

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ORDER AMENDING RULES 25 §
AND 26.1 and FORMS E and O OF §
THE RULES OF THE SUPREME §
COURT OF DELAWARE and §
DELAWARE RULE OF §
EVIDENCE 801 §

Before **STRINE**, Chief Justice; **VALIHURA**, **VAUGHN**, **SEITZ**, and **TRAYNOR**, Justices, constituting the Court *en banc*.

ORDER

This 7th day of May 2018, it appears to the Court that it is desirable to amend Supreme Court Rules 25, 26.1 and Form O and Delaware Rule of Evidence 801. These amendments are effective immediately.

(1) Supreme Court Rule 25(a) is amended as set forth below:

(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:

(2) Rule 26.1(h) is amended as set forth below:

(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 \$~~5~~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.

(3) Form E is amended as set forth below:

IN THE SUPREME COURT OF THE STATE OF DELAWARE

____[1]_____,

____[2]____ Below,

Appellant,

v.

____[3]_____,

____[4]____ Below,

No. ____[5]____

NOTICE OF APPEARANCE

To: Clerk of the Supreme Court
~~P.O. Box 476~~55 The Green
Dover, DE 199013

PLEASE enter my appearance on behalf of [6]_____ in the above-captioned appeal.

Dated _____

[7]_____

Insertions to Official Form E:

- [1] Appellant's name.
 - [2] Appellant's lower court status.
 - [3] Appellee's name.
 - [4] Appellee's lower court status.
 - [5] Supreme Court appeal number.
 - [6] Party's name.
 - [7] Name, address, telephone number and Delaware Bar ID number of the attorney entering an appearance.
- (4) Form O is amended as set forth below:

IN THE SUPREME COURT OF THE STATE OF DELAWARE

_____[1]_____,

_____[2]_____ Below,

Appellant,

v.

No. _____[5]_____

____[3]_____,
____[4]____ Below,
Appellee.

MOTION FOR ADMISSION PRO HAC VICE

____[6]____, a member of the Delaware Supreme Court bar, pursuant to Rule 71, moves the admission pro hac vice of ____[7]____ to represent ____[8]____ in this action. Movant certifies that Movant finds the applicant to be a reputable and competent attorney, and Movant is in a position to recommend the applicant's admission. The applicant is admitted, practicing, and in good standing in ____[9]____.

____[10]____

____[11]____ hereby certifies:

1. That applicant shall be bound by the Delaware Lawyers' Rules of Professional Conduct.
2. That applicant and all attorneys of the applicant's firm who directly or indirectly provide services to the party or cause at issue shall be bound by all Rules of the Court.
3. That applicant has reviewed the Statement of Principles of Lawyer Conduct.
4. That applicant consents 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.
5. The applicant has appeared in ____[12]____ actions in courts of record of Delaware in the preceding twelve (12) months.

6. Applicant does not maintain an office in the State of Delaware except ___[13]___.

7. That applicant is a member in good standing of the bar of the State of ___[14]___.

8. Applicant has not been disbarred or suspended and is not the object of any pending disciplinary proceedings in any jurisdiction where the applicant has been admitted generally, pro hac vice, or any other way, except ___[15]___.

9. Applicant is admitted for the practice of law in the following states or other jurisdictions: ___[16]___.

10. Payment for the pro hac vice application assessment in the amount determined by the Delaware Supreme Court under Rule 72(b)(vi) ~~of Three Hundred Dollars (\$300.00)~~ is attached for deposit in the Delaware Supreme Court registration fund to be distributed as the Supreme Court directs pursuant to Rule 71.

Dated: _____

.....
Applicant's Signature

ORDER

The foregoing application for admission to practice in this action pro hac vice is hereby granted. IT IS SO ORDERED this ___ day of _____, ____.

.....
Justice

Insertions to Official Form O:

[1] Appellant's name.

[2] Appellant's lower court status.

[3] Appellee's name.

[4] Appellee's lower court status.

[5] Supreme Court appeal number.

[6] Moving attorney's name.

[7] Applying pro hac vice attorney's name, firm, office address and office telephone number.

[8] Moving party's name.

[9] Jurisdiction in which applying pro hac vice attorney is admitted to practice law.

[10] Moving attorney's name, address, telephone number and Delaware Bar ID number.

[11] Applying pro hac vice attorney's name.

[12] Number of court actions in which applicant has appeared in Delaware in the preceding 12 months.

[13] Applicant's Delaware office address, if any.

[14] State(s) in which applicant is admitted to practice law.

[15] Instances, if any, in which applicant has been disbarred, suspended or is the object of a pending disciplinary proceeding.

[16] Other jurisdictions in which applicant is admitted to practice law.

(5) Delaware Rule of Evidence 801(d) is amended as set forth below:

(d) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:

(1) *A Declarant-Witness's Prior Statement.* The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) is inconsistent with the declarant's testimony, or

(B) in civil cases, is consistent with the declarant's testimony and is offered:

- (i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or
 - (ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground; or
 - (C) in criminal cases, is consistent with declarant's testimony and is permitted under 101 Del. C. § 3507; or
 - (D) identifies a person.
- (2) *An Opposing Party's Statement.* The statement is offered against an opposing party and:
- (A) was made by the party in an individual or representative capacity;
 - (B) is one the party manifested that it adopted or believed to be true;
 - (C) was made by a person whom the party authorized to make a statement on the subject;
 - (D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
 - (E) was made by the party's coconspirator during and in furtherance of the conspiracy; provided that the conspiracy has first been established by the preponderance of the evidence to the satisfaction of the court.

(6) The Clerk of this Court is directed to transmit a certified copy of the Order to the clerk for each trial court in each county.

BY THE COURT:



Chief Justice