FILING AN APPEAL IN THE SUPREME COURT OF THE STATE OF DELAWARE

A Citizen's Guide

Introduction

This guide is intended to help non-lawyers with filing an appeal in the Delaware Supreme Court. **This guide is not legal advice and should not be cited as legal authority.** The information in this guide does not replace the Supreme Court Rules but should be used with the Rules. Litigants also may want to consult the Court's Internal Operating Procedures. These are found in the Delaware Rules Annotated and are available online at https://courts.delaware.gov/rules/.

This guide reflects the Supreme Court Rules in effect as of today. The Rules are always subject to change, making it important that you are using the most up to date version of the Rules. You may call the Supreme Court Clerk's Office if you have a specific question about how to file your papers with the Court. Although our staff will try to answer your questions, you must remember that **employees of the Supreme Court are not permitted to give legal advice or make specific recommendations on how you should pursue your claims on appeal or defend against an appeal**.

Table of Contents

Quick Links 5
Definitions 6
The Delaware Supreme Court 10
- **What is the Delaware Supreme Court?** 10
- **Where is the Delaware Supreme Court?** 11
- **What may I appeal to the Delaware Supreme Court?** 11
- **Do I need a lawyer?** 12

Steps to Appeal 13
Notice of Appeal 13
- **How do I file a Notice of Appeal?** 13
- **What if an appeal has been filed against me, and I also want to appeal?** 14
- **When do I file a Notice of Appeal?** 14
- **What does it cost to file a Notice of Appeal?** 15
- **What if I cannot pay?** 15

Order Transcripts 16
- **How do I order transcripts?** 16

Briefs 17
- **How do I file a brief with the Delaware Supreme Court?** 17
- **What is an Opening Brief?** 17
- **What is an Answering Brief?** 18
- **What is a Reply Brief?** 19
- **What is a Record?** 19

When will the Supreme Court decide my appeal? 19
What can I do if I lose my appeal? 20
Form Templates 21
1. **Notice of Appeal** 21
2. **Notice of Appeal from Interlocutory Order** 21
3. **Certificate of Service** 21
4. **Directions to Court Reporter of Proceedings Below to Be Transcribed Pursuant to Rule 9(e)** 21
5. **Statement Pursuant to Rule 9(e) in Lieu of Below Ordering Transcript of Proceedings** 21

6. **Motion to Proceed in Forma Pauperis** 21
7. **Certificate of Compliance** 21
8. **Motion Under Rule 15(b)** 21

Quick Links

Delaware Supreme Court Website:
https://courts.delaware.gov/supreme/

Delaware Code Annotated:
http://delcode.delaware.gov/

Delaware Rules Annotated:
https://courts.delaware.gov/rules/

E-Filing:
https://courts.delaware.gov/supreme/efiling.aspx

Electronic Docket:
https://fileandservedelaware.com/

Forms:
https://courts.delaware.gov/forms/

Judicial Branch Operating Procedures:
https://courts.delaware.gov/aoc/operating-procedures/

Legal Assistance:
https://courts.delaware.gov/help/legalassistance.aspx

https://delegalhelplink.org/

Legal Dictionary:
https://thelawdictionary.org/

Definitions

Any definitions that are not included in this list may be found in Black's Law Dictionary, available in most libraries or online at **https://thelawdictionary.org/**.

Affidavit. A statement of the facts and procedural background related to a motion, based on personal knowledge, set forth in concise paragraphs, and sworn to be true before a notary public.

Appeal. A review by the Delaware Supreme Court of what happened in the trial court to determine whether any mistakes occurred and, if so, whether the decision should be changed and the party who filed the appeal is entitled to a remedy.

Appellant. A party who appeals from a decision of the trial court.

Appellee. A party against whom an appeal is taken and who responds to that appeal.

Arms of the Court. Boards and Commissions that perform tasks or duties related to the Court's functions.

Brief. A written statement that provides the facts of your case and the arguments for why you are correct.

> **Opening Brief.** A written document by the appellant explaining why the trial court's decision is wrong.
>
> **Answering Brief.** A written document by the appellee explaining why the trial court's decision is correct.
>
> **Reply Brief.** A written document by the appellant responding to any points raised in the answering brief that weren't addressed in the opening brief.

Cases. A legal action to be decided in court.

> **Civil**. Cases relating to the State and its citizens, and those relating to private rights between people or organizations.
>
> **Criminal.** Cases brought by the State against persons accused of a crime.

Citations. The source where you found the information you are stating, including cases, statutes, rules, articles, etc.

Clerk of the Court. The chief official in charge of the records and filings of the Delaware Supreme Court.

Courts.

> **Supreme Court.** The highest court in the State. *See "What is the Supreme Court?"*
>
> **Court of Chancery.** A court of equity that handles lawsuits seeking remedies other than damages, such as writs, injunctions, and specific performance.
>
> **Superior Court.** A court with general jurisdiction over a wide range of civil and criminal cases.
>
> **Family Court.** A court with jurisdiction over matters involving divorce, child custody, child support, paternity, domestic violence, and other family law issues.
>
> **Court of Common Pleas.** A court that has jurisdiction over misdemeanor and motor vehicle offenses, civil actions where the amount of money a party is seeking is $50,000 or less, and appeals from the Justice of the Peace.
>
> **Justice of the Peace Court.** Court with jurisdiction over minor criminal offenses and civil disputes.

Court *en banc*. The Delaware Supreme Court *en banc* is when all five Justices hear and decide a case. If a Justice has a conflict of interest, a former Justice or an active State Judge will be assigned to hear the case.

Cross-appeal. An appeal filed by the appellee, which usually is heard at the same time as the appellant's appeal.

Defendant. The party against whom a lawsuit is filed in trial court.

Docket. The list of documents in a case that have been filed in the Court and the date they were filed.

E-Filing. The option of filing documents in the Court electronically.

Filing. A document has been filed in the Court when the Clerk has actually received it and has stamped the date and time on the document.

Indigent. A person who does not have enough property or income to support himself and does not have anyone to support him.

Interlocutory appeal. An appeal that is filed before the trial court has entered its final order in the case.

Interlocutory order. An order that addresses some intermediate matter and is issued before the trial court has reached its final decision in the case.

Internal Operating Procedures ("IOP"). The IOP are procedural guidelines that explain in detail how the Delaware Supreme Court processes its caseload. The IOP are referenced in this Citizen's Guide and are published in the Delaware Rules Annotated and are available online on the Supreme Court's website.

Judicial Branch. The courts and the organizations that support the courts.

Jurisdiction. Authority.

> **Appellate jurisdiction.** The Delaware Supreme Court's authority to review and revise a lower court's decision.
>
> **Original jurisdiction.** The Delaware Supreme Court's authority to hear and decide a matter before any other court has reviewed it.

Legal Authority. A case, law, statute, or rule that supports your arguments in your brief and shows why you are correct.

Memorandum. A document presenting arguments and applying research and analysis to particular facts.

Motion. A written application requesting the Court to make a specific ruling or order.

> **Motion to Affirm.** A motion requesting the court to affirm a judgment, without oral argument, after the appellant submits the opening brief but before the appellee submits the answering brief.
>
> **Motion to Proceed in Forma Pauperis.** A motion requesting permission to proceed without paying Supreme Court fees, which provides personal information from which the court can determine that you are indigent and unable to pay.

Notice of Appeal. The paper filed in the Delaware Supreme Court notifying the Court that a case is being appealed.

Opinion. A written explanation by a judge or group of judges that accompanies an order or ruling in a case, explaining the reasoning and legal authority for the ruling.

Order. The decision or judgment of a case by a judge or group of judges.

Parties. The plaintiff and defendant; the petitioner and the respondent; or the appellant and appellee.

Plaintiff. The person or entity filing the lawsuit in the trial court.

***Pro Se*.** The term used for a person who does not have a lawyer and appears on his or her own behalf before the Court. Also known as "self-represented."

Record. All of the original papers and exhibits filed in the trial court.

Self-represented. The term used for a person who does not have a lawyer and appears on his or her own behalf before the Court. Also known as "*pro se*."

Service. Delivery of a copy of a document to be filed in the Court to the other party (or parties) to the case.

Transcript. A word-for-word typewritten account of what was said in a court proceeding.

Writ. An extraordinary remedy that is within the original jurisdiction of the Supreme Court. In general, a writ may be issued only when the party requesting it does not have any other remedy. Typically, writs are issued to stop a trial court from hearing cases outside its jurisdiction or to compel a trial court to perform a mandatory duty. There are other kinds of writs not discussed in this guide.

The Delaware Supreme Court

The Delaware Supreme Court's website can be found at: **https://courts.delaware.gov/supreme/**. The Court's website contains timely news items about the Court and provides links to the Court's Opinions and Orders, Court Rules, profiles of the Justices, and the Boards and Commissions that make up the Arms of the Court. This Citizen's Guide is also available through the Court's website. Access to the Court's online electronic docket is available for paying account-holders through File & Serve Xpress located at **https://fileandservedelaware.com/**.

What is the Delaware Supreme Court?

The Delaware Supreme Court is the highest court in the State of Delaware. It has five Justices, including a Chief Justice. The Justices are nominated by the Governor and confirmed by the Delaware State Senate. The Justices are Delaware lawyers who are appointed for twelve-year terms. Generally, three Justices will hear and decide a case, or, in some circumstances all five Justices will hear the case, which is called "*en banc*."

The Delaware Supreme Court is primarily a court of appeals. An appeal is not a new trial, but rather, is an argument of why a decision in a trial court was wrong. Normally, parties filing appeals before the Supreme Court cannot offer any evidence or arguments that were not presented to the trial court first. The Court decides appeals strictly on the basis of the record of the proceedings in the trial court and the written briefs filed by the parties in the Supreme Court. The Court also may request oral argument from lawyers representing the parties. The Court rarely requests oral argument if there is a party who is not represented by a lawyer.

The Delaware Supreme Court also has original jurisdiction to issue different types of writs (not discussed here). Writs are extraordinary remedies, which the Court does not issue frequently. An application for a writ does not replace an appeal. Writs are governed by Supreme Court Rule 43.

The Delaware Supreme Court is part of Delaware's Judicial Branch. To understand how the Supreme Court and the Judicial Branch work, it may be helpful to review the Judicial Branch Operating Procedures, which are available online at **https://courts.delaware.gov/aoc/operating-procedures/**.

References: Del. Const. art. IV, § 2; Del. Supr. Ct. R. 4, 43; IOP VIII, IX, X.

Where is the Delaware Supreme Court?

The Delaware Supreme Court has offices in all three counties of the State. The Clerk of the Court is located in Dover, but there are Deputy Clerks to accept filings in each county. The Court's regular business hours for accepting filings are 8:30 a.m. to 4:30 p.m., Monday through Friday. If you have a question about your appeal, you should direct it to the Clerk's Office in Dover. The address and telephone number are:

Clerk of Court
Supreme Court of Delaware
55 The Green
Dover, DE 19901
(302) 739-4155

If you are located in New Castle County or Sussex County and want to file a document in person, Supreme Court filings are accepted at:

Leonard L. Williams Justice Center
Law Library/Self-Help Center
500 North King Street, Suite 2500
Wilmington, DE 19801

Sussex County Law Library
Sussex County Courthouse Annex
5 East Pine Street
Georgetown, DE 19947-1903

All communication with the Supreme Court must be conducted through the Clerk's Office. No party is permitted to contact an individual Justice by telephone or email about any case.

References: Del. Supr. Ct. R. 10, 91; IOP IV.

What may I appeal to the Delaware Supreme Court?

In civil cases, you may appeal to the Delaware Supreme Court final orders issued by the judges (*not* commissioners or masters) of the Court of Chancery, the Superior Court, and the Family Court. An order is final if it resolves all of the issues in the litigation, including claims for attorneys' fees. An order is interlocutory, meaning it is not final, if it decides only some of the issues or claims in the trial court. In civil cases, the trial court can make an interlocutory order a final judgment if it meets the criteria of Rule 54(b) of the trial court. If the interlocutory order is not entered as a final judgment under Rule 54(b), then the Supreme Court will accept an appeal from the interlocutory order only if it meets the strict standards explained below and by the Delaware Rules, and complies with Supreme Court Rule 42. For the usual appeal, all proceedings in the trial court must be

finished before a notice of appeal can be filed—at which point the court clerk will docket the judgment.

In criminal cases, you may appeal orders and sentences from the Superior Court when the sentence imposed a sentence of imprisonment for longer than one month, or a fine exceeding $100. In criminal appeals from the Superior Court, the final order in the case is considered issued—and the time limit to appeal it starts—the day the defendant is sentenced, regardless of when the sentencing order is actually filed in the trial court docket. In post-conviction relief and civil appeals, the Superior Court's final order must be docketed before a party can file a notice of appeal with the Supreme Court.

References: Del. Const. art. IV, § 11; Del. Supr. Ct. R. 6.

Do I need a lawyer?

Individuals may appear before the Delaware Supreme Court without a lawyer. Corporations and other organizations must have a Delaware lawyer.

Although an individual is not required to have a lawyer, most people find that having a lawyer to help with an appeal is helpful. If you would like the assistance of a lawyer, but think you cannot afford one, you may be able to obtain free legal assistance by going to the Legal Help Link at **https://delegalhelplink.org**. Legal Help Link is a service for several agencies in Delaware that provide legal services to qualified applicants with limited means, including Community Legal Aid Society, Delaware Volunteer Legal Services, the Legal Services Corporation, and the Lawyer Referral Service. More information is available at **https://courts.delaware.gov/help/legalassistance.aspx**.

If you pursue your appeal without a lawyer, you must still comply with the Rules of the Supreme Court. You may find it helpful to refer to various legal resources in writing your brief. These resources are available at many public libraries and online, and include the:

- **Delaware Rules Annotated**. Provides each of the Delaware Courts' procedural rules and addresses evidence, professional conduct, civil and criminal procedures, and guidelines for self-representation. The Rules are available at most libraries and online at **https://courts.delaware.gov/rules/**.

- **Delaware Code Annotated**. Provides all of Delaware's statutes and laws. The Code is available in most libraries and online at **http://delcode.delaware.gov/**.

- **Atlantic Reporter**. Provides all of the Delaware Courts' published opinions. The Reporter is available at most libraries.

References: Del. Supr. Ct. R. 12.

Steps to Appeal

These are the basic steps you must take to appeal. It is important to pay attention to the timing and procedures you must follow to complete each step.

1. File a Notice of Appeal before the deadline.
2. Pay court fees or submit a Motion to Proceed in Forma Pauperis explaining why you are unable to pay.
3. Order transcripts.
4. File an Opening Brief and Appendix if you are the one appealing.
5. File an Answering Brief and Appendix if the appeal was filed against you.
6. File a Reply Brief, after the Answering Brief is filed, if you are the one appealing.

Notice of Appeal

How do I file a Notice of Appeal?

Two copies of a notice of appeal must be sent to the lawyer for each party in the proceeding below—or if a party does not have a lawyer, then sent to the party directly—either in person or by mail. After service is completed, the original notice of appeal must be filed in person or by mail with the Supreme Court Clerk or any Deputy Clerk in any of Delaware's three counties. The person or entity appealing also has the option of filing the appeal electronically in accordance with the Supreme Court Rules 10.1 and 10.2. The procedures and rules for e-filing are available at **https://courts.delaware.gov/supreme/efiling.aspx**.

A notice of appeal or cross-appeal should contain the following information:

- The name of the party or parties making the appeal;
- The name of the party or parties against whom the appeal is made;
- The name and address of each party's lawyer; and if any party does not have a lawyer, then the name and last known address of that party;
- In a criminal appeal, the name of all codefendants the appellant was tried with;

- The date of the judgment or order the party is appealing;
- Lawyers for any parties against whom the appeal is *not* being made; and
- Any designation of a transcript as required by Supreme Court Rule 9(e).

A copy of the final order being appealed, and any separate written decision that supports it, should be attached to the notice of appeal.

Samples of a Notice of Appeal, a Notice of Interlocutory Appeal, and a Certificate of Service are at the end of this guide.

References: Del. Supr. Ct. R. 7, 10.1, 10.2, 42.

What if an appeal has been filed against me, and I also want to appeal?

In civil cases, any party may file a cross-appeal within 15 days of the other party's notice of appeal, or within 30 days of the final judgment or order from which the appeal is made, whichever is later.

References: 10 Del. C. §§ 143–49; Del. Supr. Ct. R. 6.

When do I file a Notice of Appeal?

Except in direct criminal appeals, you must file your notice of appeal with the Clerk's office, and the Clerk's office must receive it, within 30 days after the trial court enters on the docket the judgment or order from which the appeal is taken. In a direct criminal appeal, the notice of appeal *must* be received by the Clerk of the Supreme Court within 30 days after sentence is imposed.

The 30-day appeal period for a direct criminal appeal starts the day after sentencing, and for all other appeals, the day after the trial court dockets the order being appealed. All days of the week are counted when computing the 30-day appeal period. The last day of the 30-day period is counted unless it is a day the Supreme Court Clerk's Office is closed for weekends, court-specific holidays, or bad weather. In that case, the 30-day period ends on the next day the Clerk's Office is open. You are responsible for knowing when the trial court enters its final order and for computing the 30-day appeal period. Supreme Court personnel are not allowed to tell you when your notice of appeal is due or compute the 30-day appeal period for you. If you file your notice of appeal by mail, it is not considered "filed" until the day the Supreme Court actually receives it. The bottom line is, don't wait

until the last minute to file an appeal. You risk losing the ability for the Court to hear the appeal.

The 30-day appeal period cannot be extended.

Except on rare occasions, when the Court is the cause of a late-filed appeal, **the 30-day appeal period cannot be extended.** You should assume if your appeal was not filed within the 30-day period, it will be dismissed and you will not be able to appeal.

What does it cost to file a Notice of Appeal?

There is a nonrefundable $510 filing fee that must be paid at the time a notice of appeal or notice of cross-appeal is filed with the Delaware Supreme Court. Payment of the filing fee is not required for appeals from decisions of the Industrial Accident Board or the Unemployment Insurance Appeal Board. The filing fee is generally the only fee charged by the Supreme Court.

What if I cannot pay?

If you are indigent and unable to pay the filing fee, you may file a motion to proceed *in forma pauperis*, which includes an "affidavit of indigency"—a document providing personal information to help the Court decide whether you will be excused from paying the filing fee. You must send a copy of the motion and affidavit, just like any document you file with the Supreme Court, to the opposing party's lawyer, or to the opposing party directly if the opposing party is not represented by a lawyer.

The Supreme Court may waive the $510 filing fee. The waiver of this fee, however, does not waive any other fees or costs that may be associated with your appeal. For instance, there may be a fee charged by the trial court for ordering or transmitting the record on appeal to the Supreme Court. None of these fees or costs, which are imposed by the trial court, can be waived by the Supreme Court.

If you mistakenly file a notice of appeal from an unappealable interlocutory order and your appeal is dismissed for failure to comply with Supreme Court Rule 42, the Supreme Court may transfer the filing fee you paid to any later appeal you file in the same case.

A sample Motion to Proceed in Forma Pauperis is located at the back of this guide.

References: Del. Supr. Ct. R. 20.

Order Transcripts

How do I order transcripts?

You do not have to order transcripts, but it is strongly recommended. If you are going to refer in your brief to testimony or an argument that was made in the trial court, you must state in your notice of appeal (or in an attachment to your notice of appeal) the date or dates of the hearings that need to be transcribed so they can be included in the record. If you do not designate the transcript, the Supreme Court will decide your appeal without it and will reject any argument that you try to make relying on facts in the transcript. **If you do not order a copy of the transcript, and the Supreme Court needs the transcript to decide the issues you have raised on appeal, those issues can be dismissed for failure to order the transcript.**

If you want to request your own copy of the transcript, you must give the appropriate court reporter a copy of the notice of appeal and any attached directions. You must file with the Clerk of the Supreme Court a certificate stating that the notice of appeal and directions were given to the court reporter and that the cost of the requested transcript was paid or will be paid soon. The party requesting the transcript must make the arrangements to pay for the transcripts. Any questions about transcripts, including questions regarding transcript costs, should first be directed to the trial court. The Supreme Court may review disputes over transcripts as part of the appeal.

If your case was decided solely on the basis of briefs or other written documents, and there was no hearing before a judge, you should say so in your notice of appeal or cross-appeal that no transcript is necessary.

Samples of Directions to Court Reporter and Statement in Lieu of Ordering Transcript are located at the back of this guide.

References: Del. Supr. Ct. R. 7, 9; Official Forms C and D.

Briefs

How do I file a brief with the Delaware Supreme Court?

After you file your notice of appeal, the Clerk of the Court will send out a scheduling order informing the parties of the dates that briefs will be due. Supreme Court Rules 13, 14, and 15 explain the form, contents, and time for filing a brief and appendix on appeal. The Court is strict about enforcing these rules when a lawyer files a brief on behalf of a party. If you are representing yourself the Court may relax some of the rules regarding the form and content of your brief. However, even if you are self-represented, the Court will strictly apply the following rules:

- You must sign and file an original copy of your brief.
- You must be sure your brief is clearly legible, regardless of whether it is typed or handwritten.
- If you type or handwrite your brief, you must not exceed the page limitation set forth in Rule 14(d)(iii). If you need additional space, you must file a motion for a page extension at least five days before the brief due date.
- If you use a word processing program to prepare your brief, you must not exceed the word count limitation set forth in Rule 14(d)(i) and you must file a Certificate of Compliance as set forth in Rule 14(d)(ii) (a sample Certificate of Compliance is located at the back of this guide). If you need additional space, you must file a motion for a word count extension at least five days before the brief due date.
- You must file your brief on or before the deadline in the scheduling notice. Although the Court disfavors extensions, if you need an extension of time to file your brief, you may file a motion for an extension in accordance with Supreme Court Rule 15(b). You must do so at least five days before the deadline given.
- A sample Motion under Rule 15(b) is at the back of this guide.

References: Del. Supr. Ct. R. 13, 14(d), 15(b).

What is an Opening Brief?

The opening brief is a written document explaining why you are appealing and what you think is wrong with the trial court's decision. The opening brief is limited to 35 pages (or 10,000 words if you use a word processing program), not including the appendix.

Although the Court will be flexible about the form and content of your brief, you should still organize your brief as best you can. It will help the Court to understand your issues on appeal if you divide your opening brief into the following sections:

- **Table of Contents**;
- **Table of Citations**, which alphabetically lists all legal authorities cited in your brief;
- **Nature of the Proceedings**, which describes the lower court proceedings, including the judgment to be reviewed;
- **Summary of the Arguments**, which states in separate numbered paragraphs the specific issues you are raising on appeal;
- **Statement of the Facts**, including only facts that were presented to the trial court and are supported by the record;
- **Argument**, which divides each issue you want to raise into separate sections and provides legal authority to support your reasoning for each one; and
- **Conclusion**, which briefly tells the Court what remedy you are seeking (what you want the Court to hold).

You must attach a copy of the decision being appealed to your opening brief. It is also recommended to attach any unpublished court orders or opinions that you use as legal authority in your opening brief.

The appendix to your opening brief should include whatever pages of the record you would like the Court to read when it considers the issues you raise on appeal. You should file an original signed opening brief and appendix.

What is an Answering Brief?

The answering brief is the appellee's opportunity to tell the Supreme Court why the trial court's decision was correct and should be affirmed. The answering brief and appendix are due 30 days after the court receives the opening brief and appendix. The answering brief is limited to 35 pages (or 10,000 words if you use a word processing program), not including its appendix. It should include all the same sections listed above for the opening brief. The appellee does not have to file an appendix to the answering brief

if the appellee chooses to rely on the material included in the appendix to the appellant's opening brief, and can instead cite to those appendix pages in the opening brief. The appellee's appendix should not include any of the same material as the opening brief.

What is a Reply Brief?

If you are the appellant, you may file a reply brief in response to the appellee's answering brief. A reply brief is not required, but it is recommended. The reply brief should not contain any new arguments or issues. The purpose of the reply brief is to respond to any points raised in the appellee's answering brief that you did not address in your opening brief. The reply brief is due 15 days after service of the answering brief and is limited to 20 pages (or 5,500 words if you use a word processing program).

References: Del. Supr. Ct. R. 13, 14, 15.

What is a Record?

The record consists of all the original papers and exhibits filed in the trial court. It will be sent automatically by the trial court to the Supreme Court Clerk's Office after the notice of appeal is filed and any ordered transcripts are prepared. The record will include: the transcript, if any was ordered; the complaint and other pleadings; pretrial orders; motions; any written orders, opinions, memoranda, or judgments by the trial court; docket entries; jury instructions; and all the documents and exhibits admitted into evidence by the trial court. In addition, any evidence that you presented to the trial court that was not admitted into evidence is part of the record on appeal for determining the admissibility of the evidence. Material that you obtained from the other parties during the discovery process is *not* considered part of the record on appeal unless it was presented to the trial court. Remember, it is your responsibility to make sure that the record contains all of the relevant material that is necessary for the Supreme Court to decide your appeal. You may not raise arguments to the Supreme Court unless you raised the argument in the trial court and the argument is supported by the record.

References: Del. Supr. Ct. R. 8, 9.

When will the Supreme Court decide my appeal?

The Court will schedule your appeal for a decision after the answering brief is filed. If it would be helpful to the Court or the issues raised in the briefs are new or difficult, oral

argument may be scheduled. Oral argument is not ordered in every case. The Court rarely requests oral argument if there is a party who is not represented by a lawyer.

The Clerk's Office will notify you if your case is scheduled for oral argument. In the majority of cases, the Court will issue a final written decision within 90 days after the submission date. The decision will be mailed to you.

References: Del. Supr. Ct. R. 16, 17.

What can I do if I lose my appeal?

The Delaware Supreme Court is the highest court in this State. Therefore, if you lose on appeal to this Court, there is no other State court to which you can appeal. Although they are rarely granted, you may file with the Court either a motion for reargument or a motion for rehearing *en banc*. A motion for reargument is a request to the same three Justices that issued the final decision in your case to reconsider its decision. A motion for rehearing *en banc* is a request to have all five Justices of the Court consider your case as if the Court was reviewing it for the first time. A motion for rehearing *en banc* can be requested only for the following reasons:

- The appeal involves a case of exceptional legal importance;
- Consideration by the full Court is necessary to maintain uniformity in Supreme Court decisions; or
- The case may be controlled by a prior decision of the Court that should be considered and that may be overruled or modified.

Motions for reargument or for rehearing *en banc* are due within 15 days after the Court files the final decision in the case. As with any motion, motions for reargument or for rehearing *en banc* are limited to 4 pages. It is worth repeating that Motions for reargument or rehearing rarely are granted and, if granted, rarely lead to a different result.

Once the Court has issued its final decision and resolved any pending motions for reargument or rehearing *en banc*, the unsuccessful party may try to seek relief in the federal courts. The procedure for seeking such relief is beyond the scope of this guide and the jurisdiction of this Court.

References: Del. Supr. Ct. R. 4(f), 18, 30(a).

Form Templates

1. **Notice of Appeal**

2. **Notice of Appeal from Interlocutory Order**

3. **Certificate of Service**

4. **Directions to Court Reporter of Proceedings Below to Be Transcribed Pursuant to Rule 9(e)**
   Request to order your transcripts.

5. **Statement Pursuant to Rule 9(e) in Lieu of Below Ordering Transcript of Proceedings**
   Statement that you don't need to order transcripts.

6. **Motion to Proceed in Forma Pauperis**
   Motion stating why you can't pay the Supreme Court fees.

7. **Certificate of Compliance**

8. **Motion Under Rule 15(b)**
   Request to extend the deadline for filing your briefs.

More form templates are available at **https://courts.delaware.gov/forms/**.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

[1]_____,	No.[5]_____, 20___
[2]_____ Below,	
Appellant,	
v.	
[3]_____,	
[4]_____ Below,	
Appellee,	

NOTICE OF APPEAL

To:[6]_____

PLEASE TAKE NOTICE that [1]_____, [2]_____, below-appellant, does hereby appeal to the Supreme Court of the State of Delaware from the order [7]_____ of the [8]_____Court, in and for [9]_____ County, by [10]_____, dated [11]_____, in case number [12] in that court. A copy of the decision sought to be reviewed is attached hereto [13].

The name and address of the attorney below for appellee is [6]_____ . The party against whom the

appeal is taken is [3]_____ .

The name and address of the attorney below for the party against whom the appeal is not taken is [14]_____. The party against whom the appeal is not taken is [15]_____.

PLEASE TAKE FURTHER NOTICE that appellant hereby designates the transcript in accordance with Rules 7(c)(6) and 9(e)(ii) in the following manner:

[16]_____

[or] [17]_____

Dated:_____

[18]_____

_____

Attorney for [1]_____

[2]_____ Below-Appellant

Insertions to Notice of Appeal:

[1] Appellant's name.

[2] Appellant's lower court status.

[3] Appellee's name.

[4] Appellee's lower court status

[5] Leave blank. The Supreme Court Clerk's Office will assign an appeal number upon receipt of the notice of appeal.

[6] Name and address of the appellee's counsel.

[7] Substantive nature of the decision from which the appeal is taken (e.g., "granting summary judgment to the defendant" or "awarding child support to the petitioner below").

[8] Lower court.

[9] County in which the lower court sits.

[10] Name of the judge who rendered the decision on appeal.

[11] Date of the decision on appeal (and the date of the final order, if different).

[12] Complete lower court case number.

[13] Attach a copy of the decision sought to be reviewed, if available. If the decision is not available, include in the notice of appeal a statement indicating such unavailability.

[14] Name and address of the counsel for the party against whom the appeal is not taken, if any.

[15] Name of the party against whom the appeal is not taken, if any.

[16] If ordering the preparation of transcript for the appeal, either designate transcript or state that a separate designation of transcript is set forth in attached Exhibit A. Whether stated within the notice appeal or in an attached Exhibit A, the designation should clearly identify by name, date and time, the proceedings, or part thereof, that need to be transcribed for the appeal.

[17] If not ordering the preparation of transcript, either state that here or state that Statement in Lieu of Transcript in accordance with Official Form D is attached hereto.

[18] Name, address, telephone number and Delaware Bar ID number of the appellant's counsel.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

[1]_____,	No.[5]_____, 20___
[2]_____ Below,	
Appellant,	
v.	
[3]_____,	
[4]_____ Below,	
Appellee,	

NOTICE OF APPEAL FROM INTERLOCUTORY ORDER

To: [6]_____

PLEASE TAKE NOTICE that [1]_____ hereby petitions this Court to accept an appeal from an interlocutory order of the _____[7] Court and represents as follows:

(1) The interlocutory order was entered on [8]_____;

(2) Application for certification was filed in the trial court on [9]_____;

(3) Response by appellee was filed in the trial court on [10]_____;

(4) The action of the trial court with respect to such application was as follows:

[11]_____

The name and address of the attorney for appellee is as follows: [6]_____

The party(ies) against whom the appeal is taken is (are) [3]_____.

Dated: _____

[12]_____

Attorney for [1]

Insertions to Notice of Appeal from Interlocutory Order:

[1] Appellant's name.

[2] Appellant's status in the lower court.

[3] Appellee's name.

[4] Appellee's status in the lower court.

[5] Leave blank. Supreme Court Clerk's Office will assign an appeal number.

[6] Name and address of counsel for the appellee.

[7] Trial court.

[8] Date of interlocutory order. Attach a copy of the order.

[9] Date that application for certification was filed in the trial court.

[10] Date that response to the application for certification was filed by the appellee.

[11] Action by trial court, if any, on the application for certification.

[12] Name, address, telephone number and Delaware Bar ID number of appellant's counsel.

CERTIFICATE OF SERVICE

I, [name] _____, hereby certify that two copies of the [title of document] _____were served by hand delivery/first class [circle the appropriate choice] on this ___day of _____, 20____ upon the following person(s):

IN THE SUPREME COURT OF THE STATE OF DELAWARE

[1]_____,	No.[5]_____, 20___
[2]_____ Below,	
Appellant,	
v.	
[3]_____,	
[4]_____ Below,	
Appellee,	

DIRECTIONS TO COURT REPORTER OF PROCEEDINGS BELOW TO BE TRANSCRIBED PURSUANT TO RULE 9(e)

To: [6]_____

[7]_____ does hereby direct the proceedings in [8]_____ v. _____, Case No. [9]_____, in the [10]_____ of the State of Delaware, in and for [11]_____ County, to be transcribed as set forth below:

(a) [12]_____

I hereby certify that transcription of the above-listed portions of the proceedings below is essential to the [13]_____ of this appeal

and that the cost thereof will be paid promptly.

Dated: _____

[14]_____

Insertions to Directions to court reporter of Proceedings below to be transcribed:

[1] Appellant's name.

[2] Appellant's lower court status.

[3] Appellee's name.

[4] Appellee's lower court status.

[5] Supreme Court appeal number, if known.

[6] Name and address of the court reporter.

[7] Party ordering transcript.

[8] Lower court case caption.

[9] Lower court case number.

[10] Name of court below.

[11] County in which the lower court sits.

[12] Proceedings, or part thereof (identified by name, date and time), that need to be transcribed for the appeal.

[13] "Prosecution" or "defense" of the appeal, as appropriate.

[14] Name, address, telephone number and Delaware Bar ID number of the attorney for the party ordering transcript.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

[1]_____,	No.[5]_____, 20___
[2]_____ Below,	
Appellant,	
v.	
[3]_____,	
[4]_____ Below,	
Appellee,	

STATEMENT PURSUANT TO RULE 9(e) IN LIEU OF
ORDERING TRANSCRIPT OF PROCEEDINGS BELOW

To: [6]_____

[7]_____ hereby states that transcription of the proceedings below [8]_____ need not be ordered because [9]_____.

Dated: _____

[10]_____

Insertions to Statement in Lieu of Ordering Transcript of Proceedings Below:

[1] Appellant's name.

[2] Appellant's lower court status.

[3] Appellee's name.

[4] Appellee's lower court status.

[5] Supreme Court appeal number, if known.

[6] Name and address of the court reporter.

[7] Party not ordering transcript.

[8] If applicable, add "other than those portions previously ordered by [appellant] [appellee]."

[9] Reason why transcript does not need to be ordered.

[10] Name, address, telephone number and Delaware Bar ID number of the attorney for the party not ordering transcript.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

[1]_____,	No.[5]_____, 20___
[2]_____ Below,	
Appellant,	
v.	
[3]_____,	
[4]_____ Below,	
Appellee,	

MOTION AND AFFIDAVIT TO PROCEED IN FORMA PAUPERIS

(1) Pursuant to Supreme Court Rule 20(h) and 10 Del. C. §§ 8802-04, I, [1] _____, swear or affirm that the information contained in this motion and affidavit is true and correct and made under penalty of perjury. I declare that I am the appellant in the above-captioned case and that because of my poverty I am unable to make prepayment of fees or costs or to give security therefore. I believe that I am entitled to relief.

(2) I appeal from an order of the [6] _____ Court, entered on the date of [7] _____ in the case of [8] _____ v. _____, No. [9] _____.

(3) You must circle either A or B below and complete the information in

the selected paragraph:

A. I am presently employed. The name and address of my employer are [10]_____. The total amount of my salary or wages is [11] _____per _____ [e.g., week or month].

B. I am not employed. My last date of employment was [12] _____. The name and address of my last employer is [13] _____. The total amount I last received as salary or wages was [14]$_____. I presently receive unemployment compensation in the weekly amount of [15]$_____. [If this does not apply, write "N/A."]

(4) I am/am not married. [Circle appropriate response.] If you are married, please provide your spouse's name: [16] _____. My spouse is/is not [Circle appropriate response.] employed. My spouse's total salary or wages is [17]$_____ per _____.

(5) You must circle either "yes" or "no" for each statement below. I have received within the last 12 months money from:

a business, profession, or self-employment	yes	no
rent payment, interest, or dividends	yes	no
pensions, annuities, or insurance payments	yes	no
gifts or inheritances	yes	no
any other source	yes	no

If the answer is "yes" to any portion of the above statement, please describe each source of income and the total amount received within the last 12 months:

[18] _____.

(6) I, and/or my spouse, have [19]$_____ in cash and [20]$_____ in either individual or joint checking or savings accounts (including funds in prison accounts). The accounts in which I and/or my spouse hold money are:

Type of Account	Account No.	Name of Bank/Institution	Acct. Balance

(7) You must circle either "yes" or "no" for each statement below, whether title is held in your or your spouse's name alone or jointly held by either one of you with another person(s).

I, or my spouse, own individually or jointly:

real estate	yes	no
bonds or stocks	yes	no
notes	yes	no
cars	yes	no
other valuable property (except ordinary household furnishings and clothes)	yes	no

If the answer is "yes" to any statement above, you must provide further information in the space provided. If you own real estate, please provide the address OR Tax Parcel ID for each parcel of real estate, the current value of the property,

and the amount of any mortgages or liens against the property. For other personal property marked "yes" above, please describe the property, its approximate current value, and the amount of any liens against the property.

Description of Property	Current Value	Amount of Lien

(8) I do/do not have dependents. [Circle appropriate response.] Please provide the names, ages, and addresses of any dependents:

Name	Age	Address

(9) I have the following debts and regular monthly expenses:

(10) You must circle either A or B below and complete the information, as appropriate:

A. I have previously moved to proceed in forma pauperis in the Supreme

Court of Delaware. For each case, please provide the case name and number and indicate whether the request was granted or denied.

Case Name	Case Number	Granted/Denied

B. I have not previously moved to proceed in forma pauperis in the Supreme Court of Delaware.

(11) You must circle either A or B below and complete the information, as appropriate:

A. I have never been found by any court to have abused the judicial process by filing frivolous or malicious litigation.

B. I previously have been found by a court in Delaware to have filed factually frivolous, legally frivolous, or malicious litigation and have been enjoined from filing future claims without leave of court. For each case, please provide the case name, the case number, and the court issuing the injunction:

Case Name	Case Number	Court

(12) If you circled B in Question 11, then you are required to make the following certifications pursuant to 10 Del. C. § 8803(e):

I hereby certify that:

(i) The claims I seek to raise in the current matter have never been raised or disposed of before in any court;

(ii) The facts alleged are true and correct;

(iii) I have made a diligent and good faith effort to determine what relevant case law controls the legal issues I seek to raise;

(iv) I have no reason to believe that the claims are foreclosed by controlling law; and

(v) I understand that this affidavit is made under penalty of perjury.

(13) I am/am not an inmate [Circle the appropriate response]. If you are an inmate, you must have the Department of Correction fill out the attached certified statement of your inmate account.

(14) I understand that, if I am permitted to proceed in forma pauperis in this matter and the Court later dismisses this action or otherwise enters a judgment against me, then the Court may require me to pay all costs and fees associated with this action and, if so ordered, shall retain jurisdiction over me until the costs and fees are paid.

WHEREFORE, having shown just cause for relief, appellant moves for leave to proceed in forma pauperis.

_____

Appellant

SWORN AND SUBSCRIBED before me this ____ day of _____, ____.

_____

Notary Public

My commission expires _____, 20____.

The following section must be completed if the appellant is incarcerated.

I hereby certify that the appellant named herein has the sum of [21]$_____ on account to the appellant's credit at the institution where the appellant is confined. I further certify that the appellant has the following securities to the appellant's credit according to the institution's records: [22] _____.

_____

Authorized Officer of Institution

IN THE SUPREME COURT OF THE STATE OF DELAWARE

[1]_____,	No.[5]_____, 20___
[2]_____ Below,	
Appellant,	
v.	
[3]_____,	
[4]_____ Below,	
Appellee,	

ORDER

This _____ day of _____, _____, upon consideration of appellant's motion for leave to proceed in forma pauperis, it is hereby ORDERED that appellant be GRANTED/DENIED leave to proceed in forma pauperis, limited only to waiver of the docketing deposit required by Supreme Court Rule 20(a).

BY THE COURT:

_____

Justice

Insertions for Motion to Proceed In Forma Pauperis:

[1] Appellant's name.

[2] Appellant's lower court status.

[3] Appellee's name.

[4] Appellee's lower court status.

[5] Supreme Court appeal number, if known.

[6] Lower court.

[7] Date of decision on appeal.

[8] Lower court case caption.

[9] Lower court case number.

[10] Name and address of your employer.

[11] Total amount of salary or wages per week, month, or year as indicated.

[12] Date you were last employed.

[13] Name and address of your last employer.

[14] Total amount of salary or wages you last received.

[15] Weekly unemployment compensation, if any.

[16] Spouse's name.

[17] Spouse's total monthly salary or wages.

[18] If any answer is “yes” to question 5, describe each source of income and the total amount received within the last 12 months.

[19] Total amount of cash on hand held by appellant and/or appellant’s spouse.

[20] Total amount of funds available in individual or joint checking or savings accounts, including funds in prison accounts.

[21] The amount on account at the institution where the appellant is confined.

[22] Securities to appellant’s credit according to institution’s records.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

[1]_____,	No.[5]_____, 20___
[2]_____ Below,	
Appellant,	
v.	
[3]_____,	
[4]_____ Below,	
Appellee,	

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Time New Roman 14-point typeface using [6] _____.

2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains [7] _____ words, which were counted by [6] _____.

Dated: _____

_____
Signature of filing attorney or unrepresented person

Insertions to Certificate of Compliance with Typeface Requirement and Type-Volume Limitation:

[1] Appellant's name.

[2] Appellant's lower court status.

[3] Appellee's name.

[4] Appellee's lower court status.

[5] Supreme Court appeal number.

[6] Name and version of word processing program.

[7] Number of words.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

[1]_____,	No.[5]_____, 20___
[2]_____ Below,	
Appellant,	
v.	
[3]_____,	
[4]_____ Below,	
Appellee,	

MOTION UNDER RULE 15(b)

[6]_____ moves the Court, pursuant to Rule 15(b), for an order extending the time for service and filing of the [7]_____ brief and appendix under Rule 15(a) from [8]_____ to [9]_____, on the grounds that [10]_____. This is the [11]_____ request for an extension of time to file the [12]_____ brief. Opposing counsel [13]_____ to the extension of time.

Dated _____

[14]_____

SO ORDERED this ____ day of _____, _____.

_____
Justice

Insertions to Motion Under Rule 15(b):

[1] Appellant's name.

[2] Appellant's lower court status.

[3] Appellee's name.

[4] Appellee's lower court status.

[5] Supreme Court appeal number.

[6] "Appellant" or "Appellee," as appropriate.

[7] "Opening," "answering" or "reply," as appropriate.

[8] Beginning date of extension period.

[9] Ending date of extension period making sure not to exceed 75 days, total, for all extensions for any given brief.

[10] Reason(s) why an extension of time is necessary.

[11] Indicate whether this is the first, second or third request for an extension of time.

[12] "Opening," "answering" or "reply," as appropriate.

[13] Indicate whether the opposing party objects or consents to the extension of time.

[14] Name, address, telephone number and Delaware Bar ID number of the moving party's attorney.