Delaware Court of Chancery Updates Rules: What you need to know!

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On September 25, 2023, the Delaware Court of Chancery issued its first set of amendments as part of a multi-year project to update and modernize its rules. Generally, the amendments made stylistic changes that are consistent with the changes made to the Federal Rules of Civil Procedure. Along with the stylistic changes, the amendments made several substantive changes based on current Court of Chancery practices. Key updates are provided in the summaries below:

+ Rule 7—Briefs: The amended rule now makes it clear that only the following briefs may be filed without court approval: (1) an opening, answering, and reply brief for a motion under Rule 12, 23, 23.1, 41(b), 56, or 65; (2) briefs relating to the approval of a settlement or application for attorney's fees and expenses for an action under Rule 23, 23.1, or 23.2; and (3) pre-trial and post-trial briefs.

In addition, the amendment provides that each brief must include: (1) a cover page; (2) a table of contents with page references; (3) a table of authorities; (4) an introduction; (5) a statement of facts in an opening or answering brief; (6) an argument, divided into sections; and (7) and a conclusion providing the relief sought. Briefs also can no longer contain numbered paragraphs.

Further, the new rule provides that opening or answering briefs cannot exceed 14,000 words, while a reply brief cannot exceed 8,000 words. These word limits do not include the front cover, table of contents, table of citations, signature block and any footer included pursuant to Rule 5.1(c).

+ Rule 10—Formatting for Court Submissions: The rule now provides clarification related to the formatting of briefs, motions and letters. This includes that all filings must use either Times New Roman 14-point typeface with 13-point typeface in footnotes, Century 12-point typeface with 11-point typeface in footnotes, or Century Schoolbook 12-point typeface with 11-point typeface in footnotes. Further, the amendment clarifies that the text of a filing must be at least double spaced, while the line spacing of headings, footnotes, and block quotations may be single spaced.

+ Rule 17—Limited Guardianships: The rule was amended to now permit the appointment of a limited guardian that will bring or defend a lawsuit on behalf of a person without capacity. The rule also includes a presumption that a parent of a minor is a qualified guardian ad litem unless there is a conflict of interest.

The rule also now sets forth specific requirements for a motion for appointment of a guardian ad litem.

+ Rule 23—Class Actions: The new rule provides several substantive changes, which include the removal of the requirement that a class must be certified “as soon as practicable.” Further, the rule no longer provides for “conditional certification orders,” which is consistent with the federal rules.

  Rule 23(d) provides new and updated rules on the practice of class counsel. This includes that class counsel must adequately and fairly represent the interest of the class and that the court must appoint class counsel when certifying a class. Moreover, the amended provision provides a 7-prong analysis for the court to consider when resolving disputes over the appointment of class counsel.

Further, Rule 23(f) revises dismissal and settlement in a class-action case. This new rule requires that a party

submitting the proposed dismissal or settlement must file an affidavit from each representative party and a proposed form of order explaining the terms of any dismissal. Counsel must also provide certain information to the class, including the time of the hearing to approve the settlement.

Rule 23(g) updated the rules related to attorney's fees in class-action suits by requiring an affidavit documenting the fees and expenses of any counsel who will share in the award.

+ Rule 23.1—Derivative Actions: This rule, which deals with derivative actions, now no longer includes the term “compromise,” which was replaced with “settlement.” Further, the rule now applies to all entities with a separate legal existence, as well as any derivative plaintiff.

+ Rule 23.2—Unincorporated Associations: This rule now provides a simplified, quasi-class action vehicle for suits on behalf of or against the members of an unincorporated association. The change does not affect the ability for members of an association to sue as individual plaintiffs, or for a party to sue members of an association as individual defendants.

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