

LOCAL RULES
OF
CIVIL PRACTICE AND PROCEDURE
OF THE
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF DELAWARE
(Amended Effective January 1, 1995)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN THE MATTER OF:)
)
The Amendments of Local Rules of)
Civil Practice and Procedure of the United)
States District Court for the District)
of Delaware)

ORDER:

This 30th day of December, 1994, a draft of the amendments to the Local Rules of Civil Practice and Procedure for this Court having been submitted by the District Court Advisory Committee appointed by this Court, and the Court having published notice of the amendments and having provided an opportunity for comment, and all the judges of this Court having considered the same,

IT IS ORDERED:

1. Pursuant to the authority vested in this Court by Rule 83, Fed. R. Civ. P., the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware be and they are hereby amended as is set out in the copy of the Local Rules attached hereto. In accordance with Rule 1.1 (b), these amendments shall take effect on January 1, 1995.

2. The Clerk shall have the attached Local Rules printed in appropriate form and shall make copies of them available for sale to all interested parties at a price approximately equivalent to their cost as fixed by the Court.

3. As required by Rule 83, Fed. R. Civ. P., the Clerk shall forward a copy of this Order and the attached Local Rules to the Judicial Council of the United States Court of Appeals for the Third Circuit and the Director of the Administrative Office of the United States Courts.

4. The Clerk shall also forward a copy of this Order and these Rules to West Publishing Company and publish notice of the amendments as provided in Rule 1.2.

THE
DISTRICT COURT
ADVISORY COMMITTEE
FOR THE
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF DELAWARE

(Amended Effective October 1, 1995)

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Federal District Court Liaisons
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Peter T. Dalleo, Clerk of Court

RULE 1.1. Scope of the Rules.

- (a) Title and Citation.** These Rules shall be known as the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware. They may be cited as "D. Del. LR."
- (b) Effective Date.** These Rules became effective on January 1, 1995.
- (c) Scope of Rules.** These Rules shall apply in all proceedings in civil actions in this Court.
- (d) Relationship to Prior Rules; Actions Pending on Effective Date.** These Rules supersede all previous Rules promulgated by this Court or any Judge of this Court. They shall govern all applicable proceedings brought in this Court after they take effect. They shall also apply to all proceedings pending at the time they take effect, except to the extent that in the opinion of the Court the application thereof would not be feasible or would work injustice, in which event the former Rules shall govern.
- (e) Rules of Construction.** United States Code, Title 1, Sections 1 to 5, shall, as far as applicable, govern the construction of these Rules.

Source: Model Local Rule 1.1. (Cf. former Delaware Local Rules 1.1, 1.2 and 9.7.)

RULE 1.2. Availability of the Local Rules.

Copies of these Rules, as amended and with any appendices attached hereto, are available from the Clerk of the Court for a reasonable charge to be determined by the Court.

When amendments to these Rules are proposed and made, notice consistent with Rule 83 of the Federal Rules of Civil Procedure and 28 U.S.C. §2071 shall be provided of: (1) such proposals; (2) the ability of the public to comment; and (3) final adoption.

Source: Model Local Rule 1.2.

RULE 1.3. Sanctions.

- (a) **In General.** The violations of or failure to conform with any of the Local Rules of the United States District Court for the District of Delaware, the Federal Rules of Civil Procedure or any order of this Court, including orders relating to conferences or other appearances, and orders or rules relating to brief schedules, shall subject the offending party and that party's attorney, at the discretion of the Court, to appropriate discipline including, but not limited to the imposition of costs, fines, and such attorneys' fees to opposing counsel as the Court may deem proper under the circumstances.
- (b) **Pretrial Procedures and Motions.** Failure of counsel for any party to appear before the Court at any pretrial conference or to complete the necessary preparations therefor or to be prepared for trial on the date set may be considered an abandonment or 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. Failure to comply with the Rules of this Court relating to motions may result in the determination of the motion against the offending party.

Source: Former Delaware Local Rule 9.2 with revisions.

RULE 3.1. Civil Cover Sheet.

- (a) Submission of a Civil Cover Sheet.** Every complaint or other document initiating a civil action shall be accompanied by a completed civil cover sheet, on a form available from the Clerk of the Court. This requirement is solely for administrative purposes, and matters appearing only on the civil cover sheet have no legal effect in the action.

If the complaint or other document is submitted for filing without a completed civil cover sheet, the Clerk shall retain the document and stamp on it the date and time submitted and promptly give notice of the omission to the party filing the document. When the civil cover sheet has been completed, the Clerk shall docket the complaint or other document Nunc pro tunc as of the date it was originally submitted.

Persons filing civil cases pro se are exempt from the foregoing requirements.

- (b) Indication of Related Actions.** Counsel for a plaintiff in a civil action shall indicate on the civil cover sheet if such action and one or more other civil actions or proceedings previously decided or currently filed in this District or any other court: (1) arise from the same or substantially identical transactions, happenings, or events; (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. Counsel for a defendant possessing such information, if it has not been noted previously, shall bring that information to the attention of all parties and the Clerk, who will either note it on the cover sheet for the case or inform the judge to whom the case has been assigned.

Source: For 3.1(a), Model Local Rule 3.1 with revisions, and for 3.1(b), former Delaware Local Rule 2.2B with revisions.

RULE 3.2. Patent Cases.

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

RULE 4.1. Service of Process.

(a) Summons. To assist the Clerk in the issuance of a summons, a party required to serve a summons shall prepare and deliver a completed form of summons to the Clerk contemporaneously with the filing of the pleading to be served with the summons or with the praecipe for additional or separate summons. Upon issuance, the Clerk shall provide the summons to the party or party's attorney who shall be responsible for prompt service of the summons and a copy of the pleading. Failure to provide a form of summons shall not be a basis to reject the pleading for filing.

(b) Affidavit of Mailing in Certain Actions. In an action in which the plaintiff serves process pursuant to 10 Del. C. § 3104, § 3112, or § 3113, an affidavit of the plaintiff or plaintiff's attorney of the defendant's non-residence and the mailing and receipt or refusal of the notice required by the statute, with the defendant's return receipt attached, shall be filed within 10 days of the receipt by the plaintiff or plaintiff's attorney of that return receipt. The affidavit and return receipt need not be served upon the parties.

Source: For 4.1(a), former Delaware Local Rule 1.4 with revisions, and for 4.1(b), former Delaware Local Rule 2.1B with revisions.

RULE 5.1.1. General Format of Papers Presented for Filing.

All pleadings, motions, and other papers presented for filing shall be on 8 ½ by 11 inch opaque, unglazed white paper of good quality, flat and unfolded, and shall be plainly typewritten, printed, or prepared by a clearly legible duplication process, and double-spaced, except for quoted material and footnotes. Each page shall be numbered consecutively. Such papers shall be unbacked and shall set forth the date of filing and a brief descriptive title indicating the purpose of the paper. The name, Delaware state bar identification number, address and telephone number of local counsel shall be typed or printed under the signature line.

This rule does not apply to: (1) exhibits submitted for filing; and (2) documents filed in removed actions prior to removal from the state courts. Additional requirements applicable to briefs, memoranda of points and authorities and appendices are set forth in D. Del. LR 7.1.2.

Source: Model Rule 5.1 with revisions (cf. former Delaware Local Rules 3.2C(3) and 3.2G(1)).

RULE 5.1.2. The Filing of Non-Conforming Papers.

If any document is submitted for filing that does not conform to the Rules of this Court governing the form of papers, the Clerk of the Court shall docket the document and promptly give notice of the defect to the party filing the document that no action will be taken by the Court on this matter until the defect is corrected. Any party receiving such a notice shall promptly serve a copy of the notice on all other parties.

Source: Former Delaware Local Rule 3.2.I.

RULE 5.2. Service.

(a) Certificate of Service. When filed with the Court, the original of any pleading or other paper required to be served shall have attached either (1) a certification by a member of the Bar of this Court or (2) an affidavit, showing how service has been made.

(b) Service of Letters. Copies of all letters furnished to the Court relating to a pending case shall be furnished to the Clerk of the Court and to all local counsel and pro se parties. The same means (e.g., mail or hand delivery) as used in delivery to the Court shall be used in delivery to all local counsel and to pro se parties whenever feasible. The copies shall indicate the method of delivery to all recipients.

Source: Former Delaware Local Rules 2.1A and 2.7 with revisions.

RULE 5.3. Number of Copies.

The original and one copy of pleadings, stipulations, motions, responses to motions, briefs, memoranda of points and authorities, appendices and any papers filed under seal shall be filed with the Clerk of the Court. Any party filing papers under seal shall distinguish the original on the cover of the paper. The original of all other papers required to be filed shall be filed with the Clerk. Two copies of each paper filed with the Court shall be served on local counsel for each of the other parties. Whenever papers are captioned in more than one action, sufficient copies shall be furnished to permit the Clerk to file one copy in each action.

Source: Former Delaware Local Rule 3.2H, with revisions.

RULE 5.4. Discovery Materials Not Filed Unless Ordered or Needed.

- (a) Service Without Filing.** Except in cases involving pro se parties, all requests for discovery under Fed. R. Civ. P. 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 the following:
- (1) a certification that a particular form of discovery or response was served on other counsel or opposing parties, and
 - (2) the date and manner of service. Filing the notice of taking of oral depositions required by Fed. R. Civ. P. 30(b)(1), 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." In cases involving pro se parties, all requests for discovery under Fed. R. Civ. P. 31, 33 through 36, and 45, and answers and responses thereto, shall be served upon other counsel or parties and filed with the Court.
- (b) Retention of Originals.** The party responsible for service of the request for discovery and the party responsible for the response shall retain the originals and become the custodian of them. The party taking an oral deposition shall be custodian of the original; no copy shall be filed except pursuant to subparagraph (c). In cases involving out-of-state counsel, local counsel shall be the custodian.
- (c) Filing Where Necessary.** 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.
- (d) Appeals.** 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.
- (e) Orders to File the Original.** 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.
- (f) Notice of Filing.** When discovery materials are to be filed with the Court other than during trial, the filing party shall file the material together with a notice (1) stating, in no more than one page, the reason for filing and (2) setting forth an itemized list of the material.

Source: Former Delaware Local Rule 4.1.E. with revisions, including revisions to conform to the 1993 Amendments to Fed. R. Civ. P. 26(a).

RULE 7.1.1 Statement Required to be Filed with Non-Dispositive Motions.

Unless otherwise ordered, the Court will not entertain any non-dispositive motion, except those motions brought by a person appearing pro se and those brought pursuant to Fed. R. Civ. P. 26(c) by a person who is not a party, unless counsel for the moving party files with the Court, at the time of filing the motion, a statement showing that the attorney making the motion has made a reasonable effort to reach agreement with the opposing attorneys on the matters set forth in the motion.

Source: Former Delaware Local Rule 3.1D and 37.1 with revisions.

RULE 7.1.2. Briefs, When Required and Schedule.

(a) Briefing and Affidavit Schedule. A party filing a motion shall not file a notice of said motion. Unless otherwise ordered by the Court, the briefing and affidavit schedule for presentation of all motions shall be:

- (1) the opening brief and accompanying affidavit(s) shall be served and filed on the date of the filing of the motion;
- (2) the answering brief and accompanying affidavit(s) shall be served and filed no later than 10 days after service and filing of the opening brief;
- (3) the reply brief and accompanying affidavit(s) shall be served and filed no later than 5 days after service and filing of the answering brief. An appendix may be filed with any brief. The above schedule may be set aside if, at the time of the filing of a motion, a party advises the Court that, because of the nature of the motion, all parties believe that no briefing is required. Any party may waive its right to file a brief upon notice to the Court.

(b) Memoranda of Points and Authorities. The Court may order or the parties may agree to serve and file, simultaneously or on an ordered or agreed schedule, statements of points and authorities in memorandum form in place of briefs.

(c) Citation of Subsequent Authorities. No additional briefs, affidavits, or other papers in support of or in opposition to the motion shall be filed without prior approval of the Court, except that a party may call to the Court's attention and briefly discuss pertinent cases decided after a party's final brief is filed or after oral argument.

Source: Former Delaware Local Rules 3.2A and B and 3.1C and E with revisions.

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

(a) Form.

- A. Covers. On the front cover of each brief, memorandum of points and authorities and appendix there shall be stated the name of this Court, the caption of the case, its number in this Court, a description of the paper's nature, the date of filing, the name and designation of the party for whom it is filed, and the name, Delaware bar identification number, address and telephone number of counsel by whom it is filed.
- B. Format. All printed matter must appear in at least 11 point type. All briefs, memoranda and appendices shall be firmly bound at the left margin. Side margins of briefs and memoranda of points and authorities shall not be less than 1¼ inches.
- C. Page Numbering of Appendices. Pages of an appendix shall be numbered separately at the bottom. The page numbers of appendices associated with opening, answering and reply briefs, respectively, shall be preceded by a capital letter "A", "B" or "C". Transcript and other papers reproduced in a manner authorized by this rule shall be included in the appendix both with original and appendix pagination.
- D. Length. Without leave of Court, no opening or answering brief shall exceed 40 pages, and no reply brief shall exceed 20 pages, in each instance, exclusive of tables of contents and citations.
- E. Form of Citations. Citations will be deemed to be in acceptable form if made in accordance with "A Uniform System of Citation" published and distributed from time to time by the Harvard Law Review Association. State reporter citations may be omitted but citations to the National Reporter System must be included except as to U.S. Supreme Court decisions where the official citation shall be used.
- F. Citation by Docket Number. References to earlier- filed papers in the case shall include a citation to the docket item number as maintained by the Clerk's office as such: "D.I.", followed by the docket item number.
- G. Unreported Opinions. If an unreported opinion is cited, a copy shall be attached to the document which cites it or shall otherwise be provided, and it shall be appropriately identified with a sufficient statement of the facts to demonstrate its pertinency.

- (b) Contents of Memoranda of Points and Authorities.** Such statements shall succinctly state each legal proposition urged by the party and, following each such proposition, cite supporting cases and legal authorities, but shall not include any further legal argument. Any memorandum not conforming with this subsection of this Rule shall conform with D. Del. LR 7.1.2(c).

(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 arranged. If a brief does not contain any citations therein, a statement stating this fact should be placed under this heading.
 - C. A statement of the nature and stage of the proceeding.
 - D. A summary of argument, stating in separate numbered paragraphs the legal propositions upon which each side relies.
 - E. A concise statement of facts, with supporting references to appendices or record, presenting succinctly the background of the questions involved. The statement shall include a concise statement of all facts which should be known in order to determine the points in controversy. Each party shall be referred to as "plaintiff", "defendant", as the case may be, or by the name or other appropriate designation which makes identity clear. The answering counter statement of facts need not repeat facts recited in the opening brief.
 - F. An argument, divided under appropriate headings distinctly setting forth separate points.
 - 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 repetition of materials contained in the opening brief. A table of contents and a table of citations, as required by subparagraphs (c)(1)A and (c)(1)B, 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 material to the questions presented as the party wishes the Court to read; duplication shall be avoided. Portions of the record shall be arranged in chronological order. If testimony of witnesses is included, appropriate references to the pages of such testimony in the transcript shall be made and asterisks or other appropriate means shall be used to indicate omissions. Appendices may be separately bound. Parts of the record not included in the appendix may be relied on in briefs or oral argument. Whenever a document, paper or testimony in a foreign language is included in any appendix or is cited from the record in any brief, an English translation made under the authority of the Court or agreed by the parties to be correct, shall be included in the appendix or in the record.

- (e) Joint Appendix.** Counsel may agree on a joint appendix which shall be bound separately.

Source: Former Delaware Local Rule 3.2B-F, with revisions.

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 to the Court for oral argument shall be in writing and shall be made no later than 3 days after service of a reply brief. An application for oral argument may be granted or denied, in the discretion of the Court.

Source: Former Delaware Local Rule 3.1.F with revisions.

RULE 7.1.5. Rearguments.

A motion for re-argument shall be served and filed within 10 days after the filing of the Court's opinion or decision. The motion shall briefly and distinctly state the grounds therefor. Within 10 days after service of such motion, the opposing party may serve and file a brief answer to each ground asserted in the motion. The Court will determine from the motion and answer whether re-argument will be granted.

Source: Former Delaware Local Rule 3.3.

RULE 9.2. Request for Three-Judge Court.

- (a) **Form of Request.** In any action or proceeding which a party believes is required to be heard by a three-judge district court, the words "Three-Judge District Court Requested" or the equivalent shall be included immediately following the title of the first pleading in which the cause of action requiring a three-judge court is pleaded. Unless the basis for the request is apparent from the pleading, it 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.
- (b) **Number of Copies.** In any action or proceeding in which a three-judge court is requested, parties shall file the original and three copies of every pleading, motion, notice, or other document with the Clerk until it is determined either that a three-judge court will not be convened or that the three-judge court has been convened and dissolved, and the case remanded to a single judge. The parties may be permitted to file fewer copies by order of the Court.
- (c) **Failure to Comply.** A failure to comply with this local rule is not a ground for failing to convene or for dissolving a three-judge court.

Source: Model Local Rule 9.2.

RULE 9.4. Pleading Claim for Unliquidated Damages.

- (a) A pleading which sets forth a claim for relief in the nature of unliquidated money 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 the jurisdiction of the Court, but no other.
- (b) Upon service of a written request by another party, the party filing the pleading shall within 10 days after service thereof furnish the requesting party with a written statement of the amount of damages claimed, which statement shall not be filed except on Court order.

Source: Former Delaware Local Rule 2.6.

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

A party who moves to amend a pleading shall attach the pleading as amended, and one copy, to the motion. In addition, the motion shall include a form of the amended pleading which shall indicate in what respect it differs from the pleading which it amends, by bracketing materials to be deleted and underlining materials to be added. Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must, except by leave of Court, reproduce the entire pleading as amended, and may not incorporate any prior pleading by reference. A failure to comply with this rule is not grounds for denial of the motion. The amended pleading shall be deemed filed as of the date of an order allowing the amendment, unless the order otherwise provides.

Source: Model Local Rule 15.1 with additions from former Delaware Local Rule 3.2G(2) and other revisions.

RULE 16.1. Complex Cases.

(a) Certification of Complex Cases.

- (1) Notice of Intent. Any party seeking a determination of complexity under 28 U.S.C. 473(a)(2)(B) shall file with the party's complaint, answer or other pleading a Notice of Intent and a short statement setting forth the grounds for that determination. Each other party shall file a short response with its responsive pleading or motion, if one is required under the Federal Rules of Civil Procedure. If none is required, each other party shall file a short response within ten days following the filing of the Notice of Intent. At the time of the Rule 16 Scheduling Conference and as provided for in D. Del. LR 16.2, the Court shall determine whether the case is complex. The Court may also at a later point in the case make a determination of complexity upon application of a party, or sua sponte, should such a determination then appear warranted.
- (2) Considerations. In the determination of complexity, the Court may consider the following: (i) the type of action; (ii) the number of parties and their capacities; (iii) the nature and number of legal issues; (iv) the nature and extent of the factual issues and any difficulties involved in developing evidence; (v) the nature and extent of discovery, including the number of documents, the amount of third-party and foreign discovery, and the number of deposition witnesses and their availability and locations; (vi) the need for expert evidence; (vii) the nature and extent of issues to be determined pretrial; and (viii) any special difficulties in trial preparation.

(b) Special Case Management Provisions for Complex Cases. The following special case management provisions shall apply to complex cases:

- (1) Quarterly Reports. Beginning on a date fixed by the Court and as required by the Court, the parties shall file quarterly reports concerning the status of discovery and any motions or other procedural matters that are pending or anticipated.
- (2) Conferences. The Court shall schedule conferences, as appropriate, to discuss the issues in contention, monitor the progress of discovery, determine or schedule pending matters, and explore settlement.
- (3) Special Issues for Complex Cases at the Rule 16 Scheduling Conference. In addition to the issues set forth under Fed. R. Civ. P. 16, and under D. Del. LR 16.2, the following may be considered at the scheduling conference provided for in D. Del. LR 16.2: (i) ordering separate trials of certain issues or the staged resolution of issues; (ii) using the Magistrate Judge or a Special Master to monitor discovery and resolve disputes; (iii) limiting discovery, for example, the number of depositions, or prescribing the sequence of discovery without Court order; (iv) determining the means, and setting the schedule, of expert discovery; (v) limiting the use of expert testimony; (vi) limiting the time for presentation of evidence or the number of witnesses or exhibits at trial; (vii) using state-of-the-art or advanced technology in the courtroom; and (viii) providing for such other means as appropriate to expedite the just and cost-effective disposition of the controversy.

Source: Implementation of 1(b) and (c) of the Civil Justice Expense and Delay Reduction Plan of the United States District Court for the District of Delaware, effective December 23, 1991.

RULE 16.2. Initial Conference; Rule 16 Conference.

- (a) **Initial Conference.** Within 45 days after service of process upon all defendants, the Court shall notify counsel of the time for holding an initial conference, which may be by telephone, at which time the Court and counsel will discuss: (i) the nature of the case; (ii) any special difficulties that counsel foresee in prosecution or defense of the case; (iii) a proposed date for the conference contemplated by Fed. R. Civ. P. 16(b); and (iv) any requests for modification of the time for the mandatory disclosure required by Fed. R. Civ. P. 16(b) and 26(f).
- (b) **Rule 16 Scheduling Conference.** At the initial conference contemplated by subparagraph (a) hereof, the Court will schedule the pretrial conference required by Fed. R. Civ. P. 16(b). Matters to be considered at the Rule 16(b) conference will include, in addition to the items specified in Fed. R. Civ. P. 16(b) and 16(c), the following matters:
- (1) whether the case is complex;
 - (2) for complex cases, the special issues set forth in D. Del. L.R. 16.1 (b)(3);
 - (3) the possibility of settlement;
 - (4) whether the matter could be resolved by voluntary mediation or binding arbitration;
 - (5) 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
 - (6) the schedule applicable to the case, including a trial date, if appropriate.
- (c) **Trial Date.** Trial shall be scheduled to occur within 12 months, if practicable, and no later than 18 months, after the filing of the complaint, except if the Court certifies that, because of the complexity or demands of the case, the number or complexity of pending criminal cases, or otherwise, (i) such a trial date is incompatible with serving the ends of justice, or (ii) the trial cannot reasonably be held within that time.
- (d) **Certification and Settlement Discussion.** Prior to the Rule 16 Scheduling Conference, counsel shall confer to discuss settlement and at the time of the conference shall certify to the Court that they have done so.
- (e) **Attendance at Conference.** Unless otherwise directed by the Court, the conference described in subparagraph (b) of this Rule will be an in-person conference. If out-of-town counsel are expected to have a significant role in the prosecution or defense of the case, it is expected that out-of-town counsel will attend the conference provided for by subparagraph (b) of this Rule.

Source: Implementation of 1(d) of the Civil Justice Expense and Delay Reduction Plan of the United States District Court for the District of Delaware, effective December 23, 1991; implementation of Fed. R. Civ. P. 26 as amended in 1993.

RULE 16.3. Exemptions from Fed. R. Civ. P. 16(b) and 26(f).

The following categories of action are exempt from the scheduling conference and order requirement of Fed. R. Civ. P. 16(b), 26(f) and the initial conference requirement of Local Rule 16.2(a).

- (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 condemnation, or for foreclosure of mortgages or sales to satisfy liens of the United States;
- (d) bankruptcy appeals; provided, however, cases in which references are withdrawn by order of the District Court remain subject to the Rules;
- (e) 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 this District in connection with discovery, or testimony de bene esse, or for perpetuation of testimony for use in a matter pending or contemplated in a U.S. 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.
- (l) proceedings for execution on a judgment pursuant to Fed. R. Civ. P. 64 or 69 or 28 U.S.C. Chapter 127.

Source: Former Delaware Local Rule 2.3 with revisions.

RULE 16.4. Pretrial Conference and Procedure.

- (a) **Pretrial Conference.** Unless otherwise ordered all civil cases shall be set for a pretrial conference. Any party may apply for a pretrial conference to be held following the completion of discovery as provided in the pretrial order issued pursuant to Fed. R. Civ. P. 16(b), and D. Del. LR 72.1. Reasonable notice of the time and place of such pretrial conference shall be given by the Clerk of the Court by mail to counsel of record.
- (b) **Failure to Appear in Pretrial Conference or to Cooperate.** Unless otherwise ordered, counsel who will conduct the trial are required to appear before the Court for the pretrial conference. Should an attorney for a party fail to appear therefor or to cooperate in the preparation of the pretrial order specified in paragraph (d) hereafter, the Court, in its discretion, may in addition to the imposition of sanctions as provided in D. Del. LR 1.3 of these Rules, hold a pretrial hearing, ex parte or otherwise, and, after notice, enter an appropriate judgment or order.
- (c) **Attorney Conference Prior to Pretrial Conference.** Attorneys for all of the parties, before the pretrial conference, shall become thoroughly familiar with the case and shall confer with the other attorneys as long and as frequently as may be required to enable plaintiff's attorney to comply with paragraph (d) of this Rule and to permit each party to premark all exhibits. Unless otherwise ordered by the Court, at such conferences each attorney shall produce all documents, papers, books, accounts, letters, medical and doctors' reports, photostats, objects or other things proposed to be introduced in evidence, and, if requested, shall furnish copies to opposing counsel of documents, papers, etc., designated by opposing counsel, at the expense of the party represented by the opposing counsel. At the same time, each attorney shall consider and discuss all matters which may expedite the pretrial conference and the trial of the case. Nothing contained in this Rule shall preclude the Court in its discretion from requiring any party to produce for the inspection of another such additional documents, papers, books, accounts, letters, medical and doctors' reports, photostats, objects and other matters as the Court deems appropriate.
- (d) **Pretrial Order.** At least 3 business days prior to the pretrial conference, the attorney for the plaintiff shall file with the Clerk an original and one copy of a proposed pretrial order, signed by an attorney for each party, which will cover such of the following items as are appropriate:
- (1) A statement of the nature of the action, the pleadings in which the issues are raised (for instance, third amended complaint and answer) and whether counterclaims, cross-claims, 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. This should be as detailed as circumstances permit; as, for instance, in a negligence case whether the brakes on plaintiff's vehicle were defective in that they had to be pumped several times to take hold at the time of the accident; whether plaintiff drove through a stop light; etc.
 - (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 pre-marked exhibits, including designations of interrogatories and answers thereto, requests for admissions and responses, which each party intends to offer at the trial with a specification of those which will be admitted in evidence without objection, those that will be objected to and the Federal Rule of Evidence in support of said objection and the Federal Rule of Evidence relied upon by the proponent of the exhibit.

- (7) The names and addresses of all witnesses a party intends to call to testify either in person, or by deposition, at the trial and the specialties of experts to be called as witnesses.
- (8) A brief statement of what plaintiff intends to provide in support of plaintiffs' claims including the details of the damages claimed, or of other relief sought, as of the date of preparation of the draft order.
- (9) A brief statement of what the defendant intends to prove as a defense.
- (10) Statements by counter claimants or cross-claimants 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 therefor.
- (12) A certification that two way communication has occurred between persons having authority in a good faith effort to explore the resolution of the controversy by settlement.
- (13) Any other matters which the parties deem appropriate.
- (14) The concluding paragraph of the draft of the pretrial order shall read:

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

Where the case is to be tried to a jury, counsel should look to D.Del.L. Rules 47 and 51 for guidance on filing proposed voir dire, jury instructions, special verdict forms, and interrogatories.

Source: Former Delaware Local Rule 5.4 with revisions.

RULE 16.5. Requests for Extensions of Deadlines.

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: (1) the reasons for the request; and (2) 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.

Source: Implementation of 1(e) of the Civil Justice Expense and Delay Reduction Plan of the United States District Court for the District of Delaware, effective December 23, 1991, as amended, and Former Delaware Local Rule 16.5 with revisions.

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."

Source: Model Local Rule 23.1.

RULE 26.1. Form of Certain Discovery Papers and Permissible Number of Requests.

- (a) **Sequential Numbering.** The parties shall number each interrogatory, request, answer, response, or objection sequentially, regardless of the number of sets of interrogatories or requests.
- (b) **Permissible Number of Interrogatories, Document Requests, Requests for Admission and Depositions.** Unless otherwise ordered by the Court, there shall be no limitation upon the permissible number of document requests, requests for admission, or depositions, but no party shall propound more than 50 interrogatories to any other party. Each subpart shall be counted as a separate interrogatory.
- (c) **Form of Responses.** The party answering, responding, or objecting to written interrogatories, requests for production of documents or things, or requests for admission served pursuant to Rules 33, 34 or 36 of the Federal Rules of Civil Procedure may state any general objections and then shall quote each such interrogatory or request in full immediately preceding the statement of any answer, response, or objection thereto.

Source: Model Local Rule 26.1; former Delaware Local Rule 26.1 with revisions.

RULE 26.2. Confidentiality.

If any documents are deemed confidential by the producing party and the parties have not been able to agree on an appropriate protective order, until a protective order is in effect, disclosure should 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.

Source: Former Local Rule 26.2.

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) shall be not less than five days.

Source: Former Delaware Local Rule 4.3A (first sentence).

RULE 30.2. Deposition Motions.

Pending resolution of any motion under Fed. R. Civ. P. 26(c) or 30(d), neither the objecting party, witness, nor any attorney is required to appear at the deposition to which the motion is directed until the motion is ruled upon. The timely filing of a motion under either of these rules shall stay the discovery to which the motion is directed pending further order of the Court.

Source: Former Delaware Local Rule 4.3A (second and third sentences).

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 (1) the deponent, (2) counsel for any party and members and employees of their firms, (3) a party who is a natural person, (4) an officer or employee of a party which is not a natural person designated as its representative by its counsel, (5) counsel for the deponent, and (6) any consultant or expert designated by counsel for any party. If a confidentiality 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 any confidential document or information.

Source: Former Delaware Local Rule 4.1D.

RULE 30.4. Procedures for Videotape Depositions.

- (a) Beginning and Conclusion.** An oral deposition to be recorded by videotape shall begin by the operator stating on camera (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 witness, and (6) the party on whose behalf the deposition is being taken. The officer before whom the deposition is taken shall then identify himself or herself and swear the witness on camera. At the conclusion of the deposition the operator shall state on camera that the deposition is concluded. When the length of the deposition requires the use of more than one tape, the end of each tape and the beginning of each succeeding tape shall be announced on camera by the operator.
- (b) Timing by Digital Clock.** The deposition shall be timed by a digital clock on camera which shall show continually each hour, minute and second of each tape of the deposition.
- (c) Custody.** The attorney for the party taking the deposition shall take custody of and be responsible for the safeguarding of the videotape and shall permit the viewing of and shall provide a copy of the videotape or the audio portion thereof upon the request and at the cost of a party.
- (d) Trial or Hearing.** At a trial or hearing that part of the audio portion of a videotape deposition which is offered in evidence and admitted, or which is excluded on objection, shall be transcribed in the same manner as the testimony of other witnesses. The videotape shall be marked as an exhibit and shall remain in the custody of the Court.
- (e) Objections at Trial.** The trial judge shall prescribe the procedure for handling at trial objections to questions and answers on the tape. Suggested devices include, among other things, a previewing by the judge and counsel and withholding from evidence material to which objections are sustained; or having the operator turn off the audio portion of the tape at the trial or hearing to exclude objectionable material; or the use of "fast forward" by the operator at the trial or hearing to eliminate both the image and the sound of the objectionable material.

Source: Former Delaware Local Rule 4.2 with revisions.

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. Unless otherwise ordered by the Court, the depositions which have been filed pursuant to D. Del. LR 5.4(c) and Fed. R. Civ. P. 30(f)(1) may be unsealed by the Clerk.

Source: Former Delaware Local Rule 4.3B.

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

Any discovery motion filed pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure shall include, in the motion itself or in a memorandum, a verbatim recitation of each interrogatory, request, answer, response, and 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.

Source: Model Local Rule 37.2 with revised title.

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

If a party demands a jury trial by endorsing it on a pleading, as permitted by Rule 38(b) of the Federal Rules of Civil Procedure, a notation shall be placed on the front page of the pleading, immediately following the title 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).

Source: Model Local Rule 38.1 with revisions (Cf. former Delaware Local Rule 3.4).

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 will 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.
 - (4) Conduct proceedings under the Narcotics Addict Rehabilitation Act of 1966.

Source: Former Delaware Local Rules 2.2A and C.

RULE 40.3. Setting Cases for Trial.

Cases will be set for trial either by motion of counsel or sua sponte by the Court. If by motion, the motion shall contain a statement of the approximate time required for trial. Unless a written opposition stating the grounds thereof is served and filed within 5 days after the filing of a motion, the case may be scheduled for a pretrial conference and trial.

Source: Former Delaware Local Rule 5.3 with revisions.

RULE 41.1. Dismissal for Failure to Prosecute.

All cases are reviewed periodically as to status by the judge to whom they are assigned, and counsel shall be required to explain any delay. 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, enter an order dismissing such case unless good reason for the inaction is given. An application for a continuance shall not be deemed to be action precluding such dismissal. 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 application of this Rule.

Source: Former Delaware Local Rule 5.2 with revisions.

RULE 47.1. Voir Dire of Jurors.

- (a) **Voir Dire Conducted by the Court.** Unless otherwise ordered by the Court, the voir dire of the petit jury panel shall be conducted by the Court. Any party desiring special voir dire questions of the jury panel must file with the Clerk in triplicate 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 Clerk or designated courtroom deputy shall draw and announce the names of the panel as to which peremptory challenges may be exercised. Except when the Court has directed otherwise prior to the commencement of voir dire, 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.

If any party passes a peremptory challenge, no further challenge may be made by the passing party to the jurors impaneled at that time.

Source: New rule with portions of former Delaware Local Rule 5.5B with revisions.

RULE 48.1. Number of Jurors.

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

Source: Former Delaware Local Rule 5.5C with revisions.

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

- (a) Instructions 3 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, the attorney for the plaintiff shall file with the Clerk, in triplicate, written instructions reasonably anticipated to be made upon which they all 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 the plaintiff(s) or by the defendant(s).
- (c) Special Verdict or Interrogatories 3 Days Before Pretrial Conference.** Any party desiring a special verdict or interrogatories, as provided for in Fed. R. Civ. P. 49, must file with the Clerk in triplicate a suggested form of special verdict or suggested interrogatories at least 3 business days before the pretrial conference.

Source: Former Delaware Local Rule 5.5A-B with revisions.

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 in whose favor a judgment or decree for costs is awarded or allowed by law, and who claims costs, shall within 10 days after the time for appeal has expired or within 10 days after the issuance of the mandate of the appellate court, serve on the attorney for the adverse party and file with the Clerk of this Court 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) Such bill of costs shall distinctly set forth each item of cost so that the nature of the charge can be readily understood and otherwise shall comply with the provisions of 28 U.S.C. § 1924.
- (3) Within 10 days after service by any party of a bill of costs, any other party may serve and file specific objections in writing to any item, setting forth the grounds therefor.
- (4) Not less than 20 days after receipt of a party's bill of costs, the Clerk, after consideration of any objections thereto, 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 (which allow clerk's fees, marshal's fees and docket fees, among other things), such other provisions of law as may be applicable and the remaining paragraphs of subpart (b) of this Rule.
- (2) Fees Incident to Transcripts -- Trial Transcripts. The cost of the originals of a trial transcript, a daily transcript and of a transcript of matters prior or subsequent to trial furnished the Court is taxable, when either 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 Cost. The reporter's reasonable charge for the original of a deposition and the reasonable cost of taking and presenting a videotaped deposition at trial are taxable only where a substantial portion of the deposition is admitted into evidence at trial or otherwise 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. Witness fees for a deposition are taxable at the same rate for attendance at trial where the cost of the deposition is taxable. The witness need not be under subpoena. A reasonable fee for a necessary interpreter at the taking of such a deposition is also taxable.

- (4) Witness Fees, Mileage and Subsistence. The rates for witness fees, mileage and subsistence are fixed by statute (see 28 U.S.C. § 1821). Such fees are taxable even though the witness does not take the stand, provided the witness necessarily attends the Court. Such fees are taxable even though the witness attends voluntarily upon request and is not under subpoena. 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 a competent 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. Cost of one copy of a document is taxable when admitted into evidence in lieu of an original which is either not available for introduction in evidence or is not introduced at the request of opposing counsel. The cost of copies submitted in lieu of originals because of the convenience of the offering party or counsel is not taxable. 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 competent 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 which are necessarily filed.

The cost of patent file wrappers and prior art patents is 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 is 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 necessarily 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) **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 Federal Rules of Civil Procedure 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. A motion to review the decision of the Clerk in the taxation of costs in accordance with Fed. R. Civ. P. 54(d) shall particularly specify the ruling of the Clerk excepted to and no others will be considered on the hearing, except that the opposing party may, within 3 days of service of the motion, file a cross motion for review of the decision of the Clerk.

(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 the District Court of a writ of execution to recover costs taxed by the appellate court.

Source: Former Delaware Local Rule 6.1, with revisions.

RULE 54.2. Jury Cost Assessment.

Whenever any civil action scheduled for jury trial is settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, juror costs, including Marshal's fees, mileage and per diem, shall be assessed equally against the parties and their counsel or otherwise assessed as directed by the Court, unless the Clerk's Office is notified at least 3 full business days prior to the day on which the action is scheduled for trial.

Source: Former Delaware Local Rule 5.5D.

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 was 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)).

Source: Former Delaware Local Rule 54.3 with revisions.

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 before entering such judgment the following documents shall be filed:

- (1) A notice directed to the Clerk which shall contain (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 completely legible photocopy for the Clerk.
 - (3) In the case of a debtor who was a non-resident at the time of the execution of the original document authorizing confession of judgment, the plaintiff shall also file the affidavit required by 10 Del. C. § 2306(c) together with a completely legible 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 record the time of lodging and place an index card in the Judgment File with a notation of the tentative nature of entry. Subsequently, the Clerk shall make a notation 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 mailings 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 court 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:

Attorney's Fees:

Plus Interest and Costs:

- (2) That the plaintiff alleges the debtor has waived any rights to notice and hearing prior to the entry of judgment.
- (3) That the entry of such a court 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 the debtor's personal property and real estate and ultimately sell at public auction the debtor's personal property and real estate for credit against the debt.
- (4) That in default of payment in appropriate cases the Marshal may seize some portion of the debtor's wages for credit against the debt.

- (5) That the debtor may file with the Court, giving an address for the Clerk of the Court, a notice of objection to the entry of judgment by a date at least two weeks following the date on which the notice letter for the entry of judgment was mailed. When the notice of objection is filed, a hearing will be scheduled by the Court. At said 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) That 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 two weeks following the last publication. An affidavit of publication shall be filed by the plaintiff with the Clerk.
- (g)
 - (1) Judgment shall be entered against a debtor who fails to object after service as provided for herein.
 - (2) If the debtor objects, a hearing date will be scheduled by the Court. At said 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.
 - (c) When a judgment is obtained pursuant to this Rule, a notation to that effect shall then be entered in the judgment records and indices 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 notice 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 record the time of the filing of 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. Judgment creditor has requested the United States District Court for the District of Delaware 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. That the debtor may file with the Court, giving an address for the Clerk of the Court, a notice of objection to the issuance of the execution process by a date at least two weeks following the date on which the notice letter for the issuance of the execution process was mailed. When the notice of objection is filed, a hearing will be scheduled by the Court. At said hearing the debtor may raise any appropriate defenses.
 - D. That 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. That 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. That if the debtor has any questions about these matters a lawyer 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 two weeks following the last publication. An affidavit of publication shall be filed by the plaintiff with the Clerk.
- (6) A. 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.
- B. If the debtor objects, a hearing date will be scheduled by the Court.
- C. At the conclusion of the hearing, the Court shall make such orders as are appropriate, including for the assessment of costs.

Source: Former Delaware Local Rule 7.2 with revisions.

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 completely legible 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. That 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).

Source: Former Delaware Local Rule 7.3, with revisions.

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

- (a) **Cases Not Covered by Fed. R. Civ. P. 67 -- Registry Accounts.** In all cases not covered by Fed. R. Civ. P. 67, money delivered into the custody of the Court shall be kept in its 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.** In all cases where money is to be invested at interest pursuant to 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 into an interest bearing account with a designated local depository. It is recommended that the Clerk's Office be contacted for information and copies of proposed orders for depositing funds with the Court.
- (c) **Other Deposit Accounts.** A party who wishes its funds to be deposited into another type of account or financial institution than that used by the Court in paragraphs (a) and (b) shall prepare a proposed order to be submitted to the Court which specifies the amount to be invested, the type of investment, the rate of interest, the length of time the money should be invested with reinvestment instructions and the name of the institution where the money is to be deposited. Said institution must meet the requirements set forth in Treasury Circular No. 176. If the Court does not accept the terms of the proposed order, the Clerk shall deposit the funds into an interest-bearing account or accounts designated by the Court.
- (d) **Money Invested at Interest.** In all cases in which money is to be 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 named in the court order depositing funds has pledged sufficient collateral pursuant to Treasury Circular No. 176, the Clerk shall have five (5) 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.
- (e) **Unclaimed Moneys.** All moneys deposited into the Court whose ownership has been adjudicated or is not in dispute and has been unclaimed by the person entitled thereto for a period of one year shall be deposited into the Treasury of the United States unless otherwise ordered by the Court. Small unclaimed balances (\$100 or less) which are received by the Court shall automatically be deposited into the Treasury Account for Unclaimed Moneys without regard to the one year limitation.
- (f) **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, as authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office, 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 of the Court shall refund the registry fee to those agencies or officials of the United States upon application filed with the Court.

Source: Former Delaware Local Rule 9.6 with revisions.

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 provide, on a separate paper attached to the motion seeking withdrawal of the funds, the social security number or tax identification number of the ultimate recipient of the funds. This separate paper, without retention of a copy by the Court, shall be forwarded by the Court directly to the institution holding the money.

Source: Model Local Rule 67.3.

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.

Source: New rule proposed by the Court.

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.

Source: Former Delaware Local Rule 6.2 with revisions.

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.

Source: Model Local Rule 71A.1.

RULE 72.1. Magistrate Judge; Pretrial Orders.

The 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 the 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 non-jury).
- (2) Nondispositive Motions. Hear and determine any pretrial motion or other pretrial matter, other than those motions specified in subsection (a)(2) 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. Issuing 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. Conducting proceedings for the collection of civil penalties of not more than \$200 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. § 1484(d).
 - C. Conducting examinations of judgment debtors, in accordance with Fed. R. Civ. P. 69.
 - D. Reviewing petitions in civil commitment proceedings under Title III of the Narcotic Addict Rehabilitation Act.
 - E. Issuing 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.
 - F. Serving as special master in an appropriate civil action pursuant to 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53. The 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.

- G. Administering oaths and affirmations and taking acknowledgments, affidavits, and depositions.
- H. Supervising proceedings conducted pursuant to 28 U.S.C. § 1782 with respect to foreign tribunals and to litigants before such tribunals.
- I. Adjudicating nondispositive sanctions under the Federal Rules of Civil Procedure, Rules of this Court or applicable statutes.

(b) Duties in Proceedings for Postconviction Relief. The 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, the 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.

Source: Revised former Delaware Local Rule 72.1.

RULE 73.1. Magistrate Judge; Trial by Consent.

Where the parties consent, the 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, the 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 the Magistrate Judge conduct any or all proceedings in the case and order the entry of a final judgment. Such notice shall be mailed to the parties with the notice of the first pretrial conference.
- (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 the Magistrate Judge.
- (c) The consent form shall be filed with the Clerk not later than 10 days after the date of the final pretrial conference.
- (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, the 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.

Source: Revised former Delaware Local Rule 72.1, with revisions.

RULE 77.1. Hours of the Clerk's Office.

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

Source: New rule.

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 Federal Rules of Civil Procedure, 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 20 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.

Source: Former Delaware Local Rule 3.6, with revisions.

RULE 79.1. Custody and Return of Exhibits.

- (a) **Custody.** The Clerk of the Court 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,

 - (a) 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
 - (b) 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.** The conclusion of an action shall mean at the time of the filing of a stipulation waiving and abandoning the right to an appeal, and to a rehearing or new trial, or upon expiration of the time for an appeal, or upon final disposition of the case after an appeal.

Source: Former Delaware Local Rule 5.1, with revisions.

RULE 79.2. Custody of Files and Withdrawal.

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 a judge and a proper receipt signed by the person obtaining the record or paper. No such order will be entered except in extraordinary circumstances.

Source: Former Delaware Local Rule 9.3.

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.

Source: Model Rule 80.1 (see also former Delaware Local Rule 9.1).

RULE 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.

Source: Former Delaware Local Rule 2.5.

RULE 81.2. Cases Transferred or Removed to this Court.

In any case transferred or removed to this Court, within twenty 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.

Source: Former Delaware Local Rule 9.4 with revisions.

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.

Source: Former Delaware Local Rule 9.5.

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 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 demean 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 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. However, unless 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.
- (d) **Association with Local Counsel Required.** An attorney not admitted to practice by the Supreme Court 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, upon whom all notices, orders, pleadings and other papers filed in the case shall be served and who shall be required to sign all papers filed with the Court, where the signature of an attorney is required, and attend proceedings before the Court, Clerk, United States Magistrate, Bankruptcy Judge, Auditors, Trustees, Receivers, or other officers of the Court.
- (e) **Time to Obtain Local Counsel.** A party not appearing pro se shall obtain representation by a member of the Bar of this Court or have its attorney associate with a member of the Bar of this Court in accordance with D. Del. LR 83.5(d) within thirty 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).

Source: Former Delaware Local Rule 8.1 with revision.

RULE 83.6. Attorney Discipline.

(a) Attorneys Convicted of Crimes.

- (1) Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any Court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, the Court shall enter an order immediately suspending that attorney, 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, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the Court may set aside such order when it appears in the interests of justice so to do.
- (2) The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, 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."
- (3) A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.
- (4) Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Court shall in addition to suspending that attorney in accordance with the provisions of this Rule, also refer the matter to counsel for the institution of a disciplinary proceeding before the Court in which 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.
- (5) 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.
- (6) An attorney suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement 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 this Court of such action.
- (2) 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, 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 (4) hereof that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.
- (3) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this Court shall be deferred until such stay expires.

- (4) Upon expiration of 30 days from service of the notice issued pursuant to the provisions of (2) above, this Court shall impose the identical discipline unless the respondent- attorney demonstrates, or this Court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:
 - A. that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
 - B. that 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. That the imposition of the same discipline by this Court would result in grave injustice; or
 - D. that the misconduct established is deemed by this Court to warrant substantially different discipline.

Where this Court determines that any of said elements exist, it shall enter such other order as it deems appropriate.

- (5) 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.
- (6) This Court may at any stage appoint counsel to prosecute the disciplinary proceedings.

(c) Disbarment on Consent or Resignation in Other Courts

- (1) Any attorney admitted to practice before this Court who shall be disbarred on consent or resign 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 while an investigation into allegations of misconduct is pending, shall, upon the filing with this Court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this Court and be stricken from the roll of attorneys admitted to practice before this Court.
- (2) Any attorney admitted to practice before this Court shall, upon being disbarred on consent or resigning 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 while an investigation into allegations of misconduct is pending, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

(d) Standards for Professional Conduct.

- (1) For misconduct defined in these Rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be disbarred, suspended from practice before this Court, reprimanded or subjected to such other disciplinary action as the circumstances may warrant.
- (2) Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Model Rules of Professional Conduct of the American Bar Association, subject to such modifications as may be required or permitted by Federal statute, court rule or decision of law, shall constitute misconduct and be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

(e) Disciplinary Proceedings.

- (1) When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a Judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the Judge shall refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

- (2) Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent-attorney because sufficient evidence is not present, or because there is pending another proceeding against the respondent-attorney, the disposition of which in the judgment of the counsel should be awaited before further action by the Court is considered or for any other valid reason, counsel shall file with the Court a recommendation for disposition of the matters, whether by dismissal, admonition, deferral or otherwise setting forth the reasons therefor.
- (3) To initiate formal disciplinary proceedings, counsel shall obtain an order of this Court upon a showing of probable cause requiring the respondent-attorney to show cause within 30 days after service of that order upon that attorney, personally or by mail, why the attorney should not be disciplined.
- (4) Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation, this Court shall set the matter for prompt hearing before one or more Judges of this Court, provided, however, that if the disciplinary proceeding is 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 three Judges eligible to serve, or the Chief Judge is the complainant, by the Chief Judge of the Court of Appeals for this Circuit.

(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:
 - A. the attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;
 - B. the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline the nature of which the attorney shall specifically set forth;
 - C. the attorney acknowledges that the material facts so alleged are true; and
 - D. the attorney 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 three 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 three 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 five 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 one 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 three 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 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 petitioner has been suspended or disbarred for five years or more, reinstatement may be conditioned, in the discretion of the Judge or Judges before whom the matter is heard, 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 one 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. Service of any other papers or notices required by these Rules shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at the address shown on the records of this Court or to counsel or the respondent's attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding.
 - (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 of this Court 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 of this Court 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 of this Court 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 person 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 of this Court shall, within ten 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 of this Court shall, likewise, 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.

Source: Revision of Former Rule 83.6 which is based on the Model Federal Rules of Disciplinary Enforcement as approved by the Judicial Conference of the United States on September 21, 1978 with a recommendation that they be adopted by the courts on an optional basis.

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 attorney 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 ten days before the motion is presented, by registered or certified mail addressed to the client's last known address.

Source: Former Delaware Local Rule 8.3 with revision.

