

OPERATING PROCEDURES FOR LITIGANTS
IN THE COURT OF CHANCERY

I. PLEADINGS AND SERVICE

(1) Special Process Servers: The following uniform procedure applies to all persons serving process for Court of Chancery matters.

- i. All persons, other than the Sheriff, wishing to serve process for Court of Chancery matters must be registered with the Court, which registration will be renewable annually on May 1 of each year.
 - a. Individuals wishing to become designated as special process servers must complete the Application of Individual Seeking Designation as Special Process Server and accompanying certification, in the form attached to the Court Rules.
 - b. The Applicant, or the company or law firm that employs them, must pay an annual registration fee of \$300 and an annual renewal fee of \$300, plus \$50 per person for each person the applicant seeks to register as a special process server.
 - c. Payment may be remitted by check to the Register in Chancery Office Administrator.
- ii. Motions and proposed orders for appointment of a special process server are no longer necessary and will not be accepted.
 - a. In each case in which a lawyer or party wishes the Register in Chancery to prepare a summons, a letter of instruction should be filed with the Register in Chancery with sufficient information to allow the Register in Chancery to prepare the summons.
 - b. Copies of the approved Application for Designation of a Special Process Server must be carried by the process server to demonstrate authorization by the Court to serve process.
- iii. In all cases, parties may choose to forego use of a special process server, and instead may file a praecipe and use the Sheriff to serve process.

II. e-FILING PROCEDURES

(1) Registration and fees for eFiling

- i. Any person intending to use eFile must register with File & Serve Xpress™ at www.fileandserveexpress.com
 - a. Attorneys adding themselves to a civil action (“C.A.”) via File & Serve Xpress’s “Case & Party Management” shall attach documentation on firm letterhead with a full signature block, including their address and Delaware bar number.
 - b. Attorneys adding themselves to a civil miscellaneous action (“C.M.”) must fax an entry of appearance to the Register in Chancery in the county in which the case was filed. The entry of appearance shall include a full signature block, including the attorney(s)’ address and Delaware bar number.
 - c. It is the obligation of registered users to maintain proper delivery information within the File & Serve Xpress system. Parties or attorneys who register to use eFiling shall notify File & Serve Xpress within 10 days of any change in firm name, delivery address, fax number, or e-mail address.
- ii. Filing Fees
 - a. There are several parts to the fee structure for eFiling. These fees will be billed through File & Serve Xpress using the billing arrangements established during the registration process. The parts are:
 - i. The routine filing fee and court costs for various pleadings (*See* Court of Chancery Rule 3).
 - ii. A court technology fee of 50 cents per document (Rule 79.1).
 - iii. The security assessment fee of \$10 per initiating filing.
 - iv. File & Serve Xpress fees
 - v. Pro Hac Vice Fees (Rule 170(c)(vi)), technology dispute filing fees.
 - b. The Court of Chancery Rules (the “Rules”) impose a fee for mediations. Those fees will be billed by the Register in Chancery directly to the parties and will not be included in the File & Serve Xpress billing process.

(2) Documents that must be electronically filed; exceptions

As provided in Rule 79.1, each document that must be filed under the Rules shall be eFiled unless otherwise ordered by the Court, except that:

- i. Paper courtesy copies of pleadings, briefs, and other documents should be delivered to the presiding judge as provided in the Court of Chancery's Guidelines for Practitioners, available at <http://courts.delaware.gov/chancery/guidelines.stm>
- ii. Survey maps, building plats, and similar descriptive exhibits that cannot be scanned due to size shall be submitted to the Register in Chancery, but the submitting party also shall eFile notice of the submission and serve all parties with such notice.
- iii. Supporting documentation for accountings relating to minor or adult guardianships established in the Court of Chancery, such as bank statements, receipts, and cancelled checks, should be delivered in paper copy directly to the Register in Chancery.

(3) Form of Documents Electronically Filed

- i. Format
 - a. Each electronically filed document shall be filed in Word, WordPerfect, TIFF, or .PDF format, except that each electronically filed brief, motion, and proposed order shall be filed in editable Word or WordPerfect format. To the extent practicable each document shall be formatted in accordance with the applicable rules governing formatting of paper documents, and in such other and further format as the Register in Chancery may require from time to time.
 - b. A document may exceed page limitation rules to a maximum of two (2) additional pages when the additional pages are attributable to the electronic conversion or filing process.
 - i. Any Word, WordPerfect or TIFF file will automatically be converted to .PDF format by File & Serve Xpress, but the original format also will be available for downloading.
 - ii. The official record of the court is the .PDF version.
 - c. The size of any eFiled document shall not exceed 10 megabytes.
 - d. The size of any eFile transaction shall not exceed 25 megabytes.

- ii. Title of Documents. The title of each electronically filed document shall include:
 - a. Party or parties filing the document;
 - b. Descriptive title of the document;
 - c. Party or parties against whom relief, if any, is sought; and
 - d. Description of the relief sought (*e.g.* Defendant ABC Corporation’s Motion for Summary Judgment against Plaintiff Jones).
- iii. Filing Related Documents
 - a. All electronically filed documents relating to a single pleading or paper shall be “electronically stapled” using the “main” and “supporting” functionality of the eFiling system. Pleadings seeking judicial action such as a proposed order shall be filed separately as supporting documents. In this way, multiple related documents, although filed separately, are logically linked together and identified as a single transaction.
 - b. All eFiled documents, papers, or pleadings directly relating to a previously filed document, paper, or pleading shall be linked to the previously filed document, paper, or pleading using the “linked to” feature in the File & Serve system.
 - c. Failure to properly link documents will result in rejection of the filing by the Register in Chancery.

(4) Time of eFiling and Service

- i. Any document filed electronically by 11:59 pm ET shall be considered eFiled with the Register in Chancery once the transmission is successfully completed (“authorized date and time”) as recorded on the File & Serve Xpress system.
- ii. An eFiled document is deemed served only upon selection of parties to be served and submission according to the File & Serve procedures. The electronic service of a pleading or other document in the File & Serve system is considered valid and effective service on all parties and shall have the same legal effect as conventional service of an original paper or document. The filing party may conventionally serve a paper copy of an electronically filed document on parties not subscribing to the File & Serve system or may select the proper options in File & Serve to serve non-

subscribing parties via facsimile or U.S. Mail. The associated filing receipt will list the parties selected for service and give proof of date, time, and method of service.

(5) Public Access to the Docket

- i. The Register in Chancery (or its designee) in each county shall make a public access terminal available to interested parties to allow access to the Court's electronic case record in all eFiled cases, subject to the Court's rules regarding confidential filings under Rule 5.1, and subject to the rules regarding the confidentiality of civil miscellaneous actions (*see* Court of Chancery Rule 90).
- ii. Documents filed in civil actions that should receive confidential treatment under Rule 5.1 shall be identified as "Confidential, electronic" in the File & Serve Xpress system. These documents will be segregated from any transmission of case history filings, to ensure the integrity of such documents beyond those who are a party to the case. A party that is not served with a Confidential, electronic document will not be able to open or view the document on the File & Serve Xpress system.
- iii. Copies made from the Court's electronic case records shall be printed by the Register in Chancery's office and copying fees will be charged in accordance with Rule 3.

(6) Additional instructions for eFiling particular types of pleadings and other documents may be found on the Court of Chancery's website, at <http://courts.delaware.gov/Help/Proceedings/chancery.stm>

III. GUARDIANSHIP PROCEEDINGS.

- (1) Appraisers. Appraisers appointed by the Court to assess the disabled person's real property shall collect payment at the time of settlement. The Register's Office shall require that the independent appraiser appointed by the Court under 12 *Del. C.* § 3951 shall submit an invoice for the appraisal to the petitioning attorney or *pro se* party and also to the Office of the Register in Chancery. If the real property is not sold within six months of the date the appraisal is filed, the Court shall collect the appraisal fee as court costs from the petitioning party. In any case where payment of the court costs would result in a hardship to the disabled person or petitioner, the petitioner should so indicate in the petition, and the Chancellor, or any Vice Chancellor or Master in Chancery, may make such departure from this Operating Procedure as justice requires.

- (2) Co-guardians. When co-guardians are appointed by the Court, unless the parties specify otherwise, the Final Order of the Court shall state that “[Name inserted] and [name inserted], acting[jointly] or [individually], are hereby appointed co-guardians of the person and property of [name of disabled person inserted].”
- (3) Guardianship Accounts. All guardianship accounts established for minors or disabled persons must be titled in such a way that clearly states that withdrawals may not be made without Court order.
- i. The proposed final order filed with a guardianship petition should specify the proposed title for the guardianship account, which shall follow the following sample:

COURT OF CHANCERY GUARDIANSHIP ACCOUNT FOR
JOHN DOE, [MINOR/DISABLED PERSON], JANE DOE,
GUARDIAN.

WITHDRAWS ONLY BY ORDER OF THE COURT

- ii. An alternate title may be requested upon a showing that a different title is appropriate or necessary under the circumstances.
- iii. The final order signed by the Court shall specify how the account must be titled, and that order shall be followed by the banking institution at which the account is established.

IV. IN FORMA PAUPERIS FINANCIAL ELIGIBILITY GUIDELINES

- (1) When *in forma pauperis* applicants have income and assets at or below 125% of the poverty level as published in the Code of Federal Regulations, 45 C.F.R. Pt. 1161, their applications shall be approved. At income or asset levels above 125% of the poverty level, the judicial officer may use discretion in granting all or part of the application, if the applicant has unusual expenses or debts in relation to their income.
- (2) In determining the maximum allowable assets, the following shall be excluded:
- i. Principal residence and surrounding land;

- ii. Reasonable equity value in work-related equipment that is essential to employment or self-employment of an individual;
- iii. Motor vehicles used for transportation with equity values of up to \$10,000;
- iv. Household goods;
- v. Personal belongings with a fair market value of less than \$25,000;
- vi. Life insurance with a maximum cash surrender value of \$8,000;
- vii. Pension funds and dedicated retirement funds; and
- viii. Burial plots.

V. IN FORMA PAUPERIS PROCEDURES

- (1) Applications and affidavits to proceed *in forma pauperis* from non-inmates shall be presented to the Master in Chancery assigned to review such applications. The Master may:
- i. Enter an order waiving all fees and court costs and directing the complaint be filed as a new case and given a number.
 - ii. Enter an order directing certain fees and court costs be paid and directing the complaint be filed as above.
 - iii. Enter an order establishing a schedule for payment of fees and court costs and directing the complaint be filed as above.
 - iv. Enter an order denying the application and directing payment of fees by a specified date.

A form of such an order is Attachment A. Such an order shall be considered a draft report to which the non-inmate may file an exception under Chancery Court Rule 144. If no exception is filed in a timely manner, the report shall be deemed final, and the non-inmate shall be deemed to have stipulated to the approval and entry of the report as a final order of this Court.

- (2) Applications and affidavits to proceed *in forma pauperis* from inmates shall be presented to the Master in Chancery assigned to review such applications. The Master may:
- i. Direct the amount of fees and costs to be paid and that the inmate shall pay 20 percent of the average daily balance of that inmate's account for the

previous six months or since the time of incarceration, whichever period of time is less.

- ii. Determine whether, based upon the affidavit, the inmate should be ordered to pay more than 20 percent.
- iii. Establish a schedule for payment.
- iv. Order that the pleading be filed as a new case and given a number, if any of the above is ordered.
- v. Enter an order denying the application and directing payment of fees by a specified date.

A form of such an order is Attachment B. Such an order shall be considered a draft report to which the inmate may file an exception under Chancery Court Rule 144. If no exception is filed in a timely manner, the report shall be deemed final and the inmate shall be deemed to have stipulated to the approval and entry of the report as a final order of the Court. The Register in Chancery shall then forward a copy of the payment order to the institution where the inmate is housed.

- (3) After establishing the amount of fees and costs to be paid, and once the complaint has been filed and assigned an appropriate number, the Master shall review the complaint and issue such orders as authorized or required by Chapter 88 of Title 10 of the Delaware Code and such other applicable statutes (hereinafter, the "IFP Statute").

A form of such order is Attachment C. If the Master dismisses the complaint, the order of dismissal shall be considered a draft report to which the inmate or non-inmate may file an exception under Chancery Court Rule 144. If no exception is filed in a timely manner, the order dismissing the complaint along with any written decision by the Master shall be presented to the Chancellor for review and final order.

- (4) If the Master does not dismiss the complaint upon initial review under the IFP Statute, the Master shall order that service of process issue. A form of such order is Attachment C. A form of such order in the case of a civil miscellaneous matter is Attachment D.
- (5) Any judicial officer to whom the case is assigned may subsequently dismiss the complaint and issue such other orders as are authorized or required under the IFP Statute.

(6) The Court retains jurisdiction over the *in forma pauperis* litigant after dismissal or judgment is entered against such litigant for purposes of collecting all fees and costs.

(7) If the application to proceed *in forma pauperis* is denied, the Register in Chancery shall notify the applicant that:

- i. The application has been denied.
- ii. The amount of the filing fee due.
- iii. The filing fee must be paid by a specified date (not less than 15 calendar days away) from the date of the notice and, if not paid by then, the matter will be considered closed.

(8) If an application to proceed *in forma pauperis* is filed in a matter that already is assigned to a judicial officer, the judicial officer assigned to the case shall be informed of such application. If the judicial officer assigned to the case is a Master in Chancery, that Master shall review the application. If the case is assigned to the Chancellor or a Vice Chancellor, a Master shall review the application in the first instance, after alerting the assigned judicial officer.

Attachment A. Order on Application to Proceed in forma pauperis (non-inmates).

ORDER ON APPLICATION TO PROCEED

IN FORMA PAUPERIS

(Non-Inmates)

The Court having considered the application to proceed *in forma pauperis* and the affidavit filed in connection therewith,

IT IS ORDERED:

_____ The application is **GRANTED**. The applicant shall:

_____ Pay no fees or court costs; or

_____ Pay certain fees and court costs, namely: _____

_____ Pay such fees and court costs:

_____ By _____

\$_____ per month

The complaint/petition shall be filed.

_____ The application is **DENIED**. The filing fee of \$_____ is due (not less than 15 calendar days from the date of notice). If not paid by then, the matter will be considered closed or the filing will be rejected.

Master in Chancery

Dated:

ATTACHMENT B. Order on Application to Proceed in forma pauperis (inmates).

ORDER ON APPLICATION TO PROCEED

IN FORMA PAUPERIS

(Inmates)

The Court having considered the application to proceed *in forma pauperis* and the affidavit filed in connection therewith,

IT IS ORDERED:

_____ The application is **GRANTED**. The applicant shall:

_____ Pay twenty percent (20%) of the applicant's average daily balance in the applicant's inmate account for the previous six months or time of incarceration, whichever period of time is less.

_____ Pay _____ (Dollars or more than 20% of account).

_____ No fee or court costs to be paid.

The complaint/petition shall be filed.

_____ The application is **DENIED**. The filing fee of \$_____ is due (not less than 15 calendar days from the date of notice). If not paid by then, the matter will be considered closed or the filing will be rejected.

Master in Chancery

Dated:

ATTACHMENT C. Order upon Initial Review of Complaint.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

v.)
)
) **Civil Action No.**
)
)

ORDER UPON INITIAL REVIEW OF COMPLAINT

The Court having reviewed the complaint:

1. ___ IT IS ORDERED that the complaint is **DISMISSED** under 10 *Del. C.* § 8803(b) because:

___ The complaint was factually frivolous.

___ The complaint was legally frivolous.

___ The complaint was malicious.

___ It plainly appears from the face of the complaint that the plaintiff is not entitled to relief.

For the following reasons: _____

Service of process shall not issue.

2. ___ The complaint is **NOT DISMISSED** and service of process shall issue.

IT IS SO ORDERED.

Dated:

Master in Chancery

ATTACHMENT D. Order upon Initial Review of Petition.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

v.)
)
) **Civil Misc. No.**
)
)

ORDER UPON INITIAL REVIEW OF PETITION

The Court having reviewed the petition:

1. ___ IT IS ORDERED that the petition is **DISMISSED** under 10 *Del. C.* § 8803(b) because:

_____ The petition was factually frivolous.

_____ The petition was legally frivolous.

_____ The petition was malicious.

_____ It plainly appears from the face of the petition that the petitioner is not entitled to relief.

For the following reasons: _____

2. _____ The petition is **NOT DISMISSED**.

IT IS SO ORDERED.

Dated:

Master in Chancery