

The New Lawyers' Survival Guide

**A publication of the Young Lawyers Section of
the Delaware State Bar Association**

2015-2016

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Message From The Young Lawyers Section Chair

Alessandra Glorioso

On behalf of the Young Lawyers Section of the Delaware State Bar Association, we congratulate you on your admission to the Bar of the State of Delaware. Delaware has one of the finest and most collegial bars in the country, and you will find it is truly a privilege to practice here and learn from the ranks of our many esteemed and experienced colleagues.

As you embark on your exciting new career practicing Delaware law, you will no doubt encounter a learning curve. As the saying goes, law school does not teach you how to be a lawyer. We have all been in your shoes and have experienced, and continue to experience, the challenges that come with transitioning into practice.

To aid in your transition, in coordination with the Commission on Continuing Legal Education of the Supreme Court of Delaware, we present this New Lawyers' Survival Guide. It contains tips, how-to information, references, and other guidance for a broad variety of practices, provided by Delaware practitioners and members of our renowned judiciary. We hope that this Guide will prove to be a go-to resource as you learn first to survive and then to succeed in your new career.

Editorial Board



Kyle Evans Gay

Associate

Morris James LLP



Selena E. Molina

Associate

Richards, Layton & Finger, P.A.



Alessandra Glorioso

Associate

Dorsey & Whitney LLP



Stacy L. Newman

Associate

Ashby & Geddes, P.A.



Jenny Kasen

Associate

Kasen & Kasen, P.C.



Evan T. Miller

Associate

Bayard, P.A.



Jason D. Warren

Associate

McCann & Wall, LLC

Meet The Editors And Authors

Justin R. Alberto. Justin R. Alberto is an Associate at Bayard, P.A. Justin focuses his practice on corporate bankruptcy and restructuring. He has experience representing debtors, creditors' committees, equity committees, lenders, bondholders, secured and unsecured creditors, plan administrators, and other interested entities in various bankruptcy reorganization and liquidation proceedings. In addition to his restructuring practice, Justin also has experience representing entities involved in litigation arising under and transactions governed by the General Corporation Law of the State of Delaware. Each year since 2013, Justin has been recognized by *Super Lawyers* magazine as a Delaware Rising Star in the practice area of bankruptcy & creditor/debtor rights. Justin was also selected for and graduated from the 2013 Federal Trial Practice Seminar sponsored by the United States District Court for the District of Delaware. While a student at Widener University School of Law, Justin clerked for the Honorable Henry duPont Ridgely, Justice of the Delaware Supreme Court.

Nathan E. Barnett. Nathan E. Barnett is an Associate in the Commercial Law Counseling Group at Morris, Nichols, Arsht & Tunnell LLP. His practice focuses on partnership, limited liability company and statutory trust law, as well as administrative law, government entities and regulation, and unclaimed property.

Sara E. Bussiere. Sara E. Bussiere, an Associate at Bayard, P.A., concentrates her practice in the areas of corporate, commercial, and intellectual property litigation in the Delaware Court of Chancery, Delaware Superior Court, and the United States District Court for the District of Delaware. Prior to joining Bayard, Sara served as law clerk to the Honorable John A. Parkins, Jr. on the Delaware Superior Court.

Rebecca Byrd. Rebecca Byrd focuses her practice on government relations matters. She previously served in the Delaware Governor's Office as deputy legal counsel, a position that included serving as liaison to the Delaware River and Bay Authority. She also has served as a Delaware Deputy Attorney General and as a clerk for the Delaware Supreme Court.

Kyle Evans Gay. Kyle Evans Gay is an Associate in Morris James LLP's Business Litigation group and focuses her practice on litigation involving corporations and alternative entities formed under Delaware Law. Kyle entered the private practice of law after serving as a judicial law clerk to the Honorable Paul R. Wallace of the Delaware Superior Court. She was also a former Deputy Attorney General in the Appeals Division of the Delaware Department of Justice. In her prior positions she gained experience in appeals litigation, criminal and civil matters, and complex commercial litigation cases.

Alessandra Glorioso. Alessandra Glorioso is an Associate with the Finance and Restructuring department at Dorsey & Whitney LLP. She is experienced in representing debtors and significant creditors in Chapter 11 proceedings and bankruptcy litigation. Alessandra's litigation service extends to Delaware corporate, commercial, and intellectual property matters. She regularly assists in matters before the United States District Court for the District of Delaware, the Delaware Court of Chancery, and the Delaware Superior Court.

Donald L. Gouge, Jr. Donald L. Gouge, Jr. is a solo practitioner who focuses his practice in the area of real estate litigation, including Landlord–Tenant and debt cases in JP Court, Petitions for Partition, Deed Restriction Enforcement, specific performance, quiet title, and related matters in the Court of Chancery, and other general civil litigation. Don started in the City of Wilmington Law Department in 1984, moved on to private practice in 1989, and became a solo practitioner in 1995.

Stephanie S. Habelow. Stephanie S. Habelow is an Associate at Chipman Brown Cicero & Cole, LLP. Stephanie joined the firm in 2012 and focuses her practice on corporate and commercial litigation in the Delaware Court of Chancery. Stephanie clerked for the Honorable William C. Carpenter, Jr. of the Delaware Superior Court before entering private practice, and also served as a judicial intern during law school for Vice Chancellor Donald F. Parsons, Jr. of the Delaware Court of Chancery and Chief Justice Myron T. Steele of the Delaware Supreme Court.

Shauna Hagan. Shauna T. Hagan is an attorney in her own firm, The Law Office of Shauna T. Hagan, LLC, where she concentrates her practice in the area of family law. Shauna is an active member of the Delaware State Bar Association Family Law Section, the Women in the Law Section, and the LGBT Section. She is the past Chair of the Family Law Section. She has also served on the Delaware State Bar Association’s Executive Committee. Shauna is a Member of the Melson Arsht Inn of Court and is the current Secretary of the Inn’s executive committee and is also a member of the St. Thomas More Society. Shauna frequently volunteers for DVLS, Child Inc.’s DVAP program, the Office of Child Advocate, and as Mock Trial Coach for Padua Academy. In 2013, Shauna received the Christopher J. White Distinguished Access to Justice Award for Commitment from the Delaware State Bar Association. In the community, Shauna is a member of the board of directors for The Delaware Adolescent Program (DAPI) and is a volunteer for the Girl Scouts of the Chesapeake Bay. She is admitted to practice law in the State of Delaware as well as before the United States District Court for the District of Delaware. She frequently presents seminars on the topic of Family Law. Shauna graduated cum laude with Honors Program Distinction from The University of Tampa in 2001 and was awarded her J.D. from Widener University School of Law in 2004.

Christofer Johnson. Chris Johnson serves as an Assistant City Solicitor for the City of Wilmington, where he represents the City in complex litigation in a variety of areas and advises several City boards, commissions, and public officials. He is on the Executive Board of the Multicultural Judges and Lawyers’ Section of the Delaware State Bar Association. Chris is admitted to practice in the state and federal courts of Delaware, New Jersey, Pennsylvania, and the U.S. Court of Appeals for the Third Circuit. He earned his B.S. degree from University of Delaware and his J.D. degree from Widener University School of Law in Delaware.

Eric J. Juray. Eric J. Juray is an Associate at Prickett, Jones & Elliott, P.A. Eric joined the firm in 2013 and focuses his practice on corporate and commercial disputes before the Court of Chancery. Prior to joining the firm, Eric clerked for the Honorable Randy J. Holland of the Supreme Court of Delaware.

Jenny Kasen. Ms. Kasen has been an Associate with Kasen & Kasen since 2010. In 2013, Ms. Kasen served as Judicial Intern to the Honorable Christopher S. Sontchi in the United States Bankruptcy Court for the District of Delaware, where she wrote draft opinions and bench memoranda, performed legal research and observed various Chapter 11 proceedings including first day motions, bid procedure hearings, Section 363 sale hearings and confirmation hearings. She attended Rutgers University School of Law where she graduated with a juris doctorate degree in 2010. While in law school Ms. Kasen externed for Chief Judge Judith H. Wizmur in the United States Bankruptcy Court for the District of New Jersey. She is also an active member of the Camden County Bar Association, Young Lawyers Committee and The Bankruptcy American Inn of Court.

William B. Larson, Jr. William B. Larson, Jr. is an Associate with Manion Gaynor & Manning LLP. His civil litigation practice focuses on toxic tort and products liability litigation in Delaware and nationally. Prior to joining MG&M, Bill served as law clerk to the Honorable John A. Parkins, Jr. of the Delaware Superior Court. He is a 2011 graduate of Washington and Lee University School of Law.

Evan T. Miller. Evan T. Miller is an Associate at Bayard, P.A. Evan concentrates his practice in the areas of corporate bankruptcy and restructuring. In addition, Evan has experience handling commercial litigation matters in Delaware, New Jersey, and Pennsylvania jurisdictions. Evan is the Chairman of the Turnaround Management Association Philadelphia NextGen Philadelphia chapter, and was the Chairman of the Delaware State Bar Association's (DSBA) Young Lawyer Section for the 2014-15 term. He previously served as Treasurer during the 2013-14 term. Evan is also a member of the executive board for the Delaware Bankruptcy American Inn of Court, a Vice Chair of the Bankruptcy Committee for the American Bar Association's Young Lawyer Division, and Vice Chair of the Philadelphia Bar Association's Bankruptcy Committee.

Arun Mohan. Arun Mohan is an Associate at Richards, Layton & Finger, P.A. where he focuses his practice on commercial and intellectual property litigation in Delaware's state and federal courts. During law school at Michigan State University, Arun served as a law clerk in a public defender's office as well as for law firms in Michigan, New York, and California.

Selena E. Molina. Selena E. Molina is an Associate at Richards, Layton & Finger, P.A. where she focuses her practice on litigation in Delaware's state and federal courts involving complex commercial litigation and intellectual property disputes. In law school, Selena served as a Josiah Oliver Wolcott Fellow to the Honorable Randy J. Holland on the Supreme Court of Delaware. Selena then clerked at the Delaware Superior Court in New Castle County for the Honorable William C. Carpenter, Jr. Selena is currently an Associate Editor and contributor to TYL, the publication of the Young Lawyers Division of the American Bar Association.

Stacy L. Newman. Stacy L. Newman joined Ashby & Geddes in 2008 as an Associate and currently splits her time between the Corporate Litigation and Counseling and Bankruptcy and Insolvency Practice groups. She represents a broad variety of clients in corporate bankruptcy proceedings, including debtors, secured and unsecured creditors, creditors' committees, equity committees, and Chapter 7 trustees. She also maintains a bankruptcy litigation practice involving preferences and fraudulent transfers. Prior to joining the firm, Stacy clerked for the Honorable James T. Vaughn, Jr., then-President Judge of the Delaware Superior Court.

Staci J. Pesin. Staci J. Pesin is a family law practitioner at Cooch and Taylor, P.A. She is a member of the Melson Arsht Inn of Court and the Family Law Section of the Delaware State Bar Association. Prior to joining Cooch and Taylor, Staci clerked for the Honorable Alan N. Cooper and the Honorable Joelle P. Hitch at the Delaware Family Court. Staci is a 2013 graduate of Widener University School of Law and is admitted to practice in Delaware, Pennsylvania, and New Jersey.

Elizabeth A. Powers. Elizabeth A. Powers is an Associate in Morris James LLP's Litigation Department. Prior to joining Morris James, she served as a judicial law clerk to the Honorable Mary M. Johnston of the Delaware Superior Court, a member of the Complex Commercial Litigation Division. She was also a former Deputy Attorney General in the Appeals Division of the Delaware Department of Justice. In her prior positions, she gained experience in appellate litigation, criminal and civil cases, and complex commercial litigation matters.

Brendan J. Schlauch. Brendan J. Schlauch is an Associate at Richards, Layton & Finger, P.A. and a graduate of The Ohio State University Moritz College of Law. He focuses his practice on corporate bankruptcy, bankruptcy litigation, and corporate restructuring. Brendan also provides advice and legal opinions as a member of the firm's substantive non-consolidation opinion team. He has also advised on a variety of commercial and secured transactions.

Zi-Xiang Shen. Zi-Xiang Shen is an Associate at Morris, Nichols, Arsht & Tunnell LLP. Zi-Xiang joined the firm in 2014 and her practice focuses on corporate and commercial litigation before the Court of Chancery.

Greg P. Skolnik. Greg P. Skolnik served as the sole judicial law clerk for all five judges of the New Castle County Court of Common Pleas. Greg is currently an Associate at Heckler and Frabizzio, P.A., focusing his practice on insurance defense and workers' compensation litigation.

Stephanie Smiertka. Stephanie Smiertka is an Associate at Grant & Eisenhofer P.A. Her practice primarily focuses on plaintiff complex pharmaceutical litigation, representing victims in federal and state courts across the country. Prior to private practice, Stephanie served as the judicial law clerk for the New Castle County Court of Common Pleas. She is a 2012 graduate of George Washington University Law School.

Aaron Stulman. Aaron Stulman is an Associate in the Bankruptcy and Insolvency Practice group at Ashby & Geddes. After graduating from Widener University School of Law, Aaron clerked for the Honorable Brendan Linehan Shannon of the United States Bankruptcy Court for the District of Delaware. Aaron is an editor and regular contributor to *The Delaware Bankruptcy Insider*, a blog designed to bring readers a comprehensive analysis of the latest Delaware corporate bankruptcy news and rulings. He is also the author of the following article: *Stub Rent Under Section 365(d)(3): A Call for a Unified Approach*, 36 DEL. J. CORP. L. 655 (2011). Prior to his clerkship, Aaron graduated *magna cum laude* from Widener University School of Law.

Kristen Swift. Kristen Swift is an Associate at Heckler & Frabizzio. Kristen previously worked for the Honorable Leonard P. Stark in the United States District Court for the District of Delaware and for the Honorable Mary Walrath in the Bankruptcy Court for the District of Delaware. She also spent time as the Pro Se Consumer Bankruptcy Advocate with Delaware Legal Services, Inc. working on access to justice issues. Before attending law school Kristen managed a social work department in a health care facility for several years.

Jane C. Trueper. Jane C. Trueper is an Associate at Richards, Layton & Finger, P.A. and a graduate of the University of Pennsylvania Law School. She focuses her practice on transactional matters relating to Delaware alternative entities, including limited liability companies, limited partnerships, and general partnerships. Jane renders advice and opinions on matters concerning formation, operation, governance, and enforceability, as well as in connection with structured finance and investment funds. Jane also provides advice regarding banking and corporate and personal trust matters.

Jason D. Warren. Jason D. Warren is an Associate at McCann & Wall, LLC. He focuses his practice primarily on personal injury, workers' compensation, medical negligence, premises liability, products liability, and employment litigation. Prior to joining McCann & Wall and exclusively representing individuals, he was an associate at an insurance defense firm.

Julie Yeager. Julie H. Yeager is honored to share her advice and insight on the Family Court in the State of Delaware with the newly-admitted members of the Delaware Bar. She has over ten years of experience in family law. At the age of 31, Julie hung her own shingle and opened The Yeager Law Firm. The Yeager Law Firm specializes in civil family law issues across the State of Delaware, including but not limited to divorce, property division, support, custody, guardianship, protection from abuse orders, and termination of parental rights and adoption. Julie is also one of ten attorneys state-wide who currently holds an Indigent Parent Contract. She has been representing parents whose children have been taken into foster care in New Castle County since 2009. Prior to opening The Yeager Law Firm, Julie was an Associate at Tybout, Redfearn & Pell from 2008 to 2011 where she developed the firm's family law practice, as well as worked in worker's compensation and insurance defense. She was a Judicial Law Clerk for the Honorable William Nicholas, the Honorable Mardi Pyott, and the Honorable William Walls in Kent County Family Court from 2007 to 2008 and a judicial law clerk for the Honorable Barbara Crowell and the Honorable Aida Waserstein in New Castle County Family Court from 2005 to 2006.

STATE COURT PRACTICE

The Supreme Court Of Delaware

Justice Collins J. Seitz, Jr.

Welcome to the Supreme Court of Delaware!

On behalf of all of the Justices of the Supreme Court of Delaware, I welcome you as you complete the remaining requirements to become members of one of the finest Bars in the country - the Delaware Bar. The Supreme Court is the highest court in Delaware, is the administrative head of the Delaware court system, and handles appeals from the trial courts. The Supreme Court also conducts its judicial and administrative functions through the Arms of the Court, which include the Board of Bar Examiners, the Commission on Continuing Legal Education, the Office of Disciplinary Counsel, and the Court on the Judiciary.

There are five Justices, with at least one Justice from each of Delaware's three counties. The Justices have their chambers in each of the counties, where they spend most of their time attending to the steady flow of appellate cases. Appeals from criminal cases represent well over half of all appeals decided by the Court. The Court holds oral arguments once a week, usually on Wednesdays, at the Supreme Court building in Dover, Delaware. The main clerk's office is in Dover, Delaware, a little less than an hour's drive from Wilmington and Georgetown. Documents can be filed there, or at the Clerk's office in Wilmington.

The Supreme Court is known as an "active bench" with oral argument occupied by questions from the Justices. Although the Supreme Court has a heavy caseload, its disposition time for submitted cases is well less than ninety days. For a successful practice in the Supreme Court, the practitioner must be familiar with the Court rules, and in particular the rules regarding the requirements for proper brief format. Perhaps most important, success on appeal requires well-written and thoughtful briefs, and meticulous preparation for oral argument. The record is what the Court has to decide each case, and counsel drafting briefs and arguing the case must be familiar with all of the nooks and crannies of the record. You can be sure the Justices and their clerks will be!

Like the other Delaware courts, the Supreme Court places a premium on civility and collegiality. By the time a case comes to Dover, in most cases someone is on the winning side, and someone is on the losing side. The true professional comes to the Supreme Court neither smug nor angry, but instead advances the best arguments for the client, accepts the rulings of the highest court in Delaware, and shakes the opponent's hand following argument. We look forward to seeing you at the podium, and at the many fine programs sponsored by the Delaware State Bar Association. Welcome to the Court.

The Basics of the Supreme Court

By: Sara Bussiere, Kyle Evans Gay, Stephanie S. Habelow, and Elizabeth A. Powers

As the highest court in the State of Delaware, the Delaware Supreme Court has “final appellate jurisdiction in criminal cases in which the sentence exceeds certain minimums, in civil cases as to final judgments and for certain other orders of the Court of Chancery, the Superior Court, and the Family Court.”¹ The Supreme Court also has “discretionary jurisdiction to issue writs of prohibition, quo warranto, certiorari, mandamus or to accept appeals of certain non-final orders or certified questions.”²

Although the Supreme Court may be best known nationally for its decisions in corporate law matters, the Supreme Court handles a variety of cases appealed from Delaware’s lower courts. The Supreme Court annually processes about 550 to 600 cases.³ The Court hears oral argument in approximately 30% of its cases, with the remainder being decided on the papers. Appeals to the Delaware Supreme Court are considered “strictly on the basis of the record in the court below and the written briefs.”⁴ “Parties before the Supreme Court are not permitted to conduct discovery, call witnesses, or offer any evidence that was not presented first to the court below.”⁵ Because of the relatively small number of cases appealed to the Supreme Court, attorneys practicing in any area of law may find themselves before the Court. Therefore, it is important to familiarize yourself with the Court’s requirements and operating procedures.

The Supreme Court is comprised of five justices, one of whom serves as Chief Justice.⁶ Each justice is nominated by the Governor and confirmed by the Delaware State Senate to serve a 12-year term.⁷ Under the Constitution of the State of Delaware, “three of the five Justices of the Supreme Court in office at the same time, shall be of one major political party, and two of said Justices shall be of the other major political party.”⁸ Geographically, the Supreme Court Courthouse and the Clerk of the Supreme Court are located in Dover, but the Supreme Court also maintains offices in New Castle (Wilmington) and Sussex (Georgetown) counties. Each of these offices also houses Deputy Court Clerks who accept paper filings in those counties.⁹ Although the Court sits in Dover, each justice maintains chambers in the county where he or she resides.¹⁰

In addition to presiding over its state-wide appellate docket, the Supreme Court administers multiple committees, commissions, and arms of the Court. For example, you already are familiar with the Board of Bar Examiners of the Supreme Court of Delaware which considers the applications and test results of potential admittees to the Delaware Bar.¹¹ The Office of Disciplinary Council is also an arm of the Supreme Court and “assists the Court in regulating the practice of law” by “evaluating, investigating, and, if warranted, prosecuting lawyer misconduct.”¹² The Supreme Court, and the Chief Justice specifically, also administers Delaware’s judicial branch. For more information on the administration of the courts, review the [Operating Procedures for the Delaware Judicial Branch](#).

¹ <http://courts.delaware.gov/Supreme/>

² Id.

³ <http://courts.delaware.gov/Help/Proceedings/supreme.stm>

⁴ <http://courts.delaware.gov/Help/Proceedings/supreme.stm>

⁵ Id.

⁶ <http://courts.delaware.gov/Supreme/justices.stm>

⁷ <http://courts.delaware.gov/Supreme/justices.stm>

⁸ DEL. CONST. art. IV, § 3.

⁹ <http://courts.delaware.gov/Help/Appeals/SupremeCitizensGuide.stm>

¹⁰ <http://courts.delaware.gov/Help/Proceedings/supreme.stm>

¹¹ <http://courts.delaware.gov/BBE/index.stm>

¹² <http://courts.delaware.gov/odc/>

Filing Requirements in the Supreme Court

By: Sara Bussiere, Kyle Evans Gay, Stephanie S. Habelow, and Elizabeth A. Powers

Time for Appeal

Except for cross-appeals, a Notice of Appeal must be filed within 30 days of the docketing of the final order or judgment appealed from in the lower court (Sup. Ct. R. 6). This rule is “jurisdictional”, meaning that this time period cannot be enlarged or extended.

Initial Pleadings

Notice of Appeal (Sup. Ct. R. 7

- *See* Rule 7(c) for contents (*see also* Forms A and B for samples).
 - Attach underlying opinion(s)/order(s) appealed from as exhibit(s) to Notice of Appeal.
- If relevant parts of the trial court record need to be transcribed:
 - Appellant: Include a direction to the Court reporter within the Notice of Appeal identifying the parts of the record that need to be transcribed (Sup. Ct. R. 7(c)(6) and 9(e)).
 - Appellee: Prepare a Direction to Court Reporter (Sup. Ct. R. 9(e) and Form C).
- If additional transcription is not needed:
 - Appellant: Within Notice of Appeal, include a statement that no transcription is necessary (Sup. Ct. R. 9(e)).
 - Appellee: Submit Statement In Lieu of Ordering Transcript (Sup. Ct. R. 9(e) and Form D).

Disclosure of Corporate Affiliations (Sup. Ct. R. 7(g) and Form P)

- File within 15 days of “notice of docketing the appeal” or within two days of service of this document by all other parties.

Briefs

General Rules

- Must use 14 point Times New Roman font, double-spaced with two spaces between each sentence (i.e., two spaces after each period) (Sup. Ct. R. 13(a)).
- Footnotes must be single-spaced with two spaces between each sentence.
 - There is a conflict between Supreme Court Rule 14(d) and 13(a) regarding the font size for footnotes. Rule 13(a) specifies 12 point font whereas Rule 14(d) specifies that footnotes should be the same size as the font of the text of the brief.
- Length (Sup. Ct. R. 14(d))
 - Opening and answering briefs may not exceed 35 pages.
 - Reply briefs may not exceed 20 pages.
 - Limits are different for cross-appeals (Sup. Ct. R. 14(d)).
- Form of Citations
 - *See* Rule 14(g) for guidance.

Binding / Colors

- All briefs and appendices must be “firmly bound” on the left hand margin in a clear plastic cover (Sup. Ct. R. 13(a)).
- Cover of appellant’s opening brief must be blue (i.e., the piece of paper behind the clear plastic cover) (Sup. Ct. R. 14(a)(ii)).
- Cover of appellee’s answering brief must be red (Sup. Ct. R. 14(a)(ii)).
- Cover of any reply brief must be gray (Sup. Ct. R. 14(a)(ii)).
- All appendices must be bound on the left hand margin with a clear plastic cover (Sup. Ct. R. 13(a)(ii)). The underlying cover of any appendix must be white (Sup. Ct. R. 14(a)(ii)).

Opening and Answering Briefs

- Include the following sections, in this order, each beginning on a new page (Sup. Ct. R. 14(b)):
 - Table of Contents
 - Table of Citations
 - Nature of Proceedings
 - Summary of Argument
 - Statement of Facts
 - Argument
 - Question Presented
 - Scope of Review
 - Merits of Argument
- Attach a copy of the trial court’s opinion/order being appealed to the opening brief (this does not go in the appendix) (Sup. Ct. R. 14(b)(vii)).

Reply Briefs (Sup. Ct. R. 14(c))

- Only need to include table of contents and table of citations and an argument section.

Appendix (Sup. Ct. R. 14(e))

- An appendix must accompany the appellant’s opening brief (except in a Certification of Questions of Law matter pursuant to Rule 41).
- Include the following:
 - Table of contents with items listed chronologically.
 - First entry should be the trial court docket.
 - Appellant’s appendix shall contain relevant portions of trial transcript “as are necessary to give this Court a fair and accurate account of the context in which the claim of error occurred and must include a transcript of all evidence relevant to the challenged finding or conclusion.”
 - If witness testimony is included, references to the pages of such testimony in the transcript shall be included in the table of contents.
- Pagination (Sup. Ct. R. 13(a)(ii))
 - Page numbers of appellant’s appendix must begin with the prefix “A” (i.e., page A59).
 - Page numbers of appellee’s appendix must begin with the prefix “B.”
 - Page numbers of any reply appendix must begin with the prefix “AR.”

Scheduling and Oral Argument

Scheduling

- After the Notice of Appeal is filed, the Clerk of the Court will submit a letter to counsel setting forth the briefing schedule.
 - Typically, in cases in which no further transcription is needed, the appellant's opening brief and appendix will be due 45 days after the filing of the Notice of Appeal (Sup. Ct. R. 15(a); *see also* Sup. Ct. R. 11 regarding computation of time).
 - If record needs additional transcribing, opening brief will be due 30 days after record is officially submitted to the Supreme Court.
 - The appellee's answering brief and appendix shall be due 30 days after service of appellant's opening brief and appendix.
 - Any reply brief and appendix of appellant shall be due no later than 15 days after service of appellee's answering brief and appendix. Rules for cross-appeals are different.
- After any reply brief has been submitted, the Clerk of the Court will schedule oral argument.

Oral Argument

- Arguments are usually heard by an anonymous three-justice panel (you will not know which justices are on the panel until the argument). Each side will have 20 minutes to argue its case. Appellant(s) will argue first, with the option to reserve a portion of their allotted 20 minutes for rebuttal.
- In some more complex matters, oral argument is heard *en banc* (i.e., by all five justices). The Court will also sit *en banc* if an original three-justice panel is unable to reach an unanimous decision or in the case of a death-sentence review. In this case, each side will have 25 minutes to argue its case. Again, appellant(s) will argue first, with the option to reserve a portion of their allotted 25 minutes for rebuttal.

Certifications of Questions of Law and Interlocutory Appeals

Certifications of Questions of Law

- The following courts and entities may certify questions of law to the Delaware Supreme Court: (1) other Delaware courts; (2) the Supreme Court of the United States; (3) a Court of Appeals of the United States; (4) a United States District Court; (5) the United States Securities and Exchange Commission; or (6) the highest appellate court of any other state.
 - Certification may be by motion or *sua sponte*.
 - "Certification will be accepted in the exercise of the discretion of the Court only where there exist important and urgent reasons for an immediate determination by th[e] Court of the questions certified. A certification will not be accepted if facts material to the issue certified are in dispute." (Sup. Ct. R. 41(b)).
 - The requirements for accepting a certification are outlined in Rule 41.

Interlocutory Appeals

- An interlocutory appeal is an appeal from an order that does not resolve all of the outstanding claims in the action.
- Procedure is governed by Rule 42, which outlines the criteria for certification and acceptance of interlocutory appeals.
- A party must first make an application for certification of an interlocutory appeal to the trial court within 10 days of the entry of the order from which the interlocutory appeal is sought.
 - The opposing party will have 10 days to file a written response or present an oral response if the Court so directs.
 - Within 10 days of the response or, if there is no response, within 20 days of the application, the trial court must enter an order either certifying or refusing to certify the interlocutory appeal.
- A party must also file a notice of appeal of an interlocutory order with the Supreme Court within 30 days after the entry of the order from which the appeal is sought.
 - If the original notice is filed prior to the trial court taking action on the application for certification described above, then a supplemental notice must be filed within 10 days of the trial court's decision on certification.
- The Supreme Court will then determine, in its discretion, whether to accept or reject the interlocutory appeal. The Court considers all relevant factors, including the decision of the trial court on the application for certification.

Appeals from Criminal, Juvenile Delinquency, and Termination of Parental Right Matters

Appeals from criminal, juvenile delinquency, and termination of parental right matters are governed by Rules 26, 26.1, and 27. If you practice criminal or family law, you may eventually represent clients in these types of appeals. The Department of Justice will represent the interests of the State of Delaware. Because these appeals necessarily involve constitutional rights, it is very important to carefully review the applicable rules. Rule 26 specifically includes information regarding appellate advice to clients and the procedure for filing appeals which the trial attorney, after a conscientious examination of the record and the law, determines are wholly without merit.

Practice Pointers for the Supreme Court

By: Sara Bussiere, Kyle Evans Gay, and Elizabeth A. Powers

We asked several experienced Supreme Court practitioners for their insight and advice for new Delaware lawyers.

1. What is one piece of advice you would give to a junior associate practicing in the Supreme Court?

Quit while you are ahead. If the Court is throwing you softballs and appears to be embracing your position, sit down. Do not feel that you need to use all of your time.

Rather than focusing on the next argument you want to make, listen carefully to the Justices' questions and formulate responsive answers. This is the best way to get a sense of where the Court is headed.

Make sure that your brief meets the exact specifications of the Court Rules which describe in detail the Court's preferences on headings, required information, and the format in which the information should be presented. It may sound intuitive, but failure to follow the Court's Rules will result in your brief getting rejected, so it's important!

If you are about to run out of time, acknowledge that you are out of time and request additional time to complete your thought.

Assume that the Court will look at the last page of your brief first to determine how long it is. The longer it is the more likely they will dread the prospect of reading it. Concision is key.

2. What procedure, practice or rule that is unique to the Supreme Court should a junior associate be mindful of?

Each side only gets 20 minutes for oral argument (if not en banc). Be sure to request time for rebuttal as it is not automatically reserved.

Be sure to identify specifically where in the trial record you have preserved each appellate argument.

Thoroughly study and understand the Court Rules before you take an appeal. Before you file anything, be sure that you can articulate why there was an error.

Because the Court is known as a "hot bench," lawyers must thoroughly prepare for oral argument and have a firm grasp of the trial record.

3. What is a common mistake or misstep that practitioners make when appearing before the Supreme Court?

It is a mistake not to concede a point that you ought to. Many times doing so will enhance your credibility with the Court.

During oral argument, always answer the question that has been asked. Do not try to avoid or evade it. Confront the question because the Justices will continue to ask the question until you answer it.

This sounds basic, but do not tell the Justices that you will address one of their questions later in the oral argument.

The Delaware Court of Chancery

Vice Chancellor John W. Noble

Welcome to the Delaware Court of Chancery!

The Court of Chancery, with its historical equity jurisdiction, is a national leader in resolving complex corporate and business disputes, in addition to its other important responsibilities ranging from administration of trusts and estates to land use matters. The Court has a presence in each of Delaware's three counties, with three judges sitting in Wilmington, one in Dover, and one in Georgetown.

The five judges and two masters of the Court have certain expectations for all lawyers appearing before them. Our expectations are not so different from those of any other trial judge: be prepared; be punctual—both with court appearances and filings; be civil and respectful; listen carefully when asked a question and attempt to answer that question—not some other question you wish you had been asked; do not be prolix; understand and account for the collateral consequences of the positions that you are advocating; appreciate the history and culture of the Court; pay attention to the rules and recommended best practices; study the Guidelines to Help Lawyers Practicing in the Court of Chancery; visit our website—it has lots of interesting and useful “stuff”; have a purpose for what you do—simply because you can do something does not make it appropriate or helpful; and remember, there are no punitive damages or juries in Chancery.

This list should not surprise you. Your clients will certainly be well served if you seek to meet the Court's expectations.

Welcome and best wishes for success in the career you are about to launch. You will find the cases here to be challenging and interesting, but do not count on your work in the vineyard becoming easier simply with the passage of time.

The Basics of the Court of Chancery

By: Stephanie S. Habelow, Eric J. Juray, and Zi-Xiang Shen

The Delaware Court of Chancery is widely recognized as the nation's preeminent forum for the determination of disputes involving the internal affairs of the thousands upon thousands of Delaware corporations and other business entities through which a vast amount of the world's commercial affairs is conducted. Its unique competence in and exposure to issues of business law are unmatched.¹³

The above quotation, taken from the Court of Chancery website is undoubtedly true. According to the Delaware Division of Corporations, more than 50% of all publicly-traded companies in the United States, including 64% of the Fortune 500 have chosen to incorporate in Delaware. By virtue of their incorporating in Delaware, corporations (or alternative entities, such as limited liability companies) consent to jurisdiction in Delaware and many business disputes are filed in the Court of Chancery. Accordingly, you will likely represent clients from across the United States and be involved in cases that may be covered by the press, locally and nationally.

Practicing law in the Court of Chancery is a unique and rewarding opportunity, and we hope you find the below information both informative and helpful as you begin this exciting journey.

The Court of Chancery Today

The Court of Chancery is comprised of a Chancellor and four Vice Chancellors.¹⁴ The Court of Chancery is also served by two masters who assist the Chancellor and Vice Chancellors on as-needed bases and frequently adjudicate entire disputes between litigants.

Although the Court of Chancery is a unified court system, the Delaware Constitution requires that each of Delaware's three counties be represented on the Court of Chancery. Thus, it is important to remember that each county has its own Register in Chancery and that each judge has his or her own staff (i.e., secretary and other court personnel). The Court's website lists the [relevant contact information](#) for each judge and Register in Chancery. You should expect every interaction with these individuals to be reported to the Chancellor or Vice Chancellor if the conversation is anything less than respectful. It is important to always remember that the Delaware legal community is small and you will be interacting with these same individuals for most of your career.

It is also important to remember that each judge has differing preferences. As you become more familiar with the Court, try to remember each judge's preferences. For example, some judges prefer citations in footnotes, and others prefer them in the body of the text. Fortunately, you will principally be practicing in front of five judges whose preferences will be well-known. Nevertheless, by remembering these preferences, you can hope to please the judge that will be reading your work product.

¹³ <http://courts.delaware.gov/Chancery/index.stm>

¹⁴ The current members of the Court of Chancery are: Chancellor Andre G. Bouchard, Vice Chancellor J. Travis Laster, Vice Chancellor John W. Noble, and Vice Chancellor Sam Glasscock III. In October 2015 former Vice Chancellor Donald F. Parsons, Jr. retired.

Court of Chancery Website

The Court of Chancery maintains a [website](#) that provides lots of useful and up-to-date information for practitioners. In addition to administrative details, various resources and contact information, the website also links to two important documents for practitioners litigating in the Court of Chancery: (1) [the Guidelines](#), and (2) [the Operating Procedures](#).

The Guidelines outline the Court's expectations and best practices for practitioners. In the words of the Court, the Guidelines are designed "to minimize disputes over process, rather than the substantive merits." For example, the Guidelines describe the Court's preferences with respect to submission of compendia of cases and sending courtesy copies of briefs to chambers—tasks you will likely be responsible for as a new attorney. To supplement the Guidelines, the Court's website also links to several sample documents, such as various stipulations, for parties to use. These documents will be helpful to your practice.

Another useful resource is the Court's [Operating Procedures for Litigants in the Court of Chancery](#). This document provides guidance on service of process, electronic filing (including fees and requirements), guardianship proceedings, and *in forma pauperis* applications.

Filing Requirements in the Court of Chancery

By: Stephanie S. Habelow, Eric J. Juray, and Zi-Xiang Shen

Verified Complaints

- All complaints, counterclaims, and cross-claims must be verified (notarized and signed by the plaintiff, or if the plaintiff is a corporate entity, by an authorized agent) pursuant to Court of Chancery Rule 3(aa).

Briefs

- Basic one-page motion: For instance, if filing an opening brief in support of a motion to dismiss, a simple motion to dismiss must be filed with the brief if it was not filed previously.
- All briefs and other filings with the Court of Chancery must be in 14 point Times New Roman font, including footnotes.
- Briefs must be filed in Word format.
- Courtesy copies of all briefs must be hand-delivered to chambers (*see* Guidelines § 2).

Discovery Requests and Responses

- Discovery requests and responses are served only, not filed (there is a “Serve Only” option on File & ServeXpress).
- Notice of Service of discovery requests or responses is filed and served, along with a Certificate of Service.
- Responses to interrogatories must be verified under oath pursuant to Court of Chancery Rule 33(b)(1).

Practice Pointers for the Court of Chancery

By: Stephanie S. Habelow, Eric J. Juray, and Zi-Xiang Shen

Transcript Rulings

The Court of Chancery is uniquely equipped to adjudicate business disputes, often under extreme time constraints. As a practical matter, the Court cannot and does not issue written opinions explaining every ruling. The Supreme Court of Delaware has acknowledged this practicality and has approved the common practice of the Chancellor and Vice Chancellors issuing their oral ruling from the bench. These oral rulings are transcribed by a Court reporter and have the same force and effect as a written ruling or order. It is permissible to cite to these transcript rulings in motions and briefs and is generally necessary in the absence of written opinions.

Secondary Sources

One of the best tips we can provide new Chancery practitioners is to always begin every research assignment by reaching for treatises. Without endorsing any specific treatise, we note that there are more than a few Delaware-specific treatises, including those dedicated to the Court of Chancery. You will be pleasantly surprised to learn that many of your research assignments are not novel. The secondary sources also may reference helpful transcript rulings. Keeping these sources in mind when beginning a new research assignment will likely save you a lot of time and effort.

Advice from Practitioners

We asked several experienced Court of Chancery practitioners for their insight and advice for new Delaware lawyers. We hope you find the below advice helpful and informative, and we look forward to working with you in the Court of Chancery!

1. What do you know now about practicing in the Court of Chancery that you wish you had known when you first started?

Every court has unwritten rules, but Chancery seems to have more than most. I wish there had been a reference book about those unwritten rules when I was a new associate. I think the *Court's Guidelines To Help Lawyers Practicing in the Court of Chancery* are tremendously helpful for young people now.

– *J. Clayton Athey, Prickett, Jones & Elliott, P.A.*

I wish I knew and appreciated at the outset how demanding (on counsel and clients) litigating a case in the Court of Chancery typically is in relation to litigating in state or federal court. In my experience, smaller clients often are surprised to learn the amount of work that must go into a case, regardless of whether it is a major M&A case or “routine” summary proceeding. This can present a challenge when it comes to managing your practice.

– *Paul Brown, Chipman Brown Cicero & Cole, LLP*

2. What is one piece of advice you would give to a junior associate practicing corporate litigation?

Know the facts. The judicial officers on the Court of Chancery routinely have complicated questions about specific aspects of the cases over which they preside and junior associates can greatly assist those arguing by anticipating the Court's questions and knowing the answers even to mundane factual questions.

– *Steve Brauerman, Bayard, P.A.*

Always be upfront and honest with opposing counsel and the Court. The Court of Chancery judges are very sophisticated and experienced. They have seen it all and are much more understanding when attorneys make an honest and upfront presentation of bad news.

– *Kevin Coen, Morris, Nichols, Arsht & Tunnell LLP*

Be courteous and kind to court staff: they are your best resources!

– *Vanessa Tiradentes, Bayard, P.A.*

3. What do you enjoy most about practicing in the Court of Chancery?

The pressure of knowing that everyone in Delaware, and beyond, will see the Court's opinion/transcript from your cases. It gives me the added incentive to work harder and longer on a case because I can't stand losing.

– *Brett M. McCartney, Morris James LLP*

The legal community in Delaware is small, and the number of lawyers who routinely practice in the Court of Chancery is even smaller. The atmosphere of congeniality helps to avoid a lot of nonsense and gamesmanship, and allows the lawyers to focus on the issues at hand.

– *Alyssa O'Connell, Skadden, Arps, Slate, Meagher & Flom LLP*

Two things stand out. First, the emphasis on briefing and other written submissions, because I enjoy writing. Second, the culture of civility among the members of the Bar and the Court, which makes the practice more pleasant.

– *K. Tyler O'Connell, Landis Rath & Cobb LLP*

The Delaware Superior Court

Judge Andrea L. Rocanelli

Welcome to the Delaware Superior Court!

It is my honor to welcome you to the Delaware Bar, and to introduce you to Superior Court. We have 21 judges state-wide, and 5 commissioners. We sit in each of the three county courthouses. Superior Court is a court of general jurisdiction, and our caseloads are quite large, with original jurisdiction over civil and criminal cases, except for equity and family matters. The Superior Court has exclusive jurisdiction to try civil jury trials, and all civil cases over \$50,000, as well as felony offenses. The Court also has intermediate appellate jurisdiction, over CCP cases, adjudication of adult felony offenses by Family Court, and administrative agencies.

Delaware Superior Court has consistently been recognized for its fairness and efficiency by the US Chamber of Commerce. The US Chamber of Commerce just released its 2015 Lawsuit Climate Ranking and Delaware was ranked first in the nation overall, as well as according to each of the criteria for a fair and reasonable litigation environment: overall treatment of tort and contract litigation, having and enforcing meaningful venue requirements, treatment of class action suits and mass consolidation suits, damages, timeliness of summary judgment or dismissal. Delaware has been ranked first every year since 2002.

The judicial officers of the Delaware Superior Court expect that you will be cooperative with your colleagues at the bar, and efficient in your presentations to the Court.

The Basics of the Superior Court

By: William B. Larson

Background

The Superior Court sits in all three counties and has statewide original jurisdiction over criminal and civil cases, except for equity cases and domestic relations matters. The Court has exclusive jurisdiction over felonies and drug offenses, except most cases with minor defendants and possession of marijuana cases, and civil cases in which the amount in controversy exceeds \$50,000. The Court also serves as an intermediate appellate court for cases originating in the Court of Common Pleas, administrative agencies, and adult criminal matters in Family Court. Additionally, the Court has several specialty courts and divisions, including the Complex Commercial Litigation Division for complex commercial litigation matters involving \$1 million or more in controversy.

Each courthouse employs state-of-the-art courtroom technologies, including e-filing and docketing, digital audio recording, Realtime transcription, wireless access, electronic evidence presentation systems as well as an integrated statewide case management system with an automated sentencing order program and drug court information system.¹⁵

Locations

New Castle County	Kent County	Sussex County
New Castle County Courthouse	Kent County Courthouse	Sussex County Courthouse
500 North King Street	414 Federal Street	1 The Circle, Suite 2
Wilmington, DE 19801	Dover, DE 19901	Georgetown, DE 19947
Building Opens at 8:30	Building Opens at 8:15	Building Opens at 8:30

Judicial Officers

President Judge Jan R. Jurden; Resident Judge T. Henley Graves; Resident Judge Richard R. Cooch; Judge Fred S. Silverman; Judge William C. Carpenter, Jr.; Resident Judge William L. Witham, Jr.; Judge Richard Stokes, Judge E. Scott Bradley; Judge Calvin L. Scott, Jr.; Judge Mary Miller Johnston; Judge Robert B. Young; Judge M. Jane Brady; Judge John A. Parkins, Jr.; Judge Diane Clarke Street; Judge Charles E. Butler; Judge Eric M. Davis; Judge Paul R. Wallace; Judge Vivian L. Medinilla; Judge Andrea L. Rocanelli; Judge Ferris W. Wharton; Judge Jeffrey J. Clark; Commissioner Alicia B. Howard; Commissioner Andrea M. Freud; Commissioner Mark S. Vavala; Commissioner Lynne M. Parker; Commissioner Bradley V. Manning.¹⁶

Additional Resources

- [Civil Rules](#)
- [Criminal Rules](#)
- [Calendars](#)

¹⁵ For additional information on the Superior Court, [visit its website](#).

¹⁶ For Judge's preferences, see [Civil Case Management Preferences](#).

Filing Requirements in the Superior Court

By: Christofer Johnson

Review the Superior Court Rules of Civil Procedure

There are no short-cuts to success. Take the time to familiarize yourself with the [Superior Court Rules](#).

Know the Judge's Preferences

Each Judge has his or her [individual preferences](#). If you still have questions *after* reviewing the Judge's preferences, feel free to give the Judge's Chambers a call.

Become Familiar With File & ServeXpress

Virtually all new civil filings are handled electronically through [File & ServeXpress](#).

Look Up Fees

Always [check the applicable filings fees](#) *before* you begin the filing process on File & ServeXpress.

Check Out Forms

All necessary Superior Court cover sheets and forms are accessible on the [Forms website](#).

Ask For Help

For Superior Court help, call (302)-255-0823 (New Castle), (302)-735-1900 (Kent), or (302) 855-7055 (Sussex).

Feel free to reach out to your colleagues in the Delaware Bar, especially your friends here in the Young Lawyer's Section! The hallmark of the Delaware Bar is its collegiality and civility. If you get stuck or have questions, members of the Delaware Bar would be glad to assist you.

Practice Pointers for the Superior Court

By: Jason Warren

Utilize Membership Opportunities

- **Delaware Trial Lawyers Association:** The Delaware Trial Lawyers Association's mission is to seek justice, preserve the constitutional right to jury trials, champion the injured, further the rule of law, protect the rights of the accused, advance the common law, promote safety, inspire excellence in advocacy, encourage members' corporation, and uphold the highest standard. The Delaware Trial Lawyers Association is open to members who primarily represent plaintiffs in personal injury cases and defendants in criminal matters. [Membership information can be found here.](#)
- **The Defense Counsel of Delaware:** The Defense Counsel of Delaware is dedicated to promoting justice, professionalism, and integrity in the civil justice system by bringing together attorneys dedicated to the defense of civil actions. [Membership information can be found here.](#)
- **Delaware State Bar Association Section Membership:** [Membership information can be found here.](#)

Learn From Judges and Experienced Lawyers

The Bifferato Trial Practice Forum's goal is to provide free continuing legal education credits to those who are just starting out and to offer young attorneys a chance to network with each other as well as with more experienced attorneys. The Trial Practice Forum is overseen by the Honorable Mark S. Vavala.

The forums are usually 2 hours and are held in the New Castle County Courthouse, Jury Services Assembly Room or Courtroom 8B, between 2:00 p.m. and 4:30 p.m., although the location and time may vary. It is recommended that you check the schedule to confirm location and time. Admission is free and there is no need to register, but you must sign-in when you arrive. For more information on the forum, call (302)-255-0661 or [visit their website.](#)

Read Recent Superior Court Decisions

Recent Superior Court decisions are [posted on the Court's website.](#) It is important to stay up to date on recent decisions and understand how judges have decided issues you may encounter.

Advice from Practitioners

We asked several experienced Superior Court practitioners for their insight and advice for new Delaware lawyers.

1. What do you know now about practicing in the Superior Court that you wish you had known when you first started?

Credibility with the court is not just an ethical obligation, but becomes your reputation.

– *C. Scott Reese, Cooch and Taylor*

2. What is one piece of advice you would give to a junior associate practicing in the Superior Court?

I would tell the junior attorney to get as many reps as possible—argue as many motions and try as many cases as you can. There is plenty of opportunity to do that in Superior Court. I started my career (a long time ago) doing insurance defense work, which got me to court every week. I still benefit greatly from that experience. And it goes without saying that when you appear in court you should always be prepared—the system works very well when you are. Never “wing it”—being prepared is a duty you owe not just to your client but to the Court and opposing counsel. Most important, never lie to the Court. Your credibility is everything. If you don’t know the answer to a question a judge asks, just tell him or her: “I don’t know.”

– *Michael Kelly, McCarter & English*

Be credible – all the judges will recognize you, and you don’t want them doubting your reputation or trustworthiness.

– *Josh Meyeroff, Morris James LLP*

3. What do you enjoy most about practicing in the Superior Court?

What I enjoy most is the accessibility we have to the Superior Court judges and the rapport this creates. This creates a level of familiarity that allows the judges to communicate frankly with the lawyers and for lawyers to better handicap the course a case is going to take, which in turn promotes earlier resolutions among the adverse parties and an overall sense that your client – win or lose – is being treated fairly.

– *Sean J. Bellew, Duane Morris LLP*

What I enjoy most about practicing in Superior Court is the collegiality between the bench and bar. In such a small state, it is easy for new attorneys to develop mentoring relationships with members of the judiciary. I encourage new attorneys to view the Superior Court judges as a resource to learn about courtroom expectations and the professionalism of the Delaware attorney. The advice I have received from Superior Court judges on courtroom performance and juggling the work life balance has proved to be invaluable in my career at the Department of Justice.

– *Kate Keller, Delaware Department of Justice*

The Family Court of the State of Delaware

Chief Judge Michael K. Newell

Welcome to the Family Court of the State of Delaware!

Congratulations on your successful completion of the bar examination. It is my honor to welcome you as a member of the bar and to introduce you to the Family Court of the State of Delaware.

The Family Court of the State of Delaware is one of a few unified family courts in the nation. Our Court has jurisdiction over virtually all matters related to children and their families. The General Assembly empowered the Family Court to exercise jurisdiction over juvenile delinquency, child neglect, dependency, child abuse, adult misdemeanor crimes against juveniles, child and spouse support, paternity of children, custody and visitation of children, adoptions, terminations of parental rights, divorce and annulment, property division, specific enforcement of separation agreements, guardianship over minors, imperiling the family relationship, orders of protection from abuse and intra-family misdemeanor crimes. The Family Court does not have jurisdiction over adults charged with felonies or juveniles charged with certain statutorily enumerated felonies. Cases are appealed to the Supreme Court with the exception of adult criminal cases which are appealed to the Superior Court. In 2005, the Delaware Constitution was amended to include Family Court as a constitutional court.

The Family Court has seventeen judges, including a Chief Judge. Ten Judges are assigned to New Castle County, three Judges are assigned to Kent County and three Judges are assigned to Sussex County. The Family Court also has sixteen Commissioners who also hear cases. Ten Commissioners are assigned to New Castle County, with Kent and Sussex Counties having three Commissioners respectively.

In Fiscal Year 2015, Family Court received approximately 38,000 civil filings, 5,000 juvenile delinquency filings and 3,600 criminal filings. During this same period, the Court disposed of approximately 37,000 civil matters, 5,300 juvenile delinquency cases, and over 3,600 criminal matters.

Family Court touches a significant number of Delaware's citizens, families, and children. Attorneys are frequently appointed to represent children, juvenile defendants and adult defendants. We encourage you to sign up for the training sessions offered by the Office of the Child Advocate, watch the videos offered on our website, and familiarize yourself with our forms. We want you to be prepared in case you decide to become a practitioner in our Court or have the pleasure of being appointed in one of our cases. I would encourage you to attend and observe the many hearings conducted by our judicial officers.

On behalf of the Judges, Commissioners, administration and staff of Family Court, I welcome you and wish you a successful career. We look forward to seeing you in our Court.

Congratulations!

The Basics of the Family Court

By: Shauna T. Hagan, Staci J. Pesin, and Julie H. Yeager

Who: There are 17 Judges and 17 Commissioners throughout the three counties. The Honorable Michael K. Newell is the current Chief Judge, who is the chief administrative and executive officer for the Court.¹⁷

What: The Family Court has jurisdiction over juvenile delinquency, child neglect, dependency, child abuse, adult misdemeanor crimes against juveniles, child and spouse support, paternity of children, custody and visitation of children, adoptions, terminations of parental rights, divorces and annulments, property divisions, specific enforcement of separation agreements, guardianship over minors, imperiling the family relationship, orders of protection from abuse, and intra-family misdemeanor crimes. The Family Court does not have jurisdiction over adults charged with felonies or juveniles charged with first and second degree murder, rape, or kidnapping. Cases are appealed to the Supreme Court with the exception of adult criminal cases which are appealed to the Superior Court.¹⁸

When: The Family Court in each of the three counties is open Monday through Friday, 8:30 a.m. to 4:30 p.m., except holidays. The [Delaware State Court Holiday Schedule](#) is the same for all of the courts, except for the 24-hour Justice of the Peace Court.

Where: There is a Family Court in each of the three counties.

New Castle County	Kent County	Sussex County
500 North King Street	400 Court Street	22 The Circle
Wilmington, DE 19801	Dover, DE 19901	Georgetown, DE 1997
(302)-255-0300	(302)-672-1000	(302)-855-7400

Why: Pursuant to 10 *Del. C.* § 902(a), which states:

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

¹⁷ <http://courts.delaware.gov/Family/judges.stm>

¹⁸ <http://courts.delaware.gov/Family/jurisdiction.stm>

Filing Requirements in the Family Court

By: Shauna T. Hagan, Staci J. Pesin, and Julie H. Yeager

[The Family Court's website](#) is extremely helpful for pro se litigants and attorneys alike. The website includes instruction packets and forms broken down into fourteen topic areas. In addition, the "Forms" header has a link to "Family Court," which includes approximately 200 fill-in templates. These forms are regularly updated to reflect the revised Family Court Rules of Civil Procedure and the Delaware Code. You are not required to use these forms, but they can be helpful.

E-filing is projected to begin January 1, 2016. At this time, physical filings are still required. In Kent and Sussex County, physical filings can only be done in-person at the Courthouse during business hours. In New Castle County, it is recommended that all physical filings be done by 5:00 p.m. when the Courthouse closes. However, attorneys may access the Courthouse after hours by contacting the security officer at (302)-255-0022.

For every petition, you must enter your appearance on behalf of your client by filing an Entry of Appearance, even if you signed the petition. (See Form 354 on the Family Court website). If you do not enter your appearance, you will not receive notice of scheduled hearings or any Court Orders from the Family Court. In addition, you will not be allowed to review the file in Family Court Records without an authorization or receive information about the case from the Call Center.

Every petition also requires an Information Sheet in order to help the process server locate the Respondent for service of process. (See Form 240 on the Family Court website).

New Castle County has a Call Center available at (302)-255-0300 (press 1 for criminal matters, 2 for divorce, 3 for custody/visitation, 4 for guardianship, or 6 for child support). If you have entered your appearance, the representatives at the Call Center can review the electronic docket, tell you what pleadings and Court Orders have been docketed and if there are any upcoming scheduled mediations or hearings. The Call Center cannot, however, provide any details about the contents of the Orders. For example, the docket may show that a motion was "Denied" but not show the reasons for the denial.

For every civil filing, except a Petition for Order of Protection from Abuse, there is an associated Family Court filing fee. The schedule of fees can be found [on the Family Court's website](#). There is \$10.00 civil court security assessment associated with most filings as listed on page 3 of the schedule.

Practice Pointers for the Family Court

By: Shauna T. Hagan, Staci J. Pesin, and Julie H. Yeager

Our “Two Cents”

It takes a special kind of person to become a Family Law attorney. Family Court can be highly contentious and emotional. It is especially important to be able to separate yourself from your client and to act professionally at all times.

The Family Law Bar is quite small and close-knit. There is a unique dynamic between the Bench and the Bar due to nature of the proceedings and the sensitive subject matter. A first impression is important and yours obviously should be a good one.

Each Family Court judge has a case manager, legal secretary, judicial law clerk, and judicial assistant (known as a bailiff in other courts). Their opinions of you matter as much as the judge's. Be respectful.

Be fifteen minutes early to every mediation and hearing. With the exception of Petitions for Orders of Protection from Abuse, the Family Court schedules individual cases for individual times and the judges, commissioners and mediators want to start on time. To quote the Honorable Jay H. Conner, “The plane doesn't wait and neither do I.”

With the exception of child support and protection from abuse hearings, most Family Court proceedings are presumptively closed to the public. Any non-party must receive special permission from the judicial officer in order to be present in the courtroom. A motion may be filed prior to the hearing or an oral motion may be made at the beginning of the hearing. If all parties agree, and if the non-party is not a witness, more than likely the non-party will be allowed to attend the hearing.

The parties in a Family Court action are called either “Petitioner” or “Respondent” rather than “Plaintiff” or “Defendant.”

Juveniles charged with criminal offenses are not called “criminals,” they are referred to as “adjudicated delinquents.”

The Delaware Rules of Evidence and Family Court Civil or Criminal Rules of Procedure apply.

A common misstep is confusion as to who is the actual client when a parent or relative of your client is paying your legal fees. The Rules of Professional Responsibility regarding confidentiality apply, therefore, you must be authorized by your client to share information, even with relatives.

Because Family Court proceedings are mostly all closed to the public and confidential in nature, it is imperative that you do not use your client's name or any identifying information in public or when bouncing ideas off your colleagues. Again, Delaware is a very small state.

Advice from Practitioners

We asked several experienced Family Court practitioners for their insight and advice for new Delaware lawyers.

1. What do you know now about practicing in the Family Court that you wish you had known when you first started?

As a commercial and intellectual property litigator, I wish I knew that Family Court would end up being one of my frequent stops. Through my pro bono activities (including as a guardian ad litem for the Office of the Child Advocate) I often find myself in Family Court. As a junior associate, I presented my first arguments at the Family Court and my experiences there have helped develop my in-court litigation skills.

– *Selena E. Molina, Richards, Layton & Finger, P.A.*

2. What is one piece of advice you would give to a junior associate practicing in the Family Court?

Get to know the staff at the Court. They are the most knowledgeable people about the Court's practices, and they genuinely try to help.

– *R. Eric Hacker, Morris James LLP*

3. What do you enjoy most about practicing in the Family Court?

What I enjoy most about practicing in Family Court is the camaraderie among the members of the family law bar and knowing that everyone shares a passion and commitment to ensuring the safety of children.

– *Islanda Finamore, Delaware Department of Justice*

The Delaware Court of Common Pleas

Chief Judge Alex J. Smalls

Welcome to the Delaware Court of Common Pleas!

The Court of Common Pleas consists of nine judges, five in New Castle County, two in Kent County and two in Sussex County. There is one Commissioner for New Castle and one shared Commissioner for Kent and Sussex Counties. It is one of the busiest courts in the State of Delaware exercising jurisdiction in misdemeanor criminal offenses, traffic violations, civil matters where the amount in controversy does not exceed \$50,000, preliminary hearings in felony matters and appellate jurisdiction for Justice of the Peace Court and motor vehicle hearing appeals.

The Court has several problem-solving courts, which consist of a Drug Diversion Program, a Community Dispute Resolution Program, a Driving under the Influence Treatment Court Program, and a Mental Health Court.

On behalf of the judicial officers of the Court of Common Pleas, welcome to the Court.

The Basics of the Court of Common Pleas

By: Gregory P. Skolnik

The [Court of Common Pleas](#) (often referred to as “CCP” is one of the busiest courts in Delaware and has locations in the New Castle County (Wilmington), Kent County (Dover), and Sussex County (Georgetown) courthouses. The telephone numbers for the Court are: (302)-255-0900 (New Castle); (302)-735-3900 (Kent); and (302)-858-5700 (Sussex).

The Court is comprised of nine judges, five in New Castle County, two in Kent County, and two in Sussex County. There is one commissioner in New Castle County, and one shared commissioner for Kent and Sussex Counties.

The jurisdiction¹⁹ of the Court of Common Pleas is limited. In civil matters, the Court has jurisdiction over name change petitions, administrative appeals from the Division of Motor Vehicles, Habitual Offender Motor Vehicle Hearings, and appeals from the Justice of the Peace and Alderman’s Courts. The Court has concurrent civil jurisdiction in claims where the “amount in controversy” does not exceed \$50,000. There is no limit on the amount of counterclaims. There is compulsory arbitration in all civil cases where the amount sought is less than \$15,000. Jury trials are not available for civil claims. If a jury trial is demanded, the case is transferred to Superior Court.

In criminal cases, the Court has concurrent jurisdiction over all misdemeanors (except certain drug offenses, motor vehicle offenses, preliminary hearings in felony cases, and appeals from the Justice of the Peace and Alderman’s Courts. Jury trials are available in criminal cases.

The Court also has several specialty “problem-solving courts,” including the Drug Diversion Program, a Community Dispute Resolution Program, and Mental Health Court.

The Court has published its own [Standards for Attorneys’ Professionalism and Civility in a Courtroom Setting](#) to address the unique issues raised in practice before the Court. This publication includes Special Rules of Courtroom Decorum. These standards should be reviewed in detail prior to appearing before the Court.

The Court’s [civil docket](#) can be accessed online 24 hours a day.

¹⁹Additional information about the Court’s jurisdiction can be found on the Court’s website.

Filing Requirements in the Court of Common Pleas

By: Gregory P. Skolnik

All filing in the Court of Common Pleas is done electronically, through the Court's *eFlex* system. In order to access the *eFlex* system, you must review the *eFlex* user manual, attend a three hour training offered by the Court every few weeks, and then file a form requesting access. Visit the [Court's website](#) for more detailed instructions.

It is critical to understand that the *eFlex* system is completely separate from the File & ServeXpress system utilized by most other Delaware state courts, and has very different rules and requirements.

The Court of Common Pleas and the Justice of the Peace Court have published a [comprehensive guide for e-filing procedures](#). This document should be reviewed in detail prior to e-filing any document with the Court.

When filing a Complaint in *eFlex*, the Complaint, Praecipe, exhibits, affidavits, and Certificate of Value should be scanned as a single document and filed together. Each individual summons must be separately scanned and filed. All subsequent documents (i.e., motions) must be filed with all subparts together in one scanned document.

Please note that there are [specific filing requirements](#) for certain types of cases, such as consumer debt collection actions, Special Election and Expedited Docket or "SPEED" filings, appeals from the Justice of the Peace Court, ADR eligible actions, Habitual Offender Petitions, and Execution Writs.

Law Clerk "Pet Peeves"

- CCP is one of the highest volume courts in Delaware, and an average motion calendar can have 30 to 40 civil motions scheduled. Please ensure that your motions are brief and to the point, and limit attachments to *relevant* case law and exhibits only.
- When citing unreported decisions that are not attached to your filing, please provide Westlaw or Lexis form citations, rather than C.A. number formatting.
- Exercise the utmost professionalism and respect for opposing counsel and parties in all communications with the Court. Ad hominem attacks and disrespectful language will do more harm than good.

Practice Pointers for the Court of Common Pleas

By: Stephanie Smiertka

The following practice pointers came from experienced CCP practitioners from New Castle, Kent, and Sussex counties.

General Practice Pointers

- “An attorney should realize that court processes and procedures differ in some areas among the 3 counties (sometimes significantly). An attorney should contact chambers or the clerk’s office in each respective county to determine how that particular court or judge prefers things to be accomplished.”
- “Punctuality is very important when practicing in CCP. Many judges take the bench a few minutes before the calendar is scheduled to commence. It is advisable to appear at scheduled court hearings at least 10 minutes early.”
- “Be on time; be respectful to the court; full candor if you want to pursue a particular course of action; be respectful to court staff, it doesn’t hurt to know names.”
- “I’ve found that good communication with chambers and the court staff is most important.”

Civil Practice Pointers

- “Make sure you have copies of authorities you are relying upon, especially in civil matters for the Judge.”
- “If you are not going to be arguing a motion, or a case settles, let the Judge’s chambers know as soon as possible.”
- “For appeals, know the importance of the mirror image rule – CCP Civil Rule 72.3. An appeal that fails to join the same parties and issues that were before the court below will be dismissed on jurisdictional grounds.”

Criminal Practice Pointers

- “Know your DUI case law.”
- “Know that you start building your reputation with your first plea offer.”
- “Be prepared with enough copies of the exhibits. In advance of trial, make sure to communicate with the State if you have evidence that may lead the prosecutor to reconsider a reduced plea offer or enter a *nolle prosequi* in advance of trial.”

Advice from Practitioners

We asked several experienced Court of Common Pleas practitioners for their insight and advice for new Delaware lawyers.

1. What do you know now about practicing in the Court of Common Pleas that you wish you had known when you first started?

The Court of Common Pleas often involves parties where the money being litigated is not the sole reason for the litigation. The litigation often involves business with what may seem like small amounts of money being litigated. However, the parties take the matters seriously and are usually litigating their reputation, not their dollars. Advise them of the costs of litigation, but do not try and convince them to settle.

– *Joshua Inkell, Marshall Dennehey Warner Coleman & Goggin*

2. What is one piece of advice you would give to a junior associate practicing in the Court of Common Pleas Court?

Treat cases before the Court of Common Pleas with the same seriousness and vigor as you would a case before the Delaware Supreme Court. Do not let the name of the Court fool you – you would be ill-advised to treat a matter before this Court as “common.” There are complex issues being decided by the CCP every day, and it goes without saying that, regardless of the stakes, the matters are very important to clients. Additionally, while it may surprise you, CCP cases are being litigated by some of the most prominent members of our bar. It is not uncommon to see attorneys with twenty years of experience at prestigious firms practicing before this Court. In short, no matter what court you are before, make sure you prepare and give the matter its due attention.

– *N. Christopher Griffiths, Connolly Gallagher LLP*

The best advice I have for a junior associate is to read the applicable rules of procedure carefully You should not assume the rules mirror other state court rules or the federal rules.

– *Marc Sposato, Marks, O'Neill, O'Brien, Doherty & Kelly, P.C.*

3. What do you enjoy most about practicing in the Court of Common Pleas?

The comradery between the attorneys who regularly practice in CCP throughout the state is what I enjoy most. The attorneys are all very friendly and willing to assist when called upon. Any attorney preparing to appear in CCP for the first time should feel free to reach out to me with any questions or concerns.

– *Seth H. Yeager, Lyons, Doughty & Veldhuis, P.A.*

The Delaware Justice of the Peace Court

Magistrate Judge Kathy S. Gravell

Welcome to the Delaware Justice of the Peace Court!

As the place where justice starts, it is the mission of the Justice of the Peace Court to serve the people of Delaware by efficient and accessible administration of justice for all, and to treat all persons with integrity, fairness, and respect.

As early as the 1600's, Justices of the Peace were commissioned to handle minor civil and criminal cases. Along with a host of other duties, the administering of local government in the 17th and 18th Centuries on behalf of the English Crown was a primary duty of the Justices of the Peace. With the adoption of the State Constitution of 1792, the Justices of the Peace were stripped of their general administrative duties leaving them with minor civil and criminal jurisdiction. During the period, 1792 through 1964, the Justices of the Peace were compensated entirely by the costs and fees assessed and collected for the performance of their legal duties. In 1965, under the leadership of Governor Charles Terry, Jr., the Justice of the Peace Court System was reformed. No longer would the Magistrates keep any part of the costs and fees as they had for the previous 120 years. The Courts were brought into the State Court System to be administered by the Chief Justice of the Supreme Court. In 1980, a Chief Magistrate, who is a member of the Delaware Bar Association, was appointed to act for the Chief Justice in the affairs of the Justice of the Peace Courts. The Justice of the Peace Court System currently employs 266, has 16 Courts which process cases at 13 different locations throughout the State. The Justice of the Peace Courts are authorized by the Constitution of Delaware, Article IV, Section 1.

The Justice of the Peace Courts has jurisdiction over civil cases involving debt, trespass and replevin in which the amount in controversy does not exceed \$15,000. The Justice of the Peace Court has jurisdiction over all landlord/tenant summary possession proceedings. Justice of the Peace Courts are authorized to hear certain misdemeanors and most motor vehicle cases (excluding felonies) and may act as Committing magistrates for all crimes. Appeals may be taken de novo to Court of Common Pleas in criminal and civil cases, except landlord/tenant possession cases. Those cases may be appealed to a three judge panel of Justices of the Peace.

The Justice of the Peace Courts are Delaware's entry-level courts through which pass the great majority of all criminal cases. The criminal jurisdiction of the Justice of the Peace Courts include, but is not limited to:

- Criminal misdemeanor cases as listed in 11 *Del. C.* §2702, and all criminal violations.
- Most Title 21 offenses which do not involve physical injury or death.
- Violations of the County Code and other ordinances of municipalities.
- Truancy cases.
- Enumerated Fish and Wildlife violations.
- Enumerated Alcoholic beverage violations.
- Miscellaneous violations initiated by other state agencies.
- Limited jurisdiction for juvenile offenses.

The Courts of the Justices of the Peace have civil jurisdiction over:

- Contractual disputes where the amount in controversy does not exceed \$15,000.
- Replevin actions (actions brought to recover possession of personal property unlawfully taken) where the amount in controversy does not exceed \$15,000.
- Negligence cases (not involving physical injury) where the amount in controversy does not exceed \$15,000.
- Landlord/Tenant cases, including summary proceedings for possession for which jury trials are authorized, and appeals from landlord/tenant cases to special courts consisting of a three judge panel.

The Courts of the Justices of the Peace also have jurisdiction to:

- Issue summonses and warrants for all criminal offenses based upon findings of probable cause.
- Issue search warrants for all criminal offenses based upon findings of probable cause.
- Conduct initial appearances to set bond for all criminal offenses and conduct bond review hearings when requested.
- Issue and execute capiases. (A capias is a bench or arrest warrant issued by a judge for a defendant who has failed to appear for arraignment, trial, or sentencing or who has failed to pay a court-ordered fine.)

The Basics of the Justice of the Peace Court

By: Selena E. Molina

Who: The Justice of the Peace Court (“JP Court”) operates under one Chief Magistrate and boasts 11 Magistrate Judges in Kent County, 28 Magistrate Judges in New Castle County, and 16 Magistrate Judges in Sussex County. The Honorable Alan Davis is the current Chief Magistrate.²⁰

What: The JP Court has jurisdiction over civil cases in which the amount in controversy does not exceed \$15,000. This includes jurisdiction over debt, trespass, replevin, negligence, and landlord tenant actions. The JP Court is also authorized to hear specified misdemeanors and motor vehicle cases. Appeals from the JP Court go to the Court of Common Pleas, de novo, except for appeals from landlord/tenant cases, which proceed to a three judge panel of the JP Court. The JP Court may also issue summonses and warrants, conduct initial appearances for criminal offenses, and issue and execute capias.²¹

When: The various JP Courts throughout the state have broad ranging hours of operation, with one JP Court in each county operating 24 hours a day, seven days a week. The Delaware [State Court Holiday Schedule](#) is the same for all of the courts, except for the 24-hour JPCourts.

Where: There are 15 [JP Court locations](#) throughout the state.

Why: The JP Courts are authorized by the Delaware Constitution, Article IV, Section 1. They operate under the following mission:

As the place where justice starts, it is the mission of the Justice of the Peace Court to serve the people of Delaware by efficient and accessible administration of justice for all, and to treat all persons with integrity, fairness, and respect.²²

In furthering that mission, the JP Court aims to “[b]e sensitive and responsive to the needs of a diverse community[,]” “[u]se cutting edge technology to increase: citizens’ access and convenience in using the Court and the Court’s ability to reach sound decisions through the best available access to factual and legal information[,]” “[t]reat all individuals using the Courts with the utmost respect[,]” “[h]ave a service oriented approach in dealing with users of the Court[,]” “[u]se strategic planning to develop and maintain the highest possible level of services to the public and to responsibly seek, use and account for public resources[,]” “[i]nsure that court procedures and structure best facilitate the expeditious and economical resolution to disputes[,]” and “[i]nsure equal application of the judicial process to all cases, which are fairly decided based upon legally relevant factors.”

²⁰ <http://courts.delaware.gov/jpcourt/judges.stm>

²¹ <http://courts.delaware.gov/jpcourt/jurisdiction.stm>

²² Id.

Filing Requirements in the Justice of the Peace Court

By: Donald L. Gouge, Jr.

Use the Court forms, which are accessible on the [Court website](#). When you file a complaint, fill out the Court form completely. You can indicate in the concise statement of facts box “see attached” where you can attach a full formal complaint.

For any motion, use the Court forms (CF11) and attach, if you wish, a detailed motion. However, be brief and to the point.

All filings by attorneys in JP Courts, like CCP, are done electronically through the Court’s *eFlex* system. In order to access the *eFlex* system, you must review the *eFlex* user manual, attend a three hour training offered by the Court periodically, and then file a form requesting access. There is a 10 page limit on each document, meaning that you may have to split up exhibits. The JIC Helpdesk can be reached at (302) 255-2100.

Landlord-tenant cases must be filed in the Court closest to the rental unit, unlike debt cases.

Review the Court Rules; they are different than the other courts and much shorter.

If you have questions, call the clerk’s office for the Court where you have filed your case, they are very helpful.

For landlord-tenant cases, always input the rental unit address (not the mailing address) as the property must be posted with notice.

Practice Pointers for the Justice of the Peace Court

By: Donald L. Gouge, Jr.

General Practice Pointers – Civil

- Rule 1 in JP Court, literally and figuratively: “The Rules of the Court shall be construed to secure the just, speedy, and inexpensive determination of every proceeding.” JP Courts are high volume courts, remember that and try your case accordingly.
- You are not entitled to discovery in JP Courts without leave of the Court (Rule 27). Discovery is rarely granted. Why? See Rule 1. If you want discovery, file in a higher court, or, as a defendant, you can transfer the case to Superior Court. In debt cases only, you can request a Bill of Particulars, per Rule 26.
- The jurisdictional limit of the Court is \$15,000. It is a great Court to obtain an unbiased independent assessment of your case. You can always appeal *de novo* to CCP (but be wary of the mirror image rule, CCP Civil Rule 72.3!). But most cases will resolve at JP Court, inexpensively, thereby providing great service to your client at a reasonable rate.
- A majority of litigants are pro se – give them the same respect as you would opposing counsel and the Court, even if their position is unreasonable. The Court will not tolerate you “beating up” a pro se litigant.
- Practice in JP Court as you would any other Court with the same respect and civility toward litigants, parties and the Court – maintain Courtroom decorum. Be particularly nice to the clerks, even when they reject a filing – trust me, they are doing you a favor rather than finding out in front of the judge the day of trial that your filing is defective.
- Most JP Court judges are not lawyers, but that does not give you license to treat them any differently than any other judge. Due to the fairly limited jurisdiction of the Court, they hear the same type of cases over and over again, and they know the law.
- A corporation can represent itself in JP Court without an attorney, unlike any other Court. Why, see Rule 1 above! However, the corporate representative must file a Form 50 with the Chief Magistrate’s office in Georgetown and bring it to Court for any appearance.
- All landlord-tenant cases for possession (residential and commercial) must be brought in JP Court. If your money claim exceeds \$15,000, you can file the money claim in a higher court.
- Rules of evidence apply in JP Court as any other court. However, only in JP Court, you can have admitted into evidence business records (*see* DRE 803(25)). The Court will give the document whatever weight it deserves.
- It is ok to use a 41(b) motion at the conclusion of a pro se plaintiff’s case in the event that they have not put in exhibits or proper evidence to support their claim.
- Please enter your appearance prior to going to Court, even the day before or morning of trial.

General Practice Pointers – Criminal

- **Plea in absentia:** Attorneys do not always send in the payments for their clients. Their clients will mail in their PIA paperwork separately and then the clerks must make the call to the attorney to make the payment. So stay on top of this and avoid the call from the clerk!
- **Dispositions:** Attorneys should ensure that the case has been heard/adjudicated before asking for a disposition. These requests are often made in error as the request and payment is sent in long before the trial date.
- **Transfers to CCP:** Attorney requests for a transfer to CCP without being sure that the case/charges may be eligible to transfer to CCP or that the charge(s) are in the sole jurisdiction of the JP Court.

General Practice Pointers – View from the Bench

- The judges expect the same quality case that you would present in any other Court.
- Be prepared!
- You will be held to the Court Rules.
- If you are citing case law – bring copies.
- Bring extra copies of all evidence/exhibits – one for you to use, one for the witness, one for the opposing party, and one to move into evidence.
- The Court will allow pro se litigants some latitude as this is their “day in Court.” The Court will explain at the beginning of the case procedure and legal concepts. The judges feel that is an important part of essential fairness.
- When requesting a continuance, always contact the other party and obtain their position; or why you have not received a response.

Advice from Practitioners

We asked several experienced JP practitioners for their insight and advice for new Delaware lawyers.

1. What do you know now about practicing in the JP Court that you wish you had known when you first started?

The clerks are your best friends when filing a matter or dealing with a procedural problem. Each Justice of the Peace Court is unique in certain respects and it is imperative you know the ins and outs of filing and practicing in each specific court whether in New Castle, Kent, or Sussex counties. The clerks are your gateway to understanding what is expected and are a wealth of knowledge regarding specific filing and practicing requirements, particularly when a pleading has been rejected. Treat them with the respect they deserve and your case will benefit from their expertise.

– *David C. Zerbato, Law Offices of Michael P. Morton*

JP Court is a great way to hone your skills. Punctuality is important in JP Court as in all Delaware Courts. However, be prepared to wait once you check in; litigants are routinely given a fifteen minute grace period.

– *Jillian M. Pratt, LSC of Delaware, Inc.*

2. What is one piece of advice you would give to a junior associate practicing in the JP Court?

Know the procedural and evidentiary rules. While this may seem to be obvious advice and offer little help, the Justice of the Peace Court has several procedural and evidentiary rules unique to this Court which must be known in order to practice successfully.

– *David C. Zerbato, Law Offices of Michael P. Morton*

Do not let the informal nature of JP Court lull you into a false sense of security. Come to Court prepared as you would to any other Court with a full understanding of the rules and statutes that you are trying to use to support your client’s position.

– *Jillian M. Pratt, LSC of Delaware, Inc.*

3. What do you enjoy most about practicing in the JP Court?

I really enjoy the opportunity to interact with other lawyers and with the JP Judges. If you practice regularly in JP Court, you will routinely appear before the same judges and attorneys and build camaraderie with them.

– *Jillian M. Pratt, LSC of Delaware, Inc.*

I enjoy the “rough knuckles” surprises that come up on an almost daily basis in the JP Court. Things like oral counterclaims made halfway through trial, no written answers to complaints, very limited discovery (must make a motion), all lead to an awesome opportunity to learn to think on your feet and react.

– *Michael P. Morton, Law Offices of Michael P. Morton*

Practice before the JP Court is unpredictable as the legal sophistication of the parties varies greatly. You have to come in fully prepared while also having to think on your feet. Practice is less scripted and more “ad lib.”

– *Augusto Cordova, CLASI*

State Administrative Agencies

By: Rebecca Byrd and Kristen Swift

There are several administrative agencies in Delaware (*see* Appendix A for a list of agencies and commissions). These Boards and Commissions range from very formal to very informal. Although each Board or Commission has its own procedures for conducting business, there are general rules that will help guide your practice before any administrative tribunal.

Remember these tips:

- Become familiar with the agency and its role in the administrative process. Who are the Board members, how are they selected and what are their preferences? Answer these questions the same way you would as though you were appearing before a judge.
- Some Boards are highly specialized and some less so. It is important to know what the tribunal expects from practitioners. One way to understand this is to ask practitioners experienced in practicing before the tribunal.
- Understand the level of formality expected before appearing before the Board or agency. Where possible, view proceedings prior to appearing.
- Become familiar with procedural rules, and if there are no Board rules, be aware that the [Delaware Administrative Procedures Act](#) (the “Act”) will apply. The Act will supersede Board Rules where a Board rule conflicts with the Act.
- Checkout the location of the Board just as you would a courtroom and become familiar with the surroundings and available technology.
- The Delaware Attorney General has an appointed attorney to every administrative Board before the State of Delaware who oversees all Boards in case legal issues arise.
- The Delaware State Bar Association is an amazing resource. It has CLE videos available for purchase. In particular, it has a video entitled [Delaware Administrative Law: Practicing before Delaware’s Boards and Commissions](#) (Recorded on 2/25/14).
- All state administrative bodies are subject to the [Delaware Freedom of Information Act](#).
- Ask lots of questions! Call the clerks, call other practitioners, network, and use your connections to investigate and get the answers you seek.

Appendix A

Department of Agriculture*

Delaware Harness Racing Commission

Delaware Thoroughbred Racing
Commission

Department of Corrections

Sex Offender Management Board
Board of Parole

Department of Finance

Lottery Commission
Tax Appeal Board

Department of Health and Social Services

Delaware Healthcare Commission
Delaware Health Resources Board

Department of Insurance*

Department of Labor*

Industrial Accident Board
Unemployment Insurance Appeals
Board

Department of Natural Resources and Environmental Control*

Delaware Solid Waste Authority
State Coastal Zone Industrial Control
Board
Environmental Appeals Board

Department of Safety & Homeland Security

Delaware Alcoholic Beverage Controls
Commission

Department of State – Professional Regulation

Department of State – Other

Bank Commissioner
Board of Pardons
Merit Employee Relations Board
Public Employment Relations Board
Public Integrity Commission
Public Service Commission
State Human Relations Commission

Department of Transportation

Division of Motor Vehicles

*Indicates a Department and Secretary who has the authority to hold hearings and issue rulings.

FEDERAL COURT PRACTICE

The United State District Court for the District of Delaware

Chief Judge Leonard P. Stark

Welcome to the United States District Court for the District of Delaware!

The United States District Court for the District of Delaware is one of 94 federal trial courts of general jurisdiction across the country. We are part of the Third Circuit, along with the Districts of New Jersey; the Eastern, Middle, and Western Districts of Pennsylvania; and the District of the U.S. Virgin Islands.

The District of Delaware was created by the First Judiciary Act in 1789. Since that time, 25 individuals have had the honor of serving as District Judges for the District of Delaware.

I am privileged to serve as the District of Delaware's current Chief Judge. This position rotates according to a formula set out by federal statute and has a seven-year term. I have three District Judge colleagues. As you know, each of us has been appointed by the President, upon confirmation by the U.S. Senate. According to the United States Constitution, we are permitted to hold our offices "during good Behaviour," which is more commonly known as life tenure.

The District of Delaware has other judicial officers, specifically three Magistrate Judges and six Bankruptcy Judges. The Magistrate Judges are appointed by the District Judges and serve renewable eight-year terms. The Bankruptcy Judges are appointed by the Court of Appeals for the Third Circuit and serve renewable fourteen-year terms.

Our Court is located in the J. Caleb Boggs Federal Building on King Street, which has been its home since 1973. We handle all federal litigation that arises in the State of Delaware. This makes us a very busy court. Not only do we have (by a wide margin) the most patent cases per judgeship among all District Courts across the country, but our overall caseload (weighted for complexity) is also regularly among the five largest of all District Courts.

Now that you are a member of the Delaware Bar you are eligible to join the Bar of the federal court and I encourage you to do so. I also recommend that you join our District's Federal Bar Association ("FBA"). Our FBA chapter is one of the most active in the country and has experienced tremendous growth in recent years. Membership in the FBA allows you to attend regular continuing legal education programs, including our Bench and Bar Conference, at which you will have an opportunity to interact with the Judges of our Court. It also makes you eligible to participate in our nationally-recognized Federal Trial Practice Seminar, a unique program in which prominent trial litigators and our Judges help train newer attorneys how to try cases in our Court.

On behalf of the entire bench of the U.S. District Court for the District of Delaware, I welcome you and wish you the best in your career.

The Basics of the District Court

By: Arun J. Mohan and Selena E. Molina

Who: There are 4 Judges and 3 Magistrate Judges on the bench of the United States District Court for the District of Delaware (“Delaware District Court”). The Honorable Leonard P. Stark is the current Chief Judge and the Honorable Mary Pat Thyng is the current Chief Magistrate Judge.²³

What: 28 U.S.C. § 1330 et seq. sets forth the jurisdiction of all United States District Courts, including the Delaware District Court. The Delaware District Court has jurisdiction over federal questions, diversity matters, and federal criminal prosecutions, to name a few.

When: The Delaware District Court is open Monday through Friday from 8:30 a.m. to 4:00 p.m., except holidays. The [holiday schedule](#) is posted each year on the Delaware District Court website.

Where: The Delaware District Court has one location at:

844 North King Street, Unit 18
Wilmington, DE 19801-3570²⁴

Why: Pursuant to 28 U.S.C. § 132, district courts were created with the following requirements:

(a) There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district.

(b) Each district court shall consist of the district judge or judges for the district in regular active service. Justices or judges designated or assigned shall be competent to sit as judges of the court.

(c) Except as otherwise provided by law, or rule or order of court, the judicial power of a district court with respect to any action, suit or proceeding may be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.

Further, pursuant to 28 U.S.C. § 87, the entire State of Delaware constitutes one judicial district and the court for the District of Delaware shall be held in Wilmington.

²³ <http://www.ded.uscourts.gov/judges-info>.

²⁴ <http://www.ded.uscourts.gov/hours-directions>

Filing Requirements in the District Court

By: Arun J. Mohan and Selena E. Molina

Perhaps one of the most important filing requirements in the Delaware District Court is the 6:00 p.m. [filing deadline](#). This deadline was first instituted on October 16, 2014 and applies to all electronic transmissions of documents (including, but not limited to, motions, briefs, appendices, and discovery responses) with the exception of initial pleadings. A filing must be completed by 6:00 p.m. EST in order to be considered timely filed and served that day. This filing deadline is unique to the Delaware District Court.

The Delaware District Court utilizes the [CM/ECF and PACER filing and docketing systems](#).

Each Delaware District Court judge also has a preference website where additional filing tips can be found. For example, the Honorable Leonard P. Stark maintains a [list of forms, guidelines, and standing orders](#) for his chambers.

Any filing questions should be addressed to the particular district court judge's civil case manager or the clerk's office at (302) 573-6170.

Filings made under seal need to have a certificate of service and a redacted public version must be filed within 7 days.

The [District of Delaware Fee Schedule](#) can be found on the Court's website.

Entries of appearance may be made by filing an entry of appearance form or by filing a document signed by the attorney wishing to enter his or her appearance.

An attorney not admitted to the Bar for the State of Delaware may be admitted *pro hac vice* upon motion by a Delaware attorney. In order to be admitted *pro hac vice*, the attorney must:

- Be admitted, practicing, and in good standing as a member of a bar within the United States;
- Submit to the disciplinary jurisdiction of the District Court for any alleged misconduct which occurs in the preparation or course of this action;
- Be familiar with the District of Delaware's Local Rules; and
- Pay a \$25 annual fee to the Clerk of the Court.

Read more information regarding the requirements to be admitted [pro hac vice](#).

Filings must be double spaced (not spaced "exactly"), 12 point font, PDF format. No document may be over 5 MB in size, which means voluminous exhibits must be broken down into multiple parts.

Filings are immediately reflected on the docket so extra care must be taken with under seal designations!

The Court's CM/ECF system will serve a notice of the filing with a link to the filed document on all parties of record except for under seal documents, which require service by hand delivery or via email.

Discovery documents are not filed or served via CM/ECF or PACER; they must be served via hand delivery or email and a notice of service should be filed. All documents filed must be signed by Delaware counsel and filed under the Delaware counsel's name.

Practice Pointers for the District Court

By: Arun J. Mohan and Selena E. Molina

Our “Two Cents”

Although a federal court, the “Delaware way” of collegiality applies in the Delaware District Court. Delaware counsel in Delaware District Court matters are never “just local counsel.” The Court will expect that Delaware counsel be fully engaged in the litigation.

Documents should be written in a truth-seeking and academic format; parties are not “entitled” to anything and accusations of malfeasance should be reserved for rare and serious infractions (i.e., when a Rule 11 motion is appropriate).

Never forget about the [Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware](#), they are equally as important as the Federal Rules of Civil Procedure.

Plan to arrive at the courthouse extra early on jury trial days as all persons entering the Court must pass through a metal detector. Be prepared to show identification and remove any electronic devices or wires from your pockets or bags. It is courteous to advise colleagues and clients about courthouse security procedures in advance.

Call into teleconferences early. You should be patching in chambers right at the scheduled time or sooner.

Advice from Practitioners

We asked several experienced District Court practitioners for their insight and advice for new Delaware lawyers.

1. What do you know now about practicing in the District Court that you wish you had known when you first started?

It is important to note that all of the judges have their own preferences, procedures, and forms. The District Court website has a page for each judge that links to that judge’s standing orders, forms, and preferences with respect to communication. Until you become familiar with the judges, be sure to check their pages before filing anything or contacting chambers.

– *Lindsay B. Orr, Drinker Biddle & Reath LLP*

2. What is one piece of advice you would give to a junior associate practicing in the District Court?

We have fewer judges than most other courts so it is easier to learn their preferences and to get to know them personally. Take every opportunity to speak in court (so they begin to recognize you) and to interact with our judges at local events (which means join the FBA-Delaware Chapter!).

– *Pilar Kraman, Young Conaway Stargatt & Taylor, LLP*

When asked a question, answer in as concise a manner as you can. It's okay to elaborate, but before doing so make sure you first answer the question.

– *Andrew Mayo, Ashby & Geddes, P.A.*

3. What do you enjoy most about practicing in the District Court?

I most enjoy the community of attorneys that I regularly practice with in the District of Delaware. As a patent litigator, I have found the Delaware patent bar to be supportive and collegial in all aspects of the profession—whether participating in professional organization or arguing with opposing counsel, the Delaware attorneys I practice with in the District Court conduct themselves gracefully and respectfully.

– *Brian Biggs, DLA Piper*

The United States Bankruptcy Court for the District of Delaware

Chief Judge Brendan Linehan Shannon

Welcome to the United States Bankruptcy Court for the District of Delaware!

Please accept my warmest congratulations on passing the bar examination and becoming a member of the Delaware Bar. It is my privilege and my pleasure to welcome you to the United States Bankruptcy Court for the District of Delaware. The Bankruptcy Court is located at 824 Market Street, and there are six judges in our Court. We handle all personal and business bankruptcies arising in the State of Delaware.

Our Court has gained a measure of national prominence over the past 20 years on account of the large Chapter 11 corporate reorganization cases that have been filed here. For example, my colleagues and I have overseen the reorganization of RadioShack, Continental Airlines, the Los Angeles Dodgers baseball team, and the Catholic Diocese of Wilmington, to name just a few. When considering the number of cases assigned to each judge, the Delaware Bankruptcy Court is among the busiest bankruptcy courts in the country. In addition to our corporate reorganization docket, we have approximately 3,000 Chapter 7 or Chapter 13 consumer or personal bankruptcies pending in our Court at any given point in time.

The Bankruptcy Court is a very busy and fast-paced place. The typical deadlines for pending matters is 14 or 21 days, and our Local Rules and [Court website](#) offer valuable and necessary information on practice in our Court. The practicing bar in the Bankruptcy Court is exceptionally collegial, and the Court expects opposing counsel to cooperate with one another in advance of Court appearances to ensure that matters are presented efficiently and fairly.

On behalf of my colleagues on the bench of the Bankruptcy Court, I welcome you and I wish you all the best as you begin your career as a member of the Delaware Bar.

The Basics of the Bankruptcy Court

By: Justin R. Alberto, Aaron Stulman, and Evan T. Miller

Location: 824 North Market Street, Wilmington, DE 19801 (walk down the alley past the hot dog cart and through the revolving doors, proceed to the elevator, courtrooms are located on the 5th and 6th floors depending on the judge, and the 3rd floor is for administration).

Judicial Officers:

- Chief Judge Brendan L. Shannon
- Judge Kevin J. Carey
- Judge Kevin Gross
- Judge Laurie Selber Silverstein
- Judge Christopher S. Sontchi
- Judge Mary F. Walrath

Local Rules and General Chambers Procedures: [The Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware](#) is the single most important source of information for practicing in the Bankruptcy Court. Almost every question can be answered by consulting the Local Rules, including, but not limited to, service of notice, filing a proof of claim, procedure for requesting relief from the automatic stay, sale and sale procedures motions, adversary proceeding requirements, discovery, mediation procedures, and confidentiality. These Local Rules are typically modified once a year.

In addition, there are general procedural and administrative requirements available under the “Judges’ Info” tab on the homepage of the Bankruptcy Court website. All of the items on this page are important to familiarize with, starting with the “General Chambers Procedures”, continuing with the “Hearing Binder Guide,” and so on. These will provide very discrete instructions in supplement to the Local Rules generally.

Several of the Bankruptcy Court judges have individualized chambers procedures, which are modified versions of the General Chambers Procedures. These procedures—along with other orders or templates specific to that judge—can be found on the individual judges’ pages under the “Judges’ Info” tab referenced above.

Forms: The Court’s website provides links to national [Official Bankruptcy Forms](#) as well as [Local Forms](#). These forms will come in handy if you are not working at a law firm that already has a database of examples. Nonetheless, it is worth familiarizing yourself with it as the Court updates the forms from time to time.

Office of the U.S. Trustee: Relevant information is located at the websites for the Court and the U.S. Department of Justice, U.S. Trustee Program.

Filing a Proof of Claim: General information regarding filing a proof of claim (and the form to complete) can be found on the Court’s website.

List of Recently Filed Chapter 11 and 15 Cases: A list of all Chapter 11 and 15 cases filed within the past 45 days can be found on the Court's website, which can be modified to show all cases filed in the last calendar year.

Opinions: A database of all Opinions entered by any judge in the Bankruptcy Court can be found on the Court's website. The database is searchable by both judge and year.

Daily Docket: The daily docket for the Bankruptcy Court can be found on the Court's website. Any hearing that is cancelled will appear in red. That is not to say that a hearing will not be cancelled or rescheduled the day of. Unfortunately, the daily docket on the Bankruptcy Court's website is not updated throughout the day.

Clerks' Office: The Clerk of the Court is David Bird. Information about the Clerk's Office Procedures is available on the Court's website (for example, required documents for filing a Chapter 11 case, formatting the creditor matrix, and procedures when the CM/ECF system is down).

Help Desk: The Bankruptcy Court's "Help Desk" can provide guidance with respect to certain procedural and administrative questions. They can be reached 8:00 am to 5:00 pm, Monday through Friday, at (302)-252-2887 or helpdeskde@deb.uscourts.gov.

Filing Requirements for the Bankruptcy Court

By: Justin R. Alberto and Aaron Stulman

Admission

In order to file in the Bankruptcy Court, you must first be admitted to practice in the United States District Court for the District of Delaware. Please note that this is not that same as being admitted to practice in the Delaware State Courts. The District of Delaware has all the [information you will need to be admitted](#) on its website.

Filing

Filing is done through the Bankruptcy Court's [CM/ECF system](#). Once you are admitted to practice in the Bankruptcy Court, you will need to register. After registering, you should receive your log-in credentials. If you have any questions regarding this process, contact the help desk by telephone at (302)-252-2887 or by email at helpdeskde@deb.uscourts.gov.

CM/ECF

The Bankruptcy Court provides attorney training through individualized e-learning modules. Consult the Court's website to learn more about filing and using the CM/ECF system.

In addition to filing, CM/ECF can be used to check the docket of any case (whether closed or still pending). To do so, after logging in, click on "Query," type the case number into the field (or alternatively, search by case name). This will take you to the bankruptcy case's landing page with various case information. Click "Docket Report" and enter the relevant time period (or Docket Nos.) and click "Run Report." As a tip, if you want to pull up the entire case's docket, replace the "year" in the first date you see with "2000" and the search will range from 2000 through today's date. Please note that running a report will generate a fee based on the number of pages, but the fee is capped at \$3.00 for any single search (including document searches).

CM/ECF can also be used to track cases. When any document is filed in a given case, you will be sent an email notification with a link to the document. This is a very helpful tool for monitoring cases. To track a case, click on "Utilities" and then "Maintain Your ECF Account." Then, click on "Email information..." and under "Send notices in these additional cases," type in the Case No., select "Return to Account screen," and then "Submit." You should start receiving email notifications immediately.

Practice Pointers for the Bankruptcy Court

By: Justin R. Alberto, Aaron Stulman, and Evan T. Miller

Local Rules

It cannot be stressed enough how vital the [Local Rules](#) are to practicing in the Delaware Bankruptcy Court. To save yourself significant time and stress, familiarize yourself with both the Bankruptcy Court's and District Court's Local Rules. The Bankruptcy Court Local Rules are typically modified once a year, often with significant changes from one year to the next, so be sure you have the most current version.

Note that many of the Local Rules substantially modify their counterparts (if any) in the Federal Rules of Bankruptcy Procedure, especially with respect to timing.

Advice from Practitioners

We asked several experienced Bankruptcy Court practitioners for their insight and advice for new Delaware lawyers.

1. What do you know now about practicing in the Bankruptcy Court that you wish you had known when you first started?

There is a tremendous amount of interrelation among the statutory and procedural sources of Delaware bankruptcy practice – from federal sources like the Bankruptcy Code and Federal Rules of Bankruptcy Procedure (even the Federal Rules of Civil Procedure, at times), to “local” sources like the Local Rules (Bankruptcy and District Courts), General Chambers Procedures, etc. Never be afraid to ask questions if you are unsure whether a rule or section, be it federal or otherwise, applies in a given situation.

– *Evan T. Miller, Bayard, P.A.*

When I first started, I was very aware of my status as the most junior attorney, so much so that I was nervous to ask questions; however, after just one year, I have learned that the best way to grow professionally in this practice is to engage and ask questions. The lawyers at the Bankruptcy Court are not only practicing at the highest levels, but they are also very willing and eager to teach their junior colleagues.

– *Rachel L. Biblo, Richards, Layton & Finger, P.A.*

2. What is one piece of advice you would give to a junior associate practicing in the Bankruptcy Court?

No matter what your role is in a case, prepare for a hearing like you are presenting the listed matters. You can't provide relevant advice – from a Delaware counsel or any other perspective – if you don't know what is going on.

– *Christopher Samis, Whiteford Taylor Preston, LLP*

Become an expert in the local rules. It will help you in so many aspects of your practice from giving advice to co-counsel to communications with chambers. If junior associates know the local rules they become an invaluable member of the team very quickly.

– *Amanda Steele, Richards, Layton & Finger, P.A.*

3. What do you enjoy most about practicing in the Bankruptcy Court?

The family environment. I know, a strange answer, but the reality is that given the concentration of complex reorganizations here in Delaware, the bankruptcy bar is small despite its ability to attract sophisticated practitioners from around the United States. As a result, the world of attorneys and judges is familiar, creating an environment of informality with high levels of respect for each other and the Court that is not duplicated in many other practice areas.

– *Karen B. Skomorucha Owens, Ashby & Geddes, P.A.*

Bankruptcy defies monotony. It is consistently challenging, and its parameter of issues can include virtually any other area of law.

– *Thomas Walsh, Marshall Dennehey Warner Coleman & Goggin*

OTHER PRACTICE AREAS

The Basics of Delaware Transactional Law

By: Nathan E. Barnett

Deal lawyers in Delaware have the chance to work on sophisticated transactions of all kinds, guiding businesses from formation to dissolution and everything in between. Because of Delaware's outsized role in the business world, transactional lawyers in the First State are called upon by national and international clients and law firms seeking advice on Delaware law. Whether advising a small business on an employment agreement or a multinational conglomerate on a merger, below is some information all junior transactional lawyers in Delaware should know.

Entities and Statutes: It is important that newly minted Delaware transactional lawyers understand the commonly-used business organizations existing under Delaware law—corporations, partnerships, limited partnerships, limited liability companies, and statutory trusts—and the statutes governing these entities—the Delaware General Corporation Law, the Delaware Revised Uniform Partnership Act, the Delaware Revised Uniform Limited Partnership Act, the Delaware Limited Liability Company Act, and the Delaware Statutory Trust Act. There are several Delaware treatises covering each of these statutes, and related case law, that are of particular use to young attorneys, and should be consulted early on.

Due Diligence and Contract Drafting: Young lawyers will have to review a number of documents and will be expected to take ownership of their tasks by, at the very least, paying close attention to detail. For example, contract language often has very precise meaning and therefore young lawyers should scrutinize each provision and endeavor to understand how a seemingly minor change to such provision may have an important impact on the entire agreement. Additionally, when reviewing an agreement, young lawyers should note the general structure of the contract and how the provisions fit together, such as recitals, representations and warranties, covenants and rights, conditions, remedies, and other general provisions. Often the best resources for young attorneys performing contract review and drafting are more senior attorneys that can answer questions that arise when reviewing agreements.

Opinion Letters: Delaware lawyers are often engaged to provide legal opinion letters at the closing of business transactions expressing conclusions on legal matters of concern to the requesting party. Generally, opinion letters are either “clean,” “qualified,” or “reasoned.” Clean opinions state a clear expression of the law on a particular matter, subject to standard assumptions and exceptions; qualified opinions are similar to clean opinions, but with non-standard exceptions or qualifications; and reasoned opinion letters provide a view on how a court may rule on a particular issue with appropriate analysis and reasoning. Opinion letters are often requested by lenders in connection with financing transactions, by investors in a private equity fund, or by boards of directors in connection with a certain action.

Uniform Commercial Code (UCC): Since many business entities are organized in Delaware, young lawyers should familiarize themselves with the Delaware UCC, particularly Article 9, which governs the perfection of a security interest in personal property, often by the filing of a financing statement in the state where an entity is organized. Young lawyers should also gain a working understanding of Article 2, which governs the sale of goods.

Filing Requirements for Delaware Transactional Law

By: Jane C. Trueper

As a transactional attorney, you will be involved with filing a variety of documents with the Delaware Secretary of State (the “State Office”). Filings relating to business entities (including limited liability companies, limited partnerships, statutory trusts, and corporations), UCC filings, certificates of good standing, and payment of corporate franchise tax are handled by [the State Office](#). The State Office assesses whether the filing complies with the relevant statute and, if it does comply, the State Office files the document and remits the filed document to you.

How to File: Documents filed with the State Office must be accompanied by a cover memo containing the name and address of the person or law firm submitting the request. The [form of filing cover memo and more detailed information on how a request should be formatted](#) are available on the State Office’s website.

Filing Deadlines: If a document is received by the State Office in proper form and all required fees are paid when received, the document will be filed with the date and time received as soon as the State Office is able to process the regular, non-expedited work for that date. Regular (non-expedited) work takes on average between 10 and 15 business days to process. However, due to the large amounts of work received in March, June, and December, filings may take 3 to 4 weeks provided there are no issues with the request. Filings may be expedited with [payment of additional fees](#). Expedited filing times and corresponding deadlines are:

- One-hour service: Must be received by 9:00 p.m. EST.
- Two-hour service: Must be received by 7:00 p.m. EST.
- Same-day service: Must be received by 2:00 p.m. EST.
- Next day service: Must be received by 7:00 p.m. EST the day before filing is needed.

Additional Services: In addition to handling online filings, the State Office provides several other services relating to the creation, maintenance, and termination of an entity that you will need to utilize as a transactional attorney. These include:

- Payment of state franchise taxes
- Filing annual reports
- Checking availability of an entity name
- Reserving an entity name
- Searching for a business entity
- Checking an entity’s status
- Validating a certificate
- Searching Delaware laws online

Practice Pointers for Delaware Transactional Law

By: Brendan J. Schlauch

Being an effective transactional attorney requires attention to detail and a working knowledge of various legal concepts to help clients achieve their business objectives. Here are a few practice pointers to help you succeed as a junior transactional attorney in Delaware:

- **Understand the Deal:** You may feel overwhelmed by the volume of documents you need to review and understand as part of a deal. But take the time to understand the deal in a meaningful way before asking for help and guidance from a more experienced attorney. It is important to recognize that much of the information you need is readily available. For example, it is helpful to review the recitals to any document. Although they have little legal value, recitals summarize hundreds of pages of legal concepts and will help you identify the most important information about a deal.
- **Focus on What Matters:** Recognize that every deal lawyer’s primary goal is to get the deal done. In order to achieve this goal, it is crucial to understand what matters most to your client. In other words, do not spend time commenting on stylistic or non-substantive issues. Obviously, do not shy away from correcting any errors you may come across—just remember to have a clear understanding of why the comment is important to the deal. Ultimately, only make a comment if you are comfortable defending it.
- **Use Transactional Resources:** There are countless resources available to deal lawyers, including articles and publications created by Delaware law firms and the Delaware State Bar Association. Ask senior attorneys for recommended resources and take every opportunity to review them. Do not overlook existing documents your firm has on file. Transaction documents are largely based on forms, so making use of existing documents as precedent for your assignment will save a lot of time and trouble.
- **Concentrate on Producing Error-Free Work Product:** It is important to take things slowly your first few months as a first-year associate. Most of the tasks you are assigned in your first year are aimed at helping you learn. They are also designed to help senior attorneys gain confidence in your abilities as a lawyer. So take the time to learn about what you are being asked to do and focus on producing error-free work product.
- **Practice Defensive Lawyering:** Every communication you have with another party to a deal should be made with the understanding that it could be discoverable in future litigation. In particular, realize that when you send an email you may unintentionally imply more than you intended.²⁵ Be as specific and as clear as possible when sending emails, and be willing to pick up the phone and call someone if doing so will be more efficient or avoid ambiguity. Also, if you do not know the answer to a question, say so and respond that you will look into the issue—this is always better than giving the wrong answer or fumbling through a partially correct answer.

²⁵ For example, replying that something “looks good” or stating “nice job on the document” could imply that you are in agreement on more than just the narrow legal issue with which your email was concerned.

Advice from Practitioners

We asked several experienced transactional law practitioners for their insight and advice for new Delaware lawyers.

1. What do you know now about practicing transactional law that you wish you had known when you first started?

Unlike litigation, there are no court ordered deadlines, so transactional law is completely deal driven and depends on the needs of each individual client. This creates an exciting atmosphere surrounding specific deals and often requires a quick turnaround of work product. Transactional law also offers immediate gratification when the deal closes.

– *Lauren McCrery, Berger Harris LLP*

2. What is one piece of advice you would give to a junior associate practicing transactional law?

Take ownership of your matters. Engage yourself in the entire transaction, not just the discrete task you were given to work on, and you will get through the steep “junior associate learning curve” much faster than if you only focus on discrete tasks and issues.

– *Sara Gelsinger, Morris, Nichols, Arsht & Tunnell LLP*

3. What do you enjoy most about practicing transactional law?

The diversity and number of matters on which I get to work. As transactional attorneys in the State of Delaware, we have the unique opportunity to take part in many large and complex transactions and corporate reorganizations involving Delaware entities. In addition to keeping work interesting, this has helped me expand my knowledge base and think creatively, which has made me a better attorney.

– *Joshua J. Novak, Richards, Layton & Finger, P.A.*

The Basics of In-House and Pro Bono Practice

By: Selena E. Molina

The State of Delaware offers several opportunities to practice not only with a law firm, as a sole practitioner, or with a state agency, but also to practice in house at one of the many companies incorporated and/or located in Delaware or for one of Delaware's three legal services organizations.

An in-house position at one of Delaware's many companies can encompass any number of complex and interesting legal work including, but not limited to, contracts, compliance, securities, or bankruptcy. Attorneys admitted in another state or foreign jurisdiction may apply to practice as in-house counsel under Rule 55.1 of the Delaware Supreme Court Rules, without the need for a Delaware license.

Delaware also boasts three legal services organizations: the Community Legal Aid Society, Inc. (CLASI), Delaware Volunteer Legal Services, Inc. (DVLS), and Legal Services Corporation of Delaware, Inc. (LSCD). The Combined Campaign for Justice, which funds these organizations, has reported that "4,460 low-income Delaware families improved their lives through the efforts of the three legal services providers" in the year 2014.²⁶ CLASI provides free legal services to people with disabilities, citizens over 60 years old, victims of housing discrimination, people living in poverty, victims of domestic violence, and immigrant victims of crime, abuse, and neglect.²⁷ DVLS handles protection from abuse and other family law matters, private landlord matters, and estate planning matters.²⁸ LSCD handles Chapter 7 and 13 bankruptcy matters, consumer problems (including repossessions, fraud, and debt collection), housing problems (including eviction, foreclosure, and unsafe conditions), tax issues, and unemployment benefits.²⁹ All of these organizations' services are free of charge to Delawareans.

There are also a number of opportunities for attorneys in all practice areas to perform pro bono work throughout the State of Delaware. Such opportunities are available through the above legal services organizations (i.e., DVLS provides training on the pro bono representation of parties involved in protection from abuse cases, the Office of the Child Advocate (i.e., Delaware attorneys can serve as guardians ad litem for children in foster care, the Delaware State Bar Association, and your place of employment. The Delaware Lawyers' Rules of Professional Conduct state: "[a] lawyer should render public interest legal service."³⁰ Further the Principles of Professionalism for Delaware Law, adopted jointly by the Delaware State Bar Association and the Delaware Supreme Court, state that "[a] lawyer should assist and substantially participate in civic, educational and charitable organizations. A lawyer should render substantial professional services on a charitable, or pro bono publico, basis on behalf of those persons who cannot afford adequate legal assistance."³¹ Pro bono cases, while often emotionally challenging, can be the most enriching part of an attorney's practice and many Delaware attorneys are dedicated to, and active participants in, helping Delaware's underserved population.

²⁶ <http://www.delawareccj.org/>

²⁷ <http://www.declasi.org/>

²⁸ <http://www.dvls.org/Domestic-Violence-Representation-Wilmington-DE.html>

²⁹ <http://www.dvls.org/Domestic-Violence-Representation-Wilmington-DE.html>

³⁰ <http://courts.delaware.gov/odc/docs/DLRPCFebruary2010.pdf>

³¹ <http://courts.delaware.gov/odc/prof.stm>