

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

PART I. THE COURT

Rule 1. Term of Court.

There shall be 1 term of the Court which shall coincide with the calendar year. Oral arguments will be scheduled as provided in Rule 16(c) or as otherwise ordered by the Court.

Rule 2. Quorum; seniority.

(a) Quorum. —A quorum of the Court en Banc shall be 5 and a quorum of the Court sitting as a panel shall be 3. A former Justice of the Supreme Court or an active constitutional judge may be assigned to complete a quorum as provided in Article IV, § 12 and § 38 of the Constitution.

(b) Seniority. —Seniority of active Justices of the Court shall be determined under the provisions of Article IV, § 2 of the Constitution. Active Justices shall be senior in rank to former Justices, or judges of the constitutional courts designated to serve under Article IV, §§ 12 and 38 of the Constitution.

Rule 3. Powers of individual Justices.

(a) Decisions or orders of the Court. —Except for decisions or orders entered pursuant to paragraph (b) of this Rule, a decision or order of the Court which will determine or terminate the case shall not be made or entered unless concurred in by a majority of the Court.

(b) Decisions or orders of the Court by a single Justice. —A decision or order of the Court may be made by 1 Justice when:

(1) The decision or order does not terminate the case; or

(2) All parties consent to the termination of the case. A party is deemed to have consented to the termination of the case when the party fails to respond timely to (a) this Court's notice to show cause why the appeal should not be dismissed, or (b) a direction of this Court requiring the party to take action by a fixed date.

(c) Motion Justice. —Pursuant to a monthly rotation schedule, a member of the Court shall be designated as the Motion Justice to consider and initially review all motions, interlocutory appeals, certifications of questions of law, certificates of reasonable doubt, original writs, requests for advisory opinions, and appeals from the decisions of the Board on Professional Responsibility, the Board on the Unauthorized Practice of Law, and the Board of Bar Examiners. If the current Motion Justice has entered a disqualification in a case, any motion or other paper filed in said case that requires action by the Motion Justice shall be referred to the next qualified and available Motion Justice in the monthly rotation schedule.

Rule 4. Panel assignments and the Court en Banc.

(a) Composition of Court. —The Court en Banc consists of all qualified and available members of the Court. In any case in which the accused shall have been sentenced to death or in any other case where a Rule of this Court provides for a hearing en Banc or a rehearing en Banc under paragraph (d) or (f) hereof, the Court shall sit en Banc. If fewer than all the Justices are qualified and available to constitute a quorum, there shall be an assignment of retired Justices or active constitutional judges, pursuant to Article IV, §§ 12 and 38 of the Constitution and Rule 2, sufficient to constitute a quorum.

(b) Prior submission and consideration by panel. —A matter may be referred ab initio to a panel of three Justices or to the Court en Banc. The criteria for determining when a matter may be scheduled ab initio for a determination by the Court en Banc shall be set forth in the Internal Operating Procedures of the Court.

(c) Assignment of cases. —Except as provided in paragraphs (a), (b) and (g), all cases which proceed through complete briefing shall be assigned, on a rotation basis, for disposition by the Chief Justice to panels of three Justices and shall be heard as they come to issue, unless otherwise ordered by the Court. All other cases shall be considered by a Motion Justice panel for disposition.

(d) Rehearing by Court. —In the event a panel is unable to reach a unanimous decision in a case under submission, or in the event that there is a reasonable likelihood that a prior decision of the Court may be modified or overruled, the presiding Justice of the panel, if not the Chief Justice, shall so notify the Chief Justice, or the senior Justice if the Chief Justice is disqualified, in writing, and the case shall thereupon be scheduled on a priority basis for rehearing and determination by the Court en Banc without further briefing unless ordered by the Court. Rehearing by the Court en Banc shall be as to all issues on appeal unless the Court otherwise orders.

(e) Unanimous decision of panel deemed decision of Court. —A unanimous decision of a panel of 3 Justices shall be deemed the decision of the Court in the case, subject to the provisions of paragraph (f) hereof.

(f) Motion for Rehearing en Banc. —There shall be no Rehearing en Banc, if the unanimous decision of a panel of 3 Justices provides for a mandate to issue forthwith. In all other cases, a motion for Rehearing before the Court en Banc may be filed with the Clerk within 15 days after filing of the Court's opinion or order pursuant to Rule 17 unless the time is enlarged or shortened by the Court. The motion shall succinctly state the grounds therefor and shall be supported by a certificate of counsel or pro se certificate that it is presented in good faith and not for delay. The motion shall not be subject to oral argument and an answer or response shall not be permitted unless requested by the Court. A motion for rehearing under this rule may be based upon any of the following grounds:

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

- (i) Important question. —The proceeding involves a question of exceptional importance;
- (ii) Maintain uniformity. —Consideration by the Court en Banc is necessary to secure or maintain uniformity in Supreme Court decisions;
- (iii) Modify or overrule. —The case may be controlled by a prior decision of the Court which should be reconsidered or which may be overruled or modified.

The motion shall state with particularity the grounds therefor and shall include a copy of the opinion as to which rehearing is sought. A motion for rehearing before the Court en Banc shall be granted upon the affirmative vote of 2 or more of the qualified and available members of the Court. Denial of a motion for rehearing is not subject to a motion for reargument. The motion shall conform to the page and form requirements of Rules 30 and 13.

(g) Hearing en Banc ab initio by affirmative vote. —Any case may be set for hearing en Banc ab initio upon the affirmative vote of 2 or more of the qualified and available members of the Court.

(h) Composition of motion panel to consider and determine motions. —The panel of Justices to consider and determine motions and other applications that require action by a panel, other than those governed by a specific rule or previously submitted to another panel of the Court, shall normally consist of the current month's Motion Justice, the previous month's Motion Justice and the next month's Motion Justice. If a member of a Motion Justice's panel has entered a disqualification in a case, the next qualified and available Justice in the monthly rotation schedule shall replace the disqualified Justice in that case.

PART II. APPEALS—GENERAL

Rule 6. Time for taking appeals and cross-appeals.

(a) Notice of appeal. —A notice of appeal shall be filed in the office of the Clerk of this Court as follows:

- (i) Civil appeals. —Within 30 days after entry upon the docket of a judgment, order or decree from which the appeal is taken in a civil case except as to appeals controlled by § 146 of Title 10;
- (ii) Challenges to a final award under the Delaware Rapid Arbitration Act. —Within 15 days after issuance of the final award.
- (iii) Criminal appeals. —Within 30 days after a sentence is imposed in a direct appeal of a criminal conviction; and
- (iv) Post-conviction appeals. —Within 30 days after entry upon the docket of a judgment or order in any proceeding for post-conviction relief.

(b) Cross-appeals. —A notice of cross-appeal shall be filed in the office of the Clerk of this Court as follows:

- (i) Civil appeals. —In any civil action in which a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 15 days after the date on which the first notice of appeal was filed, or within 30 days after the entry of the judgment or order from which the appeal is taken, whichever is later.
- (ii) Challenges to a final award under the Delaware Rapid Arbitration Act. —In any arbitration proceeding in which a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 7 days after the date on which the first notice of appeal was served, or within 15 days after issuance of the final award to which the challenge is made, whichever is later.
- (iii) Criminal appeals. —In any criminal action in which the State elects to file a notice of cross-appeal, the notice must be filed within 30 days of the filing of a notice of appeal by the defendant.

Rule 7. Commencement of appeal.

(a) Notice of appeal. —An appeal shall be commenced by a notice of appeal. The notice of appeal shall be served in duplicate upon an attorney of record for each party to the proceeding below; if there is no such attorney it shall be served upon each party in the manner provided in these Rules for service of papers. Immediately following such service, such appellant shall file with the Clerk of this Court such notice, in duplicate, together with proof of service as provided in these Rules. The Clerk shall forthwith forward the duplicate thereof to the clerk of the trial court for filing in such court or to the arbitrator. Appeals from interlocutory orders shall be governed by Rule 42.

(b) Cross-appeal. —Any party may cross-appeal from any judgment or order from which an appeal may be taken.

(c) Form of notice of appeal or cross-appeal. —The notice of appeal or cross-appeal shall:

- (1) Court or arbitrator. —Name the court from which the appeal is taken, name the judge entering the judgment and identify the case number therein, or provide the name and address of the arbitrator and identify the final award to which the challenge is made;
- (2) Party or parties; attorney or attorneys. —Name the party or parties taking the appeal and the party or parties against whom the appeal is taken and provide the name and address of each party's attorney of record below, except as hereafter provided;
- (3) Judgment or award reviewed. —Designate the judgment, order or final award, or part thereof, sought to be reviewed and the date thereof and, in a direct appeal of a criminal conviction, state the names of all codefendants with whom the appellant was tried, the date of the sentence from which the appeal is taken; and where the appeal is taken more than 30 days after the entry of the judgment or

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

order sought to be reviewed, or, in the case of an arbitration under the Delaware Rapid Arbitration Act, more than 15 days after issuance of the final award to which challenge is made, the factual and legal grounds for the appeal time being tolled;

(4) Attorneys for parties against whom the appeal is not taken. —Designate by name and address the attorney of record for each other party to the proceeding below against whom the current appeal is not taken;

(5) Pro se litigants. —If there is no such attorney for any party, designate the name and last known address for each such party;

(6) Transcript. —Contain the designations of the transcript as required by Rule 9(e); and

(7) Forms. —Comply substantially with Official Forms A and B of these Rules. The provisions of subsections (4) and (5) above shall apply generally in any appeal including all direct appeals of criminal convictions whenever the appellant, in compliance with subsection (3) above, identifies the codefendants with whom appellant was tried.

(8) Appeal caption. —The caption of the appeal shall contain only the names of the parties below taking the appeal and the names of the parties against whom the appeal is taken.

(9) Copy of judgment or final award to be reviewed. —A copy of the order of judgment or final award sought to be reviewed, and any separate rationale for it, if available, shall be attached to the notice of appeal and to the notice of cross appeal if different from the notice of appeal, and if not available, a statement indicating such unavailability shall be included.

(d) Use of pseudonyms. —All appeals concerning domestic relations and juvenile delinquency proceedings shall be captioned and reported by use of appropriate pseudonyms selected by the Court. The Court may also assign pseudonyms to non-parties named in its orders and opinions when, in the Court's discretion, it is appropriate to protect the identity of the non-party. Any party to an appeal in which a pseudonym is assigned may move the Court to revoke the assignment, but any such motion will be granted only for good cause shown.

(e) Joint or several appeals. —Any 2 or more parties interested jointly, severally or otherwise in a judgment or order may join in an appeal therefrom, or any of them may appeal separately. When parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the Court.

(f) Death of a party. —

(i) Before notice of appeal is filed. —In civil cases or arbitrations under the Delaware Rapid Arbitration Act, if a party entitled to appeal shall die before filing a notice of appeal, the same may be filed by the personal representative of the party; if the party has no personal representative, the same may be filed by the attorney of record for the party in the trial court or before the arbitrator within the time prescribed by law.

(ii) After notice of appeal is filed. —After a notice of appeal is filed, substitution of parties shall be effected in accordance with these Rules.

(g) Disclosure of Corporate Affiliations and Financial Interest. —Each party shall file a Disclosure of Corporate Affiliations and Financial Interest, as provided for in Form P of these Rules, within fifteen (15) days of the notice of docketing the appeal, or concurrently by a party with the filing of a motion or other document seeking to expedite the proceedings, and within two (2) days of service of such a document by all other parties. However, when the State of Delaware or any other governmental entity is a party, a Disclosure of Corporate Affiliations and Financial Interests shall be filed only if that party has pertinent information to report.

Rule 8. Questions which may be raised on appeal.

Only questions fairly presented to the trial court may be presented for review; provided, however, that when the interests of justice so require, the Court may consider and determine any question not so presented.

Rule 9. The record.

(a) Record — Contents. —An appeal shall be heard on the original papers and exhibits which shall constitute the record on appeal.

(aa) Sanctions for failure to pay the record preparation and transmittal fee. —Every appellant is required to pay the record preparation and transmittal fee within the time limit imposed by the trial court unless the trial court waives its fee or otherwise extends the deadline for payment. If an appellant shall fail to comply with the provisions of this rule, the Court may dismiss the appeal sua sponte pursuant to Rule 29(b). Failure to pay the trial court's record preparation and transmittal fee also may be the basis for disciplinary action against the appellant's attorney.

(b) Transmission by clerk of trial court. —The clerk of the trial court shall transmit to the Clerk of this Court all original papers including photographs, documentary exhibits and transcripts of testimony. Other exhibits shall be transmitted only upon order of a member of this Court. The clerk of the trial court shall append a certificate identifying the record with reasonable definiteness. The papers, other than exhibits and transcripts, shall be laid flat in chronological order and bound at the top, with a certified copy of the docket entries as the initial paper. Subject to the provisions of Rule 42, the time within which the record shall be transmitted is as follows:

(i) Transcript. —If a written statement relating to the transcript is included in the notice of appeal as provided in subparagraph (ii) or

(iii) of paragraph (e) of this rule, the clerk shall transmit the record within 10 days after receipt of the transcript;

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

(ii) No transcript. —If a written statement relating to transcript contained in the notice of appeal states that no transcription (or no further transcription) is required, the clerk of the trial court shall transmit the record within 20 days after receipt of the duplicate of the notice of appeal from the Clerk of this Court unless the attorney for another party to the appeal shall timely designate additional transcription pursuant to paragraph (e)(iii) hereof, in which event the clerk of the trial court shall transmit the record within 10 days after receipt of the additional transcription.

(iii) Cross-appeal. —In a cross-appeal the same procedure shall be followed except as to parts of the record theretofore transmitted. Immediately upon the filing of the record the clerk shall notify counsel of the date of such filing.

(bb) Sealing of court records. —In any appeal except from Family Court, any document or other part of the record that has been sealed by order of the trial court or submitted to the arbitrator as confidential shall remain sealed unless this Court, for good cause shown upon application by any person, shall authorize the unsealing of such document or record. In appeals originating in the Family Court, the record and documents filed with the Clerk of this Court and all proceedings shall remain confidential unless otherwise ordered by the Court, sua sponte, or for good cause shown upon application by a party. Any motion to challenge the confidential treatment of any document or record in this Court shall be governed by the procedures set forth in Rule 30. The Court may, in its discretion, direct the trial court to rule on any such motion. After the filing of any brief under seal, in any appeal except from Family Court, one original and one copy of a redacted brief should be filed with the Court within 15 days.

(c) Stipulation to omit papers and order to send up additional papers. —The parties may stipulate that certain parts of the record not be transmitted to this Court. Such stipulation shall be included in the record transmitted by the clerk of the trial court. The stipulation shall state distinctly which parts of the record are to be included and which parts are to be omitted, including the respective docket numbers. The trial court or this Court may direct that any part of the record omitted by stipulation shall nevertheless be transmitted.

(d) Return of record to trial court. —Upon final disposition of the appeal the record shall be returned to the clerk of the trial court with the mandate.

(e) Transcript. —Except in challenges to a final award under the Delaware Rapid Arbitration Act, the following directions shall apply unless otherwise ordered by the Court:

(i) Criminal class A felony. —In any criminal case in which the trier of fact returns a verdict of guilty of a class A felony, the judge of the trial court shall, within 10 days, enter an order directing the preparation of the transcript of the entire trial excluding opening and closing arguments of counsel and jury selection; provided that in cases in which the death penalty is imposed the entire record shall be transcribed. The judge of the trial court shall also designate the party or parties responsible for payment of the cost of such transcript. The trial court upon motion or sua sponte may enter an order modifying the designation of transcript and assignment of costs within 10 days of the entry of the original transcription order. The trial court shall transmit such order for preparation of transcript and any modifying order to the appropriate court reporter and to the clerk of the trial court. A copy of the order of transcription shall be attached to the notice of appeal, or if not prepared and available at the time that an appeal is filed, it shall be filed with this Court as soon thereafter as the order or modifying order has been prepared and is available to the party docketing the appeal. The court reporter shall prepare and file such transcript at the earliest practicable time but not later than 40 days from the date of the trial judge's order directing the preparation of the transcript;

(ii) All other cases. —In all other cases appellant shall include in the notice of appeal (or in an attached exhibit) either a statement designating such parts of the proceedings as are deemed necessary to be transcribed for inclusion in the record, or a statement that no transcript need be ordered, with reasons given. In cases where the notice of appeal contains a designation, the attorney for the appellant shall promptly serve a copy of the notice of appeal upon the appropriate court reporter and shall, no later than 7 days after the filing of the notice of appeal, file with the Clerk of this Court a certificate setting forth that service has been accomplished and that the cost of the transcript has been, or will be promptly, paid. The service upon the court reporter shall be in the manner set forth in Rule 10 for service upon attorneys, except that only one copy of the notice of appeal need be served. If the notice of appeal as initially filed is accompanied by a proof of service upon the court reporter which complies with Rule 10(c), no separate certificate of such service need be filed. The notice of appeal so served shall constitute an order to the court reporter to prepare a transcript of the parts of the record so designated that are not already on file. Such designation in or attached to the notice of appeal shall comply substantially with Official Form C;

(iii) Parties other than appellant. —Within 15 days after the appeal is docketed, the attorney for each of the other parties to the appeal shall serve upon the other parties to the appeal and file with the clerk of the trial court and the Clerk of this Court a written designation and direction substantially in the form prescribed by Official Form C or Official Form D; such designation shall be delivered by the attorney forthwith to the appropriate court reporter, and shall constitute a direction to prepare a transcript of the parts of the record so designated;

(iv) Filing of transcript. —The court reporter shall prepare and file such transcript at the earliest practicable time but not later than 40 days after receipt of the latest direction specified under subparagraph (ii) or (iii) of this paragraph. Transcripts shall be prepared in the chronological sequence in which the directions required under the preceding subparagraphs of this paragraph are received; provided,

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

however, preparation of the transcript in (1) death penalty appeals and (2) all other criminal appeals shall take precedence over all other work of the court reporter except courtroom assignments.

(f) Sanctions for failure to order or pay for transcript. —The time periods provided for the designation, ordering of, and payment for the transcript or portions thereof are mandatory unless extended by Order of this Court for good cause shown. Absent good cause shown, failure to so designate shall not be a basis for enlargement of time for the filing of briefs and appendices under Rule 15. If a party or counsel shall fail to comply with the provisions of this rule, including the timely filing of designations or directions, or the prompt payment for the transcript, as provided herein, the Court may dismiss the appeal sua sponte, pursuant to Rule 29(b). Such failure may also be the basis for disciplinary action against the attorney or other relief in the discretion of the Court.

(g) Record in lieu of transcript. —In any case in which the testimony or other pertinent matter has not been stenographically recorded, any factual material which shall be necessary to the disposition of the issues may be certified by the trial court, and, when filed with the clerk of that court shall become part of the record. In any such case, the matter so incorporated in the record shall be so prepared as to present only the rulings of the trial court on matters of law and shall contain only such statements of fact as may be necessary to review those rulings. The parties may enter into a stipulation as to the substance of testimony or other proceedings as may be essential to a decision of the issues to be presented on the appeal, whether or not a stenographic record has been made. The stipulation shall be approved by the judge of the trial court and certified to this Court in lieu of a transcript and without the necessity of the directions required under subparagraphs (ii) and (iii) of paragraph (e) above. Delay in the preparation of such statement shall not enlarge any of the time periods established hereunder.

(h) Payment of cost of transcript. —Counsel appointed to represent an indigent party may apply to the trial court for an order determining responsibility for payment of the cost of the transcript at public expense when such payment is required or permissible under law. Counsel may also apply promptly to the trial court, pursuant to § 1515 of Title 13 or other provisions of law, if pertinent, for an order determining responsibility for payment of the cost of the transcript. Otherwise, failure to pay promptly the cost of the transcript ordered shall be grounds for sanctions under subsection (f). A court reporter may require a party to submit a deposit for the preparation of the transcript.

(i) Jurisdiction of trial court. —During the pendency of an appeal to this Court, the trial court shall retain jurisdiction over all issues relating to the ordering of transcript in cases on appeal. Any decision of the trial court as to the ordering of transcript in cases on appeal is reviewable by this Court as an appeal issue.

Rule 10. Service and filing of papers.

All parties not represented by an attorney and not registered with LexisNexis, the Court's electronic filing service, must comply with the following requirements:

(a) Service and filing of papers. —Every paper to be filed shall be served upon every other party before it is filed with the Clerk of the Court or a Deputy Clerk in any county. All notices of appeal, briefs, appendices, motions or other papers shall be filed with the Clerk of the Court or with a Deputy Clerk in any county during their regular business hours. Filing by mail in the office of the Clerk of the Court in Dover is permissible, provided that filing shall not be deemed to be complete until the paper has been received in the office of the Clerk. Filing with a Deputy Clerk in any county shall be deemed to constitute filing for all purposes under these Rules when the paper has been received in the office of such Deputy Clerk during regular business hours.

(b) Manner of service. —Whenever under these Rules service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the Court. Service may be personal or by mail. Personal service includes delivery to a clerk or other responsible person at the office of the attorney. Service by mail is complete upon mailing. Two copies of each paper shall be served upon each party to the appeal. Service upon a person not represented by an attorney shall be made by personal delivery or by first class mail or as otherwise ordered by the Court. If the party to the appeal is not represented by an attorney and the address of the party is unknown, service shall be complete by depositing with the Clerk 2 copies of such paper together with an accompanying affidavit or certificate of a member of the Bar of this Court that the address of such party is unknown and cannot be ascertained with reasonable diligence.

(c) Proof of service of papers. —Papers presented for filing shall contain an acknowledgment of service by the persons served or proof of service in the form of a statement of the date and manner of service and the names of the persons served, certified by the person who made the service. Proof of service may appear on or be affixed to the papers filed. The Clerk in the exercise of the Clerk's discretion may permit papers to be filed without acknowledgment of proof of service upon assurance satisfactory to him that such proof shall be filed promptly thereafter.

(d) Number of copies required. —Ten copies of briefs, including supplemental briefs, and appendices shall be filed.

(e) Delivery of copies to Justices. —Whenever a brief, or other paper, a copy of which should be before the individual Justices of this Court, is filed, the party so filing may, at the party's option, deliver or mail 1 copy to each Justice at the Justice's office and shall inform the Clerk that the party has done so. In such case, the number of copies required to be filed with the Clerk may be reduced by the total number of copies delivered to the Justices.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

Rule 10.1. Electronic filing.

- (a) The electronic filing of documents in the Supreme Court of the State of Delaware shall be referred to as “eFile” or “eFiling”.
- (b) Every appeal of a case that is subject to eFiling in the trial court shall be subject to eFiling in the Supreme Court. In addition, when the Supreme Court determines that it is appropriate for any case, or category of cases, to follow the procedures for eFiling, the Court shall designate it as an eFile case or category of cases.
- (c) A technology surcharge of \$1.50 per document shall be assessed in each eFile case for the purpose of a fund to operate the eFiling system. The Court shall expend the funds solely for the purpose of operating and maintaining the eFiling system. The technology fee is not imposed on filings by Arms of the Supreme Court, by the Department of Justice or by indigent parties or their counsel.
- (d) No Delaware lawyer shall authorize anyone to eFile on that lawyer’s behalf, other than an employee of his/her law firm or service provider retained to assist in eFiling.
- (e) No person shall utilize, or allow another person to utilize, the password of another in connection with any eFiling.
- (f) The eFiling of a document by a lawyer, or by another under the authorization of a lawyer, shall constitute a signature of that lawyer under Rule 12.
- (g) All eFilings must be signed by a member of the Delaware Bar or party not represented by an attorney in accordance with the eFile administrative procedures.
- (h) Every document that is eFiled shall be served upon every other party. Unless otherwise ordered, the electronic service of a document, in accordance with the eFile administrative procedures, shall be considered service under Rule 10. Service by electronic means shall be treated in the same manner as service by mail for the purpose of adding 3 days to the prescribed period to respond, as set forth in Rule 11(c).

Rule 10.2. eFile administrative procedures.

(1) *Registration and fees for eFiling*

- (a) Registration. —Any person intending to use eFile must register with LexisNexis File & Serve at www.lexisnexis.com/fileandserve.
- (b) Filing fees. —There are several parts to the fee structure for eFiling. These will be billed by LexisNexis using the billing arrangements established through the LexisNexis registration process. The parts are:
 - (i) The routine filing fee (See generally Rule 20).
 - (ii) A technology fee of \$1.50 per document (Rule 10.1).
 - (iii) LexisNexis File & Serve fees.
 - (iv) Pro Hac Vice fees (Rule 71).

(2) *Minimum Technical Requirements*

The minimum technical requirements for eFilings are available online at www.lexisnexis.com/fileandserve

(3) *Documents which must be electronically filed; Exceptions*

Each document which must be filed in a case subject to eFiling under the Rules shall be eFiled unless otherwise ordered by the Court. A party to a case who is not represented by an attorney may file and serve all documents on paper or may register with LexisNexis File & Serve to file and/or serve documents electronically. If paper is delivered to the Court for docketing in cases subject to electronic filing, the Clerk will electronically upload such document(s) to LexisNexis File & Serve. For purposes of Rule 10(d) the electronic version of any document filed with the Clerk shall constitute the original. Any participant eFiling any brief, including supplemental briefs, shall deliver to the Clerk by the next business day the number of copies otherwise required by Rule 10(d). The cover page must indicate “COPY” and include the ID number associated with the electronically filed document(s). Any participant eFiling a document shall file the other paper copies described in Rule 10(d) only upon the request of the Court.

(4) *Form of Documents Electronically filed*

- (a) Format. —Each electronically filed document shall be filed in Word, WordPerfect, TIFF or PDF format. To the extent practicable it shall be formatted in accordance with the applicable rules governing formatting of paper documents, and in such other and further format as the Clerk may require from time to time.
 - (i) eFile will automatically convert any Word, WordPerfect or TIFF file to .PDF format, but the original format will also be available for downloading.
 - (ii) The official record of the court is the .PDF version.
- (b) Title of Documents. —The title of each electronically filed document shall include:
 - (i) Party or parties filing the document,
 - (ii) Descriptive title of the document,

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

- (iii) Party or parties against whom relief, if any, is sought, and
- (iv) Nature of the relief sought (e.g., Defendant ABC Corporation’s Motion to Affirm).

(c) Signature. —

(i) Each electronically filed document shall be deemed to have been signed by the attorney or party not represented by an attorney authorizing such filing, and shall bear a facsimile or typographical signature of such person, e.g., “/s/ Adam Attorney.” Each document eFiled by or on behalf of a party shall also include the typed name, address, telephone number of the attorney or unrepresented party filing such document. Attorneys shall include their Delaware bar number.

(ii) Each electronically filed declaration and affidavit shall be deemed to have been signed by the declarant or affiant if an attorney or party not represented by an attorney has authorized such filing. The original affidavit or declaration filed or served electronically, shall be maintained by the party filing the affidavit during the pendency of the appeal, and shall be made available, upon reasonable notice, for inspection by other counsel, the Clerk or the Court.

(d) Filing Related Documents. —

All electronically filed documents relating to a single pleading or paper shall be “electronically stapled” using the “main” and “supporting” functionality of the eFiling system. In this way, multiple related documents, although filed separately, are linked logically together and identified as a single transaction.

(5) **Sealed Documents**

(a) Documents filed under seal MUST be formatted with a footer stating the following:

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL. REVIEW AND ACCESS TO THIS DOCUMENT IS PROHIBITED EXCEPT BY PRIOR COURT ORDER

This footer must appear on every page of the document. Additionally, the first page or cover page of the document must be in the following format:

IN THE SUPREME COURT OF THE STATE OF DELAWARE

[name of first appellant], :
v. : No. []
[name of first appellee]. :

YOU ARE IN POSSESSION OF A DOCUMENT FILED IN THE SUPREME COURT OF DELAWARE THAT IS CONFIDENTIAL AND FILED UNDER SEAL.

If you are not authorized by Court order to view or retrieve this document read no further than this page. You should contact the following person:

[filing attorney’s name]
[firm name of filing attorney]
[address of filing party]
[telephone number of filing party]

No other information should appear on the cover page.

(b) The filing details and document title will appear in the LexisNexis system. The document can be viewed only by the Court, the filer, and those case participants who received service of that particular document. A participant that was not served with the document can see only the document title in the case details, however, that participant is not able to open or view the document.

(c) Public versions of sealed documents shall be filed in accordance with Rule 9.

(6) **Time of eFiling and Service**

(a) Except for notices of appeal, all electronic filings in nonexpedited cases must be completed by 5:00 p.m. Eastern Time in order to be considered timely filed that day. All notices of appeal and electronic filings in expedited cases must be completed before midnight Eastern Time in order to be considered timely filed that day.

(b) An eFiled document is deemed served only upon selection of participants to be served and submission according to the File & Serve procedures. Participants shall make service of all eFiled documents upon all participants capable of receiving online service through the LexisNexis File & Serve system. Participants unable to receive online service of eFiled documents through the LexisNexis File & Serve system may also be served via U.S. Mail from the LexisNexis File & Serve system. The associated filing receipt will list the participants selected for service and give proof of date, time and method of service. No other certificate of proof of service shall be required for eFiled documents.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

(c) Participants that do not exercise the U.S. Mail option in the aforementioned 10.2(6)(b) and/or parties who are not listed on the associated filing receipt listing the participants selected for service shall be served a paper copy of any electronically filed pleading or other document. Service of such paper copy shall be made by the filing party in accordance with Rule 10(b).

(d) Participants using the File & Serve system and who receive online service via the File & Serve system, may set an e-mail notification preference so that he or she will receive an e-mail notification that a document(s) has been served and is available for viewing in his or her File & Serve Online Inbox. The e-mail notification feature does not constitute Service on the File & Serve subscriber and is provided by File & Serve solely as a convenience. Whether or not a participant sets an e-mail notification preference, it is the responsibility of the participant using the File & Serve system to check his or her File & Serve Online Inbox to view eFiled and served documents.

(7) **Public Access to the Docket**

The Clerk shall make a Public Access Terminal available to the general public to allow access to the Court's electronic case record in all eFiled cases. Copies made from the Court's electronic case records shall be printed by the Clerk's Office and copying fees will be charged in accordance with Rule 20.

(8) **Related eFile Information**

eFile instructions and practice guides are available on the LexisNexis File & Serve Web Site www.lexisnexis.com/fileandserve. Once users are logged into LexisNexis File & Serve they may click the "support" link within the application to access further information.

(9) **Privacy Issues**

Easy access to electronic documents raises many privacy issues. eFile users must be sensitive to confidential and personal information not filed under seal. Parties shall refrain from including, or shall redact where inclusion is necessary, the following personal identifiers from all documents filed with the court, including exhibits thereto, unless otherwise ordered by the Court.

(a) *Social Security Numbers.* —If an individual's social security number must be included in a document, only the last four digits of that number should be used.

(b) *Names of minor children.* —If the involvement of a minor child must be mentioned, only the initials of that child should be used.

(c) *Dates of birth.* —If an individual's date of birth must be included in a document, only the year should be used.

(d) *Financial account numbers.* —If financial account numbers are relevant, only the last four digits of these numbers should be used.

In addition, exercise caution when filing documents that contain the following:

- (i) Personal identifying number, such as a driver's license number
- (ii) Medical Records, treatment and diagnosis
- (iii) Employment History
- (iv) Individual Financial Information
- (v) Proprietary or Trade Secret Information

It is the sole responsibility of counsel and the parties to be sure that all pleadings comply with the rules of this court requiring redaction of personal identifiers. The Clerk will not review each pleading for redaction.

(10) **System or User Filing Errors**

If the electronic filing is not filed with the Clerk or served because of (1) an error in the transmission of the document to LexisNexis which was unknown to the sending participant, or (2) a failure to process the electronic filing when received by LexisNexis, or (3) rejection by the Clerk, or (4) other technical problems experienced by the filer, the Court may upon satisfactory proof enter an order permitting the document to be filed or served nunc pro tunc to the date it was first attempted to be sent electronically.

(11) **Obligation of Registered eFile Users to Maintain Proper Delivery Information**

(a) Participants who register to use the File & Serve system shall notify LexisNexis within 10-days of any change in firm name, delivery address, fax number or e-mail address.

(b) Participants who have set an e-mail notification preference are solely responsible for providing an accurate, up-to-date e-mail address and for ensuring that the e-mail account is set up properly to receive e-mail notifications.

Rule 11. Time.

(a) *Computation.* —In computing any period of time prescribed or allowed by these Rules, by order of Court, or by statute, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, or other legal holiday, or other day on which the office of the Clerk is closed, in which event the period shall run until the end of the next day on which the office of the Clerk is open. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and other legal holidays shall be excluded in the computation. As used in this rule "legal holidays" shall be those days provided by statute or appointed by the Governor or the Chief Justice of the State

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

of Delaware.

(b) *Enlargement.* —The time for taking an appeal or cross-appeal shall not be enlarged. Except as otherwise provided in these Rules, all other extensions or enlargements of time are subject to approval by the Court.

(c) *Additional time after service by mail or e-Filing.* —Whenever a participant has the right to or is required to do some act or take some proceeding within a prescribed period after being served and service is made by mail or by eFiling, 3 days shall be added to the prescribed period. The additional 3 day period applies only as to acts taken by participants and does not apply to actions taken by the Court.

Rule 12. Attorneys of record; withdrawal.

(a) *Appearance and signing of papers.* —

(i) *Original signature by Delaware attorney.* —Except in the case of a party appearing pro se, all papers filed with the Court shall be signed by an attorney who is an active member of the Bar of this Court and who maintains an office in Delaware for the practice of law. The attorney shall list the attorney's address, telephone number, and Supreme Court identification number on all papers filed with the Court. Such attorney or the attorney's partner or an associate of the attorney's firm must attend all proceedings. The attorney, if any, designated on the notice of appeal as the attorney below for the appellee shall be deemed to be the attorney for the appellee unless another attorney shall file a notice of appearance substantially in the form provided in Official Form E.

(ii) *Original signature is certification.* —The original signature of an attorney or party constitutes a certification by the attorney that the attorney has read the paper; that to the best of the attorney's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

(b) *Withdrawal.* —Except as permitted by order of the Court, no attorney may withdraw and all appearing attorneys are required to continue as such and to perform the duties of counsel imposed by law, by The Delaware Lawyers' Rules of Professional Conduct, and these Rules. Withdrawal of an attorney ordinarily will not be considered as permissible ground for delay and relief under these Rules.

(c) *Appearance pro se.* —As a condition for a party appearing pro se, the party must designate a mailing address other than a post office box for the receipt of all notices, papers and orders filed in the case. If a pro se party's address is a post office box, the pro se party must provide the pro se party's street address to the Court.

(d) *Office for the practice of law.* —As used in these rules, an "office for the practice of law" means a bona fide office maintained in this State for the practice of law in which the attorney practices by being there a substantial and scheduled portion of time during ordinary business hours in the traditional work week. An attorney is deemed to be in an office even if temporarily absent from it if the duties of the law practice are actively conducted by the attorney from that office. An office must be a place where the attorney or a responsible person acting on the attorney's behalf can be reached in person or by telephone during normal business hours and which has the customary facilities for engaging in the practice of law. A bona fide office is more than a mail drop, a summer home which is unattended during a substantial portion of the year or an answering, telephone forwarding, secretarial or similar service.

Rule 13. Form of briefs, appendices and other papers.

(a) *Briefs and appendices.* —

(i) *Typed.* —All text, including text in footnotes, shall be in Times New Roman 14-point typeface. Unrepresented parties without access to a typewriter or word processing program may submit papers in legible handwriting. Case names must be italicized or underlined.

(ii) *Specifications.* —All typed briefs and all appendices shall be firmly bound at the left margin in a transparent plastic cover. Briefs and appendices shall have pages not exceeding 8 1/2 by 11 inches with double spacing. Quotations of more than 50 words and footnotes shall be single-spaced. Top, bottom, and side margins of briefs shall be not less than 1 inch.

(iii) *Appendix pagination.* —Pages of an appendix shall be numbered separately at the bottom. Each page number of the appendix shall be preceded by capital A for the appellant, capital B for the appellee, and capital AR for the reply appendix, if any. Copies of the reporter's transcript and other papers reproduced in a manner authorized by this rule may be included in the appendix with the appendix paginations.

(b) *Motions and other papers.* —Motions and other papers may be produced in like manner, or may be typewritten upon opaque, unglazed white paper and shall have pages not exceeding 8 1/2 by 11 inches and shall otherwise conform with the requirements for briefs, as provided under paragraphs (a)(i) and (a)(ii) above. A motion or other paper shall contain a caption setting forth the name of this Court, the caption of the case, the file number, the date of filing and a brief descriptive title indicating the purpose of the paper. A motion or other paper shall be filed without backer.

(c) *Use of both sides and use of recyclable paper.* —It is permissible for any brief, appendix, motion or other paper to include material printed or typed on 1 side or both sides of the page, provided legibility is maintained, and the Court encourages this practice. The Court encourages the use of recycled paper by all parties filing papers with the Court.

Rule 14. Briefs and appendices; contents.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

(a) *Briefs — Cover.* —On the front cover of each brief and appendix or supplemental brief and appendix there shall be stated the name of this Court, the caption of the case and its case number, the name of the trial court, the title of the brief or appendix, the name of the party for whom the brief is filed, the name of counsel by whom the brief is filed and the date of filing. Each cover shall be the appropriate color, where applicable.

(i) *Title.* —Each brief and appendix shall be appropriately titled, for example: “Appellant’s Opening Brief” or “Appellee’s Answering Brief.” Where a cross-appeal exists, the cross-appellant’s brief should be properly labeled as such, i.e., “Appellee’s Answering Brief on Appeal and Cross-Appellant’s Opening Brief on Cross-Appeal.” The cross-appellee’s brief should also be properly labeled, i.e., “Appellant’s Reply Brief on Appeal and Cross-Appellee’s Answering Brief on Cross-Appeal.”

(ii) *Color.* —Except where the litigant is in forma pauperis, the cover of the brief of the appellant will be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix will be white. When a transparent cover is used, the underlying sheet must nevertheless conform to these color requirements.

(b) *Opening and answering.* —The opening brief of appellant and the answering brief of appellee shall contain the following under distinctive titles, commencing on a new page, in the listed order:

(i) *Table of contents.* —The table of contents shall reflect each section required by this rule, including all headings designated in the body of the brief, and shall reflect the page number on which each section or heading begins. The table of contents shall also reflect all attachments or exhibits to the brief.

(ii) *Table of citations.* —A table of citations to cases, statutes, rules, textbooks and other authorities, alphabetically arranged;

(iii) *Nature of proceedings.* —A statement of the nature of the proceeding and the judgment or order sought to be reviewed;

(iv) *Summary of argument.* —A summary of argument, stating in separate numbered paragraphs the legal propositions upon which each side relies. Appellant’s statement shall be admitted or denied with specificity in appellee’s summary, paragraph by paragraph.

(v) *Statement of facts.* —A concise statement of facts, with supporting references to appendices or record, presenting succinctly the background of the questions involved. The statement shall include a concise statement of all facts which should be known in order to determine the points in controversy and shall describe in particular the judgment or order sought to be reviewed. Each party shall be referred to as “plaintiff”, “State”, “defendant”, as the case may be, or by the party’s name or other appropriate designation which makes clear the party’s identity. References to the parties as appellant or appellee shall be avoided except where necessary. Appellee’s counterstatement of facts need not repeat facts recited by appellant.

(vi) *Argument.* —The argument shall be divided into appropriate headings, and each argument shall commence on a new page. Each argument shall be further subdivided into 3 parts:

A.(1) *Questions presented.* —The first shall state the question or questions presented, with a clear and exact reference to the pages of the appendix where a party preserved each question in the trial court. Where a party did not preserve the question in the trial court, counsel shall state why the interests of justice exception to Rule 8 may be applicable.

(2) *Scope of review.* —The second shall state the standard and scope of review applicable to the issue.

(3) *Merits of argument.* —The third shall state the merits of the argument. The merits of any argument that is not raised in the body of the opening brief shall be deemed waived and will not be considered by the Court on appeal.

B.(1) *Citations.* —The style of citations shall be as provided in paragraph (g) of this rule.

(2) *Unreported decisions.* —If an opinion or order has been published in Westlaw, LexisNexis or any reporter system, a copy thereof is **not** required to be attached to the brief except as required under (vii). If a decision has yet to be published in any of the previously named systems, a copy thereof shall be attached to the brief, except that if the number of decisions is too numerous to attach, then the decisions may be bound in a separate compendium which shall include a cover page and table of contents.

(vii) *Trial court’s judgment and rationale.* —The opening brief of the appellant shall include a copy of the order or orders of judgment being appealed and, if any, the separate written or transcribed rationale of the trial court. These items shall be inserted at the end of the opening brief, and not in the appendix.

(c) *Reply briefs.* —

(i) *Contents.* —Appellant shall not reserve material for reply brief which should have been included in a full and fair opening brief. There shall not be repetition of materials contained in the opening brief. A table of contents and a table of citations, as required by paragraphs (b)(i) and (ii), above, shall be included in the reply brief.

(ii) *Cross-appeal.* —Where there is a cross-appeal, appellee’s summary of argument with regard to the cross-appeal shall be admitted or denied with specificity in the reply brief. As appropriate, the reply brief may also contain sections specified under paragraph (b)(iii) and (b)(v) of this rule, with respect to such cross-appeal.

(iii) *Headings.* —To the extent that the reply brief contains any of the items set forth in paragraph (b) of this rule, they shall be set forth under distinctive titles and commence on a new page.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

(d) Length of Briefs.

(i) Type-volume limitation. Without leave of Court, an opening or answering brief shall not exceed 10,000 words, and no reply brief shall exceed 5,500 words. Where there is a cross-appeal, the answering/opening brief on cross-appeal of appellee shall not exceed 14,000 words and the reply/answering brief on cross-appeal of appellant shall not exceed 10,000 words. The reply brief on cross-appeal of the appellee, if any, shall not exceed 5,500 words. The front cover, material required by paragraphs (b)(i) and (ii), signature block, and any footer included pursuant to Rule 10.2(5), do not count toward the limitation. All other text must be counted toward the limitation.

(ii) Certificate of compliance. (A) Any brief subject to Rule 14(d)(i) must include a certificate of compliance by counsel or an unrepresented party that the brief complies with the typeface requirement of Rule 13(a) and type-volume limitation of Rule 14(d)(i). The person preparing the certificate must state the number of words in the brief, and may rely on the word count of the word processing program used to prepare the brief.

(B) Form R is a suggested form of a certificate for compliance. Use of Form R is sufficient to meet the requirements of paragraph (d)(ii)(A) of this rule.

(iii) Page limitations for unrepresented parties without access to a word processing program. Without leave of Court, an opening or answering brief shall not exceed a total of 35 pages and a reply brief shall not exceed 20 pages, exclusive of appendix. Where there is a cross-appeal, the answering/opening brief on cross-appeal of appellee shall not exceed 50 pages and the reply/answering brief on cross-appeal of appellant shall not exceed 35 pages, exclusive of appendix. The reply brief on cross-appeal of the appellee, if any, shall not exceed 20 pages. In the calculation of pages, the material required by paragraphs (b)(i) and (ii) of this rule is excluded and the material required by paragraphs (b)(iii) through (vi) of this rule is included.

(iv) Footnotes shall not be used for argument ordinarily included in the body of a brief.

(v) Extensions. The Court looks with disfavor upon motions to exceed the type-volume or page limitation, and such motions will be granted only for good cause shown. Any motion filed pursuant to this section must be filed at least five days before the due date for the filing of the brief to which it relates.

(e) *Appendices*. —Appellant's appendix shall contain a paginated table of contents, the complete docket entries in the trial court arranged chronologically in a single column, and relevant portions of the charge. Unless otherwise ordered by the Court, the appellant's appendix shall contain such portions of the 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. The appendix of either appellant or appellee shall, unless otherwise ordered by the Court, contain such other parts of the record material to the questions presented as each wishes the Justices to read; duplication shall be avoided whenever possible. The portions of the record in the appendix shall be arranged in chronological order following the docket entries. If testimony of witnesses is included, appropriate references to the pages of such testimony in the typewritten transcript shall be made in the table of contents. Asterisks or other appropriate means shall be used to indicate omissions in such testimony. Each appendix shall have a table of contents and be organized so that its contents can be clearly identified and rapid reference thereto can be made. All appendices shall be separately bound. Whenever any document, paper or testimony in a foreign language is included in any appendix or is cited in any brief, an English translation of such document, paper or testimony, made under the authority of the trial court or agreed by the parties to be correct, shall be included in the appendix. The appellant's opening brief is required to be accompanied by an appendix in all cases except, in a Certification of Questions of Law matter filed pursuant to Supreme Court Rule 41.

(f) *Joint appendix*. —Counsel may agree upon a joint appendix which shall be bound separately.

(g) *Form of citations*. —The following shall be the form of citations:

(i) Reported Opinions. The style of citation shall be as set forth in THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION, with no reference to State Reporter Systems or other parallel citations. For example:

Melson v. Allman, 244 A.2d 85 (Del. 1968).

Prince v. Bensinger, 244 A.2d 89 (Del. Ch. 1968).

State v. Pennsylvania R.R. Co., 244 A.2d 80 (Del. Super. Ct. 1968).

Cases with citations to computer reported systems; e.g., Westlaw, Lexis, and Fastcase shall be cited as set forth below: LEXIS Citation form: *Fox v. Fox*, 1998 Del. LEXIS 179 (Del. May 15, 1998); Westlaw Citation Form: *Fox v. Fox*, 1998 WL 280361 (Del. May 15, 1998); or Fastcase Citation Form: *Fox v. Fox*, No. 163, 1998 (Del. May 15, 1998) (Fastcase).

(ii) Unreported Opinions: The style of citation shall be as set forth below:

Delaware Citation Form: *Fox v. Fox*, Del., No. 510, 1997, *Berger, J.* (May 14, 1998).

(iii) Other Authority. The style of citation to any other type of authority, including but not limited to statutes, books, and articles, shall be as set forth in THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION.

(h) *CD-ROM Briefs*. —In addition to the electronically filed or conventionally filed paper copies of the brief, as required by these Rules,

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

a party may file a brief on a CD-ROM subject to the following requirements. The electronically filed or paper submission filed pursuant to these Rules will be the “official version” for the Court’s purposes. Except as specifically noted, the filing of a CD-ROM brief does not affect the other requirements of these Rules governing the preparation, filing, and service of the brief:

- (i) The cover page of the brief shall include the following legend in bold type immediately beneath the case number in the caption: “CD-ROM Version To Be Filed”.
- (ii) Multiple parties filing a brief jointly may file such a brief on CD-ROM. Joinders to a brief may also be filed on the same CD-ROM.
- (iii) A CD-ROM brief shall be identical to the “official version” filed with the Court, including identical pagination and the signature of counsel, or an/s/ indicating that counsel has authorized its filing.
- (iv) The table of contents of the CD-ROM brief shall contain hyperlinks to the cited page within the brief.
- (v) The CD-ROM brief shall contain hyperlinks to all cases, statutes, reference materials, exhibits and such other items as are cited in the brief, subject to the following:
 - (1) Hyperlinks shall link directly to the cited page(s) of the linked document.
 - (2) Hyperlinks shall link only to documents filed on the same CD-ROM, and not directly to the internet or other external sources.
- (vi) Format:
 - (1) All files in a CD-ROM submission shall be in PDF (portable document format).
 - (2) The CD-ROM shall not be bootable.
 - (3) The file for the brief may be prepared through direct conversion from the word processing file, or through scanning. The CD-ROM shall also include a text version of the brief in the format in which it was created and in RTF [Rich Text Format].
 - (4) Files shall be configured to allow selecting and printing. All fonts used in a file shall be imbedded in the file.
- (vii) Time and Form of Filing:
 - (1) The CD-ROM brief shall be filed not later than ten days after the filing of the electronically filed or conventionally filed paper copies of the brief, unless the Court directs otherwise.
 - (2) Ten copies of the CD-ROM shall be filed by conventional means. The CD-ROM version of the brief shall not be electronically filed.
 - (3) Two copies of the CD-ROM shall be served on each party separately represented and on each pro se party. A certificate of service shall accompany each submission.
 - (4) Each CD-ROM shall be packaged in a standard container commonly known as a “jewel case” or other secure container. A simple paper sleeve shall not suffice for this purpose.
 - (5) Each submission shall be labeled with the name of this Court, the short caption of the case and its case number, the title of the brief, the date of submission, and the name of the party making the submission. The label shall appear on the CD-ROM itself and on the jewel case or other container. Where a submission includes multiple CD-ROMs, each shall be labeled as above, with the additional identification as “CD-ROM 1 of 2”, etc.

Rule 15. Briefs and appendices; time for service and filing.

(a) *Brief and appendix schedule.* —Subject to any rule or order of Court providing otherwise, the following schedule shall govern the service and filing of briefs and appendices:

- (i) *Opening brief.* —In all cases in which no transcript or no further transcript has been ordered or designated under Rule 9(e), appellant’s brief and appendix shall be served and filed not later than 45 days after the notice of appeal. In all other cases appellant’s brief and appendix shall be served and filed not later than 30 days after filing of the record.
- (ii) *Answering brief.* —Appellee’s brief and appendix shall be served and filed not later than 30 days after service of appellant’s brief and appendix.
- (iii) *Reply brief.* —Appellant’s reply brief and reply appendix, if any, shall be served and filed not later than 15 days after service of appellee’s brief and appendix, except when such reply brief includes answering matter related to any cross-appeal, in which event the reply brief and reply appendix, if any, shall be served and filed not later than 30 days after service of appellee’s brief and appendix. The Court encourages all appellants and cross-appellants to file reply briefs as the Court finds such briefs to be helpful.
- (iv) *Cross-appeal appellant.* —In cross-appeals the party who first filed a notice of appeal shall be considered the appellant for the purpose of this rule.
- (v) *Cross-appeal appellee.* —If appellant’s reply brief includes answering matter related to any cross-appeal, appellee may serve and file a reply brief directed thereto not later than 10 days following service of such reply brief.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

(vi) *Permissive writing.* —No other brief or writing containing argument may be submitted without leave of Court. A party may, by letter to the Clerk, bring to the Court's attention pertinent cases decided after a party's final brief is filed or after the case is under submission for decision. The letter shall identify the arguments to which the cases relate and provide copies of the cases to the Court and opposing counsel. The letter shall not contain any argument.

(b) *Extensions.* —The Court expects parties to proceedings in this Court, and their counsel in the case of represented parties, to accord the highest priority to the processing of such proceedings. Accordingly, extensions of time are discouraged. The following conditions shall be strictly applied to any requests for extension.

(i) *Timely motion for first extension.* —A motion for an extension of time for the filing of briefs or appendices must be docketed at least five days in advance of the due date for such filing and must contain the opposing party's position on the motion or set forth the reasons why the position of the opposing party could not be ascertained despite a diligent effort to do so. The form of the motion shall be substantially in the form set forth in Official Form F of these Rules.

(ii) *Clerk's authorization to grant first extensions.* —Unless a special briefing schedule has been established or the Court orders otherwise, the Clerk of the Court is authorized to grant an extension of three days from the original due date for such filing if the motion requesting the extension is unopposed and if it is the party's first motion for extension of the particular brief or appendix in the matter.

(iii) *Timely motion for additional extensions.* —A motion for any additional extension beyond that set forth in subparagraph (ii) must comply with the requirements set forth in subparagraph (i) and must include a statement identifying the exceptional circumstances necessitating the extension. The motion will be considered by a Justice of this Court. If the Justice determines that the request for the extension complies with these rules, the Justice may grant an extension totaling not more than fifteen days from the original due date of the opening or answering brief or appendix or ten days for a reply brief or appendix, except that an extension of up to forty-five days may be granted in proceedings under Supreme Court Rule 26(c).

(iv) *Untimely motions for extensions.* —If a motion for extension is filed less than five days in advance of the due date, the motion will ordinarily be denied unless the moving party demonstrates not only exceptional circumstances for the extension but also exceptional circumstances justifying the late filing of the motion, demonstrating that the latter circumstances did not exist or could not with due diligence have been known or communicated to the Court earlier.

(v) *Untimely submissions may not be filed.* —The Clerk of the Court may not accept for docketing an untimely filed brief or appendix unless the filing party first obtains leave to file out of time under the provisions of this Rule. If leave is not obtained, the Clerk of the Court will take the appropriate action as directed by the Court, which action may include dismissal of the appeal if the appellant has not filed a timely brief or, in the case of the appellee, a decision by the Court on the basis of the record and papers that have been timely filed.

(vi) *Motions for extensions filed after due date.* —No motion for an extension filed after the due date for the brief or appendix will be entertained unless the party requesting the extension demonstrates that the interests of justice require the relief requested notwithstanding the failure to comply with this Rule. In such a case an extension may be granted in the discretion of the Justice for a period of not more than three days.

(vii) *Exceptional circumstances defined.* —“Exceptional circumstances” for purposes of this Rule means serious or disabling illness or injury; death of an immediate family member; act of God; state or national emergency; or other circumstances of similar unavoidable nature.

(viii) *Certification for untimely motions; sanctions.* —Any motion filed by an attorney under subsection (iv) or subsection (vi) shall include a certification from the attorney identifying all other motions for extensions filed in all other cases during the six months preceding the date of the current motion and noting which, if any, of those prior motions were filed under subsection (iv) or subsection (vi). Any attorney who, during the preceding six months, has filed more than two such out-of-time motions, will be subject to discipline for a performance deficiency under Supreme Court Rule 33.

(ix) *Appearance of party or attorney.* —In connection with any motion under this Rule, the Court may require the appearance by the parties and/or their principal counsel at an office conference or in open court.

Rule 16. Argument.

(a) *Oral argument.* —There shall be oral argument only in those appeals and original proceedings designated by the Court. Otherwise, cases shall be deemed submitted for decision upon the briefs. There will be no oral argument on motions unless the Court so orders.

(b) *Schedule of arguments.* —Arguments will be heard in each month as ordered by the Court.

(c) *Scheduling.* —Upon filing of the reply brief on appeal or cross-appeal or upon the expiration of the due date for the filing of the reply brief, the case shall be deemed at issue and ready for argument at the call of the Court.

(d) *Opening and closing.* —The appellant shall be entitled to open and conclude argument of the case, including any pending motions. At the beginning of the argument, the appellant shall inform the Court of the amount of time, if any, the appellant wishes to reserve for

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

rebuttal. Cross-appeals shall be argued as 1 case, and the party filing the first notice of appeal shall be entitled to open and conclude the argument. In a cross-appeal, cross-appellant may, upon request, conclude argument with a reply as to the cross-appeal only.

(e) *Number of counsel.* —Not more than 2 counsel shall be heard for each party on the argument of a case.

(f) *Time.* —Unless otherwise ordered by the Court, the parties shall have a total of 20 minutes to argue each side of an appeal or original proceeding before a panel and a total of 25 minutes per side to argue before the Court en Banc. An application for additional time for oral argument shall be presented to a Justice not later than 30 days after the filing of the appellee's brief. The Court may limit or terminate an argument when, in its opinion, the issues have been fully presented. The time allowed may be apportioned between counsel on the same side at their discretion; provided always that a fair opening of the case shall be made by the party having the opening argument. Counsel will be expected not to read at length from briefs or opinions.

(g) *Recent cases.* —In order for a party to rely at oral argument upon any case from any court that was decided after briefing was completed, a copy of that case must be sent to each opposing party and to the Court at least 48 hours prior to the time of oral argument.

Rule 17. Opinions and orders.

(a) *Final decisions.* —All decisions finally determining or terminating a case shall be made by written opinion, or by written order, as determined by the Court.

(b) *Filing.* —Each written opinion or order of the Court shall be filed with the Clerk.

(c) *Special contents.* —Each written opinion or order of the Court shall bear 2 dates immediately under the caption of the case:

(i) *Submitted date.* —The date of submission of the matter for decision; and

(ii) *Decided date.* —The date the opinion or order is filed.

Each written opinion of the Court, in a matter which was orally argued, shall identify by name the attorneys who presented the oral argument.

Rule 18. Reargument.

A motion for reargument may be filed with the Clerk within 15 days after the filing of the Court's opinion or order unless the time is enlarged or shortened by the Court. The motion shall conform to the page/word count and form requirements of Rules 30 and 13. The motion shall succinctly state the grounds therefor and shall be supported by a certificate of counsel or a pro se certificate that it is presented in good faith and not for delay. The motion shall not be subject to oral argument; no answer to the motion shall be permitted unless requested by the Court. There shall be no reargument when the mandate issues forthwith. The following orders shall not be subject to reargument: (1) orders entered under Rules 41 and 42; (2) orders entered by a single justice which are directed to matters of form and do not address the underlying merits of the appeal; and, (3) orders denying motions for reargument or rehearing en Banc.

Rule 19. Mandate.

(a) *When issued — Motion for reargument — Stay.* —In each case finally determined, a mandate, certified copy or other appropriate process, with a certified copy of the opinion or order, notice of dismissal or stipulation of dismissal shall be issued to the trial court. Unless otherwise ordered by the Court, or unless a motion for reargument or a motion for rehearing en Banc is filed, the mandate shall issue as a matter of course upon expiration of the period allowed for filing such motions. If a motion for reargument or a motion for rehearing en Banc is filed, the mandate shall issue upon the Court's disposition thereof. After reciting the proceedings in the trial court and in this Court, the mandate shall direct the affirmance, reversal or modification of the judgment or order in the trial court and the assessment of costs on appeal, and shall direct such court to take proceedings in conformity with the opinion of this Court. The mandate shall be signed, sealed and attested by the Clerk. Copies shall be forwarded to counsel of record or to parties appearing *pro se*.

(b) *Special form of mandate.* —In any case in which a special form of mandate may be required, the Court may, upon application of counsel filed prior to the time fixed for the issuance of the mandate, or upon its own motion, permit counsel to be heard upon the form thereof.

(c) *Remand for determination below.* —If the decision includes a remand for a determination by the trial court, a certified copy of said decision with jurisdiction reserved shall issue. The trial court to which the case is remanded shall make such determination and file the same as specified by this Court, or if no time is specified, within 60 days of issuance of the certified copy of said decision. If it shall not be feasible for the trial court to do so within the time provided herein, the trial court shall file a status report within such time. This Court may thereupon enter an order requiring such determination by a specified time or, in the absence of such order, the determination shall be made at the earliest time thereafter as is feasible, which time shall not exceed an additional 60 days.

(d) *Remand for new trial or new penalty hearing in certain cases.* — In a Class A felony tried without a jury or a capital first degree murder case that is reversed and remanded by the Supreme Court to the Superior Court for a new trial or penalty hearing, the President Judge shall assign a different judge to preside over the case if the judge whose decision was reversed on appeal is the same judge who presided over the bench trial or the penalty hearing that resulted in the imposition of the death sentence.

Rule 20. Fees and costs.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

(a) *Nonrefundable filing fee.* —Except in appeals originating from the Industrial Accident Board and the Unemployment Insurance Appeal Board, a party filing a notice of appeal, or other proceeding, shall pay to the Clerk the sum of \$500 and a \$10 Court Security Assessment which shall be maintained in a separate account designated as “Court Security Assessment Fund.” This fee is nonrefundable. No other fee shall be assessed against a party except under paragraph (b)(ii).

(b) *Schedule of fees.* —

(i) The fees charged by the Clerk to nonparties to the appeal shall be as follows:

For a Clerk’s certificate of good standing _____	\$10.00
For a copy of any paper, per page (including opinions and orders) _____	\$1.00
Admission to the Delaware Bar _____	\$150.00
Replacement Bar Admission Certificate _____	\$50.00

(ii) Special items of costs in special cases shall be based upon bills submitted to the Clerk, or upon a special order of the Court, as the case may be.

(c) *Appeals and certiorari from this Court.* —In all proceedings on appeal or writ of certiorari from this Court to the Supreme Court of the United States, the Clerk of this Court shall be paid the costs, as estimated by the Clerk, of preparing and certifying the Clerk’s transcript before the transcript is transmitted to the Supreme Court.

(d) *Costs allowed to a party.* —Except as otherwise provided by law, or as otherwise ordered by the Court, costs shall be allowed as follows: If an appeal is dismissed, costs shall be taxed against the appellant; if a judgment is affirmed, costs shall be taxed against the appellant; if a judgment is reversed, costs shall be taxed against the appellee; if a judgment is affirmed in part and reversed in part, costs shall be allowed as ordered by the Court. Costs in original proceedings or proceedings on certification shall be determined by the Court in each instance. The costs shall normally include the amounts charged for fees under paragraph (b) of this rule and such other expenses as shall be incurred and certified by the Clerk of this Court, or the clerk of the trial court.

(e) *Costs for or against the State.* —In a case in which the State of Delaware or an agency or officer thereof is a party, if an award of costs against the State is authorized by law, costs shall be awarded in accordance with the provisions of paragraph (d); otherwise, costs shall not be awarded for or against the State of Delaware.

(f) *F frivolous appeals.* —The Court may in any case involving a frivolous appeal, enter a special order assessing costs in addition to those provided for by paragraph (d) as justice may require. Such additional costs may, in the discretion of the Court, include the costs incurred in the preparation and transmission of the record, the cost of the transcript and the reasonable expenses of any appellee. An appellee that wishes to recover costs and reasonable expenses, including attorneys’ fees, under this rule must file a motion that conforms with the requirements of Rule 30 by the deadline for the filing of the reply brief. Rule 30 governs the form, contents, and timing of the response and reply to the motion.

(g) *Reimbursement of filing fee.* —If a judgment of the trial court is reversed and costs are assessed against the appellee, the Clerk shall certify in the mandate the filing fee collected under paragraph (a) in this Court which is to be collected in the trial court for reimbursement of the party who paid the filing fee.

(h) *Indigents.* —Upon application of a party claiming to be indigent, the Court may authorize the commencement of an appeal or original proceeding before the Court without prepayment of fees, costs or security by a person who files a motion and sworn affidavit in accordance with 10 Del. C. §§ 8802-04 and Supreme Court Official Form Q. The sworn affidavit must be sufficient to allow the court to determine the ability of the affiant to pay all or any portion of the court costs and fees associated with the proceeding before the Court.

PART III. APPEALS—SPECIAL PROVISIONS

Rule 25. Expedited procedure.

(a) *Motions to affirm in certain criminal cases.* — Motions to affirm may be filed in appeals of criminal matters other than direct appeals of convictions after trial and timely first motions for postconviction relief under Superior Court Criminal Rule 61 when there was a conviction after trial. The following procedures shall apply to motions to affirm. Within 10 days after service of appellant’s opening brief, appellee may, in lieu of a brief, serve and file a motion to affirm the judgment or order of the trial court. The motion shall conform to the form requirements of Rule 13. Motions to affirm of unrepresented parties without access to a word processing program are subject to the four-page limitation set forth in Rule 30(c). Motions to affirm of all other parties are subject to the 1,200 word count and requirements set forth in Rule 30(d). The filing of the motion tolls the time for filing of appellee’s brief. If there is more than one appellee in an appeal, the filing of a motion to affirm by one appellee tolls the time for the filing of all the appellees’ briefs. The sole ground for such motion shall be that it is manifest on the face of appellant’s brief that the appeal is without merit because:

(i) *Law settled.* —The issue on appeal is clearly controlled by settled Delaware law;

(ii) *Factual issue.* —The issue on appeal is factual and clearly there is sufficient evidence to support the jury verdict or findings of

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

fact below; or

(iii) *Exercise of discretion.* —The issue on appeal is one of judicial discretion and clearly there was no abuse of discretion. The motion to affirm shall state the ground or grounds on which it is based together with citation of authorities and record references to evidence relied upon. There shall be no briefing, argument or response to the motion, unless requested by the Court. If the motion to affirm shall be granted by unanimous action of a panel of the Court an order or opinion will be entered and a mandate will issue thereon; if the motion shall not be unanimously granted, it shall be denied. If the motion shall be denied, the appellee's brief will be due within 20 days after such denial, and the appeal will proceed through briefing, scheduling and disposition as provided by these Rules. The motion to affirm shall be substantially in the form set forth in Official Form G. A motion to affirm shall not be accompanied by a proposed form of order.

(b) *Motions to affirm denials of petitions for extraordinary writs in civil cases.* —Motions to affirm may only be filed in civil appeals from orders denying petitions for extraordinary writs. The procedures and standards for motions to affirm in these civil cases are set forth in subparagraph a. In all other cases in which a party seeks expedited resolution of a civil appeal, the party shall follow the procedures set forth in subparagraph e.

(c) *Affirmance sua sponte.* —After filing of the appellant's opening brief, a panel of the Court by unanimous action may, *sua sponte*, enter an order or opinion affirming the judgment or order of the trial court for the reason that it is manifest on the face of the appellant's opening brief that the appeal is without merit because:

(i) *Law settled.* —The issue on appeal is clearly controlled by settled Delaware law;

(ii) *Factual issue.* —The issue on appeal is factual and clearly there is sufficient evidence to support the jury verdict or findings of fact below; or

(iii) *Exercise of discretion.* —The issue on appeal is one of judicial discretion and clearly there was no abuse of discretion.

(d) *Oral argument without briefs.* —In any case where the parties so stipulate and the Court approves, or upon the Court's order *sua sponte*, an appeal may be heard by the Court on oral argument without briefs, or with limited briefs or other submission to the Court. Any such stipulation shall be presented to the Court not later than the time when the first brief is otherwise due to be served and filed.

(e) *Expedited scheduling.* —Upon motion for good cause shown or upon the Court's order *sua sponte*, the Court may order an expedited schedule of any or all procedures, including a shortened time for the filing of briefs and other papers, in any appeal or other proceeding.

Rule 26. Appeals in criminal and juvenile delinquency cases.

(a) *Continuing obligation of and representation by counsel.* —(1) Every trial attorney, whether privately retained, court appointed or provided by the Office of the Public Defender, shall in every case in which the client has been convicted or adjudged delinquent; and (2) every attorney appointed by the trial court to represent a criminal defendant or juvenile at State expense in postconviction proceedings, unless the attorney had been permitted to withdraw under the trial court's rules, shall in every case in which postconviction relief is denied:

(i) *Advise client.* —Advise the client of any right to appeal, the possible grounds for appeal and counsel's opinion of the probable outcome of an appeal;

(ii) *Docket appeal.* —Docket an appeal whenever the client desires to appeal, whether or not the appeal appears meritorious; and

(iii) *Prepare documents.* —Prepare and file all documents relating to the appeal, including those relating to the transcript as required by Rule 9.

Such attorney, until this Court orders otherwise, shall continue to represent the client on appeal. But, if a postconviction attorney's motion to withdraw was granted by the trial court, and postconviction relief was denied, that attorney's continuing obligation is limited to that prescribed by the trial court's rules.

(b) *Appointment of counsel.* —The Court will appoint counsel in any case in which it determines that an indigent defendant or child desires but does not have counsel on direct appeal. The Court may, in the interest of justice, appoint additional or substitute counsel for any indigent defendant or delinquent child upon the application of either counsel or client. In appeals from rulings made under Superior Court Criminal Rule 61 or other post-conviction rulings of a trial court, the Court may in its discretion appoint counsel for an indigent defendant or child.

(c) *Appeals without merit.* —If the trial attorney, after a conscientious examination of the record and the law, concludes that an appeal is wholly without merit, the attorney may file a motion to withdraw. Such motion shall be accompanied by the following:

(i) *Brief and appendix required.* —The trial attorney is required to file a brief referring to anything in the record which may arguably support the appeal. The brief shall contain the following under distinctive titles and commencing on a new page, in the listed order: a statement of the charges; the nature of the defense made at trial; a summary of the evidence; the significant pretrial and trial applications and rulings; the sentence; and, the defendant's points, which shall not exceed 35 pages. Appropriate pages from the record, including the sentencing order and appropriate pages from the transcript, shall be contained in a separately bound appendix. A statement by

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

counsel that there were no errors of law below or that the appeal is without merit does not meet this requirement.

(ii) *Attorney statement.* —A statement by the attorney that the attorney:

(A) *Copy to client.* —Supplied the client with a copy of the motion, brief, and appendix.

(B) *Advice to client.* —Advised the client that the client could state in a writing of no more than 35 pages, delivered to the attorney within 30 days, any point that the client wanted the Court to consider, and that such a writing would be included in the brief. Such statement by the attorney shall state the date on which the attorney delivered a copy of the motion and brief to the client and whether or not any writing was received in response thereto.

(iii) *Client response.* —Any statement by the client which is received by the attorney in response to the motion to withdraw.

Neither the motion nor the brief shall be an argument against the client's interest. The client shall have 30 days in which to review the proposed brief and proposed motion to withdraw and to prepare and submit any points for the Court's consideration, prior to the filing by counsel of said brief and motion. The motion and the brief shall be served upon the State; and the State shall file within 20 days of service a response or make any application it deems appropriate.

Upon the expiration of such 20-day period, the Court shall determine, without oral argument, whether the appeal, on its face, is wholly without merit. If the Court so determines, the Court may order that the judgment below be affirmed. If the Court does not so determine, the motion for withdrawal may be granted and the Court may appoint substitute counsel who shall thereafter have 30 days in which to submit an opening brief.

(d) *Withdrawal.* —An attorney for a defendant in a criminal appeal, including a child adjudged delinquent, may withdraw only upon written motion and order of the Court, entered in the following circumstances:

(i) *Consent.* —An attorney may be permitted to withdraw, after complying with paragraph (a) of this rule, at any time after other counsel has entered an appearance for the client.

(ii) *Non-consent.* —Without the consent of the client, a privately retained attorney may be permitted to withdraw, after complying with paragraph (a) of this rule, on motion served upon the client with notice of a stated time for presentation thereof to the Court.

(iii) *Waiver of counsel.* —Prior to the filing of any brief, a defendant who is represented by an attorney may apply to the Court for leave to proceed pro se and to discharge the defendant's attorney. The motion must be served upon the attorney and the State and be accompanied by an affidavit in a form supplied by the Clerk. Upon receipt of a motion in the proper form, in cases where the defendant has a constitutional or statutory right to counsel, the Court shall remand the case to the Superior Court for an evidentiary hearing on the defendant's waiver of counsel. In all other cases the Court may, in its discretion, remand the case to the Superior Court for an evidentiary hearing on the defendant's motion to appear pro se. Upon any remand, the attorney shall be present at the hearing in the Superior Court. Pursuant to Rule 19(c), the Superior Court shall make and report its findings of fact within 30 days of the remand, unless some other time is ordered by the Court. Motions to appear pro se are otherwise governed by the procedures set forth in Rule 30. In the event the defendant's motion is granted, the responsibility of the attorney to represent the defendant shall terminate. The Court in its discretion may, however, appoint an attorney to render advisory assistance to the defendant.

(iv) *All other cases.* —In all other cases an attorney may be permitted to withdraw, after complying with paragraph (a) of this rule, only in the interest of justice and upon good cause shown. Any such application shall state the grounds thereof and shall be served upon the client with notice of a stated time for presentation to the Court. See Official Form H.

(e) *Waiver of nonrefundable filing fee.* —In any appeal from a conviction in the Superior Court, any person who, by reason of indigence, seeks relief from the nonrefundable filing fee required by Rule 20(a) may file with the Clerk a motion setting forth the facts relied upon. If the Court is satisfied that the appellant is qualified to proceed as an indigent, it shall enter an order waiving such payment. If the appellant was represented at trial by counsel appointed by the Superior Court or provided by the Office of the Public Defender, the payment of the docketing deposit shall be waived upon the filing of an affidavit stating that such representation was previously afforded, setting forth the court and proceeding in which it was afforded and that there has been no substantial change in the appellant's financial circumstances.

(f) *Trial transcript.* —If the ground of an indigent appellant's appeal requires a review of the evidence, the indigent appellant's counsel shall be furnished on request and without charge, a copy of the transcript of the relevant trial testimony. Subject to the provisions of Rule 9(e), any such request shall describe with specificity the particular portion of the transcript that is relevant to the appeal. Counsel's request shall be made initially to the trial judge, whose denial of the request shall be reviewable by this Court. The cost of such transcript shall be certified by the Superior Court for payment.

(g) *Application for fees and disbursements of court-appointed counsel.* —A separate claim for compensation and reimbursement of expenses shall be made to this Court and to each other court before which the court-appointed counsel represented the client. Each claim before this Court shall be supported by a written statement specifying in-court and out-of-court time expended, services rendered and expenses incurred while the case was pending before this Court, and all compensation and reimbursement applied for, expected or received in the same case from any other sources. The Court shall thereupon fix the compensation and reimbursement to be paid to

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

counsel, and shall certify such amount to the Administrative Office of the Courts for payment.

(h) *Standards for setting counsel fees.* —Any attorney appointed under this rule shall be compensated at a rate not exceeding \$50 per hour, and shall be reimbursed for expenses reasonably incurred. Compensation paid hereunder for services performed in this Court shall not exceed \$2,000 for each attorney in an appeal in which 1 or more felonies, or acts of delinquency which would be felonies if committed by an adult, are charged; or \$1,000 for each attorney in an appeal in which only misdemeanors, or lesser acts of delinquency, are charged. These maximum amounts shall not prevent any such attorney from being compensated for services performed in other courts involving the same representation.

(i) *Waiver of maximum amounts.* —Payment to court-appointed counsel in excess of the maximum amounts provided herein may be made for extended or complex representation if the Court finds that the amount of such payment is necessary to provide fair compensation and the payment is approved by the Court. Any application for a fee exceeding \$2,000 shall be made only upon reasonable notice to the Attorney General. Application for lesser amounts may be ex parte unless, in a specific instance, the Court otherwise directs.

(j) *Timing of fee applications.* — All fee applications should be submitted within 90 days after issuance of the mandate.

(k) *Appeals in habeas corpus.* —The foregoing procedures shall be applicable in an appeal from a denial of a petition for writ of habeas corpus filed by any indigent appellant.

(l) *Appeals in violation of probation proceedings.* —Notwithstanding the provisions of Rule 26(a), the defense attorney of record in the proceedings in which the client has been found in violation of probation satisfies the continuing obligation of and representation by counsel when the defense attorney advises the client, in writing:

- (i) of any right to appeal;
- (ii) whether the defense attorney will continue representation on appeal; and
- (iii) that, if the client wants to pursue an appeal without representation, the client must file, in the office of the Clerk of this Court, a notice of appeal within 30 days after a sentence from the violation of probation is imposed.

The defense attorney's advice to the client shall be made part of the record at the violation of probation proceedings.

Rule 26.1. Appeals in termination of parental rights cases.

(a) *Continuing obligation of trial counsel.* —A trial attorney shall, in every case in which an individual's parental rights have been terminated, continue to represent the client on appeal until this Court orders otherwise and shall carry out the following:

- (i) *Advise client.* —Advise the client of any right to appeal, the possible grounds for appeal and counsel's opinion of the probable outcome of an appeal;
- (ii) *Docket appeal.* —Docket an appeal whenever the client desires to appeal, whether or not the appeal appears meritorious; and
- (iii) *Prepare documents.* —Prepare and file all documents relating to the appeal, including those relating to the transcript as required by Rule 9.

(b) *Appointment of counsel.* —The Court will appoint counsel in any case in which it determines that an indigent appellant or child desires but does not have counsel in a termination of parental rights appeal. The Court may, in the interest of justice, appoint additional or substitute counsel for any indigent appellant upon the application of either counsel or client.

(c) *Appeals without merit.* —If the trial attorney, after a conscientious examination of the record and the law, concludes that an appeal is wholly without merit, the attorney may file a motion to withdraw. Such motion shall be accompanied by the following:

(i) *Brief and appendix required.* —The trial attorney is required to file a brief referring to anything in the record which may arguably support the appeal. The brief shall contain the following under distinctive titles and commencing on a new page, in the listed order: a statement of the facts; the nature of the appellant's case at trial; a summary of the evidence; the significant pretrial and trial applications and rulings; the order of termination of parental rights; and, the appellant's points, which shall not exceed 35 pages. Appropriate pages from the record, including the order of termination of parental rights and appropriate pages from the transcript, shall be contained in a separately bound appendix. A statement by counsel that there were no errors of law below or that the appeal is without merit does not meet this requirement.

(ii) *Attorney statement.* —A statement by the attorney that the attorney:

(A) *Copy to client.* —Supplied the client with a copy of the motion, brief, and appendix.

(B) *Advice to client.* —Advised the client that the client could state in a writing of no more than 35 pages, delivered to the attorney within 30 days, any point that the client wanted the Court to consider, and that such a writing would be included in the brief. Such statement by the attorney shall state the date on which the attorney delivered a copy of the motion and brief to the client and whether or not any writing was received in response thereto.

(iii) *Client response.* —Any statement by the client which is received by the attorney in response to the motion to withdraw.

Neither the motion nor the brief shall be an argument against the client's interest. The client shall have 30 days in which to review the

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

proposed brief and proposed motion to withdraw and to prepare and submit any points for the Court's consideration, prior to the filing by counsel of said brief and motion. The motion and the brief shall be served upon the State and/or CASA; and the State and/or CASA shall file within 20 days of service a response or make any application it deems appropriate.

Upon the expiration of such 20-day period, the Court shall determine, without oral argument, whether the appeal, on its face, is wholly without merit. If the Court so determines, the Court may order that the judgment below be affirmed. If the Court does not so determine, the motion for withdrawal may be granted and the Court may appoint substitute counsel who shall thereafter have 30 days in which to submit an opening brief.

(d) *Withdrawal.* —An attorney for an appellant in a termination appeal, may withdraw only upon written motion and order of the Court, entered in the following circumstances:

(i) *Consent.* —An attorney may be permitted to withdraw, after complying with paragraph (a) of this rule, at any time after other counsel has entered an appearance for the client.

(ii) *Non-consent.* —Without the consent of the client, a privately retained attorney may be permitted to withdraw, after complying with paragraph (a) of this rule, on motion served upon the client with notice of a stated time for presentation thereof to the Court.

(iii) *Waiver of counsel.* —Prior to the filing of any brief, an appellant who is represented by an attorney may apply to the Court for leave to proceed pro se and to discharge the appellant's attorney. In the event the appellant's motion is granted, the responsibility of the attorney to represent the appellant shall terminate. The Court in its discretion may, however, appoint an attorney to render advisory assistance to the appellant.

(iv) *All other cases.* —In all other cases an attorney may be permitted to withdraw, after complying with paragraph (a) of this rule, only in the interest of justice and upon good cause shown. Any such application shall state the grounds thereof and shall be served upon the client.

(e) *Waiver of nonrefundable filing fee.* —In any appeal from a termination of parental rights proceeding in the Family Court, any person who, by reason of indigence, seeks relief from the nonrefundable filing fee required by Rule 20(a) may file with the Clerk a motion setting forth the facts relied upon. If the Court is satisfied that the appellant is qualified to proceed as an indigent, it shall enter an order waiving such payment. If the appellant was represented at trial by counsel appointed by the Family Court, the payment of the docketing deposit shall be waived upon the filing of an affidavit stating that such representation was previously afforded, setting forth the court and proceeding in which it was afforded and that there has been no substantial change in the appellant's financial circumstances.

(f) *Trial transcript.* —If the ground of an indigent appellant's appeal requires a review of the evidence, the indigent appellant's counsel shall be furnished on request and without charge, a copy of the transcript of the relevant trial testimony. Subject to the provisions of Rule 9(e), any such request shall describe with specificity the particular portion of the transcript that is relevant to the appeal. Counsel's request shall be made initially to the trial judge, whose denial of the request shall be reviewable by this Court. The cost of such transcript shall be certified by the Family Court for payment.

(g) *Application for fees and disbursements of court-appointed counsel.* —A separate claim for compensation and reimbursement of expenses shall be made to this Court and to each other court before which the court-appointed counsel represented the client. Each claim before this Court shall be supported by a written statement specifying in-court and out-of-court time expended, services rendered and expenses incurred while the case was pending before this Court, and all compensation and reimbursement applied for, expected or received in the same case from any other sources. The Court shall thereupon fix the compensation and reimbursement to be paid to counsel, and shall certify such amount to the Administrative Office of the Courts for payment.

(h) *Standards for setting counsel fees.* —Any court-appointed attorney in a termination of parental rights case shall be compensated at a rate not exceeding \$60 per hour and shall be reimbursed for expenses reasonably incurred. Compensation paid hereunder for services performed in this Court shall not exceed \$2,000 for each attorney. This maximum amount shall not prevent any such attorney from being compensated for services performed in other courts involving the same representation. Payment to court-appointed counsel in excess of \$2,000 may be made upon motion of counsel for good cause shown for extended or complex representation if the Court finds that the amount of such payment is necessary to provide fair compensation and the payment is approved by the Court.

(i) *Timing of fee applications.* All fee applications should be submitted within 90 days after issuance of the mandate.

Rule 27. Appeals by the State in criminal cases.

(a) *Appeals of right.* —When an appeal of right by the State in criminal cases is permitted, the appeal shall be commenced within 30 days after entry of the final order from which an appeal may be taken.

(b) *Discretionary appeals.* —An application for leave to file an appeal allowable in the discretion of the Court shall contain a statement in detail of the substantial question of law or procedure to be decided. Such application shall be filed within 30 days after entry of the final order in the criminal case from which the appeal is sought to be taken. The form of application shall comply substantially with Official Form I. If the application is granted, the appeal shall be deemed filed as of the date of the filing of the application.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

Rule 28. Brief of amicus curiae.

- (a) *When permitted.* —A brief of an amicus curiae may be filed only by leave of Court granted on motion or at the request of the Court.
- (b) *Motion for leave to file.* —The motion must be accompanied by the proposed brief and state:
- (1) The movant's interest;
 - (2) The reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case; and
 - (3) Whether the parties to the appeal consent to or oppose the motion for leave to file.
- (c) *Contents and form.* —An amicus brief must comply with Rule 13. The cover of the amicus brief must be green and must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. An amicus brief must include:
- (1) A table of contents, with page references;
 - (2) A table of authorities, including cases (alphabetically arranged), statutes, and other authorities, with page references;
 - (3) A concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file; and
 - (4) An argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review.
- (d) *Length.* —Except by leave of the Court, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the Court grants a party permission to file a longer brief, that extension does not affect the length of the amicus brief.
- (e) *Time for filing.* —An amicus curiae must file its brief, accompanied by a motion for filing, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's principal brief is filed.
- (f) *Reply brief.* —Except by leave of the Court, an amicus curiae may not file a reply brief.
- (g) *Oral argument.* —An amicus curiae may not participate in oral argument unless ordered by the Court.

Rule 29. Dismissal.

- (a) *Voluntary dismissal.* —At any time before filing of the appellee's brief, an appellant may dismiss the appellant's appeal voluntarily by serving a notice of dismissal upon the other parties to the appeal, by filing the same with the Clerk and paying the costs. Otherwise, a voluntary dismissal may be made only upon stipulation of all parties to the proceeding and with the approval of the Court.
- (b) *Involuntary dismissal upon notice of the Court.* —The Court may order a complaint, petition or appeal dismissed, *sua sponte*, upon notice of the Court. Dismissal upon notice may be ordered for lack of subject matter jurisdiction, for untimely filing of an appeal, for appealing an unappealable interlocutory order, for failure of a party diligently to prosecute the appeal, for failure to comply with any rule, statute, or order of the Court, or for any other reason deemed by the Court to be appropriate. In the event that the Court shall conclude, *sua sponte*, that dismissal upon any of the foregoing grounds appears appropriate, the procedure for such dismissal shall be as follows: The Clerk shall forward to the appellant a notice directing that the appellant show cause why the complaint, petition or appeal should not be dismissed for the reasons stated in the notice. The notice shall direct the complainant, petitioner or appellant to respond within 10 days after receipt of the notice. After consideration of such response, the Court shall enter an order dismissing the complaint, petition or appeal or maintaining jurisdiction of the case. If a response is not filed within the time allowed, the dismissal shall be deemed to be consented to pursuant to Rule 3(b)(2). Upon entry of any order of dismissal, the Court shall specify the terms thereof including provision for payment of costs.
- (c) *Involuntary dismissal without prior notice.* —The Court may order a complaint, petition or appeal, including any petition seeking to invoke the original jurisdiction of the Court over extraordinary writs, dismissed, *sua sponte*, without notice, notwithstanding the provisions of Rule 29(b), when such complaint, petition or appeal from any ruling or order, interlocutory or final, manifestly fails on its face to invoke the jurisdiction of the Court and where the Court concludes, in the exercise of its discretion, that the giving of notice would serve no meaningful purpose and that any response would be of no avail.
- (d) *Procedure upon dismissal.* —Upon dismissal, the Clerk shall remand the record to the trial court, together with a certified copy of the notice, stipulation or order of dismissal.

Rule 30. Motions.

- (a) *Form; contents.* —An application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall state the order and relief sought, shall state with particularity the grounds on which it is based, shall cite relevant authorities in support thereof and shall be accompanied by a proposed order.
- (b) *Response; reply.* —A party who opposes a motion shall file within 10 days after the service of the motion an answer thereto stating with particularity the grounds on which the motion is opposed and shall cite relevant authorities. Within 7 days after service of an answer to the motion, the moving party may file a reply to the answer.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

(c) *Page limitations for unrepresented parties without access to a word processing program.* No motion, answer to a motion, or reply shall exceed four pages in length including the caption and signature block.

(d) *Type-volume limitation for parties with access to a word processing program.* No motion, answer to a motion, or reply shall exceed 1,200 words. The caption, signature block, and any footer included pursuant to Rule 10.2(5), do not count toward the limitation. All other text must be counted toward the limitation. All motions, answers, and replies shall include a certificate of compliance by counsel or an unrepresented party that the document complies with the typeface requirement of Rule 13(a) and type-volume limitation of this rule. The person preparing the certificate must state the number of words in the document, and may rely on the word count of the word processing program used to prepare the document. Form R is a suggested form of a certificate for compliance. Use of Form R is sufficient to meet the requirements of this rule.

(e) *Determination of motions.* —Motions shall be decided without oral argument unless otherwise permitted. If an answer to a motion is required and is not filed within the time allowed by these Rules, a non-responding party shall be deemed to have consented to the relief sought by movant.

(f) *Motions not to delay the progress of the appeal.* —Unless the Court shall otherwise order, and subject to Rule 25(a), the filing and disposition of a motion shall not stay, alter or extend the time for the filing of briefs pursuant to Rule 15.

(g) *Motions for relief under Rules 14, 15, or 34.* —With respect to motions seeking relief from the provisions of Rule 14 or Rule 15 or motions under Rule 34, the Court, in its discretion, may act upon said motions without awaiting an answer or reply, notwithstanding paragraph (b) of this Rule.

Rule 31. Substitution of parties.

(a) *Suggestion of death by personal representative.* —When a party dies, a personal representative of the party may suggest the death upon the record and shall file evidence of the representative capacity and a designation of counsel.

(b) *Suggestion of death by party in interest other than personal representative.* —When a party dies and a personal representative of the party shall not, within 60 days after such death, appear under paragraph (a), any other party in interest may suggest such death upon the record and shall file evidence of the appointment of a personal representative. Thereupon, without notice, the Court shall enter an order that such personal representative appear and designate counsel. In default of such appearance, the adverse party may cause a certified copy of the order to be served on the personal representative. If the personal representative is a nonresident, service shall be made by certified mail. Within 30 days thereafter, on proof of such service, the adverse party without further notice may request an order either to revive the cause and direct that it proceed as to the interest of the deceased party, or to dismiss the cause as to such interest, as may appear proper.

(c) *Disposition of cause by Court of its own motion.* —If the death of a party is brought to the attention of the Court, and proceedings are not taken under paragraph (a) or paragraph (b), the Court, *sua sponte*, may direct such steps to be taken as are proper to dispose of the case or expedite the proceeding.

Rule 32. Stays and injunctions pending appeal; security for such stays or injunctions.

(a) *Stay or injunction pending appeal.* —Except in a challenge to a final award under the Delaware Rapid Arbitration Act, a motion for stay must be filed in the trial court in the first instance. The trial court retains jurisdiction over the initial motion and must rule on the initial motion regardless of whether the case is on appeal to this Court. A stay or an injunction pending appeal may be granted or denied in the discretion of the trial court, whose decision shall be reviewable by this Court. The trial court or this Court, as a condition of granting or continuing a stay or an injunction pending appeal, may impose such terms and conditions, in addition to the requirement of indemnity, as may appear appropriate in the circumstances.

(b) *Stay in criminal proceedings.* —The right to a stay of execution and bail on appeal in criminal cases shall be as provided by statute and by these Rules. On application for a stay of execution and bail, the provisions of any applicable statute must be met. Such an application may be heard by this Court. The party seeking a stay must file with the Court a stipulation of facts or such portion of the record as is necessary to sustain the application. The State may submit such portions of the record as it deems relevant.

(c) *Supersedeas bond or other security.* —A stay or injunction pending appeal shall be granted upon filing and approval of sufficient security. Such security shall be presented to and approved or disapproved in the first instance by the trial court. The type, amount, and form of the security shall be determined in the first instance by the trial court, whose actions shall be reviewable by this Court. The security shall be filed with the clerk of the trial court who shall forthwith give notice thereof to the attorney for the appellee. The security shall not be approved until notice of appeal has been served on the appellee and filed in the manner provided under these Rules. In a challenge to a final award under the Delaware Rapid Arbitration Act, this Court may make all determinations regarding the security.

(i) *Type of security.* —Security for a stay or injunction pending appeal shall be a supersedeas bond or other security. The trial court shall have the discretion to set a type of security other than a supersedeas bond, with the party seeking such other type of security having the burden to demonstrate the sufficiency of such other type of security.

(ii) *Amount of security.* —With regard to a judgment or a portion of a judgment for a sum of money, the security shall ordinarily equal

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

such sum of money and all costs and damages, including damages for delay. The trial court shall have the discretion to set the security at a lesser amount, with a party seeking the stay or injunction pending appeal having the burden to show that a lesser amount is sufficient in the circumstances.

(iii) *Form of security.* —In a civil case the security shall remain in full force and effect unless the principal obligor prosecutes the appeal to effect, according to law and the Rules of this Court, and pays any judgment for a sum of money and all costs and damages, including damages for delay, and otherwise abides the decree if the principal obligor fails to make the principal obligor's plea good. A supersedeas bond shall be substantially in the form prescribed in Official Form J.

(d) *Bond in a criminal case.* —In a criminal case, if this Court issues the certificate under 11 Del. C. Sec. 4502 in the first instance, the Court, in its discretion, may either determine the terms and conditions of release or remand the matter to the trial court for such determination. If the trial court issues the certificate under 11 Del. C. Sec. 4502, the amount of the bond and the surety, when fixed and approved by the trial court, shall be deemed to have been so fixed and approved by this Court. If either the defendant or the State seeks a change in the terms or conditions of release previously ordered by the trial court, the Court may, in its discretion, review and, if appropriate, modify the terms or conditions of release or, if additional evidence is required, remand, subject to review by this Court, the case to the trial court for the limited purpose of conducting such review and making such changes as may be appropriate. Pursuant to Rule 19(c), the trial court shall make and report its determination within 30 days of the remand, unless some other time is ordered by the Court.

The principal obligor shall be bound to appear when directed by this Court or the trial court, to prosecute the appeal to effect according to law and the Rules of this Court, to pay all costs and otherwise to abide the judgment on appeal and the final judgment in the trial court.

(i) *Justification by surety.* —Every surety shall justify by affidavit the property offered to secure the principal obligor's surety.

(ii) *Forfeiture.* —If there is a breach of condition of a bond, this Court or the trial court may declare a forfeiture of the bail.

(iii) *Setting aside.* —This Court or the trial court may direct that a forfeiture be set aside, upon such conditions as the Court may impose, if it appears that justice does not require enforcement of the forfeiture.

(iv) *Enforcement.* —When a forfeiture has not been set aside, the trial court shall on motion enter a judgment of default and execution may issue thereon. By entering into a bond, the obligors submit to the jurisdiction of the trial court and irrevocably appoint the clerk of that court as their agent upon whom any papers affecting their liability may be served. The liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail a copy to each obligor at the obligor's last known address.

(v) *Remission.* —After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in subparagraph (iii) of this paragraph.

(vi) *Exoneration.* —When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of defendant into custody.

Rule 33. Sanctions and discipline for performance deficiency.

(a) *Sanctions.* —Upon failure of a party or counsel to comply with any rule or order, the Court may enter an appropriate sanction against the offending party or counsel, or both, after notice and opportunity to be heard. Such sanction may include the award of reasonable attorneys' fees and the determination of an appeal against the offending party. Disciplinary action, including imposition of a fine, may be taken against any offending counsel. The term "counsel" shall be deemed to include counsel admitted pro hac vice.

(b) *Performance deficiency defined.* —The Court may also take disciplinary action against an attorney admitted to practice before it and those admitted pro hac vice for unprofessional conduct constituting performance deficiency, as hereafter defined, for which referral to the Board on Professional Responsibility may or may not also be warranted.

Performance deficiency shall be generally understood to mean unacceptable performance by an attorney which is not attributed to incompetency and which appears to be the result of inattention, neglect, lack of diligence or other conduct not becoming an officer of the Court.

Discipline for performance deficiency may be imposed for: (i) Persistent failure to abide by or comply with the rules, orders or other directives of the Court or its staff; (ii) submission of briefs, oral argument or other communications to the Court or its staff that are either lacking in candor or grossly below customary professional standards.

(c) *Disciplinary action for performance deficiency.* —Disciplinary action for performance deficiency may include one or more of the following sanctions against the offending attorney:

(i) *Costs.* —Imposition of costs, expenses and reasonable attorneys' fees;

(ii) *Fine.* —A fine in such amount as the Court determines;

(iii) *Disqualification.* —Disqualification from submitting papers and appearing before the Court for a period of up to 90 days;

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

(iv) *Reprimand*. —A private or public reprimand; or

(v) *Other sanction*. —Such other sanction as the Court deems appropriate including but not limited to referring the matter to the Office of Disciplinary Counsel.

In the event the Court shall conclude that performance deficiency discipline may be appropriate, the Clerk shall forward to the lawyer-respondent a notice directing the lawyer-respondent to show cause why the lawyer-respondent should not be subjected to performance deficiency discipline. The notice shall state with precision the particular performance relied upon and may include as an attachment a recitation of the infractions of the rule, order or other directive, the brief or briefs or other communications in question and/or a transcript of the oral argument in question. The notice shall direct the lawyer-respondent to respond within 10 days after receipt of the notice and to indicate in such response whether a hearing is requested. The lawyer-respondent's response shall attach a current and complete record of all the lawyer-respondent's prior disciplinary matters in Delaware or any other jurisdiction. The Court, upon the expiration of the time for a response, shall take such action as it deems appropriate; provided, however, that no action shall be taken without a hearing if one is requested in a response.

Rule 34. Nonconforming papers.

The Court may strike any brief, appendix, motion or other paper or document which does not conform to these Rules or which is not within the bounds of professional propriety.

Rule 35. Review and stay of death penalty.

(a) *Implementation of statutory review and stay provisions*. —The provisions of 11 Del. C. § 4209(f) and (g) relating to the method and imposition of a sentence of death and the automatic review thereof by this Court shall be implemented in accordance with this rule.

(b) *Procedure in trial court*. —Within 5 calendar days after the imposition of a sentence of death under 11 Del. C. § 4209(f), the sentencing judge shall notify in writing the Clerk of this Court of the imposition of such sentence and with such writing shall transmit a certified copy of the docket entries and the sentencing order in the Superior Court case.

(c) *Procedure in this Court*. —Upon receipt of the notice set forth in paragraph (b) of this rule, the Clerk of this Court shall forthwith:

(i) *Docket automatic appeal*. —Docket an automatic appeal from the death sentence, pursuant to 11 Del. C. § 4209(g), and notify the sentencing judge and counsel thereof; and

(ii) *Notify motion justice*. —Communicate the notification and the docketing to the motion justice; and

(iii) *Order trial record*. —Direct, in the name of this Court, the filing in this Court without delay of the record of the case in the Superior Court, including both the transcript of the trial and the transcript of the punishment hearing.

Upon receipt from the Clerk of the notice of the docketing of the automatic appeal of the death penalty under 11 Del. C. § 4209(g), the motion justice shall forthwith enter an order to stay of execution, effective until the completion of the judicial review of the automatic appeal and any other appeal taken in the case.

(d) *Responsibility of trial counsel*. —It shall be the responsibility of trial counsel for any defendant sentenced to death to see that an appeal of the underlying conviction is timely docketed so that such defendant's rights are fully protected and such counsel shall have fully complied with the Rules of this Court.

(e) *Stays in further proceedings*. —An application, either *pro se* or through counsel, by a defendant sentenced to death, for a stay of execution of sentence, following the issuance of the mandate of this Court, in any proceeding, including postconviction proceedings, may be granted by the Superior Court and shall be initially made to that Court, whose decision shall be reviewable by this Court.

PART IV. OTHER PROCEEDINGS

Rule 41. Certification of questions of law.

(a) *Who may certify*. —

(i) *Delaware courts*. —Other Delaware courts may, on motion or *sua sponte*, certify to this Court for decision a question or questions of law arising in any case before it prior to the entry of final judgment if there is an important and urgent reason for an immediate determination of such question or questions by this Court and the certifying court has not decided the question or questions in the case.

(ii) *Other entities*. —The Supreme Court of the United States, a Court of Appeals of the United States, a United States District Court, a United States Bankruptcy Court, the United States Securities and Exchange Commission, the Highest Appellate Court of any other State, the Highest Appellate Court of any foreign country, or any foreign governmental agency regulating the public issuance or trading of securities may, on motion or *sua sponte*, certify to this Court for decision a question or questions of law arising in any matter before it prior to the entry of final judgment or decision if there is an important and urgent reason for an immediate determination of such question or questions by this Court and the certifying court or entity has not decided the question or questions in the matter.

(b) *Requirements for accepting a certification*. —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 this Court of the questions certified. A certification will not

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

be accepted if facts material to the issue certified are in dispute. A certificate shall state with particularity the important and urgent reasons for an immediate determination by this Court of the question certified. Without limiting the Court's discretion to hear proceedings on certification, the following illustrate reasons for accepting certification:

- (i) *Original question of law.* —The question of law is of first instance in this State;
 - (ii) *Conflicting decisions.* —The decisions of the trial courts are conflicting upon the question of law;
 - (iii) *Unsettled question.* —The question of law relates to the constitutionality, construction or application of a statute of this State which has not been, but should be, settled by the Court.
- (c) *Procedure for certification.* —The procedure for certification shall be as follows:
- (i) *Certification by trial court.* —A judge of the certifying court shall sign and file with the clerk of that court a certification substantially in the form set forth in Official Form K;
 - (ii) *Filing by trial court.* —The clerk of that court shall, within 5 days of the filing of such certification, file with the Clerk of this Court 6 certified copies of the certification and 6 true and correct copies of such of the following papers as may have been filed below:
 - (A) *Petition.* —Any Petition for Certification;
 - (B) *Response.* —Any response to the Petition for Certification; and
 - (C) *Stipulation of facts.* —Any stipulation of facts with respect to the Certification;
 - (iii) *Clerk of the Supreme Court.* —Upon the receipt of such copies, the Clerk of this Court shall forthwith docket the proceeding on certification in the same manner as other cases are docketed, shall deliver to each of the Justices 1 copy of the certification and any accompanying papers and shall send written notice to the parties of the filing of such proceeding;
 - (iv) *Action upon certification.* —After docketing and unless otherwise ordered, this Court shall thereupon and without further argument determine whether to accept or refuse the certification. If refused, a certified copy of the order shall be sent to the certifying court and a copy thereof sent to each counsel. If accepted, the proceeding on certification shall be considered to have been duly instituted, and the Clerk shall send written notice thereof to the parties. The certification as filed shall constitute the record;
 - (v) *Procedure upon acceptance.* —From the date of acceptance of certification further proceedings shall be governed by these Rules. Briefs shall be filed in the order recommended by the certifying court in the certification, unless the Court, at the time of approving the certification, shall designate a different order. In any event, insofar as time for filing is concerned, the party or parties required to file the first brief shall be considered the appellant and the other party or parties shall be considered appellee. The caption for papers filed in this Court after acceptance of certification by this Court shall reflect such relationship among the parties.

Rule 42. Interlocutory appeals.

- (a) *Exercise of jurisdiction.* —The Court's jurisdiction to hear and determine appeals in civil cases from interlocutory orders of a trial court, including a trial court acting as an intermediate appellate court in the review of a ruling, decision or order of a court or an administrative agency, shall be exercised in accordance with this rule as to certification and acceptance of interlocutory appeals. All time periods under this rule should be calculated under Supreme Court Rule 11.
- (b) *Criteria to be applied in determining certification and acceptance of interlocutory appeals.* —
- (i) No interlocutory appeal will be certified by the trial court or accepted by this Court unless the order of the trial court decides a substantial issue of material importance that merits appellate review before a final judgment.
 - (ii) Interlocutory appeals should be exceptional, not routine, because they disrupt the normal procession of litigation, cause delay, and can threaten to exhaust scarce party and judicial resources. Therefore, parties should only ask for the right to seek interlocutory review if they believe in good faith that there are substantial benefits that will outweigh the certain costs that accompany an interlocutory appeal.
 - (iii) Any application for interlocutory review shall contain a statement that the applicant and the applicant's counsel have determined in good faith that the application meets the criteria set forth in this paragraph. Consistent with the principles set forth in subparagraph (ii) of this paragraph, in deciding whether to certify an interlocutory appeal, the trial court should consider whether:
 - (A) The interlocutory order involves a question of law resolved for the first time in this State;
 - (B) The decisions of the trial courts are conflicting upon the question of law;
 - (C) The question of law relates to the constitutionality, construction, or application of a statute of this State, which has not been, but should be, settled by this Court in advance of an appeal from a final order;
 - (D) The interlocutory order has sustained the controverted jurisdiction of the trial court;
 - (E) The interlocutory order has reversed or set aside a prior decision of the trial court, a jury, or an administrative agency from which an appeal was taken to the trial court which had decided a significant issue and a review of the interlocutory order may terminate the litigation, substantially reduce further litigation, or otherwise serve considerations of justice;

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

- (F) The interlocutory order has vacated or opened a judgment of the trial court;
- (G) Review of the interlocutory order may terminate the litigation; or
- (H) Review of the interlocutory order may serve considerations of justice.

After considering these factors and its own assessment of the most efficient and just schedule to resolve the case, the trial court should identify whether and why the likely benefits of interlocutory review outweigh the probable costs, such that interlocutory review is in the interests of justice. If the balance is uncertain, the trial court should refuse to certify the interlocutory appeal.

(c) *Procedure for certification of interlocutory appeals in the trial court.* —An application for certification of an interlocutory appeal shall be made in the first instance to the trial court in accordance with the following procedures:

- (i) *Application.* —Such application shall be served and filed within 10 days of the entry of the order from which the appeal is sought or such longer time as the trial court, in its discretion, may order for good cause shown.
- (ii) *Response.* —An opposing party shall have 10 days (or such shorter time as the trial court shall in its discretion order, upon notice for good cause shown or upon the trial court's order *sua sponte*) after such service within which to serve and file a written response or, if the trial court so directs, present an oral response in lieu of a written response;
- (iii) *Action by trial court.* —Within 10 days after filing of the response or, if there is none, within 20 days after filing the application, the trial court shall enter an order certifying or refusing to certify the interlocutory appeal;
- (iv) *Form of order.* —Such order shall be substantially in the form set forth in Official Form L, setting forth the basis for the certification and indicating which of the criteria set forth in paragraph (b) of this rule is applicable;
- (v) *Service on trial court.* —A copy of the application and response referred to in subparagraphs (i) and (ii) of this paragraph shall, concurrently with service and filing, be delivered by the party serving and filing it to the judge of the trial court whose order is sought to be reviewed.

(d) *Procedure for acceptance of interlocutory appeals in the Supreme Court.* —No interlocutory order shall be reviewed by this Court unless the appeal therefrom has been accepted by this Court in accordance with the following procedure:

- (i) *Time to file.* —The notice of appeal may be filed at any time after the filing of the application for certification in the trial court, except that it shall be the obligation of appellant to serve and file in this Court a notice of appeal of an interlocutory order within 30 days after the entry of the order from which the appeal is sought to be taken;
- (ii) *Form of filing.* —The notice of appeal and any cross-appeal shall comply with this rule, Rules 6 and 7 of this Court and with such version of Official Form M as shall be applicable to the situation;
- (iii) *Supplemental notice.* —If the notice of appeal is filed before action has been taken by the trial court on the application for certification, appellant shall file a supplementary notice of appeal within 10 days after the expiration of the time periods set forth in paragraph (c) of this rule.

(iv) *Contents of notice.* —The notice of appeal and the supplementary notice of appeal, if any, shall include a true and correct copy of such of the following papers as shall have been filed below except that the supplementary notice of appeal shall not contain any papers previously attached to the notice of appeal:

- (A) *Application.* —The application for certification and attachments thereto; the Court discourages unnecessary attachments to the application for certification;
- (B) *Order on review.* —The interlocutory order from which the appeal is sought to be taken together with any opinion of the trial court with respect thereto;
- (C) *Response.* —The written response, if any, to the application for certification, or the transcript, if and when available, of an oral response in lieu of a written response;
- (D) *Action by trial court.* —The order, if any, of the trial court certifying or refusing to certify the interlocutory appeal and any opinion with respect thereto; and
- (E) *No action by trial court.* —If no order has been entered by the trial court on the application for certification within 30 days of the entry of the interlocutory order, a separate certificate of appellant's counsel so stating shall be attached.
- (v) *Action by this Court.* —Unless otherwise ordered, this Court shall thereupon and without further argument determine in its discretion whether to accept or refuse the interlocutory appeal. In exercising that discretion, this Court may consider all relevant factors, including the decision of the trial court whether to certify the interlocutory appeal and the factors set forth in paragraph (b) of this rule.
- (vi) *Proceedings after acceptance.* —From the date of the acceptance of the interlocutory appeal, further proceedings shall be governed by these Rules, except:

- (A) *Trial record not transmitted.* —The record shall not, in the first instance, be transmitted to the Clerk of this Court. Instead, the respective appendices of the parties, or a joint appendix if one is agreed upon, shall contain such record materials as each party

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

believes relevant to the determination of the issue on appeal. The Court may, at its option, thereafter direct the clerk of the trial court to transmit all of the record, or such portions as the Court deems relevant to consideration of the interlocutory appeal.

(B) *Brief schedule.* —The time schedule for the filing of the briefs and appendices, under Rule 15, shall commence upon the third day following the acceptance of the interlocutory appeal, if no transcript is ordered. In the event a transcript is designated to be prepared under Rule 9(e), the brief schedule shall commence upon this Court's receipt of the court reporter's final transcript log entry.

(C) *Preparation of transcript.* —The time schedule for the preparation and filing of the transcript, if designated under Rule 9(e), shall commence upon the third day following the acceptance of the interlocutory appeal.

(vii) *Proceedings after refusal.* —If the appeal is refused, a certified copy of the order shall be sent to the trial court and a copy thereof to each counsel.

(e) *Continuation of other proceedings in the trial court.* —The pendency of proceedings under this rule shall not operate as an automatic stay. Applications for stays shall be processed in the same manner as stays pending appeal under Rule 32.

(f) *Failure to seek or obtain review of interlocutory order.* —The failure to seek review of or the refusal of the Court to accept an appeal from an interlocutory order under this rule shall not bar a party from seeking review of such interlocutory order on appeal from the final order, judgment or decree.

Rule 43. Extraordinary writs.

(a) *Scope of rule.* —This rule governs the exercise of the Court's original jurisdiction over proceedings involving writs of certiorari, mandamus, prohibition, *quo warranto* or other extraordinary writs.

(b) *Procedure.* —

(i) *Commencement and contents.* —A proceeding involving an extraordinary writ shall be commenced by serving all other parties to the proceeding below and by filing with the Clerk of the Court 6 copies of a complaint substantially in the form prescribed by Official Form N. If the complaint relates to a current proceeding in a trial court, the Clerk of the Court shall forthwith forward a duplicate of the complaint to the clerk of such court for filing therein. All other parties to the action in the trial court shall be deemed respondents, notwithstanding the fact that the relief sought is not specifically directed to them. If the complaint is directed to a trial judge, or to a court as an entity, the caption of the complaint shall not bear the name of the judge or court. In the body of the complaint the name of the judge or court shall be set forth with particularity. The complaint shall be captioned only in the name of complainant.

(ii) *Answer requested.* —An answer is requested to be filed within 20 days of the filing of the complaint with the Court. The answer may include any affirmative defense or grounds for dismissal or denial of the complaint, and unless the Court otherwise directs, no further submissions of the parties shall be accepted. If the complaint is directed against a judge who does not desire to appear or participate in the proceeding, the judge may so advise the Clerk by letter. The Clerk shall notify all other parties to the proceeding. The complaint shall not be taken as admitted whether or not such a letter is submitted.

(iii) *Brief schedule.* —In the event that the Court requires briefing on the matter, it shall so notify the parties and the matter shall be briefed in accordance with the rules applicable to appeals. The opening brief of complainant shall be due within 30 days after service of the answer, unless the answer includes an affirmative defense or grounds to dismiss or deny the complaint, in which event the opening brief shall be due within 30 days after the Court has determined that the complaint shall not be dismissed. In all other respects, the matter shall be briefed in accordance with the rules applicable to appeals.

(iv) *Stay not automatic.* —The filing of a complaint for an extraordinary writ shall not operate as an automatic stay. Applications for stays shall be processed in the same manner as stays pending appeals under Rule 32.

(v) *Fact finding hearing.* —The Court may order an issue of fact to be tried before a special master or order testimony to be taken by a commissioner at such time and place and in such manner as the Court shall direct.

(vi) *Superior court action required.* —A complaint shall not be filed under this rule for a writ to be issued to the Court of Common Pleas, a Justice of the Peace Court, or the Municipal Court of the City of Wilmington or to a judge thereof, unless a petition for such writ shall have been first presented to and denied by the Superior Court. When a writ is sought under this rule following such denial, a copy of the opinion, if any, shall be served and filed with the complaint.

(vii) *No further submissions.* —Upon receipt of the writ, no further submissions by the petitioner will be accepted without leave of the Court.

Rule 44. Advisory opinions upon request from the Governor or from the General Assembly.

(a) *Request for an opinion.* —A request from the Governor or from the General Assembly shall be regarded as confidential for a period of 5 days after receipt thereof, or until the request becomes public information, whichever first occurs.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

(b) *Briefing and oral argument.* —The request shall be docketed with the Clerk of the Court and, after designation of counsel, shall be processed through briefing and argument in the same manner as an appeal or as an original proceeding in the Supreme Court. Correspondence between the Governor, or the Speaker of the House and the President Pro Tempore of the Senate, as the case may be, and the Justices about the request shall be included in the docket which is public information.

(c) *Delivery and publication.* —After the opinions are prepared, they shall be hand-delivered to the Governor or to the Speaker of the House and the President Pro Tempore of the Senate, as the case may be, and shall be regarded as confidential for a period of 5 days thereafter, or until the Governor or the Speaker of the House and the President Pro Tempore of the Senate, as the case may be, has released them, whichever first occurs.

PART V. ATTORNEYS

SUBPART A. BOARD OF BAR EXAMINERS.

Rule 51. Board of Bar Examiners.

(a) *Appointment and term of office.* —The Court shall appoint a Board of Bar Examiners (the “Board”) consisting of such number of members of the Bar as the Court shall determine. Each of the counties shall be represented on the Board. Each member of the Board shall be appointed for a term of 3 years, unless the Court shall order otherwise. No member shall be appointed to serve for more than 3 consecutive terms, unless otherwise ordered by the Court. At the request of the Board, the Court may appoint as a temporary Board member (to perform such duties as shall be prescribed by the Board) any former Board member.

(b) *Duties.* —It shall be the duty of the Board to administer Rules 51 through 55. The Board shall examine applicants for admission to the Bar upon principles of law and equity at least once a year. The Court shall select a Chair and a Vice Chair. The Court may also appoint a Secretary and an Assistant Secretary who, if appointed, may be members of the Board. The duties of the Secretary and Assistant Secretary shall be prescribed by the Board. The Court may also appoint an Executive Director who shall not be a member of the Board.

(c) *Powers.* —The Board shall have the power:

(1) *Internal operating rules.* —To adopt rules of procedure for the conduct of its duties;

(2) *Bar admission rules.* —Subject to the approval of the Court, to adopt general rules, in furtherance of and supplemental to the Rules of the Court, relating to the admission to the Bar;

(3) *Subpoenas.* —In connection with the performance of its duties, to take testimony under oath and to compel the attendance of witnesses and the production of documents by the filing of a praecipe for a subpoena with the Clerk of the Supreme Court, service of such subpoena to be made in a manner prescribed by the Clerk;

(4) *Fees.* —To require the payment by each applicant for admission to the Bar, prior to or after examination, of reasonable fees relating to the application process, the administration of the Bar Examination and the admission process, including without limitation expenses incurred in connection with the character investigation set forth in subparagraph (6);

(5) *Stenographers.* —To employ such stenographic or other assistance as may from time to time be necessary or proper; and

(6) *Character investigation.* —To conduct such investigation of an applicant for admission to the Bar prior to or after the Bar Examination as shall be necessary to determine the fitness of such applicant and the applicant’s compliance with the Rules of the Court and the Rules of the Board, and to charge any such applicant for expenses incurred in connection with such investigation in addition to the fees generally applicable to all applicants.

(d) *Associate members.* —The Court may appoint associate members of the Board to assist each member of the Board. Each associate member shall have been a member of the Bar for at least 5 years. Each associate member shall be appointed for a term of 1 year and shall have such duties and functions as shall be prescribed by the Board. Associate members of the Board shall not have the power to vote upon any determination or decision of the Board.

(e) *Members-Elect.* —The Court may appoint up to 2 Members-Elect per year to assist in the function and operation of the Board. Each Member-Elect shall be appointed for a term of 1 year and shall have such duties and functions as shall be prescribed by the Board. Members-Elect shall not have the power to vote upon any determination or decision of the Board.

Rule 52. Admission to the Bar — General.

(a) *Requirements for admission.* —No person shall be admitted to the Bar unless the applicant shall have qualified by producing evidence satisfactory to the Board:

(1) *Character and aptitude.* —That the applicant is a person of good moral character and reputation and that the applicant possesses such qualities, aptitudes and disposition as fit the applicant for the practice of law.

(2) *Preceptor.* —That the applicant is vouched for by a member of the Bar of this State who shall have been a member of the Bar of this State for at least 10 years, and such person shall be designated as the Preceptor for such applicant.

(3) *Age.* —That the applicant is at least 21 years of age.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

(4) *College or university.* —That the applicant has completed the pre-legal education necessary to meet the minimum requirements for admission to a law school that at the time of graduation was listed on the American Bar Association list of approved law schools. In the event that the applicant was admitted to such a law school without having first received a baccalaureate degree or its equivalent from an accredited college or university (the method of such accreditation to be determined by the Board), the applicant shall supply to the Board a copy of the law school's statement of considerations in the applicant's file or other supporting statement from the law school, satisfactory to the Board, setting forth the basis for the law school's decision to admit notwithstanding the absence of such a degree.

(5) *Law school.* —That the applicant has been regularly graduated with a juris doctor degree or its equivalent from a law school which at the time of conferring such degree was listed on the American Bar Association list of approved law schools.

(6) *Multistate Professional Responsibility Examination.* —That the applicant has taken the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners at such time as the Board shall determine and has achieved such score as the Board shall determine to be necessary for admission.

(7) *Bar Examination.* —That the applicant has been examined upon principles of law and equity and has been found by the Board based upon the applicant's performance on such examinations to be qualified to practice as an attorney.

(8) *Clerkship.* —That, as shall be certified by both the applicant and the applicant's Preceptor, the applicant has served a clerkship in the State of Delaware under the direct and constant supervision of a member of the Bar of this State qualified as set forth in subparagraphs (i)-(iii) aggregating substantially full-time service for at least 5 months' duration, which period need not be continuous but which may not begin prior to matriculation at a law school described in subparagraph (5) of paragraph (a) of this Rule 52. For purposes of this Rule 52(a)(8), 5 months is 21 forty-hour work weeks.

(i) *Law office/legal department.* —In the office of or under the direct and constant supervision of the applicant's Preceptor, or under the direct and constant supervision of such other member of the Bar of this State who is satisfactory to the applicant's Preceptor and who has been a member of the Bar of this State for at least 5 years;

(ii) *Law clerk.* —As a law clerk of a justice or judge of the courts of this State or of a United States judge residing in Delaware; or

(iii) *Public office.* —In the office of the Department of Justice of the State of Delaware, the office of the Public Defender of the State of Delaware, the office of the United States Attorney for the District of Delaware, the office of the City Solicitor of the City of Wilmington, the office of Community Legal Aid Society, Inc., the office of Delaware Volunteer Legal Services, Inc. or in the office of a related or similar organization approved by the Board upon the request of an applicant, under the direct and constant supervision of a member of the Bar of this State who has been a member of the Bar of this State for at least 5 years.

(9) *Checklist of legal activities.* —That the applicant has performed such legal tasks and activities related to the practice of law in Delaware as the Board shall direct and furnish in the form of a checklist to all applicants for admission, with the completion of such tasks and activities to be certified by both the applicant and the applicant's Preceptor.

(10) *Pre-admission program.* —That the applicant has satisfactorily attended a pre-admission session of instruction called by the Court or by the Board upon such subjects as the Court or the Board shall from time to time determine to be appropriate instruction for those seeking admission to the Bar, and has paid a fee established by the Court or the Board to the Clerk of the Supreme Court.

(11) *Other requirements.* —That the applicant has complied with such other requirements as the Board may prescribe from time to time, with the approval of the Court.

(12) *Military service exception.* —In the event that an applicant satisfies all of the requirements for admission to the Bar except completion of the clerkship and/or attendance at the pre-admission program, and the applicant made a good faith effort to complete those requirements but was unable to do so because he or she was called to active duty in any of the armed services of the United States after taking the Bar Examination, then, in the discretion of the Court, the applicant shall be qualified to be admitted to the Bar conditionally. Upon taking the oath, the applicant would then become a member of the Bar for all purposes, subject to the following: (i) if the applicant completes the clerkship requirement within six months after release from active duty and attends the next pre-admission program called by the Court or the Board, his or her admission to the Bar will be made unconditional; (ii) if the applicant fails to complete those requirements, the applicant's conditional admission to the Bar may be revoked by the Court and the Court may order such other sanctions as may be warranted in the circumstances.

(aa) *Proof of qualifications.* The applicant bears the burden of proof to establish by clear and convincing evidence that the applicant has met all of the qualifications set forth in paragraph (a) of this Rule. Refusal of an applicant to furnish available information or to answer questions relating to the applicant's qualifications shall be deemed a sufficient basis for denial of admission.

(b) *Application for admission to the Bar.* —A person seeking admission to the Bar shall complete and file an application for admission to the Bar at such time prior to the administration of the Bar Examination as the Board shall determine. The Board may deny an applicant permission to take the Bar Examination if the applicant has failed to comply with the instructions of the Board regarding the application process.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

(c) *Deadline for completion of requirements for admission.* —An applicant for admission to the Bar must have satisfied the requirements for admission and be admitted by December 31 of the calendar year following the year in which the applicant passes the Bar Examination. Except for good cause shown to the Board, an applicant who fails to satisfy the requirements for admission to the Bar within the time prescribed shall not be admitted without retaking the Bar Examination.

(d) *Certification.* —Upon approval of the qualifications of any applicant for admission to the Bar, the Board shall execute and deliver to the applicant a certificate of the applicant's qualifications for admission to the Bar.

(e) *Appeals from actions of the Board.* —Any person aggrieved by final action of the Board may appeal to the Court for relief if such action affects the substantial rights of the person claimed to be aggrieved, except that decisions of the Board with respect to a specific grade or grades assigned to any individual applicant are final and shall not be subject to review by the Court. The appeal shall be commenced by serving 2 copies thereof upon the Chair and the Executive Director of the Board and by filing the original and 1 copy with the Clerk of the Court in compliance with Rule 7, such service and filing to be accomplished within 30 days of the action of the Board. No appeal shall be accepted unless the provisions of this paragraph have been timely fulfilled. Appeals from the Board's action to the Court shall be briefed in accordance with Rule 15, argued and determined from the record of the matter before the Board of Bar Examiners and not by means of a hearing de novo. Findings by the Board relating to disputed issues of fact and credibility will not be reversed by the Court if such findings are sufficiently supported by the record and are the product of an orderly and logical deductive process.

Rule 53. Admission to the Bar — Attorneys admitted elsewhere.

Repealed effective Feb. 21, 1984.

Rule 54. Admission in open court; oath.

Application for admission to the Bar shall be made in open court at any session of the Court or in the chambers of any Justice of the Court. Upon the admission of any person, the name of such person shall be forwarded by the Clerk of the Court to the Prothonotary and to the Register in Chancery in each of the counties of this State to be properly recorded by them. Every attorney shall, on the attorney's admission, subscribe to the roll of attorneys and take and subscribe the following oath or affirmation:

"I _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Delaware; that I will behave myself in the office of an Attorney within the Courts according to the best of my learning and ability and with all good fidelity as well to the Court as to the client; that I will use no falsehood nor delay any person's cause through lucre or malice."

Rule 55. Limited permission to practice in certain public programs.

(a) *Limited permission to practice.* —Attorneys admitted to practice in other jurisdictions or graduates of law schools described by Rule 52(a)(5) who are employed by or associated with Delaware Volunteer Legal Services, Community Legal Aid Society, Inc., Legal Services Corporation of Delaware, Inc., the Department of Justice of the State of Delaware, the Office of the City Solicitor of the City of Wilmington, the Office of the Public Defender, Office of the Child Advocate of the State of Delaware, the New Castle County Office of Law, the Non-profit Pro Bono Committee of the Delaware State Bar Association, the United States District Court for the District of Delaware's Federal Civil Panel, or attorneys who are admitted to practice in other jurisdictions and are associated with a legal assistance program approved or recognized by the Board, may, in the discretion of the Board, be permitted to practice in the courts and administrative tribunals of this State in matters involving such office or the clients of such program. The requirements, qualifications and procedures for such permission shall be set forth in the Rules of the Board.

(b) *Application and oath.* —Application for permission to practice before the courts and administrative tribunals of this State under paragraph (a) of this Rule shall be made in open court at any session of the Court or in the chambers of any Justice of the Court. Each applicant shall, on being granted such permission, take and subscribe the following oath or affirmation:

"I _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Delaware and that I shall conduct myself strictly in accordance with all the terms and conditions of the Rules of the Delaware Supreme Court and the Rules of the Board of Bar Examiners; that I will behave myself within the Courts and administrative tribunals according to the best of my learning and ability and with all good fidelity as well to the Court as to the client; that I will use no falsehood nor delay any person's cause through lucre or malice."

(c) Limited permission is not admission to the Bar. —Applicants who are granted limited permission to practice under this Rule shall not be deemed to have been duly admitted to the practice of law before the Court.

Rule 55.1. Limited permission to practice of in-house counsel.

(a) A lawyer admitted to the practice of law in a jurisdiction other than this state, of the United States, may apply for a Delaware Certificate of Limited Practice, which will allow the lawyer to practice law as in-house counsel in this state. In-house counsel who is eligible for this certificate must be employed in the state as a lawyer working exclusively for a for-profit or a non-profit corporation, association, or other organizational entity, which can include its subsidiaries and affiliates, the business of which is lawful and is other

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

than the practice of law or the provision of legal services (hereinafter termed "Employer"). Such lawyers may make no court appearances or engage in other activities for which Supreme Court Rules 71 and 72 pro hac vice admission is required except as permitted by Supreme Court Rule 57. The Delaware Certificate of Limited Practice does not authorize the provision of legal services to the Employer's officers or employees in their personal capacities.

- (1) Lawyers admitted to practice in a jurisdiction outside of the United States may apply individually to the Supreme Court for a Delaware Certificate of Limited Practice, pursuant to the provisions of this Rule.
 - (2) In-house counsel currently practicing law on behalf of an Employer in this state, but without a certificate, will be granted a period of one (1) year from the effective date of this Rule to file for a practice certificate without penalty, so long as all other requirements of this Rule are met. Current in-house lawyers who have been inactive members of another bar for five (5) years or more, and are not otherwise active members of any other bar, may continue in that status but must comply with all provisions and obligations of this Rule and with the continuing legal education requirements of an active member of the Delaware Bar.
- (b) An applicant for a Delaware Limited Practice Certificate shall:
- (1) File under oath the Supreme Court's form application for a Delaware Limited Practice Certificate.
 - (2) Furnish a certificate signed by the licensing authority in each jurisdiction in which the applicant is admitted to practice law, stating that the applicant is licensed to practice law and is, with the exception provided in section (a)(2) above, an active member in good standing at the bar of at least one of those jurisdictions.
 - (3) File affidavit on a form furnished by the Supreme Court, from an officer, principal, or partner of the applicant's. Employer who attests:
 - (A) that the applicant is employed as a lawyer to provide legal services exclusively to the Employer, which can include its subsidiaries and affiliates and, with the exception provided in section (a)(2) above, certifies that the applicant will remain an active member in good standing of another state or national bar during the entire course of his or her employment.
 - (B) that the nature of the applicant's employment conforms to the requirements of this Rule; and
 - (C) that the Employer shall notify the Supreme Court immediately upon the termination of the applicant's employment.
 - (4) Certify that the applicant has read and is familiar with the Delaware Lawyers' Rules of Professional Conduct.
 - (5) Pay an application fee in the amount of \$100 dollars.
- (c) During the period in which an application for a Delaware Certificate of Limited Practice is pending with the Supreme Court, the applicant may be employed in the state as an in-house counsel on a provisional basis by an Employer whose affidavit is filed pursuant to section (b)(3) above.
- (d) Upon finding that the applicant has complied with the requirements of section (b) above, the Supreme Court shall notify the applicant that he or she is eligible to be issued a Delaware Certificate of Limited Practice. Each applicant shall take and subscribe to the following oath or affirmation:

I _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Delaware; and that I shall conduct myself strictly in accordance with all the terms and conditions of the Rules of the Delaware Supreme Court, in particular Rule 55.1; that I will behave myself in the office of an In-House Counsel according to the best of my learning and ability and with all good fidelity as well to the Court as to the client; that I will use no falsehood nor delay any person's cause through lucre or malice.

After the applicant has taken and subscribed to the foregoing oath or affirmation, the applicant shall be issued a certificate entitling the applicant to practice law in the state as provided in this Rule.

- (e) The privileges and responsibilities of practice by in-house counsel operating under a valid certificate in this state shall include all privileges and responsibilities otherwise applicable to other Members of the Delaware Bar. Accordingly, lawyers registered under this Rule shall be deemed to be practicing law in Delaware limited to the provisions of Rule 55.1 and are thus subject to:
- (1) all rules governing the practice of law in Delaware. Jurisdiction of the Supreme Court shall continue whether or not the lawyer retains the Delaware Certificate of Limited Practice and irrespective of the lawyer's continued presence in the state; and
 - (2) the fulfillment of Supreme Court's requirements for continuing legal education, if applicable in accordance with section (a)(2) above, or the requirements of the other state or states or jurisdictions in which the in-house or federal agency lawyer is admitted to practice law.
- (f) Each person issued a Delaware Certificate of Limited Practice shall promptly report to the Supreme Court any change in employment, any change in bar membership status in any jurisdiction of the United States where the applicant has been admitted to the practice of law, or the imposition of any disciplinary sanction in such jurisdiction by any federal court, state court or agency before which the applicant has been admitted to practice, or in any state in which the attorney has rendered legal services while temporarily authorized under Rule 5.5. This provision shall apply also to any certificated lawyer admitted to practice in a jurisdiction outside of the United States.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

(g) While the practice of a lawyer registered under this Rule is limited to practice for the Employer furnishing the affidavit required by this Rule, a lawyer registered under this Rule may participate in the provision of any and all legal services pro bono publico in Delaware offered under the auspices of organized legal aid societies or state/local bar association projects, or provided under the supervision of a Member of the Delaware Bar who is also working on the pro bono representation.

(h) If there is a change in circumstances and:

(1) An attorney admitted pursuant to this Rule becomes ineligible for limited practice, in accordance with its provisions, both the attorney and the attorney's employer shall immediately provide written notification to the Clerk of the Delaware Supreme Court of that change in circumstance.

(2) An attorney admitted pursuant to Rule 55.1 and who has become employed by a different employer, but continues to meet all of the requirements of Supreme Court Rule 55.1 may seek to transfer the attorney's certificate to the new employer. Both the attorney and the attorney's new employer shall immediately provide notification to the Clerk of the Delaware Supreme Court of that change in circumstance and file a new employer affidavit, no less than 30 days from the date of the change in circumstance.

(i) The applicant's authority to practice law as granted under this Rule shall be automatically suspended when:

(1) employment by the Employer furnishing the affidavit required by this Rule is terminated, except, those attorneys applying for a certificate transfer under Rule 55.1(b)(2);

(2) the lawyer fails to comply with any provision of this Rule; or

(3) when the lawyer is suspended or disbarred for disciplinary reasons in any jurisdiction of the United States or by any federal court or agency or by any foreign nation before which the lawyer has been admitted to practice.

Any lawyer whose authority to practice is suspended under sections (i)(2) or (i)(3) above may be considered for reinstatement in accordance with Rule 22 of the Delaware Lawyers' Rules of Disciplinary procedure.

(j) The Supreme Court may adopt such additional regulations as needed to implement the requirements of this Rule.

(k) After the effective date of this Rule, any attorneys newly hired as an in-house counsel by an eligible organization must be admitted pursuant to this Rule within 90 days from the date of employment to comply with its provisions.

Rule 55.1. Form 1. Application.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

APPLICATION FOR A CERTIFICATE OF LIMITED PRACTICE

I, [Full Name] do hereby apply to the Supreme Court of the State of Delaware for a Certificate of Limited Practice in accordance with Supreme Court Rule 55.1.

I certify that I am employed exclusively as legal counsel for the [Full Name of Company or Business Entity] whose business is other than the practice of law or the provision of legal services.

I certify that I am a member in good standing of the following bars: [List all bar memberships and membership identification numbers, if any], and that I am an active member in good standing of the Bar of the State/Country of [List State/Country/Jurisdiction].

I certify that I have read, and am familiar with, the Delaware Lawyers' Rules of Professional Conduct.

Dated: _____

APPLICANT

Sworn to and subscribed

Before me this

Day of _____, 20

Notary Public

Rule 55.1. Form 2. Certification of Membership by State Bar Licensing Authority.

[This is a suggested format, anything comparable will be accepted.]

PRINTED LETTERHEAD STATE BAR LICENSING AUTHORITY

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

To Whom It May Concern:

[Full Name of Applicant] is an active/inactive member in good standing of the [Bar/Law Society] of the [State/Commonwealth/Territory/Jurisdiction/Country] of [Name of Jurisdiction]. His year of admission was []. His/Her Bar Identification Number is [].

Very truly yours,

[Signature]

[Printed Name and Address of Clerk or Licensing Authority Recorder]

Rule 55.1. Form 3. Report of Change of Status.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

REPORT OF CHANGE OF STATUS UNDER RULE 55.1

Registrant holding a Delaware Certificate of Limited Practice hereby gives notice to the Court that

[His/Her employment with _____, whose address is _____ and whose telephone number is _____, has ended effective as of [Date].]

[His/Her active membership in the Bar of [Jurisdiction] has changed to inactive/emeritus/senior status effective as of [Date]]

[He/She is the subject of disciplinary measures imposed by the Bar of [Jurisdiction] effective as of [Date]. The nature of these disciplinary measures is as follows: [Describe the matter and the sanction imposed].]

Registrant is aware and acknowledges that his/her Certificate of Limited Practice granted by this Court on [Date] is hereby revoked and ended as of the date hereinabove written.

Signature of Registrant

Dated: _____

Printed Name of Registrant

Delaware Bar Identification Number

[Address]

[Telephone Number]

[Electronic Mail Address]

Rule 55.1. Form 4. Employer Affidavit.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RULE 55.1 EMPLOYER AFFIDAVIT

STATE OF _____:

COUNTY OF: _____:

BE IT REMEMBERED, that on this _____ day of _____, A.D., 20, personally appeared before me, [FULL NAME OF CORPORATE OFFICER], who being duly sworn according to law, did depose and say:

1. I am the [TITLE OF CORPORATE OFFICER] of the [FULL NAME OF COMPANY], a corporation organized and existing under the laws of the State of [JURISDICTION], having its principal place of business in Delaware at [DELAWARE ADDRESS OF COMPANY].
2. I certify that [NAME OF APPLICANT], hereinafter Applicant, is employed as a lawyer by [NAME OF COMPANY] and that the nature of the Applicant's employment conforms to the requirements of Rule 55.1.
3. I certify that Applicant works exclusively for [NAME OF COMPANY] or one or more of its subsidiaries or affiliates whose business is other than the practice of law or the provision of legal services.
4. I certify that Applicant will remain an active member in good standing of the [BAR/LAW SOCIETY] of the [STATE/Commonwealth/JURISDICTION] of [NAME] during the entire course of his/her employment.
5. I certify that I, or my successors, will notify the Supreme Court immediately if Applicant's employment is terminated, or if any conditions required by Rule 55.1 change.

signature of officer

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

Printed name of officer

Sworn to and subscribed
before me this day
of _____, 20

Notary Public

Rule 55.1. Form 5. Employer Report of Change of Status.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EMPLOYER REPORT OF CHANGE OF REGISTRANT STATUS UNDER RULE 55.1

Employer of Registrant holding a Delaware Certificate of Limited Practice hereby gives notice to the Court that [the employment of [REGISTRANT'S NAME AND DELAWARE BAR IDENTIFICATION NUMBER] has ended effective as of [Date].]
[the active membership of [REGISTRANT'S NAME AND DELAWARE BAR IDENTIFICATION NUMBER] in the Bar of [Jurisdiction] has changed to inactive/emeritus/senior status effective as of [Date]]
[it has been advised that [REGISTRANT'S NAME AND DELAWARE BAR IDENTIFICATION NUMBER] is the subject of disciplinary measures imposed by the Bar of [Jurisdiction] effective as of [Date].]

Signature of Corporate Officer

Dated: _____

Name and Title

[Address]

[Telephone Number]

[Electronic Mail Address]

Rule 55.2. Foreign Legal Consultants.

(a) A lawyer who is a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority, may apply for a Delaware Certificate of Limited Practice as a Foreign Legal Consultant.

(b) *Application.* An applicant for a Delaware Certificate of Limited Practice as a Foreign Legal Consultant shall file an application with the Delaware Board of Bar Examiners ("Board") on a form furnished by the Board and which shall include all of the following:

(1) A certificate from the professional body or public authority having final jurisdiction over professional discipline in the foreign country in which the applicant is admitted, certifying the applicant's admission to practice, date of admission, and good standing as a lawyer or counselor at law or the equivalent.

(2) A duly authenticated English translation of the certificate required by section (b)(1) above if it is not in English.

(3) Other evidence as the Supreme Court or the Board may require regarding the applicant's educational and professional qualifications and good moral character.

(4) A certification under oath that the applicant has read, is familiar with, and will abide by the Delaware Lawyers' Rules of Professional Conduct and all other rules and regulations applicable to licensed Foreign Legal Consultants in the State of Delaware.

(5) An application fee consisting of: (i) U.S. \$1,000 payable to the Board of Bar Examiners, and (ii) a copy of the receipt evidencing payment by the applicant to the National Conference of Bar Examiners ("NCBE") of the U.S. \$825 application fee (or such other amount set by the NCBE) to obtain a Character Report from the NCBE. In addition, the Board may impose on an applicant any additional reasonable fees relating to the application including without limitation expenses incurred in connection with the character investigation set forth in subparagraph (c) below.

(c) *Investigation and Recommendation of the Board; Applicant's Oath.* After the applicant has complied with the requirements of section (b) above, the Board shall conduct an investigation of the same type described in Supreme Court Rule 51(c)(6), after which the Board shall make a recommendation to the Supreme Court regarding the suitability of the applicant to receive a Delaware Certificate of Limited Practice as a Foreign Legal Consultant. If the application is approved by the Supreme Court, each applicant shall take and subscribe to the following oath or affirmation:

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

I _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Delaware; and that I shall conduct myself strictly in accordance with all the terms and conditions of the Rules of the Delaware Supreme Court, in particular Rule 55.2; that I will behave myself in the office of a Foreign Legal Consultant according to the best of my learning and ability and with all good fidelity as well to the Court as to the client; that I will use no falsehood nor delay any person's cause through lucre or malice.

After the applicant has taken and subscribed to the foregoing oath or affirmation, the applicant shall be issued a certificate entitling the applicant to practice law in the state as provided in this Rule.

(d) **Limitations on Scope of Activities.** A person licensed to practice as a foreign legal consultant under this Rule may render legal services in this jurisdiction with respect to the law of the foreign country or countries in which the foreign legal consultant is admitted to practice law, but shall not be considered admitted to practice law in this jurisdiction, or in any way hold himself out as a member of the bar of this jurisdiction, or do any of the following:

- (1) appear as a lawyer on behalf of another person in any court, or before any magistrate or other judicial officer, in this jurisdiction (except when admitted pro hac vice);
- (2) prepare any instrument effecting the transfer or registration of title to real estate located in the United States of America;
- (3) prepare:
 - (A) Any will or trust instrument effecting the disposition on death of any property located and owned by a resident of the United States of America, or
 - (B) Any instrument relating to the administration of a decedent's estate in the United States of America;
- (4) prepare any instrument in respect of the marital or parental relations, rights or duties of a resident of the United States of America, or the custody or care of the children of such a resident;
- (5) render professional legal advice on the law of this State, of any other jurisdiction in which he or she is not authorized to practice law or of the United States of America (whether rendered incident to the preparation of legal instruments or otherwise);
- (6) carry on a practice under, or utilize in connection with such practice, any name, title or designation other than one or more of the following:
 - (A) the foreign legal consultant's own name;
 - (B) the name of the law firm with which the foreign legal consultant is affiliated;
 - (C) the foreign legal consultant's authorized title in the foreign country of his or her admission to practice, which may be used in conjunction with the name of that country; and
 - (D) the title "foreign legal consultant," which may be used in conjunction with the words "admitted to the practice of law in [name of the foreign country of his or her admission to practice]."

(e) **Rights and Obligations.** Subject to the limitations listed in Section (d) of this Rule, a person licensed under this Rule shall be considered a foreign legal consultant affiliated with the bar of this jurisdiction and shall be entitled and subject to:

- (1) the rights and obligations set forth in the Delaware Lawyers' Rules of Professional Conduct or arising from the other conditions and requirements that apply to a member of the Delaware Bar under the Rules of the Supreme Court; and
- (2) the rights and obligations of a member of the bar of this jurisdiction with respect to:
 - (A) affiliation in the same law firm with one or more members of the bar of this jurisdiction, including by:
 - (i) employing one or more members of the bar of this jurisdiction;
 - (ii) being employed by one or more members of the bar of this jurisdiction or by any partnership or professional corporation that includes members of the bar of this jurisdiction or that maintains an office in this jurisdiction; and
 - (iii) being a partner in any partnership or shareholder in any professional corporation that includes members of the bar of this jurisdiction or that maintains an office in this jurisdiction; and
 - (B) attorney-client privilege, work product privilege and similar professional privileges.
 - (C) A person licensed to practice as a foreign legal consultant under this Rule shall be subject to professional discipline in the same manner and to the same extent as members of the bar of this jurisdiction. To this end:
 - (i) Every person licensed to practice as a foreign legal consultant under this Rule:
 - a. shall be subject to the jurisdiction of the Supreme Court and to censure, suspension, removal or revocation of his or her license to practice by the Supreme Court and shall otherwise be governed by Supreme Court Rules; and
 - b. shall execute and file with the Supreme Court, in the form and manner as the court may prescribe:
 1. a commitment to observe the Delaware Lawyers' Rules of Professional Conduct and the Rules of the Supreme

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

Court to the extent applicable to the legal services authorized under this Rule:

2. an undertaking or appropriate evidence of professional liability insurance, in an amount as the court may prescribe, to assure the foreign legal consultant's proper professional conduct and responsibility;

3. a written undertaking to notify the court of any change in the foreign legal consultant's good standing as a member of the foreign legal profession and of any final action of the professional body or public authority referred to in Section (b)(2) of this Rule imposing any disciplinary censure, suspension, or other sanction upon the foreign legal consultant; and

4. a duly acknowledged instrument in writing, providing the foreign legal consultant's address in this jurisdiction and designating the clerk of Supreme Court as his or her agent for service of process. The foreign legal consultant shall keep the clerk advised in writing of any changes of address in this jurisdiction. In any action or proceeding brought against the foreign legal consultant and arising out of or based upon any legal services rendered or offered to be rendered by the foreign legal consultant within or to residents of this jurisdiction, service shall first be attempted upon the foreign legal consultant at the most recent address filed with the clerk. Whenever after due diligence service cannot be made upon the foreign legal consultant at that address, service may be made upon the clerk. Service made upon the clerk in accordance with this provision is effective as if service had been made personally upon the foreign legal consultant.

(ii) Service of process on the clerk under this Rule shall be made by personally delivering to the clerk's office, and leaving with the clerk, or with a deputy or assistant authorized by the clerk to receive service, duplicate copies of the process together with a fee as set by the Supreme Court. The clerk shall promptly send one copy of the process to the foreign legal consultant to whom the process is directed, by certified mail, return receipt requested, addressed to the foreign legal consultant at the most recent address provided to the clerk.

(f) **Automatic Suspension.** The applicant's authority to practice as a foreign legal consultant as granted by this Rule shall be automatically suspended when (1) the applicant fails to comply with any provision of this Rule; or (2) when the lawyer is suspended or disbarred for disciplinary reasons in any jurisdiction of the United States or by any federal court or agency or by any foreign nation before which the applicant has been admitted to practice as a lawyer or counselor at law or the equivalent. Any applicant whose authority to practice has been suspended under this section may be considered for reinstatement in accordance with Rule 22 of the Delaware Lawyers' Rules of Disciplinary Procedure.

(g) **Effect of Delaware Bar Admission.** If a person licensed as a foreign legal consultant under this Rule is subsequently admitted as a member of the bar of this jurisdiction under the Rules governing admission, that person's foreign legal consultant license shall be deemed superseded by the license to practice law as a member of the bar of this jurisdiction.

(h) **Annual Registration and Assessments.** A person licensed as a foreign legal consultant shall, as a condition of remaining a foreign legal consultant, no later than March 1 of each year:

(1) file with the Clerk of this Court, in a form approved by the Court, a registration statement showing the member's name, residence address, office address, office telephone number, firm association, and such other information as the Court shall direct, and

(2) Pay a registration assessment as determined by the Delaware Supreme Court.

(i) **Late Filing Assessment.** Any foreign legal consultant who fails to file an annual registration statement by March 1 of each year shall pay a \$300 late filing assessment.

(j) **Changes in Information.** Each person licensed as a foreign legal consultant is required to notify the Clerk of the Court in writing within 30 days of any change in the information provided in the member's most recent registration statement.

(k) **Certain duties of the Clerk of Court.** The Clerk of the Court shall: (i) within a reasonable time after January 1 each year, provide to each registered Foreign Legal Consultant an annual registration form to be filed with the Clerk, (ii) deposit forthwith all assessments received under this Rule to the account specified in Rule 69(i); (iii) mail to each Foreign Legal Consultant who files a registration statement and pays the assessments, a registration card, in a form approved by the Court, certifying that such member is in good standing as a Foreign Legal Consultant.

(l) **Resignation.** Upon acceptance of the resignation by the Court, the certificate issued pursuant to subsection (c) above shall terminate and the foreign legal consultant who resigns shall no longer be entitled to engage in any of the activities enumerated in this Rule in this state.

(m) **Additional Regulations.** The Supreme Court may adopt such additional regulations as needed to implement this Rule.

Rule 55.3. Limited permission to practice for certain Assistant United States Attorneys.

(a) Limited permission to practice. —A lawyer admitted to the practice of law in a jurisdiction other than this state, of the United States, who is employed by the United States Attorney's Office for the District of Delaware may apply for a Delaware Certificate of Limited Practice Pursuant to Rule 55.3, which will allow the lawyer to practice law in the courts and administrative tribunals of this State for the

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

purpose of aiding the Attorney General of the State of Delaware in matters enforcing the laws of the state.

(b) An applicant for a Delaware Certificate of Limited Practice Pursuant to Rule 55.3 shall:

- (1) File under oath the Supreme Court's form application for a Delaware Certificate of Limited Practice Pursuant to Rule 55.3.
- (2) Furnish a certificate signed by the licensing authority in each jurisdiction in which the applicant is admitted to practice law, stating that the applicant is licensed to practice and is an active member in good standing at the bar of at least one of those jurisdictions.
- (3) File an affidavit on a form furnished by the Supreme Court, from the United States Attorney for the District of Delaware who attests:
 - (A) That the applicant is employed as a lawyer by the United States Department of Justice as an Assistant United States Attorney in the District of Delaware and certifies that the applicant is and will remain an active member in good standing of another state bar during the entire course of his or her employment pursuant to Rule 55.3;
 - (B) That the nature of the applicant's employment conforms to the requirements of this Rule; and
- (4) Certify that the applicant has read and is familiar with the Delaware Lawyers' Rules of Professional Conduct.
- (5) Pay an application fee in the amount of \$100.

(c) Upon finding that the applicant has complied with the requirements of section (b) above, the Supreme Court shall notify the applicant that he or she is eligible to be issued a Delaware Certificate of Limited Practice Pursuant to Rule 55.3.

(d) Application and oath. —Application for permission to practice before the courts and administrative tribunals of this State under paragraph (a) of this Rule shall be made in open court at any session of the Court or in the chambers of any Justice of the Court. Each applicant shall, on being granted such permission, take and subscribe the following oath or affirmation:

"I _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Delaware and that I shall conduct myself strictly in accordance with all the terms and conditions of the Rules of the Delaware Supreme Court, in particular Rule 55.3; that I will behave myself in connection with my Delaware Certificate of Limited Practice Pursuant to Rule 55.3 and acting under Rule 55.3 according to the best of my learning and ability and with all good fidelity as well to the Court as to the client; that I will use no falsehood nor delay any person's cause through lucre or malice."

After the applicant has taken and subscribed to the foregoing oath or affirmation, the applicant shall be issued a certificate entitling the applicant to practice law in the state as provided in this Rule.

(e) The privileges and responsibilities of practice by an Assistant United States Attorney for the District of Delaware operating under a valid certificate in this state shall include all privileges and responsibilities otherwise applicable to other Members of the Delaware Bar. Accordingly, lawyers registered under this Rule shall be deemed to be practicing law in Delaware limited to the provisions of Rule 55.3 and are thus subject to:

- (1) All rules governing the practice of law in Delaware. Jurisdiction of the Supreme Court shall continue whether or not the lawyer retains the Delaware Certificate of Limited Practice Pursuant to Rule 55.3 and irrespective of the lawyer's continued presence in the state; and
- (2) The requirements of the other state or states in which the Assistant United States Attorney is admitted to practice law.

(f) Each person issued a Delaware Certificate of Limited Practice Pursuant to Rule 55.3 shall promptly report to the Supreme Court any change in employment, any change in bar membership status in any jurisdiction of the United States where the applicant has been admitted to the practice of law, or the imposition of any disciplinary sanction in such jurisdiction by any federal court, state court, or agency before which the applicant has been admitted to practice.

(g) If there is a change in circumstances and a lawyer admitted pursuant to this Rule becomes ineligible for limited practice, in accordance with its provisions, both the lawyer and the United States Attorney shall immediately provide written notification to the Clerk of the Delaware Supreme Court of that change in circumstance.

(h) The applicant's authority to practice law as granted under this Rule shall be automatically suspended when:

- (1) employment by the United States Department of Justice, and its representative, the United States Attorney for the District of Delaware who furnishes the affidavit required by this Rule, is terminated;
- (2) the lawyer fails to comply with any provision of this Rule; or
- (3) when the lawyer is suspended or disbarred for disciplinary reasons in any jurisdiction of the United States or by any federal court or agency or by any foreign nation before which the lawyer has been admitted to practice.

(i) The Supreme Court may adopt such additional regulations as needed to implement the requirements of this Rule.

Rule 55.3. Form 1. Application.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

APPLICATION FOR A CERTIFICATE OF LIMITED PRACTICE PURSUANT TO RULE 55.3

I, [Full Name] do hereby apply to the Supreme Court of the State of Delaware for a Certificate of Limited Practice Pursuant to Supreme Court Rule 55.3.

I certify that I am employed exclusively as an Assistant United States Attorney for the District of Delaware.

I certify that I am a member in good standing of the following bars: [List all bar memberships and membership identification numbers, if any], and that I am an active member in good standing of the Bar of the State/Country of [List State/Country/Jurisdiction].

I certify that I have read, and am familiar with, the Delaware Lawyers' Rules of Professional Conduct.

Dated: _____

APPLICANT SIGNATURE

ADDRESS

CITY/STATE/ZIP

PHONE/EMAIL

Sworn to and subscribed

Before me this _____

Day of _____, 20

Notary Public

Rule 55.3. Form 2. Certification of Membership by State Bar Licensing Authority.

[This is a suggested format. Anything comparable will be accepted.]

PRINTED LETTERHEAD STATE BAR LICENSING AUTHORITY

To Whom It May Concern:

[Full Name of Applicant] is an active/inactive member in good standing of the [Bar/Law Society] of the [State/Commonwealth/Territory/Jurisdiction/Country] of [Name of Jurisdiction]. His/her year of admission was []. His/Her Bar Identification Number is [].

Very truly yours,

[Signature]

[Printed Name and Address of Clerk or Licensing Authority Recorder]

Rule 55.3. Form 3. Report of Change of Status.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

REPORT OF CHANGE OF STATUS UNDER RULE 55.3

Registrant holding a Delaware Certificate of Limited Practice Pursuant to Rule 55.3 hereby gives notice to the Court that

[His/Her employment with the United States Department of Justice, United States Attorney's Office for the District of Delaware, whose address is _____ and whose telephone number is _____, has ended effective as of [Date].]

[His/Her active membership in the Bar of [Jurisdiction] has changed to inactive/emeritus/senior status effective as of [Date].]

[He/She is the subject of disciplinary measures imposed by the Bar of [Jurisdiction] effective as of [Date]. The nature of these disciplinary measures is as follows: [Describe the matter and the sanction imposed].]

Registrant is aware and acknowledges that his/her Certificate of Limited Practice Pursuant to Rule 55.3 granted by this Court on [Date] is hereby revoked and ended as of the date hereinabove written.

Dated: _____

Signature of REGISTRANT

Printed Name of Registrant

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

[Address]

[Telephone Number]

[Electronic Mail Address]

Rule 55.3. Form 4. Employer Affidavit.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RULE 55.3

EMPLOYER AFFIDAVIT — RULE 55.3

STATE OF _____

COUNTY OF _____

BE IT REMEMBERED, that on this _____ day of _____, A.D., 20, personally appeared before me, [FULL NAME OF U.S. ATTORNEY FOR THE DISTRICT OF DELAWARE], who being duly sworn according to law, did depose and say:

1. I am the United States Attorney for the District of Delaware.
2. I certify that [NAME OF APPLICANT], hereinafter Applicant, is employed as a lawyer by the United States Department of Justice as an Assistant United States Attorney for the District of Delaware and that the nature of the Applicant's employment conforms to the requirements of Rule 55.3.
3. I certify that Applicant works exclusively for the United States Department of Justice.
4. I certify that Applicant will remain an active member in good standing of the [BAR/LAW SOCIETY] of the [STATE/COMMONWEALTH/JURISDICTION] of [NAME] during the entire course of his/her employment in the context of Rule 55.3.
5. I certify that I, or my successors, will notify the Supreme Court immediately if Applicant's employment is terminated, or if any conditions required by Rule 55.3 change.

Signature of United States Attorney for the District of Delaware

Printed name of U.S. Attorney

Sworn to and subscribed

before me this _____

Day of _____, 20

Notary Public

Rule 55.3. Form 5. Employer Report of Change of Status.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EMPLOYER REPORT OF CHANGE OF REGISTRANT STATUS

UNDER RULE 55.3

Employer of Registrant holding a Delaware Certificate of Limited Practice Pursuant to Rule 55.3 hereby gives notice to the Court that:

[the employment of [REGISTRANT'S NAME] has ended effective as of [Date].]

[the active membership of [REGISTRANT'S NAME] in the Bar of [Jurisdiction] has changed to inactive/emeritus/senior status effective as of [Date]]

[it has been advised that [REGISTRANT'S NAME] is the subject of disciplinary measures imposed by the Bar of [Jurisdiction] effective as of [Date].]

Signature of United States Attorney for the District of Delaware

Printed Name of United States Attorney for the District of Delaware

Dated: _____

Rule 55.4 Limited Permission to Practice as a Military Spouse

(a) Qualifications. An applicant who meets all of the following requirements may apply for a Certificate of Limited Practice as a Military Spouse. The applicant:

(1) is the spouse of either:

(A) an active duty service member of the United States Uniformed Services, and that service member is or will be stationed in Delaware due to military orders; or

(B) a member of the National Guard, based in a jurisdiction other than this State, who is under a call to active service authorized by the President or the Secretary of Defense, and that National Guard member is or will be stationed in Delaware due to military

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

orders;

- (2) is or will be physically residing in Delaware due to the service member's orders;
- (3) is admitted to practice as an attorney before the highest court in at least one state or jurisdiction in the United States;
- (4) is currently an active or inactive member in good standing in every jurisdiction to which the applicant has been admitted;
- (5) is not currently subject to attorney discipline or the subject of a pending disciplinary matter in any other jurisdiction;
- (6) satisfies the Delaware bar admission requirements set forth in Rules 52(a)(1)–52(a)(6), 52(a)(9) and 52(a)(10);
- (7) has not failed the Delaware Bar Examination in the last 5 years;
- (8) has never been denied admission to the Delaware Bar; and
- (9) has a Supervising Attorney, as defined below.

(b) Application. An applicant for a Certificate of Limited Practice as a Military Spouse shall file an application with the Delaware Board of Bar Examiners (“Board”) on a form furnished by the Board and which shall include all of the following:

- (1) A certificate of good standing from every jurisdiction in which the applicant is admitted as an attorney;
- (2) Other evidence as the Supreme Court or the Board may require regarding the applicant's educational and professional qualifications and good moral character;
- (3) A certification under oath attesting to all of the following:
 - (A) The applicant has read, is familiar with, and will abide by the Delaware Lawyers' Rules of Professional Conduct, including Rule 1.15 regarding the safekeeping of property and the maintenance of appropriate financial books and records;
 - (B) The applicant has read, is familiar with, and will abide by the Delaware Lawyers' Rules of Disciplinary Procedure and the Principles of Professionalism for Delaware Lawyers;
 - (C) The applicant has read, is familiar with, and will abide by this Rule and all other rules and regulations applicable to individuals receiving a Certificate of Limited Practice as a Military Spouse in this State; and
 - (D) A Supervising Attorney has agreed to assist and promote the applicant's compliance with the Delaware Lawyers' Rules of Professional Conduct, the Delaware Lawyers' Rules of Disciplinary Procedure, the Principles of Professionalism for Delaware Lawyers, this Rule, and all other rules and regulations applicable to individuals receiving a Certificate of Limited Practice as a Military Spouse in this State;
- (4) A copy of the military orders to a military installation in Delaware;
- (5) An official military document, which can include the military orders referred to in paragraph (b)(4) of this Rule, identifying the applicant as the spouse of the service member and stating that the applicant is authorized to accompany the service member to Delaware;
- (6) A certification from the applicant's Preceptor;
- (7) A certification under oath from the applicant's Supervising Attorney, attesting to all of the following:
 - (A) The Supervising Attorney has performed an inquiry and concluded that the applicant is familiar with the Delaware Lawyers' Rules of Professional Conduct, including Rule 1.15 regarding the safekeeping of property and the maintenance of appropriate financial books and records, the Delaware Lawyers' Rules of Disciplinary Procedure, and the Principles of Professionalism for Delaware Lawyers; and
 - (B) The Supervising Attorney has agreed to assist and promote the applicant's compliance with the Delaware Lawyers' Rules of Professional Conduct, the Delaware Lawyers' Rules of Disciplinary Procedure, the Principles of Professionalism for Delaware Lawyers, this Rule, and all other rules and regulations applicable to individuals receiving a Certificate of Limited Practice as a Military Spouse in this State; and
- (8) An application fee of \$150 payable to the “Delaware Board of Bar Examiners.” In addition, the Board may impose on an applicant any additional reasonable fees relating to the application including without limitation expenses incurred in connection with the character investigation set forth in paragraph (c) of this Rule.

(c) Investigation and Recommendation of the Board; Applicant's Oath. After the applicant has complied with the requirements of paragraph (b) of this Rule, the Board shall conduct an investigation of the same type described in Supreme Court Rule 51(c)(6), after which the Board shall make a recommendation to the Supreme Court regarding the suitability of the applicant to receive a Certificate of Limited Practice as a Military Spouse. If the application is approved by the Supreme Court, each applicant shall take and subscribe to the following oath or affirmation:

I _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Delaware; and that I shall conduct myself strictly in accordance with all the terms and conditions of the Rules of the Delaware Supreme Court, in particular Rule 55.4; that I will behave myself in practicing law pursuant to a Certificate of Limited Practice as a Military Spouse according to the best of my learning and ability and with all good fidelity as well to the Court as to the client; that I will use no falsehood nor delay any person's cause through lucre or malice.

After the applicant has taken and subscribed to the foregoing oath or affirmation, the applicant shall be issued a Certificate of Limited Practice as a Military Spouse entitling the applicant to practice law in this State as provided in this Rule.

(d) Limitations on Scope of Activities. An individual receiving a Certificate of Limited Practice as a Military Spouse:

- (1) shall not be deemed to have been duly admitted to the practice of law before the Court;

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

(2) may engage in the limited practice of law in Delaware only under the supervision of a Supervising Attorney, as defined below in paragraph (e) of this Rule;

(3) shall enter into a written engagement letter with any person to whom the individual is providing legal services, which shall be signed by the person and shall disclose both of the following:

(A) The individual is engaged in the practice of law in Delaware pursuant to a Certificate of Limited Practice as a Military Spouse; and

(B) The name and contact information for the Supervising Attorney; and

(4) shall not represent himself or herself to be a full member of the Delaware Bar or duly admitted to the practice of law in Delaware.

(e) Supervising Attorney. For purposes of this Rule, a “Supervising Attorney” is an active member of the Delaware Bar, in good standing with the Court, admitted for five years or more, not subject to any discipline from the Court, and practicing primarily within this State, who has entered into an agreement with the military spouse pursuant to paragraphs (3)(D) and (7)(B) of subsection (b) of this Rule. A Supervising Attorney for a military spouse may also serve as the military spouse’s Preceptor if the Supervising Attorney otherwise meets the qualifications set forth in Rule 10(a) of the Board of Bar Examiners Rules.

(f) Duration. A Certificate of Limited Practice as a Military Spouse will be valid for three years provided that the applicant remains a spouse or a dependent of the service member and resides in Delaware due to military orders or continues to reside in Delaware due to the service member’s immediately subsequent assignment specifying that dependents are not authorized to accompany the service member.

(g) Rights and Obligations. Subject to the limitations listed in paragraph (d) of this Rule, an individual receiving a Certificate of Limited Practice as a Military Spouse shall be considered a military spouse affiliated with the Delaware Bar and shall be entitled and subject to:

(1) the rights and obligations of a member of the Delaware Bar, including those set forth in the Delaware Lawyers’ Rules of Professional Conduct, or those arising from the other conditions and requirements that apply to a member of the Delaware Bar under the Rules of this Court; and

(2) the obligation to complete the following continuing legal education requirements during the two calendar-year period commencing on January 1 of the year after the individual receives a Certificate of Limited Practice as a Military Spouse, unless the individual’s Certificate of Limited Practice as a Military Spouse is terminated pursuant to paragraphs (j) or (o) of this Rule prior to the end of that two calendar-year period:

(A) Attendance at a Fundamentals of Lawyer-Client Relations offered by the Delaware State Bar Association;

(B) Attendance at a Fundamentals of Law Practice Management and Technology offered by the Delaware State Bar Association; and

(C) Attendance at any two of the following Fundamentals offered by the Delaware State Bar Association:

(i) Fundamentals of Civil Litigation;

(ii) Fundamentals of Criminal Law and Procedure;

(iii) Fundamentals of Family Law;

(iv) Fundamentals of Real Estate; or

(v) Fundamentals of Will Drafting and Estate Administration.

(3) An individual receiving a Certificate of Limited Practice as a Military Spouse under this Rule shall be subject to professional discipline in the same manner and to the same extent as members of the Delaware Bar. To this end:

(A) Every individual receiving a Certificate of Limited Practice as a Military Spouse:

(i) shall be subject to all rules governing the practice of law in the State of Delaware and to the jurisdiction of the Supreme Court of the State of Delaware; and

(ii) shall execute and file with this Court, in the form and manner as this Court may prescribe:

a. an undertaking or appropriate evidence of any professional liability insurance;

b. a written undertaking to notify the Supreme Court of any change in the military spouse’s good standing as a member of the bar of any jurisdiction in which the military spouse is admitted to practice, and of any final action of the professional body or public authority referred to in paragraph (b)(4) of this Rule imposing any disciplinary censure, suspension, or other sanction upon the military spouse; and

c. a duly acknowledged instrument in writing, providing the military spouse’s address in this State and designating the Clerk of the Supreme Court as the military spouse’s agent for service of process. The military spouse shall keep the Clerk advised in writing of any changes of address in this State. In any action or proceeding brought against the military spouse and arising out of or based upon any legal services rendered or offered to be rendered by the military spouse within or to residents of this State, service shall first be attempted upon the military spouse at the most recent address filed with the Clerk. Whenever after due diligence service cannot be made upon the military spouse at that address, service may be made upon the Clerk. Service made upon the Clerk in accordance with this provision is effective as if service had been made personally upon the military spouse within this State.

(B) Service of process on the Clerk under this Rule shall be made by personally delivering to the Clerk’s office, and leaving with

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

the Clerk, or with a deputy or assistant authorized by the Clerk to receive service, duplicate copies of the process together with a fee as set by the Supreme Court. The Clerk shall promptly send one copy of the process to the military spouse to whom the process is directed, by certified mail, return receipt requested, addressed to the military spouse at the most recent address provided to the Clerk.

(h) Not Preclusive. Nothing in this Rule 55.4 restricts or prevents an individual who is a military spouse from practicing law in this State in accordance with any other applicable Rule of this Court or the Delaware Lawyers' Rule of Professional Conduct.

(i) Automatic Suspension. An individual's authority to practice as a military spouse as granted by this Rule shall be automatically suspended when (1) the individual fails to comply with any provision of this Rule except for paragraph (a)(7); or (2) the individual is suspended or disbarred for disciplinary reasons in any jurisdiction of the United States or by any federal court or agency before which the individual has been admitted to practice as an attorney. Any individual whose authority to practice as a military spouse has been suspended under this paragraph may be considered for reinstatement in accordance with Rule 22 of the Delaware Lawyers' Rules of Disciplinary Procedure.

(j) Effect of Delaware Bar Admission. If an individual practicing pursuant to a Certificate of Limited Practice as a Military Spouse under this Rule is subsequently admitted as a member of the Delaware Bar under Supreme Court Rule 52, that individual's Certificate of Limited Practice as a Military Spouse shall be deemed superseded by the license to practice law as a member of the Delaware Bar.

(k) Annual Registration and Assessments. An individual receiving a Certificate of Limited Practice as a Military Spouse shall, as a condition of remaining a military spouse, no later than March 1 of each year:

(1) File with the Clerk of this Court, in a form approved by the Court, a registration statement showing the military spouse's name, residential address, office address, office telephone number, any firm association, and such other information as the Court shall direct; and

(2) Pay a registration assessment as determined by the Supreme Court.

(l) Late Filing Assessment. Any military spouse who fails to file an annual registration statement by March 1 of each year shall pay a \$300 late filing assessment.

(m) Changes in Information. Each individual receiving a Certificate of Limited Practice as a Military Spouse is required to notify the Clerk of the Court in writing within 30 days of any change in the information provided in military spouse's most recent registration statement.

(n) Certain duties of the Clerk of Court. The Clerk of the Court shall: (i) within a reasonable time after January 1 each year, provide to each registered military spouse an annual registration form to be filed with the Clerk; (ii) deposit forthwith all assessments received under this Rule to the account specified in Rule 69(i); (iii) mail to each military spouse who files a registration statement and pays the assessments, a registration card, in a form approved by the Court, certifying that such individual is in good standing as a military spouse.

(o) Resignation. Upon acceptance of the resignation by the Court, the Certificate of Limited Practice as a Military Spouse issued pursuant to paragraph (c) of this Rule shall terminate and the military spouse who resigns shall no longer be entitled to engage in any of the activities enumerated in this Rule in this State.

(p) Additional Regulations. The Supreme Court may adopt such additional regulations as needed to implement this Rule.

Rule 56. Admission of Eligible Law Student to limited practice as a legal intern.

(a) Limited practice as legal intern. —Notwithstanding the provisions of any other Rule of this Court or the Delaware State Board of Bar Examiners to the contrary, an Eligible Law Student, as hereinafter defined, may appear in the Family Court, the Court of Common Pleas, the Justice of the Peace Courts and before the State Human Relations Commission, in the following proceedings, subject to the following conditions.

(1) Family Court. —In the Family Court in proceedings:

(i) Civil matters. —In all civil matters;

(ii) Criminal matters. —

(A) Arbitration. —In arbitration or mediation;

(B) Commissioner and Master. —Before a Commissioner or Master;

(C) Judge. —On appeal from the foregoing to a Judge of the Family Court.

(2) Court of Common Pleas. —Before the Court of Common Pleas in any case involving any offense set forth in Title 21 of the Delaware Code except driving a vehicle while under the influence of alcohol offenses and cases where a person sustained a serious physical injury.

(3) Justice of the Peace. —In the Justice of the Peace Courts in any matter.

(4) Human Relations Commission. —Before the State Human Relations Commission in all proceedings within its jurisdiction.

(5) Environmental Appeals Board. —Before the Environmental Appeals Board in all proceedings within its jurisdiction.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

(6) Written consent. —Before an Eligible Law Student shall begin such representation, the party to be represented shall consent thereto by executing form I attached hereto, which shall be witnessed by the supervising attorney or by the presiding Master or Justice of the Peace and filed in the record of the proceedings.

(b) Eligibility of students. —

(1) Definition. —An “Eligible Law Student” under this rule is a student registered and attending an American Bar Association approved law school who has successfully completed four semesters as a full-time law student. Such Eligible Law Student must be certified by the Dean of the law school as being of good character and competent legal ability and eligible to participate in the legal intern program. Certification is to be made on Form II, attached hereto, and filed with the Clerk of the Supreme Court.

(2) Supervision. —In any appearance of an Eligible Law Student, the student shall be supervised by an attorney of an agency specified in paragraph (e) hereof, duly admitted to practice in this State, who shall appear as counsel of record. Such attorney shall be personally present in any proceeding before a Judge of the Family Court or Court of Common Pleas unless such personal appearance is waived by the Family Court or Court of Common Pleas.

(3) Certification. —In all appearances, the Eligible Law Student shall file with the Court or the Commission in which the student appears a written certification from the student’s supervisor indicating the name of the student and supervisor and case or cases in which the Eligible Law Student is authorized to appear.

(4) Oath. —An Eligible Law Student shall file the oath or affirmation attached hereto as Form III prior to any appearance. The supervising attorney shall witness such oath or affirmation and file it with the Clerk of the Supreme Court.

(c) Compensation prohibited. —An Eligible Law Student may neither ask for nor receive any compensation or remuneration of any kind for the student’s services from or on behalf of, the person for whom the student renders services. This shall not prevent the student from receiving compensation from any agency listed under Paragraph (e) hereof, nor shall this prevent any agency from making such charges and payments for its services as it may otherwise properly require or receive as statutory fees and allowances.

(d) Supervision. —The member of the Bar under whose supervision an Eligible Law Student does any of the things permitted by this Rule shall:

(1) File oath. —Witness and file the oath or affirmation with the Clerk of this Court.

(2) Consent to representation. —Witness the Consent to Representation on Form I as required pursuant to paragraph (a) of this Rule.

(3) Personal professional responsibility. —Assume personal professional responsibility for the student’s guidance in any work undertaken and for supervising the quality of the student’s work.

(4) Preparatory assistance. —Assist the Eligible Law Student in the student’s preparation to the extent that the supervising lawyer considers it necessary.

(e) Supervision and placement. —Supervision and student placement under this Rule shall be in and by the following agencies only:

(1) Attorney General’s Office of the State of Delaware

(2) Public Defender

(3) An organized legal aid or legal assistance program sponsored, approved or recognized by the State Board of Bar Examiners.

(4) Office of the Child Advocate.

(f) Coordination. —The Dean of the law school at which an Eligible Law Student is registered or the head of any listed in Paragraph (e) of this Rule shall act as coordinator of an Eligible Law Student under this Rule.

(g) Certification. —The certification of an Eligible Law Student

(1) Duration. —Shall remain in effect, unless sooner withdrawn, until the announcement of the results of the first Delaware Bar Examination following the student’s graduation, if registered to sit for that examination, or if not until graduation from the law school. For any student who passes that examination, the certification shall continue in effect until the date the student is admitted to the Bar.

(2) Withdrawal. —May be withdrawn by the Dean at any time by mailing a notice to that effect to the Dean of the law school at which the student is registered and to the Clerk of this Court. It is not necessary that the notice state the cause for withdrawal.

(3) Termination. —May be terminated at any time, without hearing and without any showing of cause, by this Court, the Dean of the law school at which the student is registered or the head of the agency in which the student is being supervised.

Rule 56. Form I. Consent to representation.

(CASE CAPTION)

I, _____, am _____ in
the above entitled matter.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

I have been requested by _____, Esquire, an attorney duly admitted to practice in the State of Delaware to permit _____, a student intern, to appear for me in this matter. I have been given a copy of Rule of the Supreme Court of the State of Delaware and it has been fully explained to me that _____, the student intern, is a third year law student who is not a member of the Bar. I hereby consent to representation by such student intern in this matter, and voluntarily and knowingly waive any right I may have to representation by a member of the Delaware Bar.

Dated:

STATE OF DELAWARE
COUNTY OF _____
_____, 20

Witnessed: _____

Supervising Attorney

(The original is to be filed in the Court record)

Rule 56. Form II. Certification of Eligible Law Student.

Student's Name _____

Date _____

To: The Justices of the Supreme Court of the State of Delaware

Re: The Application of _____, for permission to participate as an Eligible Law Student under Rule 56 of the Rules of the Supreme Court of the State of Delaware.

I, _____, an attorney duly admitted to practice in the State of _____, affirm and certify the following:

I am the Dean of _____ Law School which is duly accredited by the American Bar Association and is located at _____.

The applicant hereinabove named, resides at 1 _____;

and is a qualified third year student at _____ Law School. Upon the facts known to me, the applicant is of good character and competent legal ability; and is fully eligible to participate as an Eligible Law Student under Delaware Supreme Court Rule 56.

Dean

Note 1 Residence while at law school or actual domicile may be used.

Rule 56. Form III. Oath or affirmation.

"I _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Delaware; that I will conduct myself before the tribunals and Courts strictly in accordance with Supreme Court Rule 56 and any implementing Rule of the Delaware Board of Bar Examiners; that I will behave myself according to the best of my learning and ability and with all good fidelity as well to the tribunal or Court as to the client; that I will use no falsehood nor delay any person's cause through lucre or malice, and will abide by the Delaware Lawyers' Rules of Professional Conduct to the best of my ability."

Witnessed: _____

Supervising Attorney

Dated: _____

STATE OF DELAWARE
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this _____ day of _____ 20.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

(Duly authorized official)

Rule 57. Artificial entity and public body pro se representation in civil actions in the Courts of the Justices of the Peace.

(a) Definitions. —For purposes of this Rule,

(1) “Artificial entity” means any corporation incorporated in Delaware or any corporation doing business in Delaware pursuant to the provisions of 8 Del. C. § 371 or the exceptions thereto contained in 8 Del. C. § 373, any limited liability company defined under the provisions of 6 Del. C. § 18-101, any partnership or limited partnership as defined in 6 Del. C. § 15-101(11); any trust as defined in 12 Del. C. § 3501 et seq., any estate for which an executor or administrator can act pursuant to 12 Del. C. § 1501 et seq., or any other entity falling within 6 Del. C. Chapter 31, including persons, firms and unincorporated associations transacting business in Delaware that have or should have filed a certificate with the Prothonotary’s office designating a trade name.

(2) “Public body” means any regulatory, administrative, executive, or legislative body of the State or of any political subdivision of the State, including, but not limited to, any board, bureau, commission, department, division, district, agency, or authority or, any municipal or county government.

(3) “Officer” means (a) the chief executive, operating, financial, legal, and accounting officers of an artificial entity or public body; (b) to the extent not encompassed by the foregoing, the chair of the governing board, president, treasurer, secretary, a vice-president, vice-chair, assistant secretary, assistant treasurer, superintendent, or other person who performs a major policymaking function for the artificial entity or public body; (c) trustee of a trust, executor or administrator of an estate, general partner of a partnership, member of a limited liability company; and (d) any other individual designated as an officer by the artificial entity or public body.

(4) “Employee” means either a full-time employee of the artificial entity or public body who has experience in the operations of the artificial entity or public body and has knowledge of the necessary facts and law relevant to the action before the Justice of the Peace Court; a non-uniformed officer bringing action on behalf of a public entity to recover a civil penalty pursuant to 21 Del. C. § 4101, § 4802, or any subsequent civil penalty enacted by the legislature over which the Justice of the Peace Court is granted jurisdiction; or manager who is responsible for the management of the property at issue in the action before the Justice of the Peace Court and is included under the definition of “landlord” under 25 Del. C. § 5141(12).

(b) Permitted representation. —Civil actions before Justice of the Peace Courts may be prosecuted and/or defended by an officer or employee of an artificial entity or public body, who need not be an attorney duly licensed to practice law in this State, but who has been authorized by the artificial entity or public body to represent it in a Justice of the Peace Court civil action in compliance with paragraph (c) of this Rule.

(c) Certificate of representation. —

(1) Filing of Certificate. —To be duly authorized to represent an artificial entity or public body in the Justice of the Peace Court, the officer or employee must file a notarized Certificate of Representation executed by an officer of the artificial entity or public body. The Certificate, along with a \$20.00 fee, must be filed with the Chief Magistrate, prior to the time of filing of the initial pleading or at least one business day prior to any appearance, whichever shall occur first.

(2) Identification and standing. —The certificate shall include: (a) an identification of the artificial entity or public body; (b) a statement of the law or laws of the State of Delaware under which the artificial entity or public body is formed and exists; and (c) in the case of an artificial entity, an affirmation that it is in good standing.

(3) Attestation regarding representative. —The certificate shall include a notarized attestation by the artificial entity or public body and its proposed representative attesting to the fact that the officer or employee being certified:

(a) has not been disbarred from, or is not currently under suspension or probation with respect to the practice of law in any state or jurisdiction within the United States; and

(b) has not been convicted of a felony or a crime involving dishonesty or false statement in the ten-year period immediately prior to the appearance of the officer or employee in the court; and

(c) has not been determined to have engaged in the unauthorized practice of law in this or any other jurisdiction; and

(d) is not an employee whose primary duty is to prosecute or defend Justice of the Peace Court civil actions; and

(e) is authorized to appear on behalf of the said artificial entity or public body in all matters before the Justice of the Peace Court; and

(f) has not had any prior authorization pursuant to this Rule revoked by the Chief Magistrate.

(4) Initial registration fee. —A payment for permission to represent the artificial entity or public body in the amount of \$20.00 must be attached to the Certificate of Representation. Funds received shall be deposited in the registration fund of the Delaware Supreme

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

Court for the purpose of the governance of the Bar and the administration of justice and shall be distributed pursuant to approval of a majority of the members of the Supreme Court.

(5) Term of certification. —A certification shall commence on the date the appropriate form is approved by the office of the Chief Magistrate and shall be effective until the following January 15, inclusive. To avoid a lapse in authorization under this Rule, said certifications shall be renewed by January 15 of the following year and by January 15 of each year thereafter by filing same, including the \$20.00 fee, with the Chief Magistrate. Certifications, along with the \$20.00 fee, accepted on or after December 15 of each year shall authorize representation for the remainder of the term of certification and also serve as a renewal of the certification for the one-year period following January 15, unless otherwise terminated or revoked.

(6) Amendment of certification. —When the officer or employee experiences a change in circumstances affecting or pertaining to a material fact in the certificate, an amended notarized certification executed by an officer of the artificial entity or public body shall be filed within a reasonable period of time and at least one week prior to any appearance in a Justice of the Peace Court of such officer or employee on behalf of the artificial entity or public body. A copy thereof shall also be filed with the Chief Magistrate. The Chief Magistrate shall decide, based upon the amended certificate and this Rule, whether or not the officer or employee shall be permitted to represent the artificial entity or public body.

(7) Termination of certification. —In the event of a termination of the relationship of an officer or employee of the artificial entity or public body who has been certified to represent the artificial entity or public body in any Justice of the Peace Court civil action, the artificial entity or public body shall notify in writing forthwith the Chief Magistrate; and the Justice of the Peace Court in which an action is pending involving said artificial entity or public body. Effective upon the filing of such notice the former officer or employee shall no longer be permitted to represent said artificial entity or public body.

(8) Sanctions. —Any certification filed pursuant to this paragraph which contains false or fraudulent information shall be forwarded by the Chief Magistrate to the Department of Justice for prosecution or other appropriate action of the offending party, as well as the Board on the Unauthorized Practice of Law for any action which the Board may deem warranted. By filing a certification, the artificial entity or public body and its designated representative shall each subject themselves to the sanctions set forth in Justice of the Peace Civil Rule 11.

(9) Revocation of certification. —The ability to represent an artificial entity or public body shall be subject to revocation by the Chief Magistrate upon review of a certificate or upon the recommendation of any Justice of the Peace. The ability to represent an artificial entity or public body by a non-lawyer is a privilege, not a right, which may be revoked in the sole discretion of the Chief Magistrate.

(10) Form of certification. —The form of certification referred to in this paragraph shall be prepared by the Chief Magistrate.

(d) Report to this Court. —The Chief Magistrate shall, on or before February 15 of each year, file with the clerk of this Court a report regarding the operation of this Rule.

(e) Inapplicability of rule. —This Rule shall not be applicable with regard to:

(1) any case from which an appeal or extraordinary writ is lodged in the Court of Common Pleas, or the Superior Court from any civil action which originated in the Courts of the Justices of the Peace;

(2) a duly licensed Delaware attorney-at-law or a person admitted pursuant to Supreme Court Rule 55 or 56 or Justice of the Peace Court Civil Rule 90.1 representing an artificial entity or public body in any Justice of the Peace civil action.

(f) Administrative implementation. —The Chief Magistrate shall adopt such policies, procedures, practices and forms necessary to carry out the purposes of this Rule and promote uniform and consistent application thereof. Such forms and administrative implementation and the content thereof shall be at the discretion of the Chief Magistrate, unless contrary to the terms of this Rule.

Rule 57.1. Representation of Residential Tenant by Qualified Tenant Advocate in the Justice of the Peace Court.

(a) Authorized representation as Qualified Tenant Advocate. —

(1) Notwithstanding the provisions of any other Rule of this Court or the Board of Bar Examiners to the contrary, a Qualified Tenant Advocate, as hereinafter defined, may represent a “tenant,” as defined in 25 Del. C. § 5141, of a residential property in an action in the Justice of the Peace Court for summary possession under chapter 57 of Title 25 of the Delaware Code. If, after such representation has begun, the issue of possession becomes moot, or is withdrawn or resolved, but another issue or issues between the landlord and tenant remains, the representation may continue. Subject to the limitations set forth in this rule, the Qualified Tenant Advocate may engage in such activities as are necessary or appropriate to prosecute or defend the action, including but not limited to providing advice regarding defenses, engaging in settlement negotiations, filing pleadings or other documents with the Justice of the Peace Court, and appearing before the court.

(2) Written consent. —Before a Qualified Tenant Advocate shall begin such representation, the tenant shall consent thereto by executing Form 57.1-1 attached hereto, which shall be signed by the Supervising Attorney, as hereinafter defined, and filed in the

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

record of the proceedings.

(3) Privilege. —Communications between the tenant and the Qualified Tenant Advocate shall be privileged under the same rules that govern the attorney-client privilege and work-product doctrine.

(b) Eligibility and supervision of Qualified Tenant Advocate. —

(1) Definition. —A “Qualified Tenant Advocate” under this rule is an employee or independent contractor of Community Legal Aid Society, Inc., Delaware Volunteer Legal Services, or Legal Services Corporation of Delaware, Inc. (each, a “Supervising Agency”) who:

- (i) has successfully completed a course of training provided by a Supervising Agency regarding Part III of Title 25 of the Delaware Code, the Rules of Evidence, the Rules of the Justice of the Peace Court, and principles of professionalism for lawyers appearing before the Justice of the Peace Court, which principles shall apply to Qualified Tenant Advocates;
- (ii) is certified by an attorney at the Supervising Agency to possess competence and eligibility to participate in the Qualified Tenant Advocate program. The certification is to be made on Form 57.1-2 attached hereto and filed with the Clerk of the Supreme Court; and
- (iii) has filed with the Clerk of the Supreme Court the oath or affirmation attached hereto as Form 57.1-3.

(2) Supervision. —In any appearance under this rule, the Qualified Tenant Advocate shall be supervised by an attorney of the Supervising Agency, duly admitted to practice in this State (the “Supervising Attorney”). The Supervising Attorney is not required to be personally present when the Qualified Tenant Advocate appears before the court. The Supervising Attorney shall:

- (i) ensure that the certification required by section (b)(1)(ii) of this rule and the oath or affirmation required by section (b)(1)(iii) of this rule have been filed before the Qualified Tenant Advocate appears in any proceeding;
- (ii) sign the consent to representation as required by paragraph (a)(2) of this rule, and ensure that the consent is filed in the record of any proceeding in which a Qualified Tenant Advocate will appear;
- (iii) ensure that the Qualified Tenant Advocate is in compliance with the procedures established by the Justice of the Peace Court for obtaining access to the court’s e-filing system;
- (iv) in each matter in which a Qualified Tenant Advocate will appear in the Justice of the Peace Court, enter an appearance as counsel of record, which appearance shall state the names of the tenant or tenants to be represented, identify the Qualified Tenant Advocate and the Supervising Attorney, and state that the Qualified Tenant Advocate is authorized under this rule to appear in the proceeding;
- (v) assume personal professional responsibility for the Qualified Tenant Advocate’s guidance in any work undertaken and for supervising the quality of the Qualified Tenant Advocate’s work;
- (vi) assist the Qualified Tenant Advocate’s preparation to the extent that the Supervising Attorney considers it necessary; and
- (vii) carry malpractice insurance that will sufficiently cover the Supervising Attorney’s supervision of the Qualified Tenant Advocate and the work and actions of the Qualified Tenant Advocate.

(3) Notice of termination by Supervising Agency. —If the Qualified Tenant Advocate leaves the employment of the Supervising Agency or is otherwise no longer eligible to participate in the program, or upon the Supervising Agency’s termination of the Qualified Tenant Advocate’s participation in the program for any other reason, an attorney at the Supervising Agency shall notify the Clerk of the Supreme Court forthwith. Moreover, in each proceeding in which the Supervising Attorney has entered an appearance in accordance with section (b)(2)(iv) of this rule, the Supervising Attorney shall notify the Justice of the Peace Court promptly, and in no event later than one day before the next scheduled hearing, if the Qualified Tenant Advocate will no longer be representing a tenant or tenants in the proceeding.

(c) Compensation prohibited. —A Qualified Tenant Advocate may neither ask for nor receive any compensation or remuneration of any kind from or on behalf of the tenant. This shall not prevent the Qualified Tenant Advocate from receiving compensation from the Supervising Agency, nor shall this prevent any Supervising Agency from seeking compensation for its services that it may otherwise properly request or receive.

(d) Applicability of Rule 11, Sanctions. —By representing a tenant as a Qualified Tenant Advocate, the Qualified Tenant Advocate shall be subject to the requirements and sanctions applicable to attorneys that are set forth in Justice of the Peace Court Civil Rule 11.

(e) Revocation. —The ability of a non-lawyer to represent a tenant as a Qualified Tenant Advocate under this rule is a privilege, not a right. A Qualified Tenant Advocate’s authorization to appear in any particular proceeding shall be subject to revocation by the Chief Magistrate, exercising his or her sole discretion. A Qualified Tenant Advocate’s eligibility under this rule shall be subject to termination by this Court, in its sole discretion, upon review of a recommendation of the Chief Magistrate.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

Form 57.1-1 Consent to Representation

(CASE CAPTION)

I, [name], am a [plaintiff/defendant] in the above-entitled summary-possession matter in the Justice of the Peace Court. [Name of Supervising Agency] has arranged for me to be represented in this matter by [name of Qualified Tenant Advocate], under the supervision of [name of Supervising Attorney], an attorney admitted to practice law in the State of Delaware. I have been given a copy of Rule 57.1 of the Supreme Court of the State of Delaware. I understand that [Name of Qualified Tenant Advocate] is not an attorney but is authorized to provide representation to tenants in summary-possession actions in the Justice of the Peace Court under the supervision of a Delaware attorney. I consent to representation by [Name of Qualified Tenant Advocate], and I voluntarily and knowingly waive any right I may have to representation by a member of the Delaware Bar.

Dated: _____
_____ [Tenant]

STATE OF DELAWARE

COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this _____ day of _____ 20__.

(Duly authorized official)

I agree to provide the representation described above in accordance with Rule 57.1.

[Qualified Tenant Advocate]

I will supervise [Name of Qualified Tenant Advocate] in accordance with Rule 57.1, and I hereby assume personal professional responsibility for the Qualified Tenant Advocate's guidance in any work undertaken, and for supervising the quality of the Qualified Tenant Advocate's work.

[Supervising Attorney]

Form 57.1-2 Certification of Qualified Tenant Advocate

Name of Qualified Tenant Advocate

Date

To: The Justices of the Supreme Court of the State of Delaware

Re: The Application of [Name of Qualified Tenant Advocate] for permission to participate as a Qualified Tenant Advocate under Rule 57.1 of the Rules of the Supreme Court of the State of Delaware.

I, [Attorney of Supervising Agency], an attorney duly admitted to practice in the State of Delaware, affirm and certify the following:

I am an attorney at [Name of Supervising Agency]. Upon the facts known to me, [Name of Qualified Tenant Advocate] (1) is competent and eligible to participate as a Qualified Tenant Advocate under Rule 57.1 of the Rules of the Supreme Court of Delaware; (2) has not been disbarred from, and is not currently under suspension or probation with respect to the practice of law in any state or jurisdiction within the United States; (3) has not been convicted of a crime involving dishonesty or false statement in the ten-year period immediately preceding the date of this certification; (4) has not been determined to have engaged in the unauthorized practice of law in this or any other jurisdiction; and (5) has not had any prior authorization under this Rule revoked by the Chief Magistrate or the Supreme Court of Delaware.

[Attorney of Supervising Agency]

Form 57.1-3 Oath or affirmation.

I, [Name of Qualified Tenant Advocate], do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Delaware; I will conduct myself before the Justice of the Peace Court strictly in accordance with Supreme Court Rule 57.1 and any implementing Rule of the Justice of the Peace Court; I will behave myself according to the best of my learning and ability and with all good fidelity to the Court as well as to the client; I will use no falsehood nor delay any person's cause through lucre or malice; and I will abide by the Delaware Lawyers' Rules of Professional Conduct to the best of my ability.

[Qualified Tenant Advocate]

Witnessed:

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

[Attorney of Supervising Agency]

Dated: _____

STATE OF DELAWARE

COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this _____ day of _____ 20__.

(Duly authorized official)

Rule 58. Provision of legal services following determination of major disaster.

(a) Determination of existence of major disaster. —Solely for purposes of this Rule, the Delaware Supreme Court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred in:

(1) This jurisdiction and whether the emergency caused by the major disaster affects the entirety or only a part of this jurisdiction, or

(2) Another jurisdiction but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in this jurisdiction pursuant to paragraph (c) shall extend only to lawyers who principally practice in the area of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services.

(b) Temporary practice in this jurisdiction following major disaster. —Following the determination of an emergency affecting the justice system in this jurisdiction pursuant to paragraph (a) of this Rule, or a determination that persons displaced by a major disaster in another jurisdiction and residing in this jurisdiction are in need of pro bono services and the assistance of lawyers from outside of this jurisdiction is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Such legal services must be provided on a pro bono basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer. Such legal services shall be assigned and supervised through an established not-for-profit bar association, pro bono program or legal services program or through such organization(s) specifically designated by this Court.

(c) Temporary practice in this jurisdiction following major disaster in another jurisdiction. —Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

(d) Duration of authority for temporary practice. —The authority to practice law in this jurisdiction granted by paragraph (b) of this Rule shall end when this Court determines that the conditions caused by the major disaster in this jurisdiction have ended except that a lawyer then representing clients in this jurisdiction pursuant to paragraph (b) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation, but the lawyer shall not thereafter accept new clients. The authority to practice law in this jurisdiction granted by paragraph (c) of this Rule shall end 60 days after this Court declares that the conditions caused by the major disaster in the affected jurisdiction have ended.

(e) Court appearances. —The authority granted by this Rule does not include appearances in court except:

(1) Pursuant to that court's pro hac vice admission rule and, if such authority is granted, any fees for such admission shall be waived; or

(2) If this Court, in any determination made under paragraph (a), grants blanket permission to appear in all or designated courts of this jurisdiction to lawyers providing legal services pursuant to paragraph (b). If such an authorization is included, any pro hac vice admission fees shall be waived.

(f) Disciplinary authority and registration requirement. —Lawyers providing legal services in this jurisdiction pursuant to paragraphs (b) or (c) are subject to this Court's disciplinary authority and the Rules of Professional Conduct of this jurisdiction as provided in Rule 8.5 of the Rules of Professional Conduct. Lawyers providing legal services in this jurisdiction under paragraphs (b) or (c) shall, within 30 days from the commencement of the provision of legal services, file a registration statement with the Clerk of this Court. The registration statement shall be in a form prescribed by this Court. Any lawyer who provides legal services pursuant to this Rule, and not exceeding the scope of practice set forth therein, shall not be considered to be engaged in the unauthorized practice of law in this jurisdiction.

(g) Notification to clients. —Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this Rule shall inform clients in this jurisdiction of the jurisdiction in which they are authorized to practice law, any limits of that authorization, and that they are not authorized to practice law in this jurisdiction except as permitted by this Rule. They shall not state or imply to any person that they are otherwise authorized to practice law in this jurisdiction.

SUBPART B. BOARD ON PROFESSIONAL RESPONSIBILITY AND OFFICE OF DISCIPLINARY COUNSEL.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

Rule 61. Professional ethics.

The Delaware Lawyers' Rules of Professional Conduct, promulgated by order of this Court dated September 12, 1985, and effective October 1, 1985, and, to the extent applicable, the accompanying INTERPRETIVE GUIDELINES, COMMENTS, CODE COMPARISONS, and COMMITTEE COMMENTS, shall govern the conduct of members of the Bar of this State and of attorneys admitted pro hac vice.

Rule 62. Board on Professional Responsibility.

(a) *Appointment and term of office.* —There shall be a Board on Professional Responsibility consisting of such persons as the Court shall from time to time designate by order of appointment, provided however, that at least one-third of the members of the Board shall be public members who live in Delaware and have not attended law school and the remainder shall be members of the Delaware Bar in good standing. Of the members who are members of the Delaware Bar, each of the counties shall be represented on the Board. The members of the Board as heretofore constituted upon the effective date of these Rules shall constitute the Board on Professional Responsibility hereby provided for and shall severally hold office until the expiration of their respective terms and until their successors shall be appointed and, with the approval of the Court, until the conclusion of any matter commenced before the member prior to the expiration of such term. The Court shall from time to time select a Chair, a Vice Chair and other such officers as it deems necessary and appropriate. Each member of the Board shall be appointed for a term of 3 years except that the Court may appoint for shorter terms so as to stagger the terminations. No member shall be appointed for more than 2 consecutive terms. The Rules of the Board are set forth in the Delaware Lawyers' Rules of Disciplinary Procedure.

(b) *The Unauthorized Practice of Law Subcommittee of the Board on Professional Responsibility.* There shall be an Unauthorized Practice of Law Subcommittee of the Board on Professional Responsibility consisting of members of the Board on Professional Responsibility. The Court shall from time to time select a Subcommittee Chair and Vice Chair as it deems necessary and appropriate. The Subcommittee shall sit in panels of 3, consisting of 2 members of the Bar and 1 public member who lives in Delaware and has not attended law school. The Rules of the Subcommittee are set forth in the Rules of the Unauthorized Practice of Law Subcommittee of the Board on Professional Responsibility.

(c) *Preliminary Review Committee.* —There shall be a Preliminary Review Committee consisting of such persons as the Court shall from time to time designate by order of appointment, provided however, that at least one-third of the members of the Committee shall be public members who live in Delaware and have not attended law school and the remainder shall be members of the Delaware Bar in good standing. Of the members who are members of the Delaware Bar, each of the counties shall be represented on the Preliminary Review Committee. Preliminary Review Committee members shall be appointed by the Court for terms of 3 years, and each shall be subject to all obligations of the members of the Board concerning the confidentiality of the Board's records and proceedings. They shall sit in panels of 3, consisting of 2 members of the Bar and 1 public member who lives in Delaware and has not attended law school. No Preliminary Review Committee member shall serve for more than 6 years. Vacancies on the Preliminary Review Committee shall be filled by the Court.

(d) *Rules and hearings.* —The Court shall adopt rules for the conduct of hearings and of the Board's other business. Subject to the approval of the Court, the Board shall have power to employ stenographic and other assistance as may from time to time be necessary and proper. Rules of the Board shall have the same force and effect as rules of this Court.

(e) *Assessments to fund operating expenses.* —Deleted.

Rule 63. No final mandate.

Decisions of the Court in matters heard by the Board on Professional Responsibility and reviewed by the Court shall be final on issuance, and no mandate shall issue to the Board following the Court's review. However, any party to a lawyer discipline or disability proceeding before the Court may move for a stay, rehearing, reargument, or other relief as would normally be available to the parties in any appellate proceeding before the Court. The provisions of Rule 18 shall govern any such motion.

Rule 64. Office of Disciplinary Counsel.

(a) *Appointment.* —There shall be an Office of Disciplinary Counsel, consisting of a chief disciplinary counsel, one or more deputy disciplinary counsel, and as necessary or appropriate, one or more special disciplinary counsel. Each such disciplinary counsel shall be an attorney admitted to practice in this State and shall be appointed by the Court. Each such disciplinary counsel shall serve at the pleasure of the Court.

(b) *Chief disciplinary counsel.* —The attorney appointed by the Court as chief disciplinary counsel shall be the full-time director of the Office of Disciplinary Counsel, and in such capacity shall be responsible for the management and administration of the Office. The chief disciplinary counsel shall prepare budgets, reports, and other proposals as necessary or appropriate for the operation of the Office. The chief disciplinary counsel shall be responsible for liaisons with the Court, the Board on Professional Responsibility, the Unauthorized Practice of Law Subcommittee of the Board on Professional Responsibility, the Lawyers' Fund for Client Protection, the Delaware State Bar Association, the National Organization of Bar Counsel, and other related agencies. The chief disciplinary counsel shall be responsible

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

for the supervision of all other persons serving the Office. The chief disciplinary counsel shall also have such powers and duties as described in subsection (e) below.

(c) Deputy disciplinary counsel. —The attorney or attorneys appointed by the Court as deputy disciplinary counsel shall constitute, with the chief disciplinary counsel, the full-time legal staff of the Office, with such powers and duties as described in subsection (e) below. Deputy disciplinary counsel shall also assist the chief disciplinary counsel with management or administrative tasks, as necessary or appropriate, under the supervision of the chief disciplinary counsel.

(d) Special disciplinary counsel. —The Court may, as necessary or appropriate, appoint on a part-time basis one or more special disciplinary counsel for specific matters which cannot, for whatever reason, be handled by the chief disciplinary counsel or deputy disciplinary counsel. An attorney acting as special disciplinary counsel shall have the powers and duties as described in subsection (e) below and shall be subject to the supervision of the Court.

(e) Powers and duties of disciplinary counsel. —Each disciplinary counsel, as described in this rule, shall have the following general powers and duties, to the extent necessary or appropriate to carry out disciplinary counsel's designated role:

- (1) Screen and evaluate all information coming to the attention of the Office relating to conduct by a lawyer and/or the practice of law in the State of Delaware;
 - (2) Investigate when necessary or appropriate all information coming to the attention of the Office which might be grounds for discipline or other action regarding the practice of law in the State of Delaware;
 - (3) Make such recommendations as to discipline or other action regarding the practice of law in the State of Delaware to the Court, the Board on Professional Responsibility, the Preliminary Review Committee, the Unauthorized Practice of Law Subcommittee of the Board on Professional Responsibility, the Lawyers' Fund for Client Protection, and any other related agency;
 - (4) Prosecute cases for disciplinary or other action before the Court, the Board on Professional Responsibility, and the Board on the Unauthorized Practice of Law;
 - (5) Employ, subject to the budgetary limitations set by the Court, and supervise non-legal staff as necessary or appropriate for the operation of the Office;
 - (6) Promptly notify the complainant and the respondent of the disposition of each matter;
 - (7) Notify each jurisdiction in which a lawyer is admitted of any public discipline, reinstatement, transfer to or from disability inactive status, or other official action, as appropriate;
 - (8) When a lawyer is convicted of a serious crime (as defined in the Rules of the Board on Professional Responsibility) in this State, forward a certified copy of the judgment of conviction to the disciplinary agency in each jurisdiction in which the lawyer is admitted;
 - (9) Maintain permanent records of discipline, disability, and unauthorized practice matters, and compile statistics to aid in the administration of the system; and
 - (10) Pursuant to directions from the Court, or as necessary or appropriate to the purposes of the regulation of the practice of law in this State, undertake any other tasks or investigations as so required.
- (f) Expenses. —The expenses of counsel and staff, administrative costs, and all other expenses relating to disciplinary matters shall be paid in accordance with subsection (g) of this rule. An audit of all funds entrusted to the Board and the Office of Disciplinary Counsel shall be filed with the Court on a yearly basis.
- (g) Funding. —The annual expenses of the Office of Disciplinary Counsel shall be paid out of assessments made annually against the active members of the Bar of this Court, and from other such sources as are determined by the Court. As a condition of continuing membership in the Bar of this Court, every active member, except judges disqualified from practicing law, shall pay to the Court an annual assessment as determined by the Court in the Annual Registration Statement pursuant to Supreme Court Rule 69. The assessment is due and payable on March 1 of each year and delinquent if not paid by March 1 of that year.

Rule 65. Interest on Lawyer Trust Accounts.

(a) Committee. —There shall be a Supreme Court Advisory Committee on the Interest on Lawyer Trust Accounts Program (IOLTA). The Committee shall consist of six members appointed by the court for three year, staggered terms, or until such time as their successors shall be appointed, or such other terms as may from time to time be fixed by the Court. The Court shall appoint the Chair and any other officers of the committee. The Court may appoint additional ex officio members of the Committee as it may deem appropriate who shall serve at the pleasure of the court. A justice of the Court may be designated as an ex officio member of the committee.

(b) Function. —It shall be the function and responsibility of the Committee:

- (i) To oversee and monitor the operation of the Delaware Interest on Lawyers Trust Accounts Program, as established pursuant to Rule 1.15 of the Delaware Lawyers' Rules of Professional Conduct;
- (ii) To offer, solicit, receive and consider comments thereon from members of the Bar, the Bench, the Delaware Bar Foundation and

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

others and, where appropriate, to recommend to the Court changes in the Delaware IOLTA program;

(iii) To consult with and advise the Court from time to time with respect to the IOLTA program;

(iv) To prepare and submit a report to the Court on an annual basis concerning the status of the program and the work of the Committee; and

(v) To undertake such additional assignments and responsibilities in this regard as the Court may direct. Provided, however, that it shall remain the exclusive responsibility of the Delaware Bar Foundation, subject to the supervision and approval of the Court, to hold and to disburse all funds generated by the IOLTA program and periodically to render to the Court an audit of those funds.

(c) Distribution. —All interest transmitted to the Delaware Bar Foundation shall be distributed by that entity for the following purposes:

(i) To improve the administration of justice;

(ii) To provide legal services to the poor; and

(iii) For such other programs for the benefit of the public as are specifically approved by the Supreme Court of the state of Delaware form [from] time to time.

SUBPART C. OTHER PROVISIONS.

Rule 66. Lawyers' Fund for Client Protection.

(a) Operation and purpose of trust fund. —

(i) Operation. —The trust fund, known as the “Lawyers’ Fund for Client Protection” (hereinafter referred to as “the trust fund”), shall be operated and administered in accordance with this rule by 9 trustees, appointed as hereinafter provided. The trustees shall be known as the “Trustees of the Lawyers’ Fund for Client Protection.”

(ii) Purpose. —The purpose of the trust fund shall be to establish, as far as practicable, the collective responsibility of the profession in respect to losses caused to the public by defalcations of members of the Bar, acting either as attorneys or as fiduciaries (except to the extent to which they are bonded, or to the extent such losses are otherwise covered).

(b) Appointment and compensation of trustees, officers and associate trustees. —

(i) Members. —The trustees shall be appointed by this Court and shall consist of 7 persons who shall be members of the Bar and 2 persons who shall be public members who are not members of the Delaware Bar.

(ii) Terms. —Each of the counties shall be represented on the trust fund. The term of appointment shall be 4 years, provided however that no trustee shall be appointed for more than 2 consecutive terms.

(iii) Officers. —The Court shall from time to time select a Chair, a Treasurer, and such other officers as it deems necessary or appropriate.

(iv) Removal. —A trustee may be removed by the Court at any time in its discretion.

(v) Vacancy. —Vacancies shall be filled by appointment by the Court for the unexpired term.

(vi) Expenses only. —The trustees and the associate trustees shall serve without compensation, but shall be entitled to reimbursement from the trust fund, if no other source of funds is available, for their expenses reasonably incurred in performance of their duties as trustees, including transportation costs.

(vii) Associate Trustees. —The Court shall appoint five Associate Trustees to assist the Trustees in performing their duties. The Associate Trustees shall be appointed for a term of four years, unless sooner removed by the Court. There shall be at least one Associate Trustee from each county. Associate Trustees may not vote on any determination or decision by the Trustees.

(c) Powers and duties of Trustees. —

(i) Additional powers. —In addition to the powers granted elsewhere in this rule, the trustees shall have the following powers and duties:

(1) Fund management. —To receive, hold, manage and distribute, pursuant to this rule, the funds raised hereunder, and any other moneys that may be received by the trust fund through voluntary contributions or otherwise.

(2) Pay claims. —To authorize payment of claims in accordance with this rule.

(3) Adopt procedures. —To adopt, with the approval of the Court, regulations for the administration of the trust fund and the procedures for the presentation, consideration, recognition, rejection and payment of claims, and to adopt bylaws for conducting business. A copy of such regulations shall be filed with the Clerk of this Court.

(4) Enforce restitution. —To enforce claims for restitution, arising by subrogation or assignment or otherwise; to advance and pay incidental litigation expenses in those cases deemed by the Trustees to either directly or indirectly affect the purposes of the trust fund and its efficient administration.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

- (5) Investments. —To invest the trust fund, or any portion thereof, in such investments as they may deem appropriate, and to cause funds to be deposited in any bank, banking institution or federally insured savings and loan association in this State, provided however, that the trustees shall have no obligation to cause the trust fund or any portion thereof to be invested.
- (6) Pay assistants. —To employ and compensate consultants, agents, legal counsel and employees.
- (7) Delegate powers. —To delegate the power to perform routine acts which may be necessary or desirable for the operation of the trust fund, including the power to authorize disbursements for routine operating expenses of the trust fund, but authorization for payments to be made to reimburse losses caused by defalcations of members of the Bar shall be made only as provided in Rule 66(g).
- (8) Suits in trust name. —To sue or be sued in the name of the trust without joining any or all individual trustees.
- (9) Other acts. —To perform all other acts necessary or proper for fulfillment of the purposes of the trust fund and its efficient administration.
- (10) Compliance powers. —In order to determine compliance with Rule 1.15 of the Delaware Lawyers' Rules of Professional Conduct and its guidelines: (a) To require each member of the Bar of this Court to submit to the trustees such financial and accounting data or similar information as may be prescribed from time to time by the Court; (b) to conduct selected examinations of books and records required by the Court to be kept by members of the Bar, such examinations to be conducted in accordance with the rules and regulations approved by the Court; and (c) to report to the Office of Disciplinary Counsel any member of the Bar found to be in noncompliance with Rule 1.15 of the Delaware Lawyers' Rules of Professional Conduct or any failure by any member of the Bar to furnish required data or information.
- (11) Delegate powers to associate trustees. —To delegate to associate trustees such duties and functions as the trustees may prescribe.
- (ii) Report to Court. —At least once each year, and at such additional times as the Court may order, the trustees shall file with this Court a written report.
- (d) Meetings and quorum. —
- (i) Meetings. —Meetings of the trustees shall be held at the call of the Chair or a majority of the trustees, and shall be held at least once each year, upon reasonable notice.
- (ii) Quorum. —Five trustees shall constitute a quorum. A majority of the trustees present at a duly constituted meeting may exercise any powers held by the trustees, except to the extent that this rule provides otherwise.
- (e) Bar assessments. —The trust fund shall be funded from assessments made annually against active members of the Bar of this Court. As a condition of continuing active membership in the Bar of this Court, every active member, except judges disqualified from practicing law, shall pay to the Court an annual assessment as determined by the Court in the Annual Registration Statement pursuant to Supreme Court Rule 69. The assessment is due and payable on February 1 of each year and delinquent if not paid by March 1 of that year.
- (f) Treasurer's duties. —
- (i) Maintain fund. —The trust fund shall be maintained by the Treasurer in a separate account.
- (ii) Disbursements. —The Treasurer shall disburse moneys from the trust fund only upon the action of the trustees pursuant to this rule.
- (iii) Surety. —The Treasurer shall file a bond annually with the trustees for the proper execution of the duties of the office of Treasurer of the trust fund, with such surety as may be approved by the trustees and in such amount from time to time as may be fixed by the trustees.
- (g) Claims. —
- (i) Determination of merits. —The trustees are invested with the power, which they shall exercise at their sole discretion, to determine whether a claim merits reimbursement from the trust fund, and, if so, the amount of such reimbursement, the time, place and manner of its payment, the conditions upon which payment shall be made, and the order in which payments shall be made. The trustees' powers under this rule may be exercised only by the affirmative vote of at least 5 trustees.
- (ii) Rights in fund. —No claimant or other person, or organization, has any right in the trust fund as beneficiary or otherwise.
- (iii) Exercise of discretion. —In exercising their discretion, the trustees may consider, together with such other factors as they deem appropriate, the following:
- (1) Funds available. —The amounts available and likely to become available to the trust fund for payment of claims.
- (2) Contingent claims. —The size and number of claims which are likely to be presented in the future.
- (3) Total losses. —The total amount of losses caused by defalcations of any one attorney or associated groups of attorneys.
- (4) Unreimbursed amounts. —The unreimbursed amounts of claims recognized by the trustees in the past as meriting

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

reimbursement, but for which reimbursement has not been made in the total amount of the loss sustained.

(5) Relative loss. —The amount of the claimant’s loss as compared with the amount of the losses sustained by others who may merit reimbursement from the trust fund.

(6) Hardship. —The degree of hardship the claimant has suffered by the loss.

(7) Contributory negligence. —Any negligence of the claimant which may have contributed to the loss.

(iv) Conditions of payment. —In addition to other conditions and requirements the trustees may require each claimant, as a condition of payment, to execute such instruments, to take such action and to enter such agreements as the trustees may desire, including assignments, subrogation agreements, trust agreements and promises to cooperate with the trustees in making and prosecuting claims or charges against any person.

(v) Claims barred. —No claim shall be recognized which is based upon a defalcation which occurred prior to January 1, 1967.

(vi) Investigative assistance. —The trustees may request individual lawyers, bar associations and other organizations of lawyers to assist the trustees in the investigation of claims.

(h) Powers of the Supreme Court; audits. —

(i) Complete control of trust. —This Court may amend, modify or repeal this rule at any time without prior notice, and may provide for the dissolution and winding up of the affairs of the trust.

(ii) Audit trust. —This Court may at any time arrange for an audit to be made of the accounts of the trust fund by state or private auditors or may at any time direct the trustees to cause such an audit to be made. The cost of any such audit shall be paid by the trust fund.

(iii) Advise trustees. —The trustees may apply to this Court for interpretation of this rule, and for advice as to their powers and as to the proper administration of the trust. Any final order issued by this Court in response to any such application shall finally bind and determine all rights with respect to the matters covered therein.

(iv) Distribution upon dissolution. —Upon the dissolution of the trust, the trust assets shall be distributed by this Court either to the Treasury of the State of Delaware or to any organization or organizations designated by this Court, contributions to which are deductible under § 170 of the Internal Revenue Code of 1954.

Rule 67. Professional Organizations.

(a) Rights and restrictions of Professional Organizations. —Attorneys may form (i) professional service corporations for the practice of law under The Delaware Professional Service Corporation Act (8 Del. C., ch. 6), as amended from time to time and any successor statute thereto (the “Delaware Professional Service Corporation Act”), (ii) general partnerships, including limited liability partnerships, for the practice of law under the Delaware Revised Uniform Partnership Act (6 Del. C., ch. 15), as amended from time to time and any successor statute thereto (the “Delaware Uniform Partnership Law”), (iii) limited partnerships, including limited liability limited partnerships, for the practice of law under the Delaware Revised Uniform Limited Partnership Act (6 Del. C., ch. 17), as amended from time to time and any successor statute thereto (the “Delaware Revised Uniform Limited Partnership Act”), and (iv) limited liability companies for the practice of law under the Delaware Limited Liability Company Act (6 Del. C., ch. 18), as amended from time to time and any successor statute thereto (the “Delaware Limited Liability Company Act”). If any attorneys in such professional service corporations, general partnerships, limited liability partnerships, limited partnerships, limited liability limited partnerships and limited liability companies practice law in Delaware, then such professional service corporations, general partnerships, limited liability partnerships, limited partnerships, limited liability limited partnerships and limited liability companies (“Domestic Professional Organizations”) shall be operated in accordance with the provisions of this Rule. Attorneys may practice law in Delaware in a similar professional organization formed pursuant to the laws of a jurisdiction other than Delaware (“Foreign Professional Organization” and, together with Domestic Professional Organization, “Professional Organization”), and the laws of such other jurisdiction shall govern its (i) organization, (ii) internal affairs and (iii) the liabilities of its shareholders, partners or members (defined collectively as “members”), provided that such Foreign Professional Organization is operated in accordance with the applicable provisions of this Rule, including the financial responsibility requirements of subsection (h) of this Rule. Whether or not the provisions of this Rule are set forth in the organizational documents of a Foreign Professional Organization, they are applicable and binding by operation of this Rule. If no attorneys in a professional service corporation, general partnership, limited liability partnership, limited partnership, limited liability limited partnership or limited liability company practice law in Delaware, then this Rule is not applicable to such attorneys or to such professional service corporation, general partnership, limited liability partnership, limited partnership, limited liability limited partnership or limited liability company.

(b) Name of Professional Organization. —The name of a Professional Organization operating in accordance with this Rule shall always meet the ethical standards for the names of law firms established by The Delaware Lawyers’ Rules of Professional Conduct.

(c) Powers and governance of Professional Organizations. —A Domestic Professional Organization may exercise the powers and privileges conferred upon it by the laws of Delaware only in furtherance of and subject to its purposes which shall be limited to conducting

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

the practice of law as permitted by The Delaware Lawyers' Rules of Professional Conduct and these rules. Except as expressly provided herein, Domestic Professional Organizations, including the liability of shareholders, partners and members for the debts and obligations of Domestic Professional Organizations, shall be subject to and governed by The Delaware Professional Service Corporation Act, the Delaware Uniform Partnership Law, the Delaware Revised Uniform Limited Partnership Act or the Delaware Limited Liability Company Act, as the case may be; provided, however, persons who do not meet the qualifications of Bar membership set forth in subsection (d) of this rule shall not exercise any authority whatsoever over professional matters.

(d) Bar membership. —All shareholders, partners and members of, and all attorneys employed by, a Professional Organization who practice law in Delaware shall be members of the Bar of this Court. All attorneys employed by a Foreign Professional Organization for the practice of law outside of Delaware, and all shareholders, partners or members of such a Foreign Professional Organization who are not members of the Bar of this Court, shall be admitted to practice in the highest court of a state other than Delaware or territory of the United States or the District of Columbia or licensed to practice law under the laws of another jurisdiction other than a state or territory of the United States or the District of Columbia.

(e) Successor ownership. —Upon the death, ineligibility, removal, withdrawal or resignation of a shareholder, partner or member of a Domestic Professional Organization, such person or the estate of such person shall dispose of all of his or her shares or interests in the Domestic Professional Organization forthwith, either to the Domestic Professional Organization or to any person having the qualifications described in subsection (d).

(f) Filing requirements. —If not already filed, a Professional Organization shall file with the Clerk of the Court within 30 days of the date this Rule becomes applicable to such Professional Organization a certified copy of the original certificate of incorporation, statement of qualification as a limited liability partnership or limited liability limited partnership, certificate of formation or similar document, as the case may be, and all amendments thereto and restatements or renewals thereof. After the initial filing of such organizational documents with the Clerk of the Court, the Professional Organization shall also file with the Clerk of the Court within 30 days of the date of their filing with the Secretary of State of the State of Delaware all amendments, restatements or renewals of such organizational documents. At the time of the initial filing of such organizational documents with the Clerk of the Court, the Professional Organization shall file with the Clerk of the Court a list of all shareholders, partners or members of and attorneys employed by the Professional Organization. At the time of the annual registration of members of the Bar pursuant to Rule 69, the Professional Organization shall file an updated list of shareholders, partners or members of and attorneys employed by the Professional Organization. A Professional Organization shall not be required to file an updated list of shareholders, partners or members of and attorneys employed by the Professional Organization at any time other than at the times specified in the immediately preceding two sentences. If a professional service corporation operating in accordance with this Rule files a certificate of dissolution with the Secretary of State of the State of Delaware, a certified copy of such certificate of dissolution shall be filed with the Clerk of the Court within 30 days of its effective date. If a limited liability partnership or limited liability limited partnership operating in accordance with this Rule files a statement of cancellation of statement of qualification with the Secretary of State of the State of Delaware, a certified copy of such statement of cancellation of statement of qualification shall be filed with the Clerk of the Court within 30 days of its effective date. If a limited partnership or limited liability company operating in accordance with this Rule files a certificate of cancellation with the Secretary of State of the State of Delaware, a certified copy of such certificate of cancellation shall be filed with the Clerk of the Court within 30 days of its effective date. If a Foreign Professional Organization files a similar document in the jurisdiction of its formation or organization, as the case may be, a certified copy thereof shall be filed with the Clerk of the Court within 30 days of its effective date.

(g) Standards of professional conduct for Professional Organizations, individual shareholders, partners and members and other attorneys. —A Professional Organization shall do nothing which, if done by an attorney employed by it, would violate the standards of professional conduct established for the attorney by the Court. A Professional Organization and its shareholders, partners or members and other attorneys employed by a Professional Organization who practice law in Delaware shall at all times comply with the standards of professional conduct established by The Delaware Lawyers' Rules of Professional Conduct and the provisions of these rules. Any attorney who practices law in Delaware and who, by act or omission undertaken on behalf of a Professional Organization, causes the Professional Organization to act or fail to act in any way that violates the standards or rules of this Court shall subject to disciplinary action.

(h) Financial responsibility. —

(i) Individual liability. —Each shareholder, partner or member of a Professional Organization shall be liable to the extent provided by law for his or her own negligence, wrongful acts or misconduct in rendering legal services (“Acts”).

(ii) Joint and several liability. —Each shareholder, partner or member of a Professional Organization shall be jointly and severally liable for any liability of the Professional Organization based upon a claim arising from Acts by shareholders, partners or members of and other persons employed or otherwise retained by the Professional Organization in the rendering of legal services while such person was a shareholder, partner or member of the Professional Organization, in an amount not to exceed the aggregate of both of the following:

(1) The per claim amount of adequate professional liability insurance applicable to the Professional Organization under clause (iv) of this subsection (h), but only to the extent that (1) the Professional Organization fails to have the professional liability insurance

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

or other form of adequate financial responsibility required by this Rule or (2) such claim was of a kind not covered by the professional liability insurance or other form of adequate financial responsibility; and

(2) The deductible or retention amount of the professional liability insurance applicable to the claim;

provided, however, that such liability in any one year shall be limited to the amount of insurance contemplated by clause (iv)(B) of this subsection (h). The joint and several liability of the shareholder, partner or member of the Professional Organization shall be reduced to the extent that the liability has been satisfied by the assets of the Professional Organization.

(iii) Limitation. —Notwithstanding the foregoing, if a Professional Organization maintains adequate professional liability insurance or other form of adequate financial responsibility for any liability arising from Acts by shareholders, partners or members of and attorneys and other persons employed or otherwise retained by the Professional Organization, the shareholders, partners or members of the Professional Organization shall not be responsible for any such liability, except as may be otherwise required by the laws establishing such Professional Organization, as provided in clause (i) of this subsection (h) and as provided in clause (ii)(A)(2) of this subsection (h) (subject to the proviso contained clause (ii) of this subsection (h)).

(iv) Professional liability insurance. —“Adequate professional liability insurance” means one or more policies of attorneys’ professional liability insurance that insure the Professional Organization and that cover the Acts giving rise to such liability in the following amounts:

(1) subject to (B) below, coverage in an amount for each claim, in excess of any deductible or retention amount, of at least the greater of (x) \$1,000,000 or (y) the product obtained by multiplying \$100,000 by the number of attorneys practicing law in Delaware with the Professional Organization, but, in any event,

(2) the maximum coverage in an amount for all claims during the policy year, in excess of any deductible or retention amount, need not exceed the greater of (x) \$2,000,000 or (y) the product obtained by multiplying \$200,000 by the number of attorneys practicing law in Delaware with the Professional Organization.

(v) Security other than insurance. —“Other form of adequate financial responsibility” means funds, in an amount not less than the amount of professional liability insurance applicable to a Professional Organization under clause (iv) of this subsection (h) for all claims during the calendar year, available to satisfy any liability of the Professional Organization arising from Acts by shareholders, partners or members of or attorneys employed or other persons employed or otherwise retained by the Professional Organization. The funds shall be available in the form of a deposit in trust in a Delaware trust company of cash, bank certificate of deposit or United States Treasury obligation, a bank letter of credit or a surety or insurance company bond.

(vi) Insurance or financial responsibility. —

(1) If, in any proceeding, compliance by a Professional Organization with the requirements of clauses (iv) or (v) of this subsection (h) is disputed, (1) that issue shall be determined by the court, and (2) the burden of proof of compliance shall be on the person who claims the limitation of liability of this Rule.

(2) If a Professional Organization is in compliance with the requirements of clauses (iv) or (v) of this subsection (h), the requirements of clauses (iv) or (v) of this subsection (h) shall not be admissible or in any way be made known to a jury in determining an issue of liability for an extent of the debt or obligation or damages in question.

(3) Notwithstanding the pendency of other claims against a Professional Organization, the Professional Organization is in compliance with subsection (h) if:

(I) At the time a claim arising out of the kind of negligence, wrongful acts or misconduct for which liability is limited by this subsection (h) is asserted through service of a complaint or comparable pleading in a judicial or administrative proceeding, the Professional Organization has in effect insurance, in the amount set forth in clause (iv) of this subsection (h) that is applicable to (A) claims made as of the date such claim is asserted or (B) events occurring on the date of the conduct giving rise to such claim; or

(II) Within 30 days after the day such a claim is asserted as described in (1) above, the Professional Organization has designated and segregated funds in the amount set forth in clause (v) of this subsection (h).

(4) Notwithstanding any other provision of this Rule, if a Professional Organization is otherwise in compliance with the terms of this subsection (h) at the time that a bankruptcy or other insolvency proceeding is commenced with respect to the Professional Organization, it shall be deemed to be in compliance with subsection (h) during the pendency of the proceeding. A Professional Organization which has been the subject of such a proceeding and which conducts business after the proceeding has ended must thereafter comply with clauses (iv) or (v) of this subsection (h) in order to thereafter obtain the limitations on liability afforded by this Rule.

(i) No effects on rights, duties and privileges. —Except as expressly provided herein, nothing in this rule shall be deemed to modify or in any manner change the law relative to rights, privileges and duties of attorneys or clients or the law applicable to the professional relationship.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

Rule 68. Appointment of counsel for State officers and employees.

(a) Petitions for appointment. —A public officer or employee of the State named as a defendant in a civil or criminal action brought in a court of the State of Delaware or in the United States District Court for the District of Delaware for acts arising out of the public officer's or employee's employment by the State may petition for appointment of counsel; provided, however, that a complaint filed in the Court on the Judiciary shall not be deemed a "civil or criminal action brought in a court of the State of Delaware" unless and until the Chief Justice shall have referred the complaint to a Panel for review and investigation.

(b) Filing of petitions. —

(1) State proceeding. —Except as provided in subparagraph (2), a petition for appointment of counsel shall be made to the court in which the action against a public officer or employee is originally brought.

(2) Federal proceeding. —Where a public officer or employee is defendant in an action brought in the United States District Court for the District of Delaware, the petitioner may petition that Court for appointment of counsel. That Court may refer said petition to the President Judge of the Superior Court for appropriate action in accordance with applicable state law.

(3) Service. —A copy of the petition for appointment of counsel shall be served by the petitioner upon the Department of Justice.

(c) Time. —

(1) Filing of petition. —Petitions shall be filed within 10 days after service of the complaint and summons, cross-claim or counterclaim in a civil action, or arrest or service of summons in a criminal action, unless otherwise enlarged by the court for good cause shown.

(2) Actions in State courts. —A court receiving a petition for representation in an action in a court of the State shall promptly rule on it. The time required for a court to rule on a petition for representation shall be excluded from the time for filing of responsive pleadings, motions, or arraignment.

(3) Actions in federal court. —A court receiving a petition for representation in an action in a court of the United States pursuant to (b)(2) above shall rule on the petition as promptly as possible.

(d) Hearings. —A court in which a petition has been filed, on motion of the petitioner, the Department of Justice or the public defender, or at the court's own initiative, may order the record supplemented at a hearing or otherwise.

(e) Costs and attorneys' fees. —

(1) Fees. —Private counsel appointed under this rule shall be compensated for their services at a rate which is ordinary and usual in comparable cases in this jurisdiction and which is in accord with the applicable principles of Rule 1.5 of the Delaware Lawyers' Rules of Professional Conduct. Whenever appointed counsel prosecutes compulsory or permissive counterclaims or cross-claims, counsel shall obtain the express consent of counsel's client to do so and said counsel shall apportion counsel's fees for such counterclaims or cross-claims. The public officer or employee whom said counsel represents shall be responsible for such apportioned fees and expenses unless the appointing court, for good cause shown, shall otherwise order.

(2) Costs. —Private counsel appointed under this rule shall be reimbursed for costs incurred in representing a state officer or employee at a rate which is ordinary and usual in comparable cases in the jurisdiction. Such counsel, however, shall petition the appointing court in advance for authorization to incur costs or charges for transcripts, interpreters, investigators, expert witnesses and for other costs of extraordinary amount or for unusual services connected with the litigation.

(3) Payment. —Private counsel entitled to compensation or reimbursement under this rule shall apply to the appointing court for payment at the conclusion of the litigation except, upon a showing of sufficient need, the application may be made at any time during the pendency of the litigation. The Superior Court may consult with the presiding judge in cases encompassed by (b)(2) above.

(f) Conflict of interest. —Whenever the Department of Justice certifies to the appointing court that a conflict of interest exists, or may exist because of the appointment of a Department of Justice attorney, as a result of any statute or disciplinary rule under the Delaware Lawyers' Rules of Professional Conduct, the court may appoint an attorney from the private bar, if the court is satisfied that such conflict exists or may exist.

Rule 69. Categories of Bar membership and annual registration.

(a) Categories of membership. —There shall be five categories of members of the Bar of this Court: (i) active, (ii) inactive, (iii) judicial, (iv) retired, and (v) emeritus.

(b) Registration and assessments. —

(i) On or before March 1, all active, inactive and emeritus members, including newly admitted members who were admitted before February 1 of each year, are required to file a registration statement and pay a fee as set by the Delaware Supreme Court. A reminder notice will be sent by email before the registration period. Every attorney must update their attorney profile with all current contact information including email address. If an attorney has not received the reminder notice by the first week in January, please contact the Clerk's office immediately. Late fees will apply to late payments regardless of lack of notice from the Clerk's office.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

- (ii) Active assessment. — Active members shall pay a registration assessment as determined by the Delaware Supreme Court and shall pay such assessments as shall be made under Supreme Court Rule 66(e), Supreme Court Rule 64(g), Delaware Rules for Mandatory Continuing Legal Education Rule 3(E)(6) and Supreme Court Rule 74.
- (iii) Inactive assessment. — Inactive members shall pay an annual registration assessment and an annual application assessment as determined by the Delaware Supreme Court but shall pay no other assessments.
- (c) Active members. — All members of the Bar who are not inactive, judicial, retired or emeritus members are active members.
- (d) Inactive members. —
- (i) *Application.* — A member of the Bar who is not engaged in the practice of law in Delaware or who limits that member's practice of law in Delaware to uncompensated services to clients of one or more of Delaware Volunteer Legal Services, Inc., Community Legal Aid Society, Inc., the Non-profit Pro Bono Committee of the Delaware State Bar Association, the United States District Court for the District of Delaware's Federal Civil Panel, Delaware Council on Crime and Justice, Inc., the Office of Child Advocate, the Office of the Public Defender, the Department of Justice, and the United States Attorney's Office may, upon application to the Clerk of the Court, become an inactive member. Upon compliance with paragraph (b)(ii) of this Rule and Rule 4(F) of the Delaware Rules for Mandatory Continuing Legal Education, an inactive member may become an active member.
- (ii) *Assessment exemption.* — Whenever a member is classified as inactive, the Clerk of the Court shall notify the Lawyers' Fund for Client Protection, the Office of Disciplinary Counsel, and the Commission on Mandatory Continuing Legal Education and that member shall be exempt automatically from the assessments described in Rule 64(g), Rule 66(e), Delaware Rules for Mandatory Continuing Legal Education Rule 3(E)(6) and Supreme Court Rule 74.
- (e) Judicial members. — Judicial members are those judges, commissioners, and masters who are disqualified from the practice of law and those retired judges who do not practice law.
- (f) Retired members. —
- (i) Limitations and duties. — A member of the Bar who is not engaged in the practice of law in Delaware may, upon application to the Clerk of the Court, be granted a certificate of retirement and, so long as the member does not practice law in Delaware other than as provided herein, shall not thereafter be required to comply with this Rule. A retired member may not become an active or inactive member without (1) demonstrating, to the Court's satisfaction, the moral qualifications, competency and learning in the law required for admission to practice and (2) compliance with subsection (b) of this Rule. The Court may refer any retired member seeking to resume active status to the Board of Bar Examiners for determination of suitability to resume active status. Retired members may engage in uncompensated services to clients of one or more of Delaware Volunteer Legal Services, Inc., Community Legal Aid Society, Inc., the Non-profit Pro Bono Committee of the Delaware State Bar Association, the United States District Court for the District of Delaware's Federal Civil Panel, Delaware Council on Crime and Justice, Inc., the Office of the Child Advocate, the Office of the Public Defender, the Department of Justice and the United States Attorney's Office.
- (ii) Exemption from assessment. — Whenever a certificate of retirement is issued, the Clerk of the Court shall notify the Lawyers' Fund for Client Protection, the Office of Disciplinary Counsel, and the Commission on Mandatory Continuing Legal Education. A retired member shall be exempt from the assessments set forth in Rule 64(g), Rule 66(e) and Delaware Rules for Mandatory Continuing Legal Education Rule 3(E)(6).
- (g) Emeritus members. —
- (i) An emeritus member shall be at least sixty-five (65) years of age, unless waiver thereof is granted by the Supreme Court.
- (ii) A Delaware attorney applying to the Court for emeritus member status must be in good standing at the time of the application for emeritus member status.
- (iii) An active attorney must apply to the Court in writing for emeritus member status.
- (iv) Except for special assignments pursuant to Court order, emeritus members may represent only non-profit entities, including, inter alia, Internal Revenue Code § 501(c)(3) entities, religious organizations, educational and governmental institutions as well as clients that inactive members of the Bar may represent pursuant to the existing Rules of the Supreme Court. Emeritus members may not represent individuals, whether for compensation or not, except as permitted by this subsection.
- (v) Except for compensation as ordered by the Court, emeritus members may not seek or receive compensation or reimbursement of any kind of legal services, although they may be reimbursed for documented out-of-pocket expenses in connection with permitted legal services.
- (vi) Emeritus members are exempt from fees and assessments, except for the Supreme Court's registration fee.
- (vii) Emeritus members are under no obligation to fulfill any CLE requirements, but will be required to comply with Rule 4(F) of the Delaware Rules for Mandatory Continuing Legal Education, should such emeritus member apply again to become an active member.
- (viii) Emeritus members shall use their best efforts to cause Martindale Hubbell and other legal lists to state that such attorney is an

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

emeritus member of the Delaware Bar with the term “emeritus member” being expressly defined on all legal lists and legal stationery as a licensed Delaware attorney whose practice is limited to representing charitable and non-profit organizations without compensation, except where compensation is ordered by the Court.

(ix) The Delaware Supreme Court may, at any time, upon notice to an emeritus member and an opportunity to be heard, cause the status of the emeritus member to be changed, by Order, to inactive member.

(h) Continuing obligation to notify the Clerk of the Court of changes. —Each active and inactive member of the Bar is required to notify the Clerk of the Court in writing within 30 days of any change in the information provided in the member’s most recent registration statement.

(i) Certain duties of the Clerk of the Court. —The Clerk of the Court shall: (i) deposit forthwith all assessments received in a special account maintained, regulated and audited by the State for that purpose; (ii) mail to each member of the Bar who files a registration statement and pays the assessments, a registration card, in a form approved by the Court, certifying that such member is in good standing either as an active or inactive member of the Bar; and (iii) distribute funds from such special account: (1) to pay the necessary expenses incurred by the Court in administering this Rule and (2) for such other purposes related to the regulation of the practice of law as the Court shall direct.

(j) Late Fees; Administrative Suspension of Membership. Failure to file the registration statement and pay the registration fee by March 1 will result in a \$150.00 non-waivable late fee. Failure to file the registration statement and pay all fees, including late fees, by April 1 will result in an additional \$200.00 non-waivable late fee. If by April 15 the registration statement has not been filed with the Court and the registration fee and all late fees have not been paid, the attorney is deemed administratively suspended from the practice of law. The Clerk of the Court shall issue a notice of administrative suspension by certified mail at the last known address of record to each member of the Bar who has failed to comply with this Rule. A lawyer who has been administratively suspended for failure to file a registration statement or nonpayment of fees can be retroactively reinstated as a member of the Bar by filing a registration statement and paying the registration fee plus all accumulated late fees on or before July 1. Any lawyer who fails to seek reinstatement by July 1 shall be required to petition for reinstatement under Rule 22 of the Delaware Lawyers’ Rules of Disciplinary Procedure.

(k) Resignation. —Upon acceptance of the resignation by the Court, a member who resigns shall no longer be a member of the Bar.

Rule 70. Mandatory continuing legal education.

The Rules for Mandatory Continuing Legal Education promulgated by Order of this Court dated December 30, 1986, and effective January 1, 1987, shall govern the conduct of the members of the Bar of this State and members of the Judiciary.

Rule 71. Admission pro hac vice.

(a) Application. —Attorneys who are not members of the Delaware Bar or inactive members of the Delaware Bar may be admitted pro hac vice in the discretion of the Court and such admission shall be made only upon written motion substantially in compliance with Official Form O by a [an] active member of the Delaware Bar (“Delaware Counsel”). Application for admission pro hac vice must be made separately before each Court in which admission is sought. The admission of an attorney pro hac vice shall not relieve the moving attorney from responsibility to comply with any Rule or order of the Court.

(b) Certification. —Any attorney seeking admission pro hac vice shall certify the following in a statement attached to the motion:

(i) Good standing. —That the attorney is a member in good standing of the Bar of another state;

(ii) Professional conduct and principles. —That the attorney shall be bound by the Delaware Lawyers’ Rules of Professional Conduct and has reviewed the Principles of Professionalism for Delaware Lawyers:

PRINCIPLES OF PROFESSIONALISM FOR DELAWARE LAWYERS

The Delaware State Bar Association and the Delaware Supreme Court have jointly adopted the Principles of Professionalism for Delaware Lawyers for the guidance of Delaware lawyers, effective November 1, 2003. These Principles replace and supersede the Statement of Principles of Lawyer Conduct adopted by the Delaware State Bar Association on November 15, 1991. They are not intended, nor should they be construed, as establishing any minimum standards of professional care or competence, or as altering a lawyer’s responsibilities under the Delaware Lawyers’ Rules of Professional Conduct. These Principles shall not be used as a basis for litigation, lawyer discipline or sanctions. The purpose of adopting the Principles is to promote and foster the ideals of professional courtesy, civility, conduct and cooperation. These Principles are fundamental to the functioning of our system of justice and public confidence in that system.

PRINCIPLES

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

A. In general. A lawyer should develop and maintain the qualities of integrity, compassion, learning, civility, diligence and public service that mark the most admired members of our profession. A lawyer should provide an example to the community in these qualities and should not be satisfied with minimal compliance with the mandatory rules governing professional conduct. These qualities apply both to office practice and to litigation. A lawyer should be mindful of the need to protect the standing of the legal profession in the view of the public and should bring these Principles to the attention of other lawyers when appropriate.

1. Integrity. Personal integrity is the most important quality in a lawyer. A lawyer's integrity requires personal conduct that does not impair the rendering of professional service of the highest skill and ability; acting with candor; preserving confidences; treating others with respect; and acting with conviction and courage in advocating a lawful cause. Candor requires both the expression of the truth and the refusal to mislead others in speech and demeanor.

2. Compassion. Compassion requires respect for the personal dignity of all persons. In that connection, a lawyer should treat all persons, including adverse lawyers and parties, fairly and equitably and refrain from acting upon or manifesting racial, gender or other bias or prejudice toward any participant in the legal process.

3. Learning. A lawyer's commitment to learning involves academic study in the law followed by continual individual research and investigation in those fields in which the lawyer offers legal services to the public.

4. Civility. Professional civility is conduct that shows respect not only for the courts and colleagues, but also for all people encountered in practice. Respect requires promptness in meeting appointments, consideration of the schedules and commitments of others, adherence to commitments whether made orally or in writing, promptness in returning telephone calls and responding to communications, and avoidance of verbal intemperance and personal attacks. A lawyer should not communicate with a Court concerning pending or prospective litigation without reasonable notice whenever possible to all affected parties. Respect for the Court requires careful preparation of matters to be presented; clear, succinct, and candid oral and written communications; acceptance of rulings of the Court, subject to appropriate review; emotional self-control; the absence of scorn and superiority in words or demeanor; observance of local practice and custom as to the manner of addressing the Court; and appropriate dress in all Court proceedings. A lawyer should represent a client with vigor, dedication and commitment. Such representation, however, does not justify conduct that unnecessarily delays matters, or is abusive, rude or disrespectful. A lawyer should recognize that such conduct may be detrimental to a client's interests and contrary to the administration of justice.

*As used in these Principles, "Court" includes not only state and federal courts, but also other tribunals performing an adjudicatory function including administrative hearing panels and boards as well as arbitration tribunals.

5. Diligence. A lawyer should expend the time, effort, and energy required to master the facts and law presented by each professional task.

6. Public service. 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.

B. Conduct of Litigation. In dealing with opposing counsel, adverse parties, judges, court personnel and other participants in the legal process, a lawyer should strive to make our system of justice work fairly and efficiently. A lawyer should avoid conduct that undermines the judicial system or the public's confidence in it, as a truth-seeking process for resolving disputes in a rational, amicable and efficient way.

1. Responsible choice of forum. Before choosing a forum, a lawyer should review with the client all alternatives, including alternate methods of dispute resolution. A lawyer should not file or defend a suit or an administrative proceeding without a thorough review of the facts and the law as is required to form a conviction that the complaint or response has merit.

2. Pre-trial proceedings. A lawyer should use pre-trial procedures, including discovery, solely to develop a case for settlement or trial and not to harass an opponent or delay a case. Whenever possible, stipulations and agreements should be made between counsel to reduce both the cost and the use of judicial time. Interrogatories and requests for documents should be carefully crafted to demand only relevant matter, and responses should be timely, candid and not evasive. Good faith efforts should be made to resolve by agreement objections to matters contained in pleadings, discovery requests and objections.

A lawyer should endeavor to schedule pre-trial procedures so as to accommodate the schedules of all parties and attorneys involved. Agreements for reasonable extensions of time should not be withheld arbitrarily.

Only those depositions necessary to develop or preserve the facts should be taken. Questions and objections at deposition should be restricted to conduct appropriate in the presence of a judge.

3. Communications with the Court or Tribunal. A lawyer should speak and write respectfully in all communications with the Court. All papers filed in a proceeding should be as succinct as the complexity of the matter will allow. A lawyer should avoid ex parte communications with the Court on pending matters, except when permitted by law. Unless specifically authorized by law, a lawyer should not submit papers to the Court without serving copies of all papers upon opposing counsel in such a manner that

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

opposing counsel will receive them before or contemporaneously with the submission to the Court.

4. Settlement. A lawyer should constantly evaluate the strength of a client's legal position and keep the client advised. A lawyer should seek to settle any matter at any time that such course of action is determined to be consistent with the client's best interest after considering the anticipated cost of continuing the proceeding and the lawyer's good faith evaluation of the likely result.

5. Appeal. A lawyer should take an appeal only if the lawyer believes in good faith that the Court has committed error, or an appeal is otherwise required.

C. Out of state associate counsel. Before moving the admission of a lawyer from another jurisdiction, a Delaware lawyer should make such inquiry as required to determine that the lawyer to be admitted is reputable and competent, should furnish the candidate for admission with a copy [of] these Principles and ensure that the candidate for admission agrees to abide by these Principles.

(iii) Compliance with Rules. —That the attorney and all attorneys of the attorney's firm who directly or indirectly provide services to the party or cause at issue shall be bound by all Rules of the Court;

(iv) Consent to service. —That the attorney has consented to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions, including disciplinary actions, that may arise out of the practice of law under this Rule and any activities related thereto;

(v) Prior appearances. —The number of actions in any court of record of Delaware in which the attorney has appeared in the preceding 12 months;

(vi) Assessment. —That a payment for the pro hac vice admission assessment determined by the Delaware Supreme Court is attached to be deposited in the registration fund of the Delaware Supreme Court for the purpose of the governance of the Bar and the administration of justice and to be distributed pursuant to approval of a majority of the members of the Supreme Court. The pro hac vice admission assessment shall be \$375 in the calendar year 2015, \$400 in calendar year 2016, and thereafter increased annually by the rate of inflation as determined by the Delaware Supreme Court. If the case in which the pro hac vice admission continues into a subsequent year after the year of admission, such assessment shall be deemed an annual assessment to be renewed and be payable on February 1 of each subsequent year and be deemed delinquent if not paid by March 1 of each subsequent year. A notice that a pro hac vice admission may be subject to renewal shall be mailed to Delaware counsel by this Court. It shall be the duty of Delaware counsel to complete the notice stating whether the case in which the pro hac vice admission was granted remains open and to supervise the remittance of the renewal assessment if the case in which the who fails to file the pro hac vice renewal notice with or without assessment as appropriate by March 1 of each year shall pay a \$50.00 late filing assessment.

(vii) Disciplinary proceedings. —Whether the applying attorney has been disbarred or suspended or is the object of pending disciplinary proceedings in any jurisdiction where the applying attorney has been admitted generally, pro hac vice, or in any other way; and

(viii) Other jurisdictions. —The identification of all states or other jurisdictions in which the applying attorney has at any time been admitted generally.

(c) Delaware Counsel's duties. —Delaware Counsel for any party shall appear in the action in which the motion for admission pro hac vice is filed and shall sign or receive service of all notices, orders, pleadings or other papers filed in the action, and shall attend all proceedings before the Court, Clerk of the Court, or other officers of the Court, unless excused by the Court. Attendance of Delaware Counsel at depositions shall not be required unless ordered by the Court.

(d) Withdrawal. —Withdrawal of attorneys admitted pro hac vice shall be governed by the provisions of Rule 12(b). The Court may revoke a pro hac vice admission sua sponte, or upon the motion of a party, if it determines, after a hearing or other meaningful opportunity to respond, the continued admission pro hac vice to be inappropriate or inadvisable.

(e) Filing. —The motion and certificate described in subsections (a) and (b) of this Rule shall be filed as soon as reasonably possible, and they shall be filed no later than the date of the 1st appearance of the attorney who seeks admission pro hac vice before the Court or the Clerk of the Court in the matter for which admission is sought.

(f) Action by Court. —In exercising its discretion in ruling on a motion for admission pro hac vice, the Court shall also consider whether, in light of the nature and extent of the practice in the State of Delaware of the attorney seeking admission, that attorney is, in effect, practicing as a Delaware Counsel without complying with the Delaware requirements for admission to the Bar. In its consideration of this aspect of the motion, the Court may weigh the number of other admissions to practice sought and/or obtained by this attorney from Delaware courts, the question of whether or not the attorney in fact maintains an office in Delaware although the attorney is not admitted to practice in Delaware courts, and other relevant facts.

(g) Delaware Counsel's certification. —The Delaware Counsel filing a motion pro hac vice for the admission of an attorney not a member of the Delaware Bar shall certify that the Delaware attorney finds the applicant to be a reputable and competent attorney, and is in a position to recommend the applicant's admission.

(h) Copy of signed motion to be filed with Court. —The judge who signed the motion shall file with this Court a signed copy of the

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

entire Disciplinary Counsel. Disciplinary counsel shall be responsible for contacting Delaware counsel if the information contained in said copy is incomplete for the purposes of this rule.

(i) Admission of foreign lawyer. —

(1) A foreign lawyer is a person admitted in a non-United States jurisdiction and who is a member of a recognized legal profession in that jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority, and who is not disbarred, suspended, or the equivalent thereof from practice in any jurisdiction.

(2) A court or agency of this State may, in its discretion, admit a foreign lawyer in a particular proceeding pending before such court or agency to appear pro hac vice in a defined role as a lawyer, advisor or consultant in that proceeding with an in-state lawyer, provided that the in-state lawyer is responsible to the client, responsible for the conduct of the proceeding, responsible for independently advising the client on the substantive law of a United States jurisdiction and procedural issues in the proceeding, and for advising the client whether the in-state lawyer's judgment differs from that of the foreign lawyer. See subsection (4).

(3) In addition to the factors listed in this Rule, a court or agency in ruling on an application to admit a foreign lawyer pro hac vice, as a lawyer, advisor, or consultant shall weigh factors, including:

(a) the legal training and experience of the foreign lawyer including in matters similar to the matter before the court or agency;

(b) the extent to which the matter will include the application of:

1. the law of the jurisdiction in which the foreign lawyer is admitted; or
2. international law or other law with which the foreign lawyer has a demonstrated expertise.

(c) the foreign lawyer's familiarity with the law of a United States jurisdiction applicable to the matter before the court or agency;

(d) the extent to which the foreign lawyer's relationship and familiarity with the client or with the facts and circumstances of the matter will facilitate the fair and efficient resolution of the matter;

(e) the foreign lawyer's English language ability; and

(f) the extent to which it is possible to define the scope of the foreign lawyer's authority, so as to facilitate its fair and efficient resolution, including by a limitation on the foreign lawyer's authority to advise the client on the law of a United States jurisdiction except in consultation with the in-state lawyer.

(4) The court or agency shall limit the activities of the foreign lawyer or require further action by the in-state lawyer, as appropriate in its discretion in light of subsection (i)(3). It may, for example, require the in-state lawyer to sign all pleadings and other documents submitted to the court or to other parties, to be present at all depositions and conferences among counsel, or to attend all proceedings before the court or agency.

(5) If any documents submitted to the court, or referenced in any submission to the court, and which is not in English, the applicant shall submit an English translation and satisfactory proof of the accuracy of the translation. If any disciplinary proceeding is referenced in the motion as described in subsection (b)(vii), a certified copy of any finding or order shall be attached to the motion; and if not in English, the applicant shall submit an English translation and satisfactory proof of the accuracy of the translation.

Rule 72. Admission pro hac vice before administrative agencies of this State.

(a) Application. —Attorneys who are not members of the Delaware Bar may be admitted pro hac vice before the administrative agencies of this State and its political subdivisions in the discretion of such agencies and such admission shall be made only upon written motion substantially in compliance with Official Form O by a [an] active member of the Delaware Bar ("Delaware Counsel"). Application for admission pro hac vice must be made separately before each agency in which admission is sought and separately for each matter before the agency. The admission of an attorney pro hac vice shall not relieve the moving attorney from responsibility to comply with any rule or order of the agency.

(b) Certification. —Any attorney seeking admission pro hac vice shall certify the following in a statement attached to the motions:

(i) Good standing. —That the attorney is a member in good standing of the Bar of another state;

(ii) Professional conduct and principles. —That the attorney shall be bound by the Delaware Lawyers' Rules of Professional Conduct and has reviewed the Statement of Principles of Lawyer Conduct as set forth in Supreme Court Rule 71(b)(ii);

(iii) Compliance with rules. —That the attorney and all attorneys of the attorney's firm who directly or indirectly provide services to the party or cause at issue shall be bound by all rules of the practice in this State and of the agency;

(iv) Consent to service. —That the attorney has consented to the appointment of the Clerk of the Supreme Court as agent upon whom services of process may be made for all actions, including disciplinary actions, that may arise out of the practice of law under this Rule and any activities related thereto;

(v) Prior appearances. —The number of actions in any court of record of Delaware and matters before administrative agencies of this

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

State in which the attorney has appeared in the preceding 12 months;

(vi) Assessment. —That a payment for the pro hac vice admission assessment determined by the Delaware Supreme Court is attached to be deposited in the registration fund of the Delaware Supreme Court for the purpose of the governance of the Bar and the administration of justice and to be distributed pursuant to approval of a majority of the members of the Supreme Court, which payments shall promptly be forwarded by the agency to the Supreme Court. The pro hac vice admission assessment shall be \$375 in the calendar year 2015, \$400 in calendar year 2016, and thereafter increased annually by the rate of inflation as determined by the Delaware Supreme Court. If the case in which the pro hac vice admission continues into a subsequent year after the year of admission, such assessment shall be deemed an annual assessment to be renewed and be payable on February 1 of each subsequent year and be deemed delinquent if not paid by March 1 of each subsequent year. A notice that a pro hac vice admission may be subject to renewal shall be mailed to Delaware counsel by this Court. It shall be the duty of Delaware counsel to complete the notice stating whether the case in which the pro hac vice admission was granted remains open and to supervise the remittance of the renewal assessment if the case in which the who fails to file the pro hac vice renewal notice with or without assessment as appropriate by March 1 of each year shall pay a \$50.00 late filing assessment.

(vii) Disciplinary proceedings. —Whether the applying attorney has been disbarred or suspended or is the object of pending disciplinary proceedings in any jurisdiction where the applying attorney has been admitted generally, pro hac vice, or in any other way; and

(viii) Other jurisdictions. —The identification of all states or other jurisdictions in which the applying attorney has at any time been admitted generally.

(c) Delaware Counsel's duties. —Delaware Counsel for any party shall appear in the matter in which the motion for admission pro hac vice is filed and shall sign or receive service of all notices, orders, pleadings or other papers filed in the matter and shall attend all proceedings before the agency and representatives thereof, unless excused by the agency. Attendance of Delaware Counsel at depositions shall not be required unless ordered by the agency.

(d) Withdrawal. —Withdrawal of attorneys admitted pro hac vice shall be permitted only by written order of the agency. All appearing attorneys shall continue as such and continue to perform the duties of counsel imposed by law, by the Delaware Lawyers' Rules of Professional Conduct and by the agency. Withdrawal of an attorney ordinarily will not be considered as a permissible ground for delay of a matter before an agency. An agency may revoke a pro hac vice admission sua sponte, or upon the motion of a party, if it is determined, after a hearing or other meaningful opportunity to respond, the continued admission pro hac vice to be inappropriate or inadvisable.

(e) Filing. —The motion and certificate described in subsections (a) and (b) of this rule and the signed order granting admission shall be filed before the agency and a copy of each document shall be filed with the Delaware Supreme Court by the agency granting the pro hac vice admission as soon as reasonably possible, and they shall be filed no later than the date of the first appearance of the attorney who seeks admission pro hac vice before the agency in the matter for which admission is sought. The Court shall provide said copy to disciplinary counsel who shall be responsible for contacting Delaware counsel if the information contained in said copy is incomplete for the purposes of this rule.

(f) Action by agency. —In exercising its discretion in ruling on a motion for admission pro hac vice, an agency shall also consider whether, in light of the nature and extent of the practice in the State of Delaware of the attorney seeking admission, that attorney is, in effect, practicing as a Delaware Counsel without complying with the Delaware requirements for admission to the Bar. In its consideration of this aspect of the motion, the agency may weigh the number of other admissions to practice sought and/or obtained by this attorney from Delaware courts, the question of whether or not the attorney in fact maintains an office in Delaware although the attorney is not admitted to practice in Delaware courts, and other relevant facts.

(g) Delaware Counsel's certification. —The Delaware Counsel filing a motion pro hac vice for the admission of an attorney not a member of the Delaware Bar shall certify that the Delaware attorney finds the applicant to be a reputable and competent attorney, and is in a position to recommend the applicant's admission.

Rule 73. Abandoned or unclaimed trust funds held by attorneys.

When, for a continuous period of 5 years, an attorney's trust or escrow account contains trust or escrow funds, including funds held in the form of balances owed and funds for which disbursement has been attempted by issuing a check, which are either unidentifiable, unclaimed, or which are held for missing or unknown owners, the funds shall be deemed abandoned in accordance with the provisions of the Delaware escheats statute for unclaimed property, 12 Del. C. Chapter 11. The attorney shall make reasonable efforts to identify and locate the beneficial owner of the abandoned funds. With regard to funds for which the attorney has issued a check that has remained outstanding for six months or more, the attorney shall comply with the procedures set forth in Rule 1.15(d)(9)(E) of the Delaware Lawyers' Rules of Professional Conduct. The attorney shall then file an abandoned property report under 12 Del. C. § 1199. If, 90 days after the filing of the report, the attorney is still unable to identify and to locate the owner of the abandoned funds, the funds shall be paid to the State Escheator according to the provisions of the Escheats Statute.

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

Rule 74. Delaware Lawyer's Assistance Program.

(a) Operation. —There shall be a Lawyers' Assistance Program to be overseen by the Delaware State Bar Association which shall monitor the financial operation and administration of the Program. The Delaware State Bar Association shall receive an annual grant from the Court to finance the Program and have the authority, subject to the review of the Court, to set forth terms and conditions for the distribution of the funds for the operation of the Program through the Delaware State Bar Association's Lawyers' Assistance Committee.

(b) Purpose. —The purpose of the Delaware Lawyers' Assistance Program is to provide assistance to Delaware attorneys and members of the State Judiciary with alcohol, drugs, gambling, emotional, behavioral, or other personal problems that effect well-being and professional performance.

(c) Annual Assessment. —All active Delaware lawyers shall pay an annual assessment to the Lawyers' Assistance Program in an amount to be determined by the Court pursuant to the annual registration process under Supreme Court Rule 69.

PART VI. JUDGES AND ADMINISTRATION

Rule 81. The Judicial Conference.

Repealed effective Aug. 19, 2015.

Rule 82. Assignment judges of trial courts.

Repealed effective Aug. 19, 2015.

Rule 83. Attorneys and other court officers as bondsmen.

A court of this State shall not accept any cash bail, special bail bond or surety bond in respect of which an attorney or court officer acts, directly or indirectly, as bail or surety. This prohibition shall also apply to any agent, employee, member of the immediate family of any such attorney or court officer, or any corporation in which such attorney or court officer owns a controlling interest. This prohibition shall not apply to any bond in which the attorney, court officer, agent, employee or family member, as above defined, may be the principal. The phrase "member of the immediate family" shall include the spouse, father, mother, father-in-law, mother-in-law, son, daughter, brother, sister, brother-in-law or sister-in-law or any such attorney or court officer.

Rule 84. Code of Judicial Conduct.

The conduct of all judges of the courts of this State, both constitutional and statutory, shall be governed by The Delaware Judges' Code of Judicial Conduct promulgated by order of the Court dated December 16, 1993, and as thereafter amended.

Rule 85. Advisory Committee on Litigation Ethical Problems.

Repealed effective May 8, 2001.

Rule 86. Unauthorized Practice of Law Subcommittee of the Board on Professional Responsibility.

The Unauthorized Practice of Law Subcommittee of the Board on Professional Responsibility is governed by Supreme Court Rule 62 and the Rules of the Unauthorized Practice of Law Subcommittee of the Board on Professional Responsibility.

Rule 87. Administrative Office of the Courts.

Repealed effective Aug. 19, 2015.

PART VII. ADMINISTRATION OF THE COURT

Rule 91. Court administration.

(a) Clerk of the Supreme Court and office of the Clerk of the Supreme Court. —

(i) Clerk. —Pursuant to Article IV, § 27 of the Delaware Constitution of 1897, the Court shall appoint a Clerk of the Supreme Court who shall serve at the pleasure of the Court.

(ii) Office. —The Clerk's office shall be maintained in Dover.

(iii) Records. —The Clerk shall have custody of the records and papers of this Court. The Clerk shall not permit any original record or paper of this Court or any trial court to be taken from the Clerk's custody except at the direction of the Court.

(iv) Numbering of cases. —Upon the docketing of any case in this Court, the Clerk shall assign a case number to it. The first case docketed in any calendar year shall be identified by the year and designated "No. 1." Subsequent cases shall be numbered chronologically thereafter.

(v) Numbering of papers. —The Clerk shall file all papers in each case and shall give each paper a docket entry number which shall be maintained on a chronological basis.

(vi) Docket. —The Clerk shall keep a docket in which the Clerk shall record, under the caption and case number of each case, the

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

filing of each paper, its docket entry number, and the date of such filing.

(vii) Notice to Justice. —Upon the docketing of each case, the Clerk shall send to each Justice an exact copy of the caption thereof.

(viii) Authority of the Assistant Clerk. —In the event of the Clerk’s absence from the office, the Assistant Clerk shall have the authority to exercise all powers of the Clerk.

(ix) Authority of the senior court clerks, court clerks and court staff. —Senior court clerks, court clerks and court staff shall have the authority to receive papers as deputy clerks. Papers required to be filed with the Clerk of the Court may be filed with any senior court clerk, court clerk or court staff in any county.

(b) Staff Attorneys. —The Staff Attorneys assist the Court in discharging its constitutional responsibilities as the Court designates orally or in writing from time to time, including the following:

- (i) Preliminary review of the jurisdictional basis for all appeals.
- (ii) Review of all filings for compliance with Court rules.
- (iii) Coordinate requests for extensions of time by parties or court reporters.
- (iv) Review of all pro se filings and circulation of filings to the Justices with a written cover memorandum.
- (v) Assisting the Clerk of the Court in the scheduling of cases and the securing of supplemental filings.
- (vi) Undertake independent research as requested.
- (vii) Assist the Motion Justice each month as requested.
- (viii) Perform such other legal duties as assigned.

Rule 92. Seal.

The Court’s seal shall contain the words “SUPREME COURT” on the upper arc of the circle and the words “STATE OF DELAWARE” on the lower arc. This language shall encircle arms similar to those appearing on the Great Seal of the State. The Clerk is directed to retain the seal in the Clerk’s custody and is authorized to affix it to such documents as, under the practice heretofore prevailing, may be appropriate.

Rule 93. Permanent Advisory Committee on Supreme Court Rules and Rules of Evidence.

(a) A permanent Advisory Committee on Supreme Court Rules and Rules of Evidence is hereby established. The Committee shall be known as the “Supreme Court Rules Committee.”

(b) It shall consist of members of the Bar who shall be appointed by the Court for such terms as the Court shall determine. One of the members shall be designated as Chair.

(c) The Committee’s duties shall include:

- (i) Monitoring the Supreme Court Rules, considering changes where appropriate, considering and drafting changes suggested by the Committee and the Court, receiving and considering comments from members of the Bar, Bench, and public regarding possible improvements to the Rules;
- (ii) Establishing a subcommittee to monitor the Delaware Uniform Rules of Evidence, to consider any changes to analogous federal rules of evidence and ensure timely consideration of whether Delaware’s comparable rules should be amended to incorporate those changes, and to receive and consider comments from members of the Bar, Bench and public regarding these topics. This subcommittee shall be called the “Evidence Rules Subcommittee.” The Chairs of the subcommittee shall be determined by the Chair of the Committee, in consultation with the Chief Justice.
- (iii) Making recommendations and performing such other duties as the Court and Chief Justice find helpful in fulfilling their responsibilities under § 13 of Article 4 of the Delaware Constitution.
- (iv) Making recommendations to the Court concerning the rules and practices of trial courts.

(d) The Chair of the Rules Committee may appoint ad hoc members of the Committee in consultation with the Court, for specific purposes when that will aid the accomplishment of the Committee’s duties.

Rule 94. Permanent Advisory Committee on Supreme Court Rules.

Repealed effective May 24, 2016.

Rule 95. Permanent Advisory Committee on the Delaware Uniform Rules of Evidence.

Repealed effective May 24, 2016.

Rule 96. Permanent Advisory Committee on the Delaware Lawyers’ Rules of Professional Conduct.

A Permanent Advisory Committee on the Delaware Lawyers’ Rules of Professional Conduct is hereby established. It shall consist of 11

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE

or more members of the Bar who shall be appointed by the Court for staggered 3 year terms or such other terms as the Court may determine. The Court shall appoint the Chair of the Committee. A Justice of the Court may be designated by the Court as liaison to the Committee. It shall be the responsibility of the Committee to monitor these Rules, review the Model Rules of Professional Conduct and amendments or proposed amendments thereto, consider changes in the Delaware Lawyers Rules where appropriate, draft changes suggested by the Committee and the Court, receive and consider comments from members of the Bar, Bench, and others, and consult with the Court from time to time. The Committee shall make an annual report to the Court concerning the status of the rules and the work of the Committee. The annual report shall be filed on each anniversary of the effective date of this Rule. The Court may also require additional reports from time to time.

Rule 97. Permanent Advisory Committee on Professionalism.

Repealed effective Aug. 20, 2007.

PART VIII. RULES OF THE SUPREME COURT

Rule 101. Scope and application of Rules.

(a) Scope and application in Supreme Court. —These Rules shall govern all proceedings in this Court. Unless otherwise provided or the context precludes such application, the rules relating to appeals set forth in Parts II and III of these Rules shall be applicable to other proceedings under Part IV of these Rules.

(b) Application to trial courts. —All courts in this State shall adopt rules consistent with applicable Rules of this Court.

Rule 102. General provisions.

(a) Construction. —These Rules shall be construed so as to do substantial justice and to provide for the speedy and efficient determination of proceedings in this Court.

(b) Conduct of attorneys and litigants. —Attorneys and litigants shall conduct themselves before the Court in a manner consistent with the letter and spirit of these Rules. Attorneys are expected to take all necessary steps to avoid unreasonable delays and are expected to present all matters and papers to the Court with the highest professional competence and integrity.

(c) Meaning of terms. —All terms in these Rules shall have their usual meanings. Use of the singular shall include the plural. Reference to “trial court” shall refer to any tribunal to which a direct appeal to this Court shall lie.

Rule 200. Panel assignments and the Court en Banc.

Repealed, effective July 25, 1980.

Rule 201. Annual registration statement.

Repealed, effective Nov. 12, 1985.

Rule 300. Historical Society of the Supreme Court of Delaware.

(a) There shall be a Historical Society of the Supreme Court of Delaware (“Society”). Its purpose shall be to preserve the history of the Delaware Supreme Court, its members, and its administration of justice in Delaware and to educate and inform others periodically about such matters.

(b) The society shall consist of the present Justices and such other members of the Delaware bench and bar as may from time to time be designated by the Chief Justice, with the concurrence of a majority of the Justices.

(c) The Supreme Court shall allocate to the society a portion of the funds generated by the Commission on Continuing Legal Education to enable the society to carry out its purposes.