

## **Delaware Supreme Court Amends Delaware Supreme Court Rules 3, 9, 25, 29, 30, and 43**

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By an order dated May 20, 2015, the Delaware Supreme Court has amended Supreme Court Rules 3, 9, 25, 29, 30, and 43. These amendments are effective June 1, 2015. The rule amendments are available on the [Court's website](#).

The purpose of these amendments is to clarify and to bring into conformity with actual practice the use of motions to affirm under Rule 25 and motions to dismiss under Rule 29.

As to criminal appeals, Rule 25 has been amended to eliminate the ability of an appellee to bring a motion to affirm as to direct appeals from convictions after trial and first motions for postconviction relief under Superior Court Rule 61 when there is a conviction after trial. Motions to affirm remain permitted as to other criminal appeals. In the categories where motions to affirm would no longer be permitted, the appellee may file an earlier answering brief if it wishes quicker disposition.

As to civil appeals, experience has shown that motions to affirm are rarely, if ever, granted, especially if the appeal has been filed through counsel. Rule 25 has been amended to eliminate the option to file a motion to affirm in a civil case, other than one from an appeal of a denial of a petition for an extraordinary writ. Experience has shown that the motion to affirm tool has been efficiently and consistently used in this category of appeals. If there is a genuine need for expedited proceedings, the option of filing a motion for expedition remains. An appellee may also may file an earlier answering brief if it wishes quicker disposition.

Similarly, Rule 29 has been amended to eliminate the option to bring a motion to dismiss an appeal. The Court retains the ability to grant a dismissal motion *sua sponte*, under the same conditions that currently exist. As with motions to affirm in civil cases, motions to dismiss have rarely been made or granted in the Supreme Court. If an appellee believes an appeal should be dismissed for lack of jurisdiction or some other non-merits reason, that argument can be made in its answering brief. If the appellee believes that the appeal should move faster, the appellee can file its answering brief earlier.

Conforming amendments have been made to Rules 3, 9, 30, and 43 to make them consistent with the revised Rule 29.

If you have any questions, please contact William S. Montgomery, Supreme Court Administrator, at [william.montgomery@state.de.us](mailto:william.montgomery@state.de.us) or (302) 577-8742.