

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ORDER AMENDING RULES 18, §
25, 30, and 69 OF THE RULES OF §
THE SUPREME COURT OF §
DELAWARE §

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

ORDER

This 29th day of September 2016, it appears to the Court that it is desirable to amend Supreme Court Rules 18, 25, 30, and 69. These amendments are effective October 3, 2016.

(1) Supreme Court Rule 18 shall be amended to add the following language:

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.

(2) Supreme Court Rule 25(a) shall be amended as follows:

(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 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 not exceed four pages in length. 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 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.

(3) Supreme Court Rule 30 shall be amended as follows:

(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. ~~The statement of the grounds for the order or relief and the citation to the authorities in support of the motion shall not be greater than 4 pages in length including the caption of the case and signature of counsel.~~

(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. ~~No answer or reply to the answer shall exceed 4 pages in length including the caption of the case and the signature of counsel.~~

(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.

(eg) *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.

(4) Supreme Court Rule 69(b)(iii) shall be amended as follows:

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(C)(3)(aE)(6)~~ and Supreme Court Rule 74.

(5) Supreme Court Rule 69(d) shall be amended as follows:

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(C)(3F)~~ 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(C)(3)(aE)(6)~~ and Supreme Court Rule 74.

~~(iii) Inactive card. The term certificate of exemption as used in the Delaware Rules for Mandatory Continuing Legal Education Rule 4(C) shall mean a certificate of inactive status and a registration card certifying inactive status.~~

(6) Supreme Court Rule 69(f)(ii) shall be amended as follows:

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(~~C~~)(~~3~~)(~~a~~E)(~~6~~).

(7) Supreme Court Rule 69(g)(vii) shall be amended as follows:

Emeritus members are under no obligation to fulfill any CLE requirements, but will be required to comply with Rule 4(~~C~~)(~~3~~F) of the Delaware Rules for Mandatory Continuing Legal Education, should such emeritus member apply again to become an active member.

(8) 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