problems getting your responses together, contact opposing counsel before the thirty days expire and obtain an extension of time to respond. This is especially important with requests for admission which are deemed admitted if not answered in thirty days. Rule 36 (a).
2. The extension should be confirmed either by a stipulation or by a letter. Superior Court Civil Rule 90(c) provides that agreements between attorneys will not be considered by the Court unless in writing and filed with the Prothonotary or stated on the record in the presence of the Court. It is also helpful to document the extensions because of Rule 37(e)(1) which requires a certification to be filed by the moving party detailing the time spent, dates and efforts made to reach an agreement on the subject matter of a Motion to Compel.
3. Motion to Compel. Rule 37. If a motion to compel is granted, the Court, in its discretion, may award costs and attorney's fees.

G. 2019 Discovery Rules Updates.

1. Rule 26. Adds electronically stored information (ESI) to the scope of materials that can be sought.
2. Rule 26. Adds an element of proportionality to the scope of discovery that may be taken, given the needs of the case. Consider whether the burden or expense of the proposed discovery outweighs its likely benefit.
3. Rule 34. Objections must state whether the responding party is withholding responsive materials.

4. Rule 34. The default is that electronically stored information be produced in the form it is ordinarily maintained or reasonably usable.
5. Rule 37. There is a duty to preserve ESI.

VII. MOTION PRACTICE

A. Required Filing.

It is necessary to prepare and file a Notice of Motion (which will give the date and time the Motion is to be heard), a Motion, Certificate of Service, and form of Order. Rule 7.

B. Motion Procedure.

For the proper protocol of noticing and scheduling Motions with the assigned Judge, refer to the Civil Case Management Plan for the appropriate county in the appendix materials and Rule 78.

C. Motions in Limine.

The purpose of such a motion is to avoid injection into trial matters which are irrelevant, inadmissible and prejudicial. They are used most often to have the Court rule upon evidentiary matters before trial or outside the hearing of the jury. The deadline for motions *in limine* are typically set forth in the trial scheduling order.

D. Summary Judgment Motions - Superior Court Civil Rule 56.

1. Summary Judgment Motion is a Motion brought any time after twenty days subsequent to commencement, typically during or at the close of discovery. The moving party claims that after the Court reviews the evidence in a light most favorable to the non-moving party, that judgment must be entered in favor of the moving party (note that Motion for Judgment on the Pleadings under Rule 12(c) is automatically converted to a Summary Judgment Motion if an affidavit or other evidence is presented.) Motions for Summary Judgment can be brought at any time until the close of discovery unless the case has been set for trial. In that case, leave of court is required before Motions for Summary Judgment may be filed. Rule 56.
2. Under present practice, Motions for Summary Judgment are limited to four page motions, with the appropriate evidentiary material attached, and are to be served at least 10 days before the hearing on the motion. *See* Case Management Plan and Rule 56(c). Responses are due three days before the date set for the hearing.
3. Summary Judgment is frequently brought on a legal basis, *i.e.*, statute of limitations, failure to provide an expert in support of your case (in medical malpractice cases), etc.

E. Briefs - Superior Court Civil Rule 107.

1. Timing. Schedule for briefing will be ordered by the Court.
2. Type of print. Double spaced and in Times New Roman 14-point type with two spaces between sentences. Footnotes single-spaced and in Times New Roman 12-point type with two spaces between sentences. Rule 107(b).
3. Form. *See* Rule 107(d).
4. Contents. *See* Rule 107(e).
5. Extension of page limitations. Opening and Answering briefs are limited to 40 pages. Reply briefs are not to exceed 25 pages Rule 107(h). If you intend to exceed those limits, a motion must be filed with the Court. This should be done prior to filing the non-conforming brief.

F. Offer of Judgment - Rule 68.

1. A party defending against a claim, at least 10 days prior to trial, may serve an offer of judgment to be taken against that party for money or property with costs then accrued. If there are multiple plaintiffs, an offer must be made to all plaintiffs.
2. A party upon whom the offer is served has 10 days to accept it.
3. If accepted, judgment is entered. If not, the offer is deemed to have been withdrawn and is not admissible at trial. However, more than one offer may be made if time allows.
4. If the offeree does not obtain a more favorable verdict, then that party must pay costs accrued after the offer was made.

VIII. SCHEDULING AND PRETRIAL ACTIVITIES

Scheduling procedures are outlined in the Superior Court Civil Case Management Plan for each county, included with the appendix materials. The assigned Judge will issue a scheduling order setting the discovery cutoff, dispositive motion filing date, interim status report date and status conference date after all defendants have answered or upon a request for trial *de novo* (in ADR cases). Typically, at the status conference, the Judge will set any briefing scheduling, as well as the pretrial conference and trial dates. *See* sample scheduling order in the appendix materials. The pretrial order may also serve as a scheduling order to the extent the case is not already subject to one. The order will also govern the further proceedings and the trial.

A. Pretrial Procedure - Rule 16

At the pretrial conference, the parties meet with the Court to discuss the status of the case and discuss various issues, including: simplification of issues, and necessity of amendments of pleadings; limitation of expert witnesses and avoiding unnecessary proof of facts or documents; and any other matters which will aid in the disposition of the matter.

B. Pretrial order

1. Generally, the Court, at the conclusion of the conference, formulates an order reflecting action taken and which controls that subsequent course of the case. To amend or modify the order, the party desiring it must either obtain the agreement of the parties or petition the Court. However, in personal injury action, a more specific process is required.
2. Scheduling Order Deadlines
 - a. A party who proposes to change a scheduling order deadline must file a motion for such change or by written stipulation and order. Rule 16(b)(5)(a)(i).
 - b. A party's failure to promptly notify the Court of another party's failure to comply with a scheduling order deadline may result in a waiver of that party's right to consent any late filings by the offending party. Rule 16(b)(5)(a)(iii).

A pretrial stipulation and order is due, as required by the scheduling order, prior to the pretrial conference from plaintiff's attorney, or the attorney requesting the pretrial conference if not the plaintiff's attorney. The draft should be signed by all attorneys or any party not represented by an attorney, and shall address:

- (1) Statement of the nature of the action;
- (2) Facts admitted without formal proof;
- (3) Issues of fact any party contends remain to be litigated;
- (4) Issues of law any party contends remain to be litigated;
- (5) Exhibits admitted without objection/object to, and grounds for objection;
- (6) Lists of witnesses to be called at trial specifically noting the specialties of experts, and exhibits to be introduced with any objections noted;
- (7) What each party expects to prove;
- (8) Amendments to pleadings and whether they are opposed;
- (9) Certification as to the status of negotiations; and
- (0) Requests for special voir dire questions, special verdicts and interrogatories.
- (10) Trial time estimate.

IX. TRIAL

A. General

Typically, plan to arrive with witnesses at 9:30 a.m. on the day of trial. The trial generally proceeds between the hours of 10:00 a.m. and 1:00 p.m. and 2:00 p.m. and 5:00 p.m.

B. Jury Trials

1. Selection of Jurors

- a. Sources - 10 *Del. C.* § 4507.
 - (i) Voter registration.
 - (ii) Driving records.
 - (iii) Other sources.
- b. Exemption of disqualification - 10 *Del. C.* § 4509 and 4511.
- c. Jury Information List - Gives vital data such as age, education, employment, relationship with attorneys, insurance company, etc. Available from Prothonotary for \$25.00.

2. Voir Dire (Rule 47)

- a. Introduction by the Court and/or Clerk.
 - (i) Statement of the case, issues, names of the parties and witnesses to be called.
 - (ii) Discussion as the length of the case or special problems.
- b. Questioning
 - (i) Conducted by the Court.
 - (ii) However, either party has the right to submit additional questions which the Court in its discretion may give.
- c. Number of Jurors. There are six – unless a party has requested twelve.
- d. Challenges to Jurors
 - (i) Peremptory - each party has three as to the jury itself, and one for every two alternates to be selected.
 - (ii) For cause - there is an unlimited number upon a proper showing.

3. Simple Trial Outline

- a. Opening Statements - it is an outline of the evidence, not argument.
- b. Order of presentation.
 - (i) Plaintiff's case in chief.
 - (ii) Defendant's case in chief.
 - (iii) Rebuttal by plaintiff.
- c. Witness order and manner of questions.
 - (i) Direct examination and limitations.
 - (ii) Cross examination.
- d. Objections and curative instruction by the Court. Exceptions need not be taken to preserve appeal points, but you must state all bases for an objection. Matters not raised are waived. Objections and court rulings must be recorded, even at sidebar.
- e. Final argument

Order: plaintiff opens, defendant responds and plaintiff is allowed to rebut. However, plaintiff cannot address any issue on rebuttal that was not addressed in the opening.
- f. Instructions – Rule 51. The instructions, or charge, is given by the court at the conclusion of the trial, but prior to summations and define the issues of fact and law to be decided. The parties submit proposed instructions and the Court prepares a final draft and reviews with the parties. Any exceptions are noted after the charge is given but prior to the beginning of deliberations.

The Superior Court's Pattern Jury Instructions for Civil Practice are available online: <http://courts.delaware.gov/superior/pattern/>

C. Verdicts - Rule 49.

- 1. General verdict.
 - a. The jury fixes the liability of each party or the lack thereof.

- b. The jury determines the facts and applies the law as instructed by the court. Judgment is entered as a matter of course.
- 2. General verdict with interrogatories.
 - a. This procedure is generally used where there are one or more questions of fact which determine liability and there are close questions of law. The interrogatories serve to present clearly the grounds upon which the jury reached its decision.
 - b. If the verdict and the interrogatory answers are in conflict, the Court will either enter judgment consistent with the interrogatory answers, return the jury for further deliberations, or order a new trial.
- 3. Special verdict.
 - a. This involves the submission of questions by the Court on each issue of fact under the pleadings and evidence. Judgment is entered by the Court based upon the jury's findings.
 - b. It is usually employed where the case is lengthy and presents a complicated set of facts as well as propositions of law. It is also useful where the legal conclusions to be reached are dependent upon various combinations of facts.

D. Motions

1. Directed Verdict - Rule 50

The standard for a directed verdict is that even when viewing the evidence most favorably to the non-movant, the moving party is still entitled to judgment as a matter of law. Each party can so move at the close of the presentation of the other's case, and both can move at the conclusion of the presentation of all evidence.

2. Motion for Judgment Notwithstanding the Verdict - Rule 50

The standard is the same as for a directed verdict. It must be made within 10 days of judgment of jury dismissal, and can be coupled with a motion for a new trial. A motion for a new trial can also be made by a party whose verdict was overturned within 10 days thereof.

3. Amending the Jury Verdict

- a. Additur - the court can assess damages or increase the amount awarded where there is an inadequate award.
- b. Remitter - the Court diminishes the jury's award.
- c. Standard - the amount is so high or low that under the circumstances it is clearly unconscionable and to permit it to stand would work a substantial injustice on one party or the other.
- d. It is usually coupled with a motion for a new trial and a party will have the option of either accepting a revised amount or trying the case again.

E. Non-Jury Trials

- 1. Consider submitting a pretrial memorandum and trial notebook with relevant exhibits.
- 2. One should work with counsel on the scheduling of witnesses and especially on the scheduling of the testimony of experts. Typically, non-jury trials are segmented depending on the trial judge's calendar. With a non-jury trial, you need not follow a logical sequence with your witnesses, but all arrangements should be worked out ahead of time and presented to the Court. Generally, the trial Judge will not object to whatever arrangements counsel may have made in scheduling witnesses so long as they fit within the trial judge's schedule.
- 3. It is a good idea to have all your pre-marked exhibits in a bound volume, tabbed and indexed with a copy for all counsel, the Judge and for use by the witnesses.
- 4. If it is anticipated that post-trial briefing will be needed, a stipulated briefing schedule should be worked out prior to the conclusion of trial and submitted to the Court at the end of trial.

X. POST-TRIAL MOTIONS

A. New trials and re-arguments - Rule 59.

Giving the jury's verdict great deference, the court must decide whether the verdict is against the great weight of evidence.

1. New Trial - motion to be served and filed within ten days of entry of judgment.
2. Alter or Amend a Judgment - motion to be served and filed within ten days of entry of judgment.
3. Re-argument - motion to be served and filed within five days after the filing of the Court's opinion or decision.

B. Costs - Superior court Rule 54.

1. Costs are generally allowed as a matter of course to the prevailing party upon application.
2. Expert witness fees - 10 *Del. C.* §8906. Note - Expert witness fees are subject to oversight by the court and limited to the reasonable charge for time spent, *i.e.*, court and travel to and from the courthouse.
3. 10 *Del. C.* §5102 provides that if you sue a defendant who resides in any other county than that wherein such citizen resides at the time of the inception of the lawsuit, the plaintiff cannot recover costs, and such costs shall not be payable by the defendant, nor collectible by execution process.

XI. EXECUTIONS

A. Entry of Judgment

The judgment by the Judge or jury is recorded in the records of the Prothonotary's Office when rendered. Superior Court judgments constitute a lien on real property located in the county wherein they are recorded and continue for a period of ten years from the date of entry. The judgment can be renewed for an additional ten years. 10 *Del. C.* §§4702 and 4711.

B. Transfer of Judgments.

1. From the Court of Common Pleas - 10 *Del. C.* §1317.
2. From the Justice of the Peace Courts 10 *Del. C.* §9569. If upon the return of an Execution Praecipe, no goods are found which are sufficient to satisfy the execution, the creditor may file a duly certified transcript of the judgment with the Prothonotary of the Superior court (together with a check in the proper amount) in the county where the judgment was given. The judgment transferred becomes a Lien on all real property of the debtor in the county where entered.
3. From the United States District Court 10 *Del. C.* §4736. Transcripts of judgments rendered in the United States District Court or in any other federal court of competent jurisdiction within this State shall be filed and docketed in the office of the Prothonotary of each county of this State other than the county in which such judgment was rendered and when so filed and docketed, and only when so filed and docketed, such judgments, shall have the same force and effect as a lien as judgments rendered and docketed in the Superior Court of this State in any county of the State. When filed and docketed the judgment is a lien on the real property of the judgment debtor within the county in which such judgment has been filed and docketed.
4. Foreign Judgments - Delaware has adopted the Uniform Transfer of Foreign Judgments Act. 10 *Del. C.* §4781, *et seq.*
5. From the Chancery Court - Upon the receipt of any judgment or order from the Court of Chancery calling for the payment of a sum of money, the Prothonotary shall enter the judgment as provided in the judgment or order. The judgment shall thereafter have the same force and effect as though the judgment had been entered in the Superior Court. 10 *Del. C.* §4734.

XII. APPEALS TO SUPREME COURT

A. Decisions and Verdicts.

Decisions and verdicts of the Superior Court are appealed to the Delaware Supreme Court and must be filed within thirty days following the entry of judgment. Rule 6.

(1) Motion for a new trial does not extend the time for filing an appeal. *See Fisher v. Biggs*, 284 A.2d 117 (Del. 1971).

(1) A motion pursuant to Superior Court Civil Rule 59 extends the time for appeal provided that the motion is filed within the time permitted by the Rule. *See Fisher v. Biggs*, 284 A.2d 117 (Del. 1971).

(2) Notice of Appeal must name all necessary parties, if any, to the Appeal. Rule 72(c) (amended June 11, 2016).

B. Expedited Procedure on Appeals from Commissions, Boards on Lower Court – Rule 72.

C. Expedited Appeal on the Record – Rule 72.1.

D. Preparation of Transcript – Rule 73.

XIII. THE SUPERIOR COURT COMPLEX COMMERCIAL LITIGATION DIVISION

A. Judges Currently Assigned

1. Hon. Abigail M. Legrow
2. Hon. Mary M. Johnston
3. Hon. Eric M. Davis
4. Hon. Paul R. Wallace
5. Hon. Meghan A. Adams

B. The Creation of The CCLD

1. Created By Administrative Directive of the President
Judge (Administrative Directive No. 2010-3)
2. This structure allows flexibility in creating protocols
3. Superior Court Civil Rules trump the CCLD protocols
4. We strive for consistency between protocols and rules

C. Purpose of the CCLD: To give priority to complex commercial cases by providing:

1. Greater access to the Judge
2. Greater flexibility in scheduling
3. Greater flexibility in case management
4. Greater priority in trial scheduling
5. Greater consistency in decision making
6. Accent our Court of Chancery

D. Key Features of the CCLD: Prompt Rule 16 Conference to address:

1. Event deadlines
2. E-discovery
3. Expert discovery
4. Dispositive motion practice
5. Daubert motion practice
6. Trial preparation - stipulations, exhibits, technology, preserving testimony, taking testimony remotely, etc.
7. FIRM trial dates (Jury trials OR Bench trials)
8. Weekly discovery motion calendars
9. Access to the Judge for expedited discovery motions
10. Mediation - CCLD Judges will mediate cases for other CCLD Judges
11. New confidential mediation statute - 10 *Del. C.* § 546 - mediation of domestic and foreign business disputes

E. CCLD E-Discovery Protocol

1. Meet and confer requirement - not later than 21 days before the first scheduling conference with the Court, the parties shall discuss preservation, form, scope, privilege, confidentiality, cost, other issues
2. Submit plan to the Court addressing these issues
3. Court will then enter an order
4. Default standard
5. Recognizes burden on objecting party to establish undue burden
6. Animated by notions of proportionality
7. If the Court does order discovery of ESI under this subsection, it may set conditions for discovery of the information, including allocation of the expense of discovery
8. Recognizes safe harbors
9. Discovery Motions responses extended to 10 pages without leave of Court (CCLD Standing Order No. 1)
KEY: protocol is flexible - if parties agree that discovery of ESI will not be a feature of the litigation, they may request to modify the protocol or to be excused from it altogether

F. CCLD Expert Discovery

1. TSO will set disclosure deadlines
2. Daubert motion practice deadlines
3. Can set deposition protocols (location, time, etc.)
4. Cost allocation (default is pay your own expert)
5. Identification of documents and information relied upon by experts prior to deposition
6. Privilege and work product issues, *e.g.*, production of work product, engagement letters, etc.

G. CCLD Privilege Protocols

1. Inadvertent production of privileged information protocol
2. In essence, a claw back protocol
3. Sets forth time frames for asserting the privilege after production
4. Protocols for exchange information and retrieval of privileged documents
5. Default - parties free to negotiate their own agreement(s)

H. CCLD Website: <http://courts.delaware.gov/superior/complex.aspx>

1. Protocols
2. Judicial Assignments and bios
3. Standing Orders
4. Decisions

**XIV. SUPERIOR COURT AUTOMATIC RESIDENTIAL MORTGAGE
FORECLOSURE MEDIATION PROGRAM**

- A. 10 *Del. C.* § 5062 established the new program now to be implemented by Administrative Directive 2013-2.
- B. Program seeks to encourage parties to a foreclosure action to meet and address, inter alia, loss mitigation programs or other potential resolutions that may allow the defendant to continue to own the property.

See Appendix Materials

Delaware Justice of the Peace Court Practice

The Honorable Susan Ufberg
*Justice of the Peace Court
of the State of Delaware*

William Patrick Brady, Esquire
The Brady Law Firm, P.A.



Civil Practice in the Justice of the Peace Court

Hon. Susan E. Ufberg
John D. Stant Esquire

Objective is to serve the Public with a
User-friendly quick process.

- The majority of cases are filed by “Pro Se” litigants
- Non-Attorney “Form-50” agents are permitted to represent businesses
- This creates special challenges for the Judges who must navigate issues which may arise between the lack of knowledge of processes and law exhibited by Pro Se litigants when faced with litigants represented by Attorneys.

Brief Overview of Jurisdiction of the JP Court

10 Del. C. §9301

- Contract Disputes
 - Actions in Torts only for damage or taking of personal property (Replevin)
 - Trespass on Land
 - Actions for Penalty or Forfeiture under the provisions of statute or ordinance
 - Exclusive Jurisdictions of all Landlord-Tenant matters as per Title 25 of the Delaware Code
 - Distress for Rent
 - Any other Civil Jurisdiction provided by Law
- Approximately 34,000 cases per year are filed
 - There is a \$25,000 jurisdictional limit, however there is unlimited jurisdiction over commercial Landlord-Tenant matters
 - There is no jurisdiction over personal Injury action

Most Common Proceedings

- Debt
- Replevin
- Trespass
- Landlord-Tenant Matters
- Ancillary Civil Matters (Collections on Administrative Awards)
- Constable-Service, Execution, and Evictions



Location of the Justice of the Peace Courts

New Castle County

Court 9
9757 N. Broad Street
Middletown, DE 19709
(302)378-5221

Court 13
2 Penns Way Suite 203
New Castle, DE 19820
(302)323-6070

Court 16
414 Federal Street 173
Dover, DE 19901
(302)739-4316

Court 17
2370 Shorty Rd.
Georgetown, DE 19947
(302)856-1447

Kent County

Sussex County



Filing Considerations

- State-wide Jurisdiction over most matters
(If the Defendant lives out of County there is an automatic waiver of court costs)
- Landlord-Tenant matters must be filed in the County in which the rental is located

- E-Filing is mandated for Attorneys or and Form 50 agent filing more than 5 cases per year.

(Must complete a free e-filing training Class)

- Must Use Prescribed Forms

<http://courts.Delaware.gov/forms/list.aspx?age=JusticeofthePeaceCourt&sec=Forms>



Why Proceed in Justice of the Peace Court?

Exclusive Jurisdiction over Landlord-Tenant Matters

Value and Quick Resolution

Ease of Filing and Limited Discovery

"It's the Principle"

Meaningful Trial Experience without High Stakes

High Impact Pro Bono Service



QUESTIONS?????

Fundamentals of Civil Litigation

Justice of the Peace Court Practice - Tips for New Practitioners

by William P. Brady, Esquire

A. Rules of Civil Procedure

1. General Rules regarding the Rules. The J.P. Court Civil Rules generally track the Superior Court Civil Rules. However, there are many exceptions, such as differences in the scope of the Rule itself, or instances where there may be no corresponding J.P. Court Rule. You cannot assume the Rule reads the way you think it might based on the language from another Court or that there is even a JP Civil Rule on point. In other words, read the Rules.

2. What to do if there is no Rule on point. Despite the differences, the Rules do provide for a means to an end. Specifically, J.P. Civil Rule Number 1 includes the following language:

“If no procedure is specifically prescribed by these Rules, the Court may proceed in any lawful manner not inconsistent with the Rules of another Delaware Court, statute, or administrative directive”.

As a result, if there is no Rule that covers a particular situation, a litigant may be able to proceed under an appropriate Rule of another Court or other legal procedure.

3. Selected Rules of Which to be Aware.

a. Rule 3. Commencement of Action. Rule 3(a) includes the following language:

“A civil action is commenced by filing a complaint and praecipe with the Court in such form as the Court prescribes”.

You must use the J.P. Court Complaint form CF01 when initiating any new action or the Court will not accept the filing.¹ However, if the matter is complex or you cannot include all pertinent information in the space provided, it is permissible to attach a supplemental filing in, or substantially similar to, the form of Complaint typically filed in one of the higher Courts and

¹ Note that CF01 was revised effective September 2, 2020. The new form is included in the Appendix.

that filing will be accepted, so long as the standard form CF01 is also utilized and filed as the principal document. In addition, if there are more than 2 Plaintiffs or 2 Defendants, form CF01AP (included in the Appendix) must be used to identify the additional parties.

b. Rule 3(b), Venue for Summary Proceedings for Possession. Eviction actions must be initiated in the County where the rental property is located. Kent and Sussex Counties have only one J.P. Court, respectively. However, in New Castle County, Rule 3(b)(2) provides for the delineation between Court 13 in Wilmington and Court 9 in Middletown.² As a result, for rental properties in the Bear and Glasgow areas, you must carefully review the Rule and a map to determine the proper Court in which to file.

c. Rule 4 Service of Process. Rule 4(d) provides that “[se]rvice shall be made by any constable, sheriff, deputy sheriff, special process server, or any other person duly authorized by statute or rule to make service of process except that a subpoena shall be served as provided in Rule 45”.³ Service may also be made by certified mail upon any defendant.⁴

d. Rule 8. General rules of pleading. As compared to Superior Court Civil Rule 8, much of J.P. Civil Rule 8 is specifically omitted. As a result, the rules of pleading are less stringent and do not carry the same implications if allegations are not specifically denied or plead.

² “The line dividing New Castle County venue shall be as follows: Beginning at a point on the centerline of U.S. Route 40, traveling east to the centerline of the right of way of the Norfolk Southern rail line (Reynolds Industrial Line), thence south and east along that right of way to the easternmost point of the line, thence east to the Delaware River”.

³ Rule 45 allows a subpoena to be served by any person who is not a party to the action and is 18 or older.

⁴ J.P. Court Civil Rule 4(f)(V).

e. Rule 11. Signing of pleadings and sanctions. J.P. Civil Rule 11 is virtually identical to Superior Court Civil Rule 11. As a result, the obligation to file proper pleadings, the process by which a party presents a Motion for sanctions and the penalties the Court may impose for a violation of the Rule, including awarding attorney's fees, are essentially the same.

f. Rule 12. Defenses. As with Rule 8, Rule 12 is very brief when compared to its Superior Court counterpart. For example, it makes no reference to the ability to file a Motion for Judgment on the Pleadings, Motion for More Definite Statement or a Motion to Strike. However, a party would still be able to do so using the catch all provision of J.P. Court Rule 1. Notwithstanding, filing a demand for a Bill of Particulars under Rule 26 is generally a more efficient option than a Motion for More Definite Statement and it provides a defendant the ability to move to dismiss the action with prejudice if the Plaintiff either fails to file one or it is otherwise untimely or insufficient.

g. Rule 13. Counterclaims and cross-claims. J.P. Court Rule 13 is, arguably, more complex than its counterpart in other Courts, partially due to the Court's current \$25,000 jurisdictional limit.⁵ In particular, Rule 13(c)(2) provides that a defendant having a counterclaim that exceeds \$25,000:

“may bring it forward and plead it as a counterclaim, or not, at [their] pleasure, and shall not, by neglecting to so plead it, lose such cause of action. If the defendant pleads a counterclaim exceeding \$25,000, and the Court finds in favor of the defendant, judgment shall be given to the defendant for the sum determined by the Court, provided it does not

⁵ 10 *Del. C.* § 9301 was amended and 25 *Del. C.* § 5701B enacted effective November 23, 2020, which increased the J.P. Court's jurisdiction to \$25,000 for most matters and eliminated it entirely for Summary Proceedings for Possession for commercial rental units.

exceed \$25,000. If it exceeds \$25,000, that fact shall be stated on the record, and judgment shall be given for the costs of the defendant who shall be at liberty to prosecute such cause of action in another court; or such defendant may take judgment for \$25,000 and forgo the excess above \$25,000”.⁶

As a result, a defendant having a counterclaim exceeding the Court’s \$25,000 jurisdictional limit is not compelled to bring it in the pending J.P. Court action. However, a decision must be made whether to initially plead it and, if successful at trial or other disposition of the matter, whether to cap the judgment at \$25,000 or as judgment for costs and prosecute the entire claim in a higher Court.

In lieu of capping damages or having to bring a separate action in a higher Court, a party may file a counterclaim seeking judgment in excess of \$25,000 and move to transfer the entire action, pursuant to 10 *Del. C.* § 1902, which allows for removal of actions from courts lacking jurisdiction. The statute provides that “[N]o civil action, suit or other proceeding brought in any court of this State shall be dismissed solely on the ground that such court is without jurisdiction of the subject matter, either in the original proceeding or on appeal. Such proceeding may be transferred to an appropriate court for hearing and determination”. While the statute is most commonly used to transfer an action erroneously filed in one Court to the proper Court, it can also be used to remove an action from J.P. Court in which a counterclaim is pled for more than the Court’s dollar jurisdiction. The statute is to be liberally applied to achieve its purpose to permit and facilitate transfers of proceedings between the courts of Delaware in the interests of

⁶ See 10 *Del. C.* § 9536 relating to setoff or counterclaim by a defendant. See also, *Sprout v. Ellenburg Capital Corp.*, 1997 WL 716901 (Del. Super.) and *Dennis Boggi Enterprises, Inc. v. Murowany*, 2001 WL 1555672 (Del. Comm. Pl.).

justice.⁷ If the counterclaim is for significantly more than \$25,000, it may simply be more efficient to keep the dispute as a single action and move to transfer the matter.

Lastly, Rule 15(d) requires counterclaims and cross-claims be filed no later than five (5) days prior to trial. In the event a counterclaim or cross-claim is plead with such close proximity to trial, the Court may order a continuance to allow a party sufficient opportunity to prepare a defense. Likewise, Rule 13(e) allows the Court to grant an adjournment after commencement of trial if it becomes evident that a party has a counterclaim or cross-claim that they were not aware of previously or if other exceptional circumstances exist in order to allow the filing of the counterclaim or cross-claim and allow the opposing party the opportunity to defend.

h. Rule 15. Amended and supplemental pleadings. Rule 15(a) provides that a party may amend a pleading “only by leave of court or by written consent of the adverse party; leave shall be freely given when justice so requires”. In practice, the Court typically will freely give such leave to amend. When amendments are allowed “at the time of trial or in close proximity thereto, adjournments shall be freely given upon motion by the adverse party”.

i. Rule 41. Dismissal of actions. J.P. Court Rule 41 is very similar to Superior Court Rule 41 and permits a defendant to move, pursuant to Rule 41(b), for dismissal of an action at trial, following the close of the plaintiff’s case and without waiving the right to offer evidence in the event the motion is denied, on the basis that under the facts and law, the plaintiff has shown no right to relief. In particular:

“Unless the Court in its order for dismissal otherwise specifies, a dismissal under [Rule 41(b)] and any dismissal not provided for [by] this rule, other than a dismissal for lack of jurisdiction, for improper venue, or failure to

⁷ *Carney v. Qualls*, 514 A.2d 1126 (Del. Super. 1986).

prosecute, operates as an adjudication upon the merits”.

j. Rule 56. Summary Judgment. This Rule is omitted under the J.P. Court Rules.

k. Rule 60. Relief from judgment or order. This Rule tracks the Superior Court Rule almost verbatim, but adds additional language at subsections (c) and (d) regarding the time within which to file motions to vacate default judgments and nonsuits. In debt, trespass and replevin actions, a party has 15 days from the date of judgment to move to vacate and 30 days if service was made by certified mail. In summary possession actions, not more than 10 days after judgment. For all other reasons, a motion to vacate shall be made within a reasonable time.⁸

l. Rule 65. Injunction. Unlike Superior Court, the Justice of the Peace Court has limited equitable powers, which are most commonly utilized in Summary Proceedings for Possession. Thus, in an appropriate situation, the Court has the ability to issue injunctive relief against a party, including entering a preliminary injunction. As a result, Rule 65 is more akin to Court of Chancery Rule 65.

⁸ See also 10 *Del. C.* § 9537.

B. Forms of pleadings

As noted previously, Rule 3(a) requires that a new action be commenced by filing a complaint and praecipe in the form of Complaint prescribed by the Court. The Court also has a large number of other forms for various purposes, a sampling of which are included in the appendix. However, Rule 10 relating to the form of pleadings, motions and other papers, states as follows:

“Motions and other papers may be printed or typed and reproduced by any duplicating or copying process which produces a clear black image on opaque unglazed white paper not exceeding 8 ½" x 11". Motions and papers may also be filed as otherwise authorized by statute, court rule, or administrative order. A motion shall contain a caption setting forth the name of the Court, the caption of the case, the case number, the date of filing and a brief descriptive title indicating the purpose of the paper”.

As a result, parties may file motions and other pleadings in the manner typically filed in higher courts. Notwithstanding that, however, in some instances, the Court may still require the preprinted form to be filed as the primary document, with the attorney-drafted form as an attachment. When in doubt, check with the Clerk at the Court in which the pleading is to be filed. The Court maintains an index of its forms on the Delaware Courts website at

<https://courts.delaware.gov/forms/list.aspx?ag=Justice%20Of%20The%20Peace%20Court&sec=Forms>. Many of the forms are fillable or are in an editable Word format.

C. Discovery

1. Bill of Particulars.

a. Rule 26 allows a defendant in a debt action to demand that the plaintiff file a bill of particulars covering the subject matter of the claim, unless the plaintiff has already provided the information which would be contained in a proper bill of particulars in filing the original Complaint. The demand must be made on the form designated by the Court. However, the standard answer to a debt action (included in the appendix) contains a line for the defendant to simply check to demand the bill of particulars. A demand for a bill of particulars may be filed by a defendant, counterclaim defendant or cross-claim defendant.

b. Rule 26(b) states the following:

“Content. A bill of particulars shall be in writing and shall state with particularity the basis for the plaintiff’s suit and the manner in which the sum demanded was determined. If the action is based upon a contract or promise, whether expressed or implied, the bill of particulars shall state specifically the date, time and place the contract was agreed upon, the subject matter of the contract, what breach or violation of the contract occurred, the amount of damages suffered because of the breach or violation, and how those damages were determined. If the action is based upon a debt for money due and owing on a book account or other written instrument, a copy of any books or account or other written documents upon which the action is based shall be included in the bill of particulars. The bill of particulars shall include an affidavit of the plaintiff notarized by a notary public verifying that the information contained in the bill of particulars is true and correct to the best of the plaintiff’s knowledge. If the plaintiff is a corporation, partnership or other artificial entity, it shall be verified by an officer of the entity as defined in Supreme Court Rule 57(a)(3) or any representative certified pursuant to Supreme Court Rule 57.”

c. Time for response. A plaintiff has 15 days, counting the date of mailing of the notice by the Court as the first day, to file the original of the bill of particulars with the Court

and serve a copy on the defendant. Be aware that the notice of a demand for a bill of particulars is frequently contained in the notice of trial date sent by the Court. Therefore, you must make sure you review the trial notice and train support staff to look for the notice for calendaring purposes in the event the attorney does not personally review that notice due to absence from the office, etc. If the demand for a bill of particulars is made in close proximity to the trial date, assuming it has already been scheduled, the Court may continue trial on its own or on motion of a party under Rule 26(c)(3), or may deny the demand altogether.

d. Failure to comply. If a plaintiff fails to file a bill of particulars following demand or otherwise fails to comply with the content requirements, upon motion by a defendant, the Court may order the plaintiff to file the bill, grant a continuance, dismiss the action with or without prejudice, or make such other order as it deems just.⁹ However, dismissal shall not be granted if there has been substantial compliance with the Rule's requirements.¹⁰ The Court may also enlarge the time to file.¹¹

2. Other permitted discovery.

a. Many litigants believe that a bill of particulars is the only form of discovery allowed in J.P. Court. However, that is not the case. While not frequently utilized, discovery is available under J.P. Rule 27, "upon motion, in the interest of justice and judicial economy". Note that the discovery permitted under Rule 27 is limited solely to that authorized by Superior Court Civil Rules 33, 34 and 36, relating to interrogatories, production of documents

⁹ J.P. Court Civil Rule 26(d).

¹⁰ *Id.*

¹¹ J.P. Court Civil Rule 26(e).

and requests for admission, respectively. In addition, Rules 28 through 36 relating to depositions are specifically omitted under the J.P. Court Rules and are not available to litigants.

b. Should you decide to file a Motion to Allow Discovery, it is advisable to attach to it a proposed form of the discovery requests that you wish to serve on the opposing party for the Court to review in advance in determining whether to allow. Providing the discovery requests at that time may also help ward off objections or non-compliance from the other party following actual service if the Court has already ruled that the form of interrogatories or request for production of documents will be allowed. As a practical matter, the Court will likely not grant a Motion to Allow Discovery if the filing of a Bill of Particulars by a Plaintiff will satisfy the need for additional information based on the claim as stated in the Complaint. In addition, the Court will generally not authorize extensive written discovery of the nature commonly seen in higher Courts, so litigants should focus on the most important questions or documents sought in order to maximize the likelihood the Motion will be granted. Should discovery be permitted and a party fails to comply, J.P. Civil Rule 37 provides that sanctions may be ordered in accordance with Superior Court Civil Rule 37.

D. Other Tips for Practitioners

1. Continuance requests. If not previously requested in a debt action, 10 *Del. C.* § 9527(c) provides that the Court shall, except when a forthwith summons has issued, grant 1 adjournment to the defendant, of course. Black’s Law Dictionary defines “of course” to be:

“[a]s a matter of right. Any action or step taken in the course of judicial proceedings which will be allowed by the court upon mere application, without any request or contest, or which may be effectually taken without having to apply to the court for leave to take such action”.

As a result, by statute, a defendant has one continuance as a matter of right, even if the plaintiff were to object. However, any continuance request made by letter should track the information requested on the preprinted form prepared by the Court that is included in the appendix.

2. Settlements and Stipulations. As in any other civil action, settlement is not only an option, but in many instances is the most practical way to resolve a dispute. If the parties are resolving a matter in lieu of going to trial, it is essential that the agreement be reduced to writing and entered as a Stipulation with the Court. In addition, the Stipulation should contain a statement that there is no right of appeal, as is included on the Court’s form of stipulated judgment. If the parties settle on the day of trial while at Court and will later be drafting and filing the Stipulation, the terms should be read into the record in the event there is a later disagreement as to the terms. Parties may also handwrite the Stipulation on plain paper or on the preprinted Court form.

3. Appeals. 10 *Del. C.* § 9571(a) provides an absolute right to appeal from J.P. Court to the Court of Common Pleas “from *any final order, ruling, decision, or judgment of the*

court in a civil action”. The appeal shall be a trial de novo.¹² However, that statute is not applicable to matters involving possession of a rental unit.

4. Motions to Vacate Default Judgments. If a party does not have a good reason why they failed to answer a Complaint or appear for trial, it may be better to appeal the adverse judgment to the Court of Common Pleas rather than risk a denial of Motion to Vacate. In particular, an appeal of a denial of a Motion to Vacate is limited solely to a review of whether the J.P. Court abused its discretion in denying the Motion and is not a *de novo* appeal on the merits.¹³ Therefore, it may prove difficult to prevail on appeal and have the matter remanded to the J.P. Court. If having to contend with a Default Judgment, counsel should consider whether the client has a mandatory counterclaim or setoff and if so, in what amount? If the answer is yes and it is less than \$25,000, then you must consider filing a Motion to Vacate. Otherwise, on appeal, the counterclaim may be unavailable. On the other hand, if there is no counterclaim to be plead, a direct appeal to the Court of Common Pleas may be the best approach.

5. Business records in J.P. Court civil cases. Delaware Rule of Evidence 803(25) provides a specific exception to the hearsay rule for civil actions in Justice of the Peace Court. The Rule states:

“In a civil case before a Justice of the Peace, a bill, estimate, receipt or statement of account which appears to have been made in the regular course of business may be admitted into evidence by the Court if the Justice of the Peace is satisfied that the document is reliable.”

In order to be admitted without the person who prepared the document present to

¹² 10 Del. C. § 9571(c)

¹³ *Ney v. Polite*, 399 A.2d 527 (Del. Supr. 1979).

testify (or via some other exception), it must typically be on letterhead, dated, indicate the name of the preparer and describe with some specificity the work or services performed (or to be performed) or the nature of the debt or other obligation owed. However, these documents often contain opinions or other statements constituting hearsay within hearsay that may lead to a proper objection depending on the nature and scope of the statement. In those instances, the Court may determine to not admit the document into evidence at all or, in the alternative, admit part and exclude part, or admit the entire document, with the Court giving it “the weight it deserves”. If in doubt about the admissibility of a document necessary to your case, make every effort to secure the presence of the witness.

6. Trials by Zoom. Since the outset of the Covid-19 pandemic, the Court has been conducting many hearings and trials via Zoom, particularly Summary Proceedings for Possession. While this necessarily causes its own set of challenges, counsel should be aware of the Court’s guidelines on Zoom appearances, including electronic filing of exhibits and service to the opposing party in advance of trial. In addition, counsel should have access to those exhibits on the computer on which they are using to connect for trial in order to be able to share the screen and present them as necessary.

JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE

IN AND FOR _____ COUNTY

COURT NO. _____

COURT ADDRESS _____

CIVIL ACTION NO. _____

Please list plaintiffs and defendants. Add additional party names and addresses on form CF01AP.

PLAINTIFF(S)

vs.

DEFENDANT(S)

1) Name _____

1) Name _____

Address _____

☐ Address has changed

System ID# _____

Phone _____

Email Address _____

Address _____

☐ Address has changed

System ID# _____

Phone _____

Email Address _____

PLAINTIFF(S)

vs.

DEFENDANT(S)

2) Name _____

2) Name _____

Address _____

☐ Address has changed

System ID# _____

Phone _____

Email Address _____

Address _____

☐ Address has changed

System ID# _____

Phone _____

Email Address _____

Plaintiff's Attorney or Agent, if any:

Defendant's Attorney or Agent, if any:

Address _____

Address _____

System ID#

(bar#)

Phone _____

Email address _____

System ID#

(bar#)

Phone _____

Email Address _____

Check One

☐ Individual

☐ Corporation or other Artificial entity (see Supreme Court Rule 57)

Type of Service:

(Check One)

☐ Court Service

☐ Special Process Server

Type of Action:

(Check One)

☐ Debt

☐ Replevin

☐ Deficiency Judgment

☐ Individual

☐ Corporation or other Artificial entity (see Supreme Court Rule 57)

Alternate Address ☐ Physical ☐ Mailing ☐ Rental

☐ Trespass

☐ Summary Possession (LLT) - Specify

☐ Commercial Unit ☐ Residential Unit

COMPLAINT-

1. Concise Statement of Facts: (Who, What, When, Where, How?)

2. Relief Sought:

\$ _____ Amount of money claimed. (Not including interest)

\$ _____ Pre Judgment Interest at _____ % legal rate

OR

_____ % contractual rate

\$ _____ Post Judgment Interest at _____ % legal rate

OR

_____ % contractual rate

\$ _____ Court Costs.

\$ _____ Other _____

☐

Possession

☐

Return of personal property

OR

\$

Jury Trial Demanded (Possession only) ☐ Yes ☐ No

_____ Total value (Attach list of property stating description, number and value of items on 8 1/2" x 11" paper)

TO: THE JUSTICE OF THE PEACE COURT

Please docket the above-captioned case and issue a Summons to the above-named Defendant(s) to appear before you so there may be a trial on this case and judgment for the Plaintiff(s), together with interest and costs of this proceeding: or, for an Attachment in Lieu of Summons, please issue same and direct the Constable to execute the proper process.

Date _____

Plaintiff or Plaintiff's Attorney _____

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS; PLEADINGS; MOTIONS AND ORDERS. Rule 3. Commencement of action.

(a) Commencement. A civil action is commenced by filing a complaint and praecipe with the Court in such form as the Court prescribes. Sufficient copies of the complaint shall be filed so that one copy can be served on each defendant. When an action is governed by a special statute, it shall be commenced in the manner prescribed by such statute.

JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR _____ COUNTY
COURT NO. _____

COMPLAINT FORM – ADDITIONAL PARTIES

CIVIL ACTION NO: _____

| PLAINTIFF(S) | vs. | DEFENDANT(S) |
|---|------------|---|
| 3) Name _____ Address _____ <input type="checkbox"/> Address has changed System ID# _____ Phone _____ Email Address _____ | | 3) Name _____ Address _____ <input type="checkbox"/> Address has changed System ID# _____ Phone _____ Email Address _____ |
| PLAINTIFF(S) | vs. | DEFENDANT(S) |
| 4) Name _____ Address _____ <input type="checkbox"/> Address has changed System ID# _____ Phone _____ Email Address _____ | | 4) Name _____ Address _____ <input type="checkbox"/> Address has changed System ID# _____ Phone _____ Email Address _____ |
| PLAINTIFF(S) | vs. | DEFENDANT(S) |
| 5) Name _____ Address _____ <input type="checkbox"/> Address has changed System ID# _____ Phone _____ Email Address _____ | | 5) Name _____ Address _____ <input type="checkbox"/> Address has changed System ID# _____ Phone _____ Email Address _____ |
| PLAINTIFF(S) | vs. | DEFENDANT(S) |
| 6) Name _____ Address _____ <input type="checkbox"/> Address has changed System ID# _____ Phone _____ Email Address _____ | | 6) Name _____ Address _____ <input type="checkbox"/> Address has changed System ID# _____ Phone _____ Email Address _____ |
| PLAINTIFF(S) | vs. | DEFENDANT(S) |
| 7) Name _____ Address _____ <input type="checkbox"/> Address has changed System ID# _____ Phone _____ Email Address _____ | | 7) Name _____ Address _____ <input type="checkbox"/> Address has changed System ID# _____ Phone _____ Email Address _____ |

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS; PLEADINGS; MOTIONS AND ORDERS. Rule 3. Commencement of action.

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VIEW YOUR CASE ONLINE: <https://courtconnect.courts.delaware.gov>

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. _____**

COURT ADDRESS: _____

CIVIL ACTION NO: _____

PLAINTIFF (s)

VS.

DEFENDANT (S)

DEFENDANT'S ANSWER TO THE COMPLAINT

Check all that are appropriate:

- A. _____ I admit that I owe the debt or claim in the Complaint and **DO NOT** want a trial. (This means that you agree to a judgment being entered against you for the amount claimed plus interest and costs. Any money owed should be paid directly to the Plaintiff. **You will be giving up your right to a trial and will not have a right to appeal your decision to admit this debt or claim.**)
- B. _____ I WANT A TRIAL.
- C. _____ **DEBT ACTIONS ONLY:** In addition to a trial, I request that the Plaintiff provide me with a more detailed statement of the claim (Bill of Particulars).

The JP Court, at its discretion, may offer alternative case resolution options by which hearings can be heard remotely, when possible. Please indicate if you have any access to the following:

_____ Internet w/camera (computer or Smartphone)
_____ Email (list email address below)

DATED: _____

(Signature of Defendant)

(Defendant's Address/Phone No.)

(Defendant's Email Address)

(Defendant's Attorney, if any)

(Attorney's Address/Phone No.)

(Attorney's Email Address)

If you are a corporation (or other artificial entity or public body):

- This Answer **MUST** be signed by an attorney or person designated by a Certificate of Representation (Form 50) for the corporation or entity prior to the filing of this Answer.
- Only an attorney or a person designated in a Form 50 may represent you in JP court.
- **YOU MAY OBTAIN A FORM 50** and further information from the Court's website at <https://courts.delaware.gov/jpcourt>. (Click on Form 50), or you may obtain a Form 50 from your nearest JP Civil Court.

Mail this completed form (Answer) to the Justice of the Peace Court at the address above as soon as possible. This signed document must be received by the Court within 15 days after the date you received it or a default judgment may be entered against you.

STATE OF DELAWARE
Justice of the Peace Court
Continuance Request Form for Civil Cases

Today's Date: _____

Scheduled Date: _____

Case# JP ____ - ____ - _____

NAME OF PLAINTIFF: _____

NAME OF DEFENDANT: _____

Requested by: ☐ **Plaintiff** ☐ **Defendant**

State reason(s) why request is needed:

If continuance request is due to scheduling conflict due to work, medical, or other appointments you may need to provide written proof with this request form.

Provide current contact information:

Address: _____

Phone: (____) _____ - _____

Signature and Date

FOR COURT USE ONLY:

How many prior continuance requests has this party submitted to the court? _____

- ☐ Approved ____ Both parties agree ____ Timely ____ Bill of Particulars/Counterclaim issue
☐ Denied ____ Lacks specific reason/vague ____ Untimely ____ Prejudice to other party
☐ Conditional ____ Requestor is to notify other party. If other party agrees in writing, continuance is granted. If other party opposes continuance request, case will go forward as scheduled.

Comments: _____

Date

Justice of the Peace

☐ NOTE Plaintiff/Defendant's new address

New Court Date: _____

JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR _____ COUNTY
COURT NO. _____

COURT ADDRESS:

CIVIL ACTION NO. _____

PLAINTIFF(S):

☐ Check box if address has changed

1) Name: _____

Address: _____

Phone: _____

2) Name: _____

Address: _____

Phone: _____

Plaintiff's Attorney, if any: _____

VS.

DEFENDANT(S):

☐ Check box if address has changed

1) Name: _____

Address: _____

Phone: _____

2) Name: _____

Address: _____

Phone: _____

Defendant's Attorney, if any: _____

APPLICATION FOR A MOTION HEARING

I, _____, an above named party in this action, do request the Court to schedule a hearing to determine if the requested relief should be granted. In support of this application, I do truthfully state the following:

A. Type of relief requested:

B. Reasons why the relief should be granted:

C. If this is a motion to vacate a default or nonsuit judgment or a motion for a new trial or to amend a judgment, explain how you believe the result of the case may be different if the motion were granted.

Date: _____

Signature of Applicant

- Persons with disabilities should contact the Court in writing as soon as possible, prior to trial, to request reasonable accommodations.
- Should you need an interpreter, including for hearing impairment, notify the Court in writing as soon as possible (preferably 14 days) prior to trial so the court can have an interpreter available for your hearing.
- Cell phones, pagers, cameras, and other electronic devices are NOT permitted in courthouses or courtrooms without permission of a judge.
- **If you are a corporation (or other artificial entity or public body):** Only an attorney or a person designated in a Form 50 may represent you in JP court. YOU MAY OBTAIN A FORM 50 application from the Court's website at <https://courts.delaware.gov/jpcourt> (Click on Form 50) or any JP Court civil location.
- For court appropriate attire see <https://courts.delaware.gov/jpcourt/attire.aspx>.

JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR _____ COUNTY
COURT NO. _____

COURT ADDRESS:

CIVIL ACTION NO.: _____

PLAINTIFF(S):

VS

DEFENDANT(S):

STIPULATION

Check one:

☐ The parties have stipulated to the agreement below. *(Continue on additional page (s), if needed);*
or

☐ The parties have stipulated to the judgment below. *(Continue on additional page (s), if needed).*

I agree to the terms of the stipulation. I understand that I am waiving my right to a trial and that I will not have a right to appeal this stipulation.

(Plaintiff)

(Plaintiff's Address/Phone No.)

(Plaintiff No. 2, if any)

(Plaintiff No. 2's Address/Phone No.)

(Defendant)

(Defendant's Address/Phone No.)

(Defendant No. 2, if any)

(Defendant No. 2's Address/Phone No.)

The above stipulation by the parties is hereby entered in this case.

IT IS SO ORDERED this _____ day of _____, 20 _____

Justice of the Peace

ZOOM INFORMATION

Please download or update the Zoom software on the equipment you will be using prior to your scheduled hearing. (Zoom download link: <https://zoom.us/support/download>)

Please review the following prior to the hearing:

- 1) This is a virtual court proceeding in which there may be multiple people connecting. As you will be connecting to the Court remotely, make sure you are in a quiet area with little to no background noise or distractions.
- 2) Any **exhibits** you wish to submit during your hearing must be sent to the opposing party and to the Court's Email, or efiled if you are an efiler, at least **5 business days** prior to the hearing.

| Non E-Filer | E-Filer |
|--|---|
| <ul style="list-style-type: none">• Visit https://courts.delaware.gov/locations/jpcourt.aspx to determine the appropriate email address based on the location of your case.• Submit an Exhibit list (See Form CF79) with all exhibits labeled as Exhibit A, B, C, etc.• Exhibits must be emailed as a PDF attachment and not embedded in the body of the e-mail.• Hard copies of color pictures must be sent to the Court. | <ul style="list-style-type: none">• E-filers are required to e-file exhibits• Submit an Exhibit list (See Form CF79) with all exhibits labeled as Exhibit A, B, C, etc.• A description must be used to name each filing. Example Exhibit A, B, C, etc.• Hard copies of color pictures must be sent to the Court. |
| <ul style="list-style-type: none">• Digital files must be sent in PDF format. No videos may be submitted (any video evidence can be shared on screen via Zoom). | |

- 3) The Court cannot review documents submitted through ODR; you will have to resubmit them as evidence as instructed above.
- 4) You should update your app on the day of the hearing in order to have the most secure version.
- 5) Wear appropriate clothing. This is a formal court proceeding.
- 6) The Court will record the hearing.
- 7) You must sign in 15 minutes prior to the scheduled meeting time and wait for the host to admit you (there may be a delay due to the volume of the Court's calendar). Mute until you will be speaking.
- 8) It is imperative that you are prepared to begin and proceed with your case at your scheduled time. **Failure to do so may result in the Court's inability to hear your case remotely and may result in a judgment being entered against you.**
- 9) This virtual hearing will allow the presiding judge to:
 - Hear arguments from both parties (Plaintiff/Defendant)
 - Hear testimony from any witnesses
 - Please provide your witnesses with the Zoom meeting and passcode for the virtual hearing.
 - If you need to subpoena your witness this must be done 5 business days prior to the trial.
 - Witnesses should attend Zoom from a separate room/platform, preferably in a location separate from the party that has subpoenaed them.

If you experience any technical difficulties, including disconnection during the hearing, please call the Court at _____.

You are responsible for notifying the Court 5 business days in advance of the hearing **if you do not have access** to a smart phone, tablet, camera-equipped computer, or reliable internet signal. The court will only make alternative arrangements if contacted in advance by the parties.

<https://courtconnect.courts.delaware.gov>

U.S. Bankruptcy Court Practice

The Honorable John T. Dorsey
U.S. Bankruptcy Court District of Delaware

Eric J. Monzo, Esquire
Morris James LLP