GUIDELINES TO HELP LAWYERS PRACTICE~~PRACTICING~~ IN THE COURT OF CHANCERY

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GUIDELINES TO HELP LAWYERS PRACTICE IN THE COURT OF CHANCERY

These Guidelines are intended to ensure that all attorneys are aware of the expectations of the Court and to provide helpful guidance. ~~in practicing in our Court.~~ These Guidelines are not binding Court rules. They~~Rules, they~~ are intended as a practice aid that will allow parties~~our excellent Bar~~ to litigate~~handle~~ cases ~~even more~~ smoothly and to minimize disputesover procedural issues.

~~process, rather than the substantive merits.~~ These Guidelines do not establish a "standard of conduct" or a "standard of care" by which the performance of parties~~attorneys~~ in a given case can or should be measured. They~~The Guidelines are not intended to be used as a sword to wound adversaries. To the contrary, they~~ are intended to reduce conflicts ~~among counsel and parties~~ over non-merits issues. A particular situation may call for the parties to proceed~~, and allow them to more efficiently and less contentiously handle their disputes~~ in a different manner. Likewise, a judicial officer may prefer~~this Court. Accordingly, the Court does not intend that these Guidelines, or the sample forms attached hereto, be cited as authority~~ in the context of a given case that the parties proceed in a different manner~~any dispute before the Court~~.

These Guidelines~~These guidelines reflect some suggested best practices for moving cases forward tocompletion in the Court of Chancery. They have been developed jointly by the Court and its Rules Committee to provide help to practitioners. The members of the Court and its Rules Committee recognize that a particular situation may call for the parties to proceed in a different manner. Likewise, a member of the Court may prefer in the context of a given case that the parties proceed in a different manner.~~

~~The guidelines~~ are subject to change. Please check the Court of Chancery website to make sure you have the most recent version. The Court maintains a separate set of guidelines regarding best practices for e-Filing~~filing~~, which are also available on the Court's website.

Sample forms are attached to these Guidelines as exhibits. Downloadable and editable rich-text-file versions are available on the Court of Chancery website.

~~I.~~ EXPECTATIONS~~GUIDELINES~~ FOR COURTROOM~~PRACTITIONERS FOR IN-COURT~~ HEARINGS AND TRIALS ~~IN THE COURT OF CHANCERY~~

A.

1. Hearing Protocols

   a. ~~The~~ Court ~~of Chancery is a court~~ of Chancery ~~equity and the~~ proceedings ~~here~~ are important to the parties. The judges of this Court and all of its staff take their duties seriously. A court proceeding is a dignified occasion.~~and important one.~~ Please act accordingly and with the respect that our system ofjustice deserves.

   b. The Court may decide a motion without holding argument. The parties should contact chambers to advise whether any party requests argument or whether the parties agree to submit the motion for decision without argument.

c. Because the judicial officers share courtrooms, court reporters, and other critical resources, most hearings will last no more than ninety minutes. In advance of thehearing, counsel shall confer regarding the allocation of time and shall organize their presentations accordingly. Counsel should not feel compelled to use all of the available time. Any party believing that the issues to be addressed at the hearing warrant more than ninety minutes must seek more time when scheduling the hearing. Before requesting additional time for any hearing, the requesting party shall confer with the other parties in the action to determine their position and report that position to the Court. If counsel agree on the amount of time, thenthe request can be made to the judicial assistant when scheduling the hearing. If counsel disagree, then the request should be made in a single, joint letter that setsforth each side's position. The Court will be receptive to reasonable requests for extra time when the situation warrants, such as a post-trial argument involving a large record. If the Court asks the parties to circulate a letter confirming the dateand time of the hearing, then the letter should document the amount of time scheduled for the hearing.

d. Arrive early. The Court strives to start on time. You need time to set up. Before the hearing, the Court clerks and reporters need to obtain information from and provide information to counsel.

e. Everyone should stand whenever the judge enters or leaves the Courtroom. Individuals should stand when introduced to the Court. Individuals should stand at the podium when making an argument. Individuals should stand when making an evidentiary objection.

f. During a hearing or trial, side~~Side~~ conversations, reactive facial expressions oroutbursts, or other disturbances will not be tolerated.

g. If you must~~have to~~ exit for any reason while Court~~court~~ is in session, please do so quietly anddiscreetly.

~~Attorneys should be mindful of their obligation to stand whenever they address the Court. Similarly, any person who is in attendance should stand when being introduced to the Court. And of course, everyone should stand whenever the judge enters or leaves the courtroom.~~

~~Arrive early. The Court strives to start on time. You need time to set up.~~

h. If a lawyer or participant has a personal or medical situation that may require leaving a proceeding, consider having counsel advise the Court in advance. The Court seeks to be understanding and will strive to make accommodations.

~~Before the hearing, the court clerks and reporters need to obtain information from counsel.~~

2. Respect for the Court and Court Staff

a. Throughout the litigation process, you will deal regularly with ~~our~~ court staff~~clerks~~ and reporters. The Court expects them to treat you with courtesy and respect~~,~~ and to make the process as easy for you as possible while complying with the Court's rules and schedule. Please show them the same courtesy as you show the judgesof the Court. Please realize that when you do

not, the judges are likely to~~usually~~ hear about it.

b. Clerks of the Court of Chancery have a key role in helping ensure that hearings and trials run smoothly and in a dignified fashion. Part of their job is to review with you some of the judges' basic expectations for how the case will proceed. If you believe that any of the expectations are unfair or inappropriate, you should make a motion to the judge. Until your motion is granted, you are expected to comply.

3. Respect for the Courthouse Facility

a. When you leave the Courtroom~~courtroom~~, clean up and straighten your area.~~–~~ Remove or throw away your trash. Replace any chairs that were moved and slide them underthe tables.

b. You may bring bottled water for personal use into~~For the convenience of the bar and their clients, each side has access to a small conference room just outside~~ the courtroom but no otherfood or refreshments.

In the Leonard L. Williams Justice Center in New Castle County, each court roomhas two small anterooms, one on each side of the entrance. Generally, the plaintiffs' lawyers use the~~.~~ ~~This~~ room on the left side as you enter and the defendants' lawyers use the room on the right side as you enter.~~can be used during breaks and before and after trial.~~ The Court asks that you not have conversations in the rooms during trial or a hearing, because the noise can beheard in the Courtroom. ~~courtroom.~~

c. You are permitted to have food and refreshments delivered to the anterooms, and~~conference room so that~~ you may~~can~~ eat lunch there while preparing for the next part of a~~the~~ hearing.

d. There are other conference rooms in the Leonard L. Williams Justice Center in New Castle County that are available for ~~You also may~~ rent, including rooms in the Court of Chancery Mediation Center, the large conference room at the north end of the 12th Floor, and rooms on other floors~~ or a conference room on another floor~~ of the Courthouse. Arrangements for the Mediation Center can be made by contacting the Chancellor's judicial assistant.Arrangements for other conference rooms can be made with the AdministrativeOffice of the Courts. Additional information and a copy of the application for reserving a room can be found online at http://courts.Delaware.gov/AOC/RoomRequest.stm.

e. In the Kent County Courthouse, there are two small anterooms across from the Courtroom near the Register in Chancery. The plaintiffs generally use one room, and the defendants use the other. You are permitted to have food and refreshments delivered to these rooms, and you can eat lunch there while preparing for the next part of a hearing. There is also one other conference room that can be rented by contacting the Register in Chancery in Kent County.

f. In the Court of Chancery Courthouse in Sussex County, there is a single anteroom outside of the Courtroom. This area is suitable for witnesses who are waiting to

testify, but not for attorney preparation. You are not permitted to have food or refreshments delivered to this area or to eat in this area. Other space is not available for rent.

g. Use of these facilities is a privilege. When you are finished~~Use of the conference rooms is a privilege. When your use is completed~~, remove or throw away all trash and straighten up the room. The room should look as neat at the end of the day as at the beginning.

~~a.~~h. The Courtroom~~courtroom~~ staff has been instructed to inform the judges about any litigationteams or lawyers that fail to clean up their areas~~area~~.

4. ~~PDAs,~~ Cell Phones, Tablets, and Other Handheld Devices

a. Hand~~The Court prohibits the possession of hand~~-held electronic devices of any kind, including ~~in the courtroom itself. That includes blackberries,~~ cell phones~~,~~ and tablets,~~PDAs of any kind. There~~ are prohibited in the Courtroom. Their~~several important reasons for this. First, their~~ use in court is disruptive, demeaning to the dignity of the proceeding, and unfair to those actually concentrating on the proceeding. Also~~Second~~, the signals from these devices can interfere with the Courtroom~~courtroom~~reporting systems. Therefore, these devices must be turned off or put in "airplane"mode. In New Castle County~~the "off position"~~ and Kent County, they should be left in your side's ~~conference room in the vestibule of the courtroom.~~

conference room in the vestibule of the Courtroom. In Sussex County, they should be left at the front desk with Capitol Police.

b. If you fail to comply and it becomes apparent that you have a device in your possession—typically because it makes noise—the~~you have failed to put it in the off position—do not expect a kind reaction. The~~ device may be confiscated oryou may be sanctioned. If you fail to comply twice, the possible consequences will be ~~even~~ more unpleasant, and, at a minimum, you should not expect to participatein the remainder of the proceeding.

c. The Court recognizes that counsel and litigants often maintain~~many attorneys use~~ their calendars on ahandheld device. ~~as a calendar.~~ If it becomes necessary to discuss scheduling, ~~please advise~~ the Court ~~that you need your handheld device. The Court~~ likely will permit you to retrieve your device for purposes of the ~~scheduling~~ discussion.

d. Recording devices are prohibited.

5. Laptops ~~for Trial or Hearing Use Only~~

a. Attorneys may ~~The Court permits attorneys to~~ bring laptops into ~~court with~~ the Courtroom to use~~expectation that they willbe used~~ for purposes related to thetrial or hearing. If they create noise, cause interference, or become a distraction, counsel~~you~~ may be asked to remove them.

b. If an attorney wishes to receive a real-time rough draft transcript of the proceedings, they should provide their own laptop. The court reporters use Bridge Mobile software to provide real-time. The real-time stream is viewed by going to the website connect.eclipsecat.com. The court reporters will provide login credentials to those parties authorized to receive the real-time transcript on the day of the proceedings. Real-time is provided to the parties via a wireless LAN for in-person hearings and via the internet for remote hearings. Requests for real-time and questions regarding the real-time setup and connection should be addressed to the Court of Chancery court reporters before the day of the proceedings.

~~6.~~ Authorized media representatives may bring laptops into the Courtroom for professional use. Media use is governed by a separate policy that is~~Consult About Technology Needs the Week Before~~

~~Too often attorneys plan to use technology in a trial or hearing, only to discover it does not work. Other times the attorneys ask to delay the start of a proceeding while they try to straighten out their technology.~~

~~If you plan to use technology, contact the Register in Chancery approximately one week before to make arrangements to set up and check your equipment.~~

c. ~~Do not ask to have technology resources made~~ available onthe Court's website. https://courts.delaware.gov/chancery/laptops.aspx.

6. Arranging for Technology

a. The Court of Chancery~~if you do not intend to use them. The courthouse~~ has two types of courtrooms: (i) standard courtrooms and
(ii) "high tech" courtrooms that are set up with monitors, a projector, and audio-visual connections.

i. Standard Courtrooms

(A) Courtrooms 12C and 12D in the Leonard J. Williams Justice Center in New Castle County

(B) The First Floor Courtroom in Sussex County

ii. High Tech Courtrooms

(A) Courtrooms 12A and 12B in the Leonard J. Williams Justice Center in New Castle County

(B) Courtroom 2 in Kent County

(C) The Second Floor Courtroom in Sussex County

b. The high tech courtrooms are in high demand for trials that use technology. When scheduling a trial, counsel should confer and make a responsible decision as to

whether they will use technology so they can advise the judicial assistant.

c. A~~a~~ limited number of portable technology carts are available for use in standard courtrooms. The technology cart includes a projector, document viewer, and DVD player. Do not ask for a technology cart if you do not intend to use it.~~.~~ If you have reserved a cart~~it~~ and then do not use it, you are ~~wasting the Court's resources and~~ potentially preventing someone elsefrom using the equipment.

d. If you intend to use technology, contact the Register in Chancery and the Court of Chancery court reporters approximately one week before to make arrangements to set up and check your equipment.

e. Parties can arrange to bring in their own technology to outfit other courtrooms temporarily at the parties' expense. If parties wish to pursue this option, contact the Register in Chancery and the Court of Chancery court reporters approximately one month before trial to begin the process of coordinating setup.

7. Proper Attire

a. Counsel should wear ~~a~~ formal business attire.~~suit or dress with a formal business shirt orblouse.~~ Counsel is not restricted to, nor doesthe Court have any preference for, a shirt or blouse of any particular color. The Court likewise does not have any preference regarding skirts or dresses versus pantsuits.

B. EXPECTATIONS FOR REMOTE HEARINGS AND TRIALS

1. Hearing Protocols

The Court of Chancery frequently handles hearings by means of remote communication. The Court of Chancery has begun conducting evidentiary hearings and trials by means of remote communication~~.~~.

a. The right of access applies to remote hearings and trials. Unless the court closes the hearing or trial, members of the public and the press are entitled to attend.

b. As with in-person hearings, recording remote hearings and trials is strictly prohibited.

c. Join the call or videoconference early. You need to make sure your technology works, and you need to be ready when the judicial officer joins the hearing at the appointed time.

d. The standard time allocations for in-person hearings apply. Unless parties request more time, a hearing will not be allocated more than ninety minutes.

e. Provide courtesy copies just as you would for an in-person hearing. Submit exhibits and documents for the Court's use as you would for an in-person hearing: three flash drives and three paper sets. Demonstratives are also welcome in advance.

f. For videoconferences, courtroom attire is required, and the same rules of decorum for an in-person hearing apply. Side conversations are not permitted and reactive facial expressions are inappropriate. Parties may choose whether to stand to present argument or question a witness. Parties need not stand when the Court joins the videoconference.

g. At the beginning of a remote hearing or trial, a Delaware lawyer for each party shall introduce themselves, identify other participants with them, and state who will be making the presentation for their side. As with in-person hearings, if a case has had multiple hearings and the judicial officer has become familiar with forwarding counsel, then it may be possible to dispense with introductions.

2. Technology Platforms

The Court of Chancery generally uses four platforms for remote hearings and trials. From time to time, the Court may experiment with other solutions. Counsel is free to suggest a platform. For each option, RealTime transcriptions by Court of Chancery court reporters are available; counsel should contact the court reporters before the day of the proceedings to arrange for RealTime.

a. Conference Call Using A Standard Conference Bridge

i. The Court of Chancery frequently conducts hearings by conference call using a standard conference bridge. This platform is well suited for shorter hearings with a limited record and a relatively low number of attendees. Examples include status conferences, scheduling conferences, limited discovery disputes, and nondispositive motions.

ii. When scheduling a call using a standard conference bridge, Chambers will typically ask counsel to generate and circulate a dial-in number, to be posted on the docket. A failure to ask counsel to post the hearing conference number does not mean that the hearing is intended to be closed to the public. Counsel may distribute the number upon request unless instructed otherwise. If counsel distributes the number, the Court will expect that counsel alert the judicial assistant for purposes of taking roll. Attendees should join the call at least five minutes before the designated time, which is when the judicial officer will dial in. Attendees shall mute their lines unless speaking.

b. Conference Call Using CourtSolutions

i. For larger teleconferences, the Court of Chancery often conducts hearings by conference call using CourtSolutions. This platform is well suited to motions with a large number of attendees, like leadership disputes and settlement hearings, and cases that have drawn significant press attention.

ii. When scheduling a call using CourtSolutions, Chambers will specify that this platform is being used and place a letter to that effect on the docket. Anyone who wishes to attend must visit www.Court-Solutions.com to

request to participate. Attendees without an account can create one by clicking "Sign Up." Attendees with an account should log in and submit a reservation request. Attendees approved by Chambers will be able to participate. Forwarding counsel should register and join separately from Delaware counsel. Members of the public or the press can sign up and participate on a listen-only basis. CourtSolutions charges each registered user a fee for this service.

iii. Participants should join the call at least five minutes before the designated time, which is when the judicial officer will dial in. Attendees shall mute their lines unless speaking, and the Court may mute lines as necessary.

c. Video Conference Using Zoom

i. The Court of Chancery frequently conducts hearings by videoconference using the Zoom platform. This platform often will be used when a remote hearing is warranted for a type of hearing that traditionally would be conducted in person. Examples include significant discovery disputes, arguments on dispositive motions, and trials based on a paper record. The platform also may be used in lieu of CourtSolutions.

ii. When scheduling a hearing using Zoom, Chambers will specify that this platform is being used and place a letter to that effect on the docket. The Court hosts and administers the meeting. Counsel and interested parties must submit the names, email addresses, and phone numbers of all participants they expect to be on the call; the Court will provide attendees with a confidential invitation.

iii. Participants should join the call at least ten minutes before the designated time, which is when the judicial officer will dial-in. A judicial clerk will admit each approved attendee. Attendees shall mute their lines unless speaking, and the Court may mute lines as necessary. Only counsel planning to speak may use video. Counsel responsible for presentations should consider using a phone line for audio, rather than their computer, as this improves the quality of both sound and video.

iv. Documents and videos may be offered by screensharing.

d. Video Conference Hosted By CourtScribes

i. The Court of Chancery has begun conducting evidentiary hearings and trials using the Zoom platform hosted by CourtScribes.

ii. When scheduling an evidentiary hearing or trial using the Zoom platform hosted by CourtScribes, Chambers will specify that this platform is being used and place a letter to that effect on the docket. CourtScribes hosts and administers the meeting, including approving participants and authorizing entry.

iii. After confirming the hearing date and time with chambers, counsel must contact CourtScribes at least three business days before the hearing by emailing scheduling@courtscribes.com, or calling (833) SCRIBES (727-4237). Counsel must provide the party being represented, the names of all counsel appearing remotely on behalf of that party, contact information, the Court and judicial officer, appearance date and time, case name and number, and the nature of the proceeding. To be clear, counsel for each party is responsible for arranging their own appearance and those of their witnesses. The platform allows members of the public or press access on a "view/listen only" basis; the Court will refer any such inquiries to CourtScribes. CourtScribes will work with counsel in advance of the argument to identify attendees and provide the necessary protocols. CourtScribes charges users a fee for this service.

iv. Exhibits may be offered by screensharing or using CourtScribes' platform. Exhibits should also be provided to the Court as if the hearing or trial were being conducted in person.

v. Counsel who conduct remote depositions frequently should remember that a remote evidentiary hearing or trial is not a deposition. Even if you are not standing up to conduct your examination or to make objections, you should approach your interactions with witnesses, your adversaries, and the court with the same degree of preparation, judgment, and professionalism that you would exhibit during an in-person hearing.

~~II.~~C. BEST PRACTICES FOR LITIGATING CASES ~~BEFORE THE COURT OF CHANCERY~~

~~Sample forms are attached as exhibits. Downloadable and editable rich-text-file versions are available on the Court of Chancery website.~~

1. Role of Delaware Counsel

a. Concept of "local counsel"

i. The concept of "local counsel" whose role is limited to administrative or ~~a.~~ -ministerial matters has no place in the Court of Chancery. The Delaware lawyers who appear in a case are responsible to the Court for the case andits presentation.

b. Signing documents

~~b.~~i. If a Delaware lawyer signs a pleading, submits a brief, or signs a discovery request or response, it is the Delaware lawyer who is taking the positions set forth therein and making the representations to the Court. – It does not matter whether the paper was initially or substantially drafted bya firm serving as "Of Counsel."

c. Responsibilities

~~c.~~i. The judicial officers~~members of the Court~~ recognize that Delaware counsel and forwarding counsel frequently allocate responsibility for work and that, in some cases,the allocation will be heavily weighted to forwarding counsel. The judicialofficers~~members of the Court~~ recognize that forwarding counsel may have primary responsibility for a matter from the client's perspective. This does not alterthe Delaware lawyer's responsibility for the positions taken and the presentation of the case.

d. Non-Delaware counsel contact with Chambers

~~d.~~i. Non-Delaware counsel shall not directly make filings or initiate contact with the Court, absent extraordinary circumstances. Such contact must be conducted by Delaware counsel, absent extraordinary circumstances.

~~e.~~ii. It is not acceptable for a Delaware lawyer to submit a letter from forwarding counsel under a cover letter saying, in substance, "hereHere is aletter from my forwarding counsel."

iii. At the outset of a teleconference, hearing, or trial, Delaware counsel should introduce forwarding counsel to the Court and explain who will be making the presentation. If there have been multiple hearings in a case involving the same forwarding counsel, the Court may dispense with this formality. In cases where the litigation teams are particularly large, Delaware counsel may prefer only to introduce the principal lawyers and the client representative.

2. Courtesy Copies

a. Counsel should provide Chambers with two courtesy copies of any filing that they want the judge to read or that otherwise requires judicial action, such as letters, motions, and briefs. Counsel need not provide copies of routine filings, such as short motions that do not contain argument (because a supporting brief will be filed separately), motions for admission pro hac vice, motions for commission, or Rule 4(dc) certifications. As discussed below, moving counsel should investigate and promptly determine and advise the Court ~~as to~~ whether ~~or not~~ a motion for admission prohac vice or for commission is opposed.

b. Courtesy copies of motions and briefs should be submitted with a transmittal letter devoid of argument. In addition to listing what is being transmitted, the transmittal letter should (i) recite the briefing schedule if the parties have agreed on one, or otherwise state that no agreement on scheduling has been reached, and (ii) note the date and time at which a hearing has been scheduled, or otherwise that no argument date has yet been set. Once that information has been provided in a letter, subsequent transmittal letters need not recite the information unless it has changed.

c. Counsel sometimes combines the motion or brief with the exhibits and authorities to create a single, massive, hardcopy filing that is difficult to use and falls apart

easily. If you are only attaching a few short exhibits or authorities, feel free to attach them to the motion or brief. Otherwise, the compendium and appendix should be separate hardcopy submissions. Witness affidavits can be included in the appendix with other exhibits.

d. In expedited matters, courtesy copies of motions and briefs should be delivered to Chambers promptly. It is not necessary to await acceptance of an electronic filing before delivering a copy to the Court.

~~c.~~e. In expedited matters, it may be necessary to deliver papers to a judge's home. Please deliver only one copy and do not serve compendia of unreported cases unless requested. *Two* Chambers copies of all papers, including compendia and appendices, should still be delivered to the Courthouse~~courthouse~~ immediately when it nextopens.

3. Contacting Chambers

a. Calls to Chambers~~Court: The Big Picture Issue~~

i. A lawyer~~Counsel~~ who calls Chambers and asks a~~one of the judges'~~ judicial assistant~~assistants~~ to schedule a matter has a special responsibility to the Court and to other parties to thecase.~~his adversaries.~~ The Court expects that a lawyer~~counsel~~ who seeks a date is doing so on behalf of all parties and with their authority, absent an explicit indication to the contrary.

~~i.~~ii. When calling Chambers, absent~~ Absent~~ extraordinary circumstances, counsel for all parties should be~~seek dates from the Court with all counsel~~ on the call,~~line~~ or counsel should have obtained~~only after obtaining~~ authorityfrom all parties to seek a list of available dates from the Court.~~ Regrettably, the Court has experienced situations when counselfor the moving party has sought a date, not told the Court that he had not spoken to his adversaries, and then implied that the Court had insisted on the date by its own desire, rather than in response to a request by moving counsel. That puts the Court, its judicial assistants, and all the parties inan awkward and inappropriate situation. In those instances when theCourt itself gives dates for argument on a motion where briefing is completed or soon to be completed, the judicial assistant will often attemptto get all parties on the line. In some situations, that is not practical andthe moving party's counsel is given the dates and expected to share them with all relevant parties, and the parties, through some chosen mechanism of their own, are expected to confirm that the dates are acceptable to all concerned. There have been instances that create concern about whether dates have been shared fairly.~~

~~b. Calls to Court: Specific Guidance~~

~~i. When counsel calls Chambers, absent extraordinary circumstances counsel for all parties should be on the call.~~

~~ii.~~i. ~~If counsel for all parties are not on the call, then the lawyer(s) making the call must have made all reasonable efforts to contact the other parties before calling Chambers to both: (i) confer regarding scheduling; and (ii) inform them that the call is going to be made and invite them to participate.~~

iii. If counsel calls without other parties on the line, make clear to the judicial assistant that not all parties are on the line and be clear as to why and who knows what.

iv. Before calling Chambers, counsel must make a reasonable effort to confer regarding scheduling so that the parties' request can be conveyed fairly to the judicial assistant. Disputes between counsel involving scheduling should be presented directly to the Court for resolution, not to judicial assistants. If it becomes apparent during a call that the parties have disputes about issues relevant to the call, counsel should alert the judicial assistant and opponent, diplomatically terminate the call, and meet and confer offline.

~~iv.~~v. If~~When~~ a judicial assistant gives a lawyer possible dates for a hearing, the lawyer must share all such dates with all relevant counsel and be fair in finding a date acceptable to all concerned. Unless a judicial assistant has expressly indicated that the Court prefers a specific date, do not give other counsel the impression that the Court has a preference.

~~v.~~vi. The judicial assistants work hard to be fair to all concerned and to accommodate the needs of counsel. Please do what you can to make their lives easier by being fair to your adversaries in the scheduling process.~~ Disputes between counsel involving scheduling should be presented directly to the Court for resolution, not to judicial assistants.~~

b. Emailing Chambers

i. Avoid emailing the Court or its staff.

ii. Emails should not be sent to judicial officers directly except in the case of a true emergency that arises outside of regular business hours.

iii. Substantive communications must be docketed. Any meaningful substantive or procedural disputes must be presented in a procedurally appropriate filing.

iv. Email to Court staff should be used only to address routine and non-controversial matters, such as confirming a date of a hearing or confirming that a courtesy copy will be provided.

v. Email should not be used to present disputes to the Court or request action.

c. Letters~~:~~

i. Rule 171(f)(1)(C) establishes specific requirements for letters to the Court, including word limitations.

ii. Parties may use letters to provide updates to the Court or to address logistical or scheduling issues. Unless requested by the Court, letters should not be used to request substantive relief.

~~i.~~iii. Contested scheduling~~Scheduling~~ requests are frequently presented~~should be raised initially~~ by letter. ~~or by a call to Chambers.~~ Exceptfor motions to expedite, a formal motion generally is not necessary. ~~to address scheduling issues.~~

~~ii.~~iv. Forms of order should be submitted by letter.

~~a.~~

~~Letters should be short, even if they contain background. If the letter would exceed five double-spaced pages, consider whether a motion wouldbe a more appropriate vehicle.~~

~~iii.~~v. The judicial officers ~~members of the Court~~ do not want ongoing exchanges of letters. After a letter response and perhaps a letter reply, ~~if warranted,~~ it is time to schedule a conference. It even may be prudent to forgo~~forego~~ the response and reply and gostraight to the conference.

4. Settlements

a. If parties resolve a matter before a pending hearing, they should advise the Court promptly. Because the judicial officers share resources, including courtroom space, it is important to free up this space if possible. It is also important that judicial resources be devoted to live matters.

b. Resolutions may occur over the weekend before a hearing or during non-business hours. If circumstances arise that require postponing or cancelling an imminent hearing or which affect the disposition of an expedited case, counsel should advise the judicial officer's legal assistant or law clerk by telephone or email as soon as possible.

~~iv. Font size and spacing: judges and lawyers must read huge amounts of text. Therefore, it is helpful if letters use a font of 12 point size or above and are double-spaced. The easier it is for a judge to read your request, the easier it is for the judge to understand it.~~

~~4.~~5. Scheduling Guidelines

a. The judicial officers~~members of the Court~~ expect counsel to work together to manage the case and prepare it ~~in an appropriate fashion~~ for the Court's consideration. In carrying out this task, counsel have adual role both as officers of the Court and as client representatives.

~~b.~~i. The Court~~members~~ of Chancery Rules do not have default briefing schedules for motions or default case tracks. This system only functions when counselwork together responsibly. The judicial officers~~the Court~~

expect counsel to work together to reach agreement on a fair ~~briefing~~ schedule given the ~~scheduling~~ requirements ofthe case. ~~The Court of Chancery Rules do not have a default briefing schedule because counsel are expected to work together responsibly to craft a fair briefing schedule.~~

~~c.~~ii. Before a scheduling dispute is brought to the Court, the senior Delaware lawyers are expected to make a ~~a~~ good-faith direct effort, whether ~~—~~in-personor by telephone, to resolve~~telephonic conversation to work out~~ the matter and agree on a schedule ~~by the senior Delaware lawyers is expected~~.

iii. Working together includes responding in a timely fashion to opposing counsel's requests regarding scheduling. Sometimes, one side fails to respond to the other side's legitimate requests to discuss scheduling, resulting in a letter or call to the Court that could have been avoided.

iv. Working together also includes conferring and responding in a timely fashion to the Court's calls about scheduling. When a judicial assistant provides possible hearing dates, those dates cannot be offered to other parties until counsel respond. Please respond promptly.

a. Non-expedited cases

~~d. Guidance for scheduling in non-expedited cases:~~

i. In a non-expedited case, the general expectation for a~~briefing a merits-related~~ motion falling within the scope of~~, such as under~~ Rule 171(f)(1)(A) ("Merits-Related Motions")~~12(b), Rule 12(c), or Rule 56,~~ is for the opening brief to be due 30 days after the motion is filed, the answeringbrief to be due 30 days later, and the reply 15 days after that.

ii. In a non-expedited case, the general expectation for a~~briefing a discovery~~ motion falling within the scope of Rule 171(f)(1)(B) ("Other Motions") is ~~or non-case-dispositive procedural motion is~~ for the ~~motion to be aspeaking motion. If, instead, the motion is to be briefed, the opening brief should be filed with the motion. The~~ opposition to~~would generally~~ be due fourteen calendar days~~two weeks~~ after the motion is filed andthe reply seven calendar days~~one week~~ after that.

iii. In~~When negotiating schedules in~~ non-expedited cases, counsel should be considerate and respectful of each other's legitimate professional and personal commitments. There may be good cause for a schedule that departs from these Guidelines. Parties generally should accommodate minor adjustments in the scheduleto avoid deadlines that fall on Mondays or after holidays and to accommodate appropriate work-life balance concerns~~guidelines~~.

~~e. Guidance for scheduling in expedited cases:~~

b. Expedited cases

i. ~~are unique.~~ The Court gives expedited cases ~~them~~ priority. Counsel should give themsimilar priority.

ii. To assist with the process of case assignment and evaluation, counsel should note in the comment section on the supplemental information sheet any critical date by which judicial relief is needed.

~~ii.~~iii. Briefing schedules should reflect the priority given to expedited cases. For non-case-dispositive motions, the time for responses and replies should generally be measured in days.

iv. An expedited schedule should be requested by motion. This is true even for summary proceedings, where a motion to expedite historically was viewed as superfluous. In these proceedings, the motion to expedite assists the Register in Chancery and serves as an efficient vehicle for presenting the scheduling issue to the Court. Because summary proceedings must be held promptly, the motion should be short, provide the Court with factual context, and explain the requested schedule.

v. The response to a motion to expedite should be in the form of an opposition to a motion. In a summary proceeding, the opposition should focus on what is a reasonable schedule given the circumstances facing the parties.

vi. Parties should outline their preferred schedules in the motion to expedite and opposition. The Court should not be left in the dark until the teleconference. To the extent parties can agree on all or a portion of an expedited schedule, they should do so.

~~iii.~~vii. Absent extraordinary circumstances, the party seeking~~Parties in~~ expedited proceedings should make a good faith effort~~attempt~~ to provide informal courtesy copies of all relevant papers to the other side, ascertain whether expeditionis contested, and promptly inform the Court by letter~~facilitate third-party discovery involving their non-party agents, such~~ as to those efforts and any response~~investment banks~~.

viii. The fact that the default date to respond to the complaint has not passed will not prevent the Court from holding a ~~Guidance for~~ scheduling conference.

ix. The need for a defendant to obtain Delaware counsel will not prevent the Court from holding a scheduling conference. The Court generally will permit non-Delaware counsel, including in-house counsel, to appear for purposes of the initial scheduling conference. Regardless, there is a sufficient pool of qualified Delaware lawyers available that a delay in securing Delaware counsel should be rare.

~~f.~~c. Summary~~summary~~ proceedings~~:~~

i. Summary proceedings generally can be completed in 45-9060 days. A faster or slower schedule may be warranted based on external events or the complexity of the case. –Director information cases and stock list cases willmove faster.

ii. Because summary proceedings are by statute, "summary," dispositive motion practice is often wasteful and delays final resolution. The Court will therefore typically enter a schedule culminating in a prompt trial at which all arguments, factual and legal, can be presented summarily. When discussing scheduling, parties should keep this in mind.

~~Whendiseussing scheduling, parties should keep this in mind.~~

~~iii. As a general rule, parties should allocate approximately one third of the total calendar time allotted for a summary proceeding to closing the pleadings and engaging in written discovery, one third for depositions and (if necessary) expert discovery, and one third for pre-trial preparation and trial, including briefing and the pre-trial order.~~

~~iv.~~iii. Because many summary proceedings can be decided on a short, largely undisputed record, parties should consider ways to present summary proceedings on a paper record, such as by a trial with oral argument on a stipulated paper record. Certain types of summary proceedings, such as entitlement issues in advancement disputes, may be suitable for disposition on summary judgment.

~~g.~~d. Scheduling stipulations~~:~~

i. Scheduling ~~Case scheduling~~ stipulations are helpful because they inform the Court that a~~case or~~ motion is being addressed or that the case is moving forward.

(A) As a general rule, parties should propose a case schedule within 30 days after the closing of the pleadings. Before crafting a scheduling order, counsel should consider the sections in these guidelines on recurring scheduling issues, including the scheduling of motions for summary judgment.

(B) If a motion is not governed by an existing case schedule, then as a general rule, parties should agree on a briefing schedule within a matter of days after the motion is filed. Delays over scheduling should not be used to create an extended schedule. Counsel should not wait for a call from the Court asking about the briefing schedule.

ii. Minor modifications to a ~~briefing~~ schedule ~~or scheduling order~~ that do not affect the date of the last brief or the hearing date do not require a stipulation. Counsel may agree ina letter or email, which will have the same import as a formal stipulation.

iii. The following exhibits provide sample scheduling stipulations:

~~(a)~~(A) Exhibit 1 – A sample scheduling stipulation for a Rule 12(b)(6) motion.

~~(b)~~(B) Exhibit 2 – A sample scheduling stipulation for cross-motions on summary judgment.

~~(c)~~(C) Exhibit 3 – A sample case scheduling stipulation for a summary proceeding.

~~(d)~~(D) Exhibit 4 – A sample scheduling stipulation for a preliminary injunction.

~~(e)~~(E) Exhibit 5 – A sample case scheduling stipulation for a plenary action.

~~h.~~e. Recurring scheduling issues~~:~~

i. Witnesses that were not identified and ~~Identification of witnesses so they can be~~ deposed during ~~the period for~~ discovery: Parties should generally use their reasonable best efforts to ensure that parties have an opportunity to depose before trial all witnesses who will testify at trial ~~are deposed before trial~~. But ~~parties~~ sometimes a trial witness will be identified after discovery closes.

b. A party can avoid this problem by serving ~~fail to ask~~ the standard interrogatory ~~early in the case~~ asking the other side to identify prospective trial witnesses. The party responding to that interrogatory should make ~~Then, they complain of unfairness if their adversary identifies a trial witness who was not deposed. This problem, which is one of the complaining party's own making, is avoided by using the standard interrogatory. One way to avoid disputes about this is to pose an interrogatory early in the case asking the other side to identify prospective trial witnesses. The party responding to that type of interrogatory should also facilitate efficient case processing by making~~ a good faith effort to identify those persons under serious consideration to be trial witnesses, update the answer when required, and avoid unnecessary depositions late in the discovery phase or after the discovery cutoff ~~communicate in good faith with opposing counsel so that unnecessary deposition practice does not occur, but necessary depositions do. Because parties can avoid the problem of having discovery-style examination at trial by using the standard interrogatory, parties who fail to do so run the risk of not being able to depose a witness before trial~~.

(A) A party who has asked the standard interrogatory generally will be permitted to depose a witness who was identified late or can obtain an order precluding the identifying party from using the witness. Parties who fail to ask the standard interrogatory run the risk of not being able to depose a witness before trial. That said, it is inefficient for counsel to question a witness for the first time on the stand, so

the Court may still allow a short deposition of an unidentified witness so that trial time can be used effectively. Consequently, even if an opponent failed to serve the standard interrogatory, counsel should use reasonable best efforts to ensure that parties have an opportunity to depose before trial all witnesses who will testify at trial.

ii. Expert reports~~:~~

(A) Parties should ~~In general, more confusion than efficiency arises when parties do not~~ build into the scheduling order a procedure for identifying experts, serving expert~~in rebuttal~~ reports, and conducting expert discovery.

~~(a)~~(B) ~~or even reports when necessary.~~ It is usually more efficient and less controversial ~~in terms of generating disputes~~ for the parties to have their experts exchange all of their reports before taking expert depositions. The ~~, and only then be deposed. Although there are a variety of ways to achieve the objective, the~~ goal is for~~that~~ all experts to~~should~~ have completed their reports and analysis before they are deposed~~, and before trial.~~ Absent extraordinary circumstances, no new expert analysis should be presented at trial. Rather, all expert analysis should be subject to fair testing through ~~the~~ pre-trial rebuttal reports~~or reply process~~ and at deposition~~, so that parties and the Court have a reliable record on which to try the case~~.

~~(b)~~(C) The~~In general, the~~ Court prefers that parties stipulate to limit expert written discovery to the final report and materials relied on or considered by the expert. The~~Counsel should be aware that the~~ Court understands the degree of involvement counsel typically has in preparing expert reports. Cross-examination based on changes in drafts is usually an uninformative exercise.

~~(c) Scheduling orders generally should contain a provision:~~

~~(i) Requiring the parties to identify any expert witnesses and the topics the expert(s) will offer testimony on; and~~

~~(ii) Specifying a schedule for the submission of expert reports.~~

~~(d)~~(1) A sample expert discovery stipulation can be found at Exhibit 6.

iii. The timing~~temporal relation~~ of summary judgment~~dispositive~~ motions ~~to the trial:~~

(A) Parties sometimes~~often~~ provide for summary judgment motions to

be filed atthe end of discovery with briefing to be completed on the motions ~~very~~ shortly before the pre-trial briefs and the pre-trial stipulation are due, and trial is to commence. This creates inefficiency and a false exigency.

(B) Counsel should evaluate whether a case is better suited for summary judgment or trial. If the case is more suited for summary judgment, then the parties should craft a schedule that leads up to a summary judgment hearing without also providing for a trial date. Once the Court has ruled on the summary judgment motion, the parties can craft a schedule to address any remaining issues, including the possibility of trial.

(C) By contrast, if the case is more suited for trial, then the parties should craft a schedule that proceeds to trial. Summary judgment is unlikely to be an efficient or appropriate alternative to trial if the "undisputed" facts arrive in boxes from each side containing hundreds of exhibits and the briefs argue different versions of events.hundreds of exhibits and the briefs argue diffee

(D) ~~in non-expedited cases.~~ If the parties genuinely believe that a set of *undisputed* facts may exist on which a dispositive legal ruling may be made, then they should raise the issue sufficiently early in the proceedings so that resolving the motion will result in efficiencies for the Court and the litigants~~build time in for the Court to resolve the motion on a non-emergency basis~~.

f. Prolonged lack of docket activity

i. The judicial officers receive regular reports on the status of their dockets which highlight cases where there has been a lack of docket activity. When a case has had a prolonged period of inactivity, the Court may require a status report or contemplate dismissal for failure to prosecute.

ii. Counsel shall confer with their respective clients prior to submitting the status report to the Court. Parties should submit reports jointly in a single filing. If the parties have different views on a particular issue, the filing can make that clear.

iii. It is possible that parties may be working diligently on their cases despite a lack of docket activity. If this is the case, consider submitting a joint letter updating the Court on the status of the case and what is going on. If your case has not had any docket activity in six months, then sending a letter would be a good idea.

g. Pleadings

~~(a) Litigants should consider whether summary judgment is an efficient or appropriate vehicle if the "undisputed" facts arrive in boxes from each side containing hundreds of~~

~~exhibits with briefs arguing different versions of events. Likewise, if only a subset of issues is susceptible of resolution on summary judgment, the parties should consider whether the delay in trial is worth the cost, as opposed to including all the legal and factual arguments in the trial briefs.~~

~~a.~~i. Answers~~:~~

~~i.~~(A) As contemplated by Rule 10(b), an~~An~~ answer should repeat the allegations of the complaint and then set forth the response below each allegation. ~~Otherwise the Court has to look back and forth from answer to complaint to see what is being denied.~~

~~ii.~~(B) Parties should take seriously the provisions of Rule 8(b) and not aggressively deny basic facts without a good faith basis for doing so.

~~iii.~~(C) Parties~~It should go without saying that parties~~ must have a Rule 11 basis for affirmative defenses, and it is typical practice for each affirmative defense asserted to include a concise, good faith basis for asserting the defense.~~.~~ Parties should not ~~rotely~~ recite any~~a laundry list of~~ affirmative defense~~defenses,~~ without carefully considering theapplicability of each defense to the facts of the case.

~~iv. The same principles apply to replies to counterclaims.~~

~~b.~~ii. Amendments to pleadings~~:~~

~~i.~~(A) If a party intends to oppose an amended pleading because theamendment would be futile, the Court prefers for the parties to stipulate to the amendment while reserving the right to challenge the sufficiency of the amended pleading at the time a response is due or through an appropriate motion. Although it is not improper to oppose a motion to amend because the amendment would be futile, it is cumbersome because it results in briefing that is to some extent duplicative of a motion to dismiss, but with the party who would normally bear the burden on such a motion filing only one brief.

~~(a)~~

~~ii.~~(B) An amended pleading should be filed as a separate docket entry. Donot simply refer back to the version that was attached to the motionto amend. That version is hard to find. It is also often unsigned andunverified and therefore does not comply with Rules 2(aa) and 11.

~~i.~~

6. Motions

Rule 171(f)(1) establishes different requirements for Merits-Related Motions, such as those brought pursuant to Rules 12, 23, 23.1, 56 or 65, and Other Motions, such as discovery motions. Consult Rule 171(f)(1) to determine how to proceed.

a. Pro hac vice motions

i. Moving counsel should investigate and promptly determine and advise the

Court whether a motion for admission pro hac vice or for commission is opposed. Otherwise, the motion will be deemed unopposed. Any objection to a pro hac vice motion or motion for commission must be filed promptly.

b. Motions for commission

i. Moving counsel should advise Chambers whether a motion is opposed or unopposed. Opposing counsel should respond promptly when asked by moving counsel if a motion for commission is opposed.

~~5.~~

~~a. A submission of 15 pages or less may be submitted appropriately as a speaking motion with numbered paragraphs. A submission longer than 15 pages should be submitted as a motion with a supporting brief so that the Court has the benefit of the structure established by Rule 171, including a table of contents and table of authorities.~~

~~b.~~c. 12(b)(6) or 12(c) motions~~Motions:~~

i. Parties should~~A Bound Copy of the Complaint and its Exhibits: Please~~ submit two properly bound copies of the operative pleadings~~complaint~~ and their~~its~~ exhibits in connection with Rule 12(b)(6) or 12(c) motions. These are pleading-stage motions, so the pleadings and the exhibits~~when dismissal briefing is proceeding, as these~~ are the key documents. The Court does not have the resources to recreate the pleadings and exhibits from the docket, particularly when theyare voluminous.

ii. Consider whether ~~Motions That Are Not 12(b)(6) or 12(c) Motions: It is~~ a Rule~~jarring experience for new law clerks to be given a box containing huge appendices that support a~~ 12(b)(6) or 12(c) motion is adhering to the requirement that the movant ~~. For the judges of the Court of Chancery, that experience is also eyebrow raising as a challenge to a complaint must~~ accept the well-pled facts as true and rely ~~in addition~~ only on the unambiguous terms of essential~~certain discrete kinds of~~ documents. A Rule ~~(e.g., the contract in a contract case). Given the settled procedural standard, counsel should consider whether a~~ 12(b)(6) or12(c) motion may not be~~is really~~ appropriate if a large appendix is required. More typically, the need for an appendix signals a desire to argue a different set of facts, implicating at best Rule 56 and usually opening the door to ~~at least some discovery before the motion can be considered. As such, counsel should think before filing a 12(b)(6) or 12(c) motion about conferring with the other side about an approach to discovery that would facilitate an early summary judgment motion instead.~~

~~c. Motions to expedite:~~

~~i. Although a motion to expedite historically has sometimes been viewed as superfluous for a summary proceeding, a short motion can provide the~~

~~Court with helpful context. The motion to expedite in a summary proceeding need not justify the need for expedition. Rather, it can simply make reference to the statutory authority for summary treatment, then address the desired schedule, including any external events that would make a particular schedule appropriate.~~

~~The response to a motion to expedite should be in the form of an opposition to a motion.~~discovery before the motion can be considered.

d. Rule 56 motions

i. Because trials in the Court of Chancery are bench trials, it is often unhelpful to seek summary judgment unless there is a clear legal issue to be decided.

ii. To screen whether summary judgment will be helpful, parties may include in a scheduling order (or the Court may adopt) provisions requiring that parties seek leave before moving for summary judgment. Under one possible procedure, a party wishing to file a motion for summary judgment must file a letter no longer than 1,250 words setting forth the undisputed facts and legal theories that warrant granting summary judgment. Within 10 calendar days of the filing of such a letter, the party against whom summary judgment would be sought may submit a letter response no longer than 2,500 words setting forth the factual disputes (including record citations) and legal bases for opposing such a motion. The Court then determines whether to grant leave to file a motion for summary judgment. If the Court determines to grant leave, the Court may consider whether to remove any trial date from the calendar to permit the Court time to resolve the motion.

e. Complex briefing sequences

~~ii. By statute, summary proceedings must be held promptly. Your opposition should therefore focus on what is a reasonable~~

~~schedule given the circumstances facing the parties.~~

~~iii.~~i. ~~Parties should outline their respective preferred schedules in the motion to expediteand opposition. The Court should not be left in the dark until the teleconference. To the extent parties can agree on all or a portion of an expedited schedule, they should do so.~~

~~iv. For initial case scheduling issues, if a plaintiff has sought expedited treatment or filed a summary proceeding, and if the plaintiff has made a good faith effort to provide copies of the papers to the defendant(s) or their counsel and to speak directly to them if possible, then the plaintiff can and should contact Chambers to obtain a scheduling conference.~~

~~(a)~~a. ~~The fact that the default date to respond to the complaint has not passed will not affect the Court's willingness to entertain the scheduling conference.~~

~~(b) The need for a defendant to obtain Delaware counsel will not affect the Court's willingness to entertain the scheduling conference. The Court generally will permit non-Delaware counsel, including in-house counsel, to appear for purposes of the initial scheduling conference. Regardless, there is a sufficient pool of quality Delaware lawyers available that a delay in securing Delaware counsel should be rare.~~

~~d. *Pro Hac Vice* Motions: Opposing counsel should contact Chambers promptly with any objection to a *pro hac vice* motion. Otherwise, the motion will be deemed unopposed.~~

~~e. Motions for Commission: Moving counsel should advise Chambers whether a motion is opposed or unopposed. Opposing counsel should respond by a single copy of a short letter promptly when asked by moving counsel if a motion for commission is opposed.~~

~~f. Substantive cross-motions:~~

i. If substantive cross-motions are contemplated, such as for judgment on the pleadings or for summary judgment, the parties shall work to reduce the number of briefs. A four-brief sequence is preferred over~~rather than~~ a six-brief sequence ~~ispreferred~~.

ii. In cases with~~If there are~~ multiple parties, the parties should consider the commonalityof issues and attempt to coordinate~~come up with a logical sequence~~ and reduce~~coordination that reduces~~ the number of briefs. Similarly situated parties, such as multiple defendants, should not file separate briefs on the same issue. It is preferable to file a single, joint brief. If one party wishes to raise an additional issue, the brief can make clear that the issue only relates to a particular party. The Court is receptive to approving an increased word limit to facilitate the filing of a common brief.

~~ii.~~iii. In cases with large numbers of parties who each intend to file motions, the parties should consider filing briefs with colored covers like those used in the Supreme Court to help all concerned collate and use the briefs efficiently.

~~iii. Take note of the caution, set forth above, regarding the scheduling of dispositive cross-motions close to trial.~~

~~d.~~

~~Discovery~~

7. Discovery

a. General Guidelines

i. The goose and gander rule is typically a good starting point for constructive discovery solutions.

ii. All counsel (including Delaware counsel) must be mindful of their common law duty to their clients and the Court to preserve all potentially relevant information, including electronically stored information ("ESI"). Accordingly, a party to litigation must take reasonable steps to preserve potentially relevant information, including ESI, that is potentially relevant to the litigation and that is within the party's possession, custody or control. Because ESI takes many forms and may be lost or deleted absent affirmative steps to preserve it, special care is needed. At a minimum, parties and their counsel must develop and oversee a preservation process, including the dissemination of written litigation hold notices to custodians of potentially relevant ESI.

iii. Counsel's oversight of identification and preservation processes is important, and the adequacy of each process will be evaluated on a case-by-case basis. Once litigation has commenced, if a litigation hold notice has not already been disseminated, counsel should instruct their clients to take reasonable steps to act in good faith and with a sense of urgency to avoid the loss, corruption, or deletion of potentially relevant information, including ESI. Failing to take reasonable steps to preserve may result in serious consequences for a party or its counsel.

iv. Reasonable steps will vary from litigation to litigation. In most cases, however, a party and its counsel (in-house and outside) should:

(A) Take a collaborative approach to the identification, location and preservation of potentially relevant information, including ESI, by specifically including in the discussion regarding the preservation processes an appropriate representative from the party's information technology function (if applicable);

(B) Develop written instructions for the preservation of potentially relevant information, including ESI, and distribute those instructions (as well as any updated, amended or modified instructions) in the form of a litigation hold notice to the custodians of potentially relevant information; and

(C) Document the steps taken to prevent the destruction of potentially relevant information.

v. Potential problem areas for preservation of ESI include business laptop computers, home computers (desktops, laptops, and tablets), handheld mobile devices, and external or portable storage devices such as USB flash drives (also known as "thumb drives or key drives"). Other frequent problem areas include personal email accounts, text messages, and other forms of messaging. This list is not exhaustive and should be a starting point for parties and their counsel in considering how and where their clients and their employees might store or retain potentially relevant ESI. Counsel and their clients should discuss the need to identify how custodians store their

information, including document retention policies and procedures as well as the processes administrative or other personnel might use to create, edit, send, receive, store and destroy information for the custodians. Counsel also should take reasonable steps to verify information they receive about how ESI is created, modified, stored or destroyed.

vi. While the development and implementation of a preservation process after litigation has commenced may not be sufficient by itself to avoid the imposition of sanctions by the Court if potentially relevant information is lost or destroyed, the Court will consider the good-faith preservation efforts of a party and its counsel. Counsel are reminded, however, that the duty to preserve potentially relevant information is triggered when litigation is commenced or when litigation is "reasonably anticipated," which could occur before litigation is filed.

b. Collection and review of hard copy documents and ESI

i. All counsel (including Delaware counsel) must be mindful of the importance of the careful collection and review of documents and ESI. The Court has been, and remains, reluctant to adopt a "one-size-fits-all" approach to the collection and review of documents, especially given the variety of cases that come before the Court. The Court also is mindful of the considerable burdens of collecting documents for review and production, and the potential leverage that these obligations can create in litigation. Thus, it seeks to remain flexible, reasonable and efficient in resolving discovery disputes.

ii. The Court expects counsel to meet and confer promptly after the start of discovery to develop a discovery plan. The Court recommends each party disclose the process and parameters used to collect documents (*e.g.*, identify persons with knowledge, potential custodians, electronic search terms and other ESI protocols, cutoff dates, and non-custodial data sources). To the extent that the collection process and parameters are disclosed to the other parties and those parties do not object, that fact may be relevant to the Court when addressing later discovery disputes.

iii. As a general matter, custodians and parties should not collect or review their own documents. The Court prefers that outside counsel or professionals acting under their direction perform these tasks. This may not be possible in all cases, with the most obvious example being *pro se* parties. If a compelling case-specific reason exists for departing from the preferred approach, counsel nevertheless should be actively involved in establishing and monitoring the procedures used to collect and review documents to determine that reasonable, good faith efforts are undertaken and to ensure that responsive, non-privileged documents are timely produced.

iv. Among other things, the procedures used to collect and review documents generally should include interviews of custodians who may possess

responsive documents to identify how the custodians maintain their documents and the potential locations of responsive documents, including the files and computers of administrative or other personnel who prepare, send, receive or store documents on behalf of the custodians.

v. Unlike paper documents, ESI is susceptible to modification or deletion during collection. Therefore, counsel should exercise care in developing appropriate collection procedures.

vi. The Court is aware that in order for litigation to produce justice, the costs of the litigation must be proportionate to what is at stake. *See* Rule 26(b)(1). That awareness applies with special force to the subject of electronic discovery. Precisely because the extent of electronic discovery that is appropriate depends on case-specific factors, the Court has been reluctant to adopt mandatory requirements. But because the Court has eschewed a mandatory approach, it is essential that parties discuss this subject early in the discovery process and address it directly. The resulting process should take into account the needs of the case, information each side already has, the costs of employing various electronic discovery techniques, the amount in controversy, limitations on the parties' resources, and the relative importance of the various issues at stake in the litigation.

vii. The Court expects Delaware counsel to play an active role in the discovery process, including in the collection, review and production of documents, and in the assertion of privilege. If Delaware counsel does not directly participate in the collection, review and production of documents, Delaware counsel should, at a minimum, discuss with co-counsel the Court's expectations. In addition, Delaware counsel should be involved in making important decisions about the collection and review of documents and should receive regular updates, preferably in writing, regarding the decisions that are made on key issues, such as the selection of custodians and search terms. The Court expects Delaware counsel to be able to answer questions regarding the manner in which the document collection and review was conducted. It is therefore recommended that Delaware counsel and co-counsel collectively maintain a written description of the discovery process, including detailed information regarding efforts to preserve documents, custodians identified, search terms used, and what files were searched. A document can be found at Exhibit 10 that is intended to assist counsel in developing a sound document collection process. Exhibit 10 is not intended to mandate issues to consider in every case, nor is it intended to be an exhaustive list of all issues that should be considered in any particular case.

viii. If a responding party requests Word versions of discovery requests, the proponent should provide them.

c. Privilege logs

i. A difficult part of the discovery process involves reviewing documents for privilege and preparing the resulting privilege log. In the first instance, more junior lawyers typically make the initial judgment calls about which documents might be subject to a claim of privilege. Understandably, lawyers are concerned about making a mistake and producing a privileged document. This often leads to a tendency to overdesignate documents as privileged, including by designating as privileged every document received or sent by anyone who is an attorney or any document that refers to an attorney, even though the attorney may not have been acting as an attorney and the communication may not have been for the purpose of facilitating the provision of legal advice. Preparing a privilege log is a similarly difficult task, because it requires the lawyer to provide a description of the basis for asserting privilege that is sufficient for the opposing party to evaluate the claim.

ii. Because disputes about the improper assertion of privilege are common, the senior lawyers in the case, especially senior Delaware lawyers, must provide guidance about how the privilege assertion process should unfold. That includes guidance about: 1) the Delaware standards for asserting any privileges the client wishes to assert; 2) protocols for identifying the initial cut of documents that warrant a closer review for privilege; 3) protocols for ensuring that the Delaware standards are applied with fidelity when determining that specific documents are exempt from production on privilege grounds; and 4) the Delaware requirements for providing sufficient information about the document to enable the opposing party and the Court to assess whether privilege has been asserted properly. Senior lawyers, including senior Delaware lawyers, should make the final decisions on difficult privilege questions.

iii. Senior lawyers, including senior Delaware lawyers, must ensure that the guidance provided was actually followed. Although this does not mean that senior lawyers must personally conduct the privilege review or prepare the privilege log, they must take reasonable steps to ensure that privilege only has been asserted in accordance with a good faith reading of Delaware law, that there has not been systematic overdesignation, and that the privilege log contains sufficient descriptions of the documents. One possible approach to fulfilling this duty would be for a senior Delaware lawyer to review a representative sample of the entries on the privilege log and associated documents in order to assess compliance with Delaware law and practice. By this or other means, the senior Delaware lawyers must personally assure themselves that the privilege assertion process has been conducted with integrity. That means that when there is a hearing in Court, a senior Delaware lawyer must be able to take the podium, explain the basis for the assertion of a disputed claim of privilege, and be knowledgeable about the privilege assertion process.

iv. Parties may reach agreement on aspects of the privilege-log process. Here are some topics to consider:

(A) The Court generally does not expect parties to log post-litigation communications. Although there may be exceptions, particularly in an injunction proceeding in a still-developing situation, frequently parties should be able to use the date on which suit was filed as a cutoff for privilege review.

(B) It may be possible for parties to agree to log certain types of documents by category instead of on a document-by-document basis. Categories of documents that might warrant such treatment include internal communications between lawyer and client regarding drafts of an agreement, or internal communications solely among in-house counsel about a transaction at issue. These kinds of documents are often privileged and, in many cases, logging them on a document-by-document basis is unlikely to be beneficial.

(C) There are different approaches to logging email chains and email attachments. Some lawyers typically log only the top email in the chain. Others log every email in the chain. Some lawyers describe the attachment separately. Others allow the logging of the e-mail to suffice. Parties should attempt to agree on the procedures that both sides will use.

(D) Different cases may warrant different approaches to redactions. Often redacted copies are produced and a redaction log provided. Parties may agree to dispense with a log for partially redacted emails or other communications where the face of the document provides the factual information that otherwise would appear on a log.

(E) When logging documents on a document-by-document basis, parties should bear in mind that a privilege log must describe the document being withheld so that the opposing party and the Court can assess the propriety of the asserted basis for withholding the document. It is the exceedingly rare, perhaps apocryphal, description that actually reveals the substance of underlying legal advice. It would be inconsistent with the purpose of a privilege log for the receiving party to claim that the descriptions themselves waived privilege. The Court discourages using a short list of repetitive descriptions. Descriptions should be document-specific and provide context so that the reader can understand the basis for the claim of privilege. If the privilege in question is the attorney-client privilege, the log should explain the basis for the assertion of privilege and provide a brief identification of the issue involved. If the individuals drafting and reviewing the log have difficulty describing the role of the lawyer or why the issue is primarily a legal one on which legal advice was sought or given, that may be an indication that the communication is not privileged. It may instead be a general business discussion on which a lawyer was included, a factual update, a cover email attaching documents, or an effort to schedule a conference call or a meeting, which are types of

documents that should be produced. The requirement of a meaningful description thus not only provides necessary information to the other side, but also serves as a check on over-designation.

(F) The parties should provide information about the individuals identified on the log, including whether they are attorneys, their titles, and their affiliations. If non-parties are recipients or authors of a document, the privilege assertion should address how their relationship with the client or counsel justifies maintaining the privilege (*e.g.*, is there a common interest exception or is the third-party a qualified advisor whose access to privileged communications is permissible). Additional detail and context will be necessary in other situations, such as, if someone is acting both as a business person and lawyer. In many situations where lawyers have mixed roles, counsel will have to segregate the privileged portions of communications from those that are non-privileged.

(G) Preparing a privilege log with integrity requires the involvement of senior lawyers who know the applicable standards, understand the precise roles played by the client representatives, and have the relationship and stature with the client to discuss documents frankly and make principled assertions of privilege. This is particularly true of the *many* common situations when a document is only partially subject to a claim of privilege (such as a portion of corporate minutes) and where the bulk of the document should be produced if responsive.

d. Non-party discovery

i. Litigation in the Court of Chancery often involves obtaining documents from non-parties. Sometimes the non-parties will be Delaware businesses or entities who can be subpoenaed directly. Other times counsel will need to use the commission process or the Delaware Uniform Interstate Deposition and Discovery Act.

ii. Many of the non-parties who are involved in Delaware litigation are not true non-parties, but rather have affiliations with named parties. They may be controlled or controlling affiliates, or service providers like investment banks, accountants, or law firms.

iii. Parties should attempt to facilitate third-party discovery involving their non-party agents and affiliates.

(A) Forcing a party to obtain a commission or out-of-state subpoena adds unnecessary complexity and cost to the litigation. Parties also often choose to involve themselves in the productions of their agents and affiliates to address issues such as privilege. If a party intends to involve itself in the production, then the party should play a role in facilitating the production rather than pretending that the non-

party is unrelated.

(B) Facilitating third-party discovery also recognizes that the parties to a case often could be required to obtain and produce documents over which they have control, even if an agent or affiliate has custody of the documents.

e. Discovery disputes

~~6. Disputes~~

~~a.~~i. Parties should meet and confer before bringing discovery disputes to the Court's attention. The Court will not be inclined to consider arguments or authorities that have not previously been presented to the other side. If the argument or authority had been presented, perhaps the dispute would have been resolved. At the same time, the meet-and-confer process should not be used to prolong a dispute and prevent an opposing party from presenting it to the Court.

~~b.~~ii. If one party moved to compel or seeks a protective order, the responding party should not cross-move on the identical issue just to get the last (and fourth) brief. In ruling on a motion to compel, the Court can grant any relief that would be sought by way of protective order. *See* Rules 26(c) & 37(a)(4)(B) & (C). Likewise, in ruling on a motion for protective order, the Court can grant any relief that would be sought by way of a motion to compel. ~~-~~*See* Rule 26(c).

iii. When presenting discovery disputes, parties should not include the entire history of the dispute. They should instead focus on the current scope of the request and the current dispute.

~~7.~~f. Confidentiality Stipulations and Orders

~~a.~~i. Confidentiality stipulations and orders should recognize that proceedings in open court are generally public and that materials used in open court become part of the public record. ~~These stipulations also typically cover more than the topics covered by Rule 5 and should typically reference Rule 26 as well.~~ A stipulation may~~should~~ not provide that ~~-~~confidentiality restrictions would "continue to be binding throughout and after the conclusion of the Litigation, including without limitation, any appeals therefrom" without making any exception for information that becomes part of the public record. Such a restriction as drafted is overbroad and an invalid prior restraint.

~~b.~~ii. If counsel believes that certain limited and highly confidential information requires that the Courtroom~~courtroom~~ be closed, then counsel should make an application well in advance of the hearing in question. In some circumstances, it may be appropriate for counsel to agree on a more limited procedure to protect confidentiality (for example, agreeing to use aliases to refer to certain non-parties in court), and inform the Court of that agreement.

c. ~~Responsibilities of Parties Obtaining Access To Confidential Information: Litigation in the Court of Chancery often involves the production in discovery of very sensitive, non-public information.~~ When litigants and their counsel and advisors obtain access to confidential~~such~~ information, they must~~it is their responsibility to abide~~ strictly abide by the terms of the confidentiality order. Troubling~~ in place. Particularly troubling have been~~ situations have arisen where~~when~~ litigants gained~~have had~~ access to confidential, non-public information about the value of a public corporation and ~~have~~ traded in its~~the~~ securities. A~~ of that corporation. If a~~ litigant or ~~a litigant's~~ advisor who engages in ~~such~~ trading~~, they~~ should expect to have their conduct scrutinized, be required to report~~subject to intensive scrutiny and, at minimum, to face the requirement of reporting~~ themselves to the Securities and Exchange Commission, ~~and~~ possibly face~~even worse~~ sanctions~~,~~ including the mandatory disgorgement of any trading profits and a potential bar to acting as a class representative in future class or derivative actions, ~~in this Court.~~ To avoid these situations, counsel for litigants and their advisors who receive access to confidential, non-public information should discuss these principles with them and advise them that procedures need to be in place to avoid violations of the order and trading in securities on the basis of confidential, non-public information. More generally, litigants and non-litigants who access confidential discovery material ~~under a confidentiality order of this Court~~ should be reminded ~~by counsel~~ that its~~their~~ use may~~and handling of such confidential information may also~~ be subject to other laws and regulations of the State of Delaware and other jurisdictions ~~protecting personal privacy and other public policy purposes~~.

~~c.~~iii. Two sample confidentiality stipulations are attached as Exhibits 7 and 8, and available on the Court's website.

(A) If the parties depart from these forms, then they shall submit a marked/redlined version to the Court reflecting the changes.

(B) If a change is material, the parties shall advise the Court in a letter and explain why the change is being made.

g. Expedited discovery

i. The time constraints inherent in expedited litigation necessarily limit both the scope and timing of discovery and can impose considerable burdens on the parties. Accordingly, the Court expects the parties to work together in good faith to facilitate the timely completion of the discovery necessary for a fair presentation of the issues. The Court encourages the parties and counsel to consider the practices described below, while recognizing that it may be appropriate for the parties to proceed in a different manner in a particular situation, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake.

ii. **Written discovery:** Although all types of written discovery may be used

in the appropriate circumstances, written discovery in expedited cases typically is limited to document requests and narrowly tailored interrogatories intended primarily to identify persons with relevant knowledge. The parties' initial written discovery requests should be focused on the key issues relevant to the expedited portion of the case. If further proceedings are necessary after the expedited portion, there will be the opportunity for additional, non-duplicative discovery. To facilitate prompt responses to written discovery requests and the production of documents (including ESI), the plaintiff should serve its initial written discovery requests with the complaint or a motion to expedite (or if not feasible, as soon as possible thereafter), and the defendant should propound any requests it may have promptly.

iii. In all expedited matters, the parties should agree on a schedule so that initial written discovery and document production is completed before the start of depositions. The parties might agree at the outset of discovery to limit the number of discovery requests. An expedited schedule usually will require the parties to respond to written discovery more quickly than the default period set forth in the Court of Chancery Rules. In some cases, the parties may decide to forgo formal responses in favor of informal communications. To avoid misunderstandings or delays, the responses and objections to document requests, whether formal or informal, should make clear what categories of documents will be produced. The parties should meet and confer promptly to attempt to resolve any disputes regarding the scope of document production. The Court encourages documents to be produced on a "rolling basis" and for the parties to agree that certain significant documents (as discussed more below in "Document collection") will be produced as soon as feasible after the start of discovery (typically subject to an agreement that they will be treated as "attorneys eyes only" until a confidentiality order is entered).

iv. **Document collection:** When responding to written discovery requests, the parties are obligated to conduct a reasonable search for relevant and responsive documents. The speed at which a case is litigated affects what is reasonable. Although each party ultimately is responsible for its own document collection and production, the Court expects that early in the process the parties discuss limitations on expedited discovery. The Court expects the parties to freely exchange information concerning the scope of their respective document collections (*e.g.*, what documents are being collected, how they are being collected, what computers or other electronic devices are being searched, and any search terms or other restrictions being utilized to collect documents).

v. In an expedited proceeding, the parties should collect and produce the "core documents" promptly. Although every dispute is unique, attorneys can generally identify the documents that are most likely to contain relevant information. For example, where a corporate transaction (*e.g.*, a merger) is being challenged, the "core documents" typically include, at least, (i) the minutes of the relevant meetings of the board of directors and

any board committees, (ii) the materials provided to the directors related to the transaction, (iii) the working group lists associated with the transaction, and (iv) the engagement agreements and fee arrangements with advisors.

vi. Parties should identify the key custodians and focus their document collection efforts on those custodians. Typically, parties agree to limit the number of custodians from which each party collects documents. Each party should make a good faith, reasonable attempt to identify the custodians who are reasonably likely to possess relevant documents. Notwithstanding any agreement to limit the number of custodians, unless otherwise agreed, parties should collect from any centralized document repository or system that is likely to contain relevant documents (*e.g.*, document management systems, SharePoint sites, central files).

vii. Parties typically agree to limit the computer devices and systems from which they collect, the date range associated with various document requests, and the file types collected (*e.g.*, excluding ".exe" files). Parties also typically agree that they will not produce documents created after the date that the complaint was filed, unless post-complaint events are or become relevant to the dispute.

viii. Even in expedited discovery, counsel should interview the custodians to understand, among other things, any potential sources of relevant documents (*e.g.*, centralized document repositories or systems, smartphones, work and home computers), determine the records that are kept in the ordinary course, and identify any relevant jargon, acronyms or code names.

ix. Even in expedited discovery, counsel should inquire concerning the existence of responsive hard copy documents, such as handwritten notes.

x. Outside litigation counsel should actively oversee the collection of documents. As in any other case, the Court expects Delaware counsel to play an active role in the collection, review and production of documents in expedited litigation. The role of Delaware counsel become more important in expedited litigation because of the absence of any room in the schedule to redress discovery shortcomings.

xi. If search terms are used to identify potentially relevant documents, the parties should make a good-faith, reasonable attempt to negotiate those terms with the opposing parties. The responding party remains responsible for crafting an appropriate method of collecting documents; the negotiation process is not an opportunity to shift that burden to a less-knowledgeable adversary. To facilitate discussions, the responding party should disclose case- or transaction-specific terms, such as codenames and acronyms. The Court also expects parties to exchange relevant information about search results, such as statistics concerning the number of documents or "hits" associated with particular search terms and examples

of documents that are responsive to particular search terms but are not relevant to the case.

xii. **Document review and production:** The Court expects outside counsel to actively oversee document collection, review and production as part of a reasoned process designed to result in the prompt production of the documents necessary for a fair presentation of the dispute to the Court.

xiii. The Court does not require documents to be produced in a particular format. The parties are expected to cooperate to produce documents in a format that is usable to the parties. Typically, the parties agree to produce most documents as single- or multiple-page image files, and to produce spreadsheets, audio and video files, etc., in their native format. The parties also typically agree to provide standard load files (*e.g.*, a data file for metadata and an image file for images), certain objective metadata (if reasonably available) and text-searchable documents.

xiv. Parties should eliminate duplicate documents (both within and across custodians). Parties should nevertheless record the custodians possessing duplicate copies and provide that information as a separate field in the production load files.

xv. The Court encourages parties to produce core documents as soon as possible and to produce other documents on a rolling basis.

xvi. **Privilege and redaction logs:** In expedited litigation, the Court encourages the parties to make agreements that reduce the time, expense and burden associated with conducting a document-by-document privilege review and preparing privilege and redaction logs so that the merits of the application may be developed in the limited time available and fairly presented to the Court.

xvii. Parties may agree to limit the types of documents that will be logged (*e.g.*, to include only documents from a certain time frame or relating to certain subjects, or to exclude communications post-dating the filing of the complaint or solely between attorneys). The parties also may agree to defer a privilege log until later stages of the litigation.

xviii. Parties are encouraged to forgo a redaction log if the logged information would be redundant of information provided in the redacted documents—for example, if the redacted document identifies the sender and recipients of the communication, the general subject matter (*e.g.*, through a "subject" line on an email), and the basis for the redaction (*e.g.*, the redacted material is stamped "Redacted—attorney-client privilege").

xix. Parties are encouraged to forgo a full document-by-document privilege review by entering into a "quick peek" agreement that permits the requesting party to review responsive documents without the producing party waiving privilege. Whether a quick peek agreement is appropriate

depends on the facts and circumstances of the case. A sample quick peek agreement is attached as Exhibit 11. A "quick peek" agreement may not ensure that documents produced pursuant to the agreement will not be considered a waiver of privilege in other jurisdictions.

xx. It is incumbent upon the parties to reach agreement as to these or other alternative approaches to asserting claims of privilege. A party who unilaterally implements a cost-savings approach to privilege and redaction logs may face arguments that the party failed to properly assert a claim of privilege. This could result in a finding of waiver.

h. The Discovery Facilitator

i. The Court may appoint a Discovery Facilitator to assist the parties in navigating the discovery process. The fees and expenses incurred in connection with a discovery facilitator shall be borne by the parties as directed by the Court.

ii. The role of the Discovery Facilitator is to promote transparency, act as an honest broker, mediate compromises, and document agreements and disagreements. The Discovery Facilitator typically will have the power to convene meet-and-confer sessions, to request information from a party, and to communicate *ex parte* with a party or the court. The Discovery Facilitator typically will be directed to document the results of meet-and-confer sessions so that parties do not exchange lengthy letters about who said what.

iii. Unless granted additional authority, the Discovery Facilitator does not have the power to decide discovery disputes. The Discovery Facilitator is thus not a Discovery Master charged with deciding particular discovery issues. The Court nevertheless may seek input from the Discovery Facilitator if a dispute is presented to the Court.

iv. The Court has historically appointed a Discovery Facilitator in cases exhibiting some or all of the following features: highly complex facts, an extensive discovery burden, an expedited schedule, difficult privilege questions, or a pattern of discovery disputes between counsel. Parties may also request that the Court appoint a Discovery Facilitator. In the Court's experience, the presence of a Discovery Facilitator is a net benefit for everyone involved. Although there is an additional upfront cost, the involvement of a Discovery Facilitator can reduce the number of disputes and the cost of discovery for the case as a whole.

8. Compendia and Appendices

a. Use tabs. An untabbed appendix or compendium is not useful.

b. If a compendium or appendix is huge, uncomfortable to hold, and likely to fall apart, break it into separate usable volumes.

~~a.~~ The **compendium** is counsel's opportunity to provide the Court with authorities that the Courtotherwise does not have at its fingertips or which counsel want to highlight for the Court.

~~i.~~ The parties should provide ~~Each member of~~ the Court with hard copies of key cases. That said,~~has in Chambers a set of the Delaware case reporters and the Delaware statutes. Hence~~ a compendium ~~need not include these authorities.~~

~~ii. Rule 171(h) calls for a party to provide unreported decisions because these decisions are not in the books that are readily available to the Court. Authorities from non-Delaware jurisdictions are similarly not readily available to the Court and must be pulled from Westlaw or Lexis. Well-advised practitioners will include the key non-Delaware authorities, even if they are formal, published decisions.~~

~~iii.~~a. ~~The Court has ready access to the major Delaware treatises. If you are relying on excerpts from other treatises or practitioner pieces, consider including these materials in the compendium.~~

~~iv.~~c. ~~A compendium~~ that includes every single case cited in briefing~~unreported or non-Delaware authority~~ will be large and cumbersome. ~~The members of the Court often carry compendia with them.~~ Include the decisions that the Court should read. As a rough guideline, if a case is cited only once, consider leaving it out of the compendium.If a case already has been provided in an earlier compendium, simply note that fact. You need not provide an additional copy. Submitting a handy-to-use compilation of the key legal sources is the best way to ensure that the Court is familiar with your preferred authorities.

d. Movants should consider preparing a single compendium for their opening and reply briefs upon the filing of their reply brief.

e. Neither the judicial officers nor the Court's personnel have access to Lexis. If you are citing to Lexis versions of cases, it is important to provide Lexis versions.

f. The Court has ready access to the major Delaware treatises. If you are relying on excerpts from other treatises or practitioner pieces, consider including these materials in the compendium.

~~v. Use your judgment. If you are confident enough to compile a shorter compendium of what you consider the key authorities, feel free to submit it, and even include the key Delaware published materials. Counsel who give the Court and its law clerks handy-to-use compilations of the key legal sources are likely to best ensure that the Court understands their arguments. This is also true of the key factual exhibits.~~

The **appendix** is counsel's opportunity to provide the Court with the evidence~~documentary information~~ necessary to decidea motion.

~~b.~~g. The appendix should be manageable ~~As with compendia, members of the Court~~

~~often carry appendices with them~~. To the extent possible, parties responding toa motion or opening brief should avoid duplicating materials in their own appendices. The Court does not need multiple copies of large documents. Cite to the document that appeared in the appendix that accompanied the opening brief.

~~c. Use tabs. For some reason, the advent of efiling has led some practitioners to believe that an untabbed appendix or compendium is useful. It is not. To find Exhibit 13, a tab is still necessary. If you want the judge and law clerk to read your papers, it is critical to touch and feel the final version yourself with a view toward considering how reader-friendly it is.~~

~~d. Avoid the Manhattan Phonebook. If a submission is huge, uncomfortable to hold, and likely to fall apart, please break it into separate usable volumes.~~

~~a.~~

h. ~~Trial~~ Pincite to specific pages or sections of the exhibits. Do not cite to the entireexhibit, which may be lengthy.

9. Trial

a. Pre-trial briefs

i. Pre-trial briefing generally should consist of a total of two pretrial briefs, one from the plaintiffs and one from the defendants. The pre-trial briefs should summarize the evidence and arguments that each side intends to present at trial. They should not go into the same level of detail as post-trial briefs.

ii. In a case where the parties do not anticipate post-trial briefing, the parties should propose a sequence of pre-trial briefs that will present the matter to the Court for decision. Examples where this approach could make sense include a trial that will take place on a stipulated record, or where the parties do not anticipate post-trial briefing because the issues to be tried are narrow and straightforward, such as a simple books-and-records proceeding or an advancement dispute involving limited issues.

~~9. Procedure~~

~~a.~~b. Pre-trial orders~~:~~

i. The judicial officers find it helpful for parties to use their best efforts to prepare stipulated facts, with a particular focus upon the parties' identities, the relevant entities (including capital structure, as appropriate), a general timeline of critical events or other key dates, and the nature and dates of key documents and/or agreements. The Court is not looking for quotations from documents or argumentative characterizations of events. Parties should consider submitting the pre-trial order after the close of pre-trial briefing so that the parties can take into account the other side's briefs when negotiating stipulated issues of fact and drafting proposed issues of fact. For instance, when proposing statements~~In the sections of the pre-~~

~~trial order setting forth proposed findings~~ of fact, a party might~~may opt to~~ include quotations from the other side's briefs or expert reports with supporting citations. If one side has made an assertion and the other side wants to adopt it, the Court likely will treat it as fact unless it appears completely contrary to the evidence or the opposing party changes its position and shows good cause for doing so.

ii. The pre-trial order should identify all~~All~~ witnesses, including potentialrebuttal witnesses~~, should be identified~~.

iii. In cases with large records, there are often substantial numbers of exhibits and extensive portions of transcripts that are not cited in the briefs or discussed at trial. The failure to reference these materials can raise questions about the scope of the record before the trial court. To address this issue, parties may specify in the pre-trial order that the record for the purposes of the trial court's decision includes only those exhibits or portions of depositions that are used at trial or cited in post-trial briefs or at post-trial argument (subject to the resolution of any objections). ~~Trial exhibits:~~Parties also may agree to prepare a Schedule of Evidence after trial, briefing, and post-trial argument that lists the exhibits and deposition excerpts that formthe record for purposes of the trial court's decision.

c. Deposition designations

i. Parties may lodge depositions with the Court rather than prepare deposition designations.

ii. Notwithstanding the lodging of entire depositions, the Court expects the parties to cite the portions of any lodged deposition that the parties believe are relevant in their briefs.

iii. Absent objection or agreement to the contrary, the Court may consider the entirety of the lodged deposition. But the parties should expect that the Court will focus on the portions cited.

d. Trial exhibits

~~iii.~~i. ~~prepare and submit Joint Exhibits.~~ Parties should not submit separate Plaintiffs' Exhibits or Defense Exhibits.They should submit joint exhibits. Giving a document a "JX" number doesnot mean you are stipulating to its admissibility; it just helps eliminate redundancy and allows everyone to work off one ~~original~~ set of exhibits.

~~iv.~~ii. Exhibits should be in chronological order. If the matter is highly expedited, such that chronological ordering is not feasible, parties should give the Court a chronological list of exhibits as soon as practicable.

~~v. Binders containing all exhibits that examining counsel expects to refer to in examining a particular witness, and only those exhibits, are helpful to the Court in cases with a substantial number of trial exhibits.~~

~~vi.~~iii. Parties should work together to avoid duplication. If a duplicate is discovered, it should be eliminated.

~~vii.~~iv. Each side should plan its case so as to avoid deluging the Court with exhibits. It is not acceptable to simply dump in every deposition exhibit.

v. The judicial officers do not require appendices of exhibits with pre-trial briefs. If the pre-trial briefs cite to exhibits, those documents should be included on the trial exhibit list and referenced in the brief by JX number. This best way to make this feasible is to prepare the trial exhibits and exhibit list before pre-trial briefing is due. Less optimal, the parties may submit annotated pre-trial briefs after the trial exhibit list has been prepared that includes JX references.

vi. Parties should meet and confer regarding and attempt to resolve as many evidentiary issues as possible.

(A) Any objections to proposed exhibits or witnesses shall be identified on the joint exhibit list.

(B) Major evidentiary issues should be raised by motion in *limine*.

(C) Minor evidentiary issues should be addressed during trial, and may be further elucidated in post-trial briefs.

(D) Any evidentiary objections not raised as set forth above will be deemed waived.

i. Exhibit binders and flash drives

(A) Not later than the day before trial begins, parties should deliver to the Register in Chancery (i) four hard copies of tabbed exhibit binders and (ii) three flash drives containing searchable versions of the exhibits.

(1) The hard~~to the Register in Chancery not later than the day before trial begins. The~~ copies are allocated as follows: Court, Witness Stand, ~~Court Reporter,~~ Judicial Clerk, and Register in Chancery.

(2) The flash drives are allocated as follows: Court, Judicial Clerk, Court Reporter.

(3) The Register in Chancery's hard~~. The Court Reporter's~~ copy becomes~~should become~~ the official copy after trial for purposes of appeal.

(4) Counsel should contact Chambers to arrange the timing of delivery, as judges may want them earlier in the day in particular cases.

(5) As discussed below, particularly in a large case, the Court may direct the parties only to submit electronic copies.

~~viii.~~(B) All binders, including trial exhibit and witness binders, ~~and should remain free of annotations. Binders~~ should haverings that measure no more than 2" in circumference. A binder with 2" rings will measure 3" across the spine. The Court, its staff, and the Court Reporters have found that larger binders are cumbersome.

~~ix. Parties should meet and confer regarding and attempt to resolve as many evidentiary issues as possible.~~

~~(a) Any objections to proposed exhibits or witnesses shall be identified in the pre-trial order.~~

~~(b)~~(A) ~~Major evidentiary issues should be raised by motion in *limine*.~~

~~(c) Minor evidentiary issues should be addressed during trial or reserved for post-trial briefs.~~

~~(d)~~(A) ~~Any evidentiary objections not raised as set forth above will be deemed waived.~~

(C) Some judicial officers appreciate witness binders containing the exhibits that examining counsel expects to refer to when examining a particular witness. If you are unsure of a judicial officer's preference, you should inquire during the pre-trial conference.

(D) In lieu of the process outlined above, and at the discretion of the presiding judicial officer, parties may opt to conduct a nearly paperless trial.

(1) In that event, four flash drives, which hold all of the trial exhibits and depositions transcripts, should be provided, along with one hard copy set of binders.

(2) If the trial exhibits are updated over the course of trial, the parties should provide replacement flash drives containing the entirety of the updated trial exhibit set.

(3) A nearly paperless trial can be preferable for larger cases (typically lasting three or more trial days) and when the parties have trial presentation specialists who can ensure the smooth and efficient use of technology. Parties should not attempt a nearly paperless trial if they do not have a designated person in trial each day who can operate the technology efficiently. Parties wishing to conduct a paperless trials should confer with their opponents and then raise the issue with the Court during the pre-trial conference

or at an earlier time.

~~b.~~e. Trial procedure~~:~~

i. Parties should expect to divide trial time equally.

~~(a)~~(A) If your side is talking, it comes out of your time. This includes questioning witnesses, making objections, and arguing points.

~~(b)~~(B) Parties should track time usage. Beginning with day two of a multi-day trial, the parties should confer and agree at the lunch break or at the end of each day on time usage to date and the anticipated time remaining for each side.

~~ii.~~ As a general principle, whoever has the burden of proof should present their case first and control the call of the witnesses. This means that the party with the burden of proof may call an opposing party's witness as part of its case-in-chief.

~~iii.~~ii. As a general principle, witnesses should appear only once unless recalled in the rebuttal case. If both sides are calling a witness, then the party with the burden of proof has the option of how to proceed. The Court generally finds that it is more efficient and comprehensible to hear witnesses tell their own story first and then be cross-examined. If the party with the burden of proof elects to proceed in that fashion, then at the time the witness is called, the party controlling the witness presents~~would present~~ the witness first, then the other side ~~would~~ cross-examines~~examine~~ the witness without any limitationto the scope of direct. Alternatively, the party with the burden of proof may elect to proceed with a hostile examination of the witness. If this course is followed, then the party controlling the witness will be permittedto follow with a complete direct examination.

10. Forms of Order

a. Parties should work cooperatively to agree upon forms of order.

b. An order may be agreed as to form so as to avoid any argument that a party has waived a right to appeal or to revisit an issue that has been determined preliminarily for purposes of an injunction, discovery, or similar pre-trial purpose.

~~c.~~i. If parties are truly unable to agree, then the prevailing party should submit a form of order and short motion~~under a cover letter~~ that sets forth~~identifies the issues between the parties and explains~~ why the proposed form of order should be entered~~addresses them appropriately~~.

~~i. Under the principle that letters should be short, a party should submit a motion for entry of order if there are a large number of issues.~~

ii. The non-prevailing party should respond by ~~letter or~~ opposition and

provide a mark-up of the prevailing party's proposed form of order. The non-prevailing party should not respond with a completely different form oforder.

iii. The prevailing party should then reply.

iv. If a motion or relief was granted in part and the Court has not otherwise directed a party to take the lead on submitting a form of order, then the movant is the prevailing party for purposes of initiating the submissions.

~~d.~~c. If the Court has requested a form of order, then unless otherwise directed, a form of order should be submitted within five business days~~one week~~ of the ruling.

11. Representative Actions

a. Other proceedings involving the same subject matter

i. Parties to representative actions who are aware of other proceedings involving the same subject matter should (i) advise the Court promptly of the existence of the other matters and (ii) regularly update the Court regarding the status of the other matters.

~~a.~~b. Settlements~~:~~

i. If a settlement has been reached in representative litigation challenging a pending transaction, the parties should advise the Court promptly and submit the memorandum of understanding. The settlement should be presented promptly for approval following the closing of the transaction.

ii. The scheduling order for a settlement in a representative action ~~settlement~~ shouldprovide for the following:

~~(a)~~(A) Mailing of a notice at least 60 days before the hearing date, with a shorter time only upon application and for good cause shown;

~~(b)~~(B) A brief in support of the settlement and any supporting documents to be filed 30~~15~~ days before the hearing date;

~~(c)~~(C) Objections to be filed 15~~10~~ days before the hearing date, and

~~(d)~~(D) A short reply in support of the settlement and in response to any objections five days prior to the hearing date.

~~(e)~~(E) A sample settlement scheduling order appears as Exhibit 9.