

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ORDER AMENDING RULES 10.2, §
13, 14, 15, 26, 26.1 OF THE RULES §
OF THE SUPREME COURT OF §
DELAWARE and IOP XVIII OF §
THE INTERNAL OPERATING §
PROCEDURES OF THE §
DELAWARE SUPREME COURT §
§

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

ORDER

This 19th day of August 2016, it appears to the Court that it is desirable to amend Supreme Court Rules 10.2, 13, 14, 15, 26, 26.1, add Official Form R, and amend Supreme Court Internal Operating Procedure XVIII. These amendments are effective October 3, 2016.

(1) Supreme Court Rule 10.2(4)(a) shall be amended to strike the following language:

(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. ~~A document may exceed page limitation rules to a maximum of two (2) additional pages when the additional pages are attributed to the electronic conversion or filing process.~~

(2) Supreme Court Rule 10.2(4)(d) shall be amended to strike the following language:

(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.

~~(ii) All electronically filed documents, papers or pleadings directly relating to a previously filed document, paper or pleading shall be linked to the previously filed document, paper or pleading, utilizing the “linked document feature” in the eFiling system.~~

~~(iii) Failure to properly link document may result in rejection of the filing by the Clerk.~~

(3) Supreme Court Rule 13(a)(i) shall be amended as follows:

(a) *Briefs and appendices.* (i) ~~The~~All text, including text in footnotes, shall be ~~typeset~~ in Times New Roman 14-point ~~type with two spaces between sentences.~~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. ~~The typeface on footnotes shall be Times New Roman 12-point type with two spaces between sentences.~~

(4) Supreme Court Rule 13(a)(ii) shall be amended as follows:

(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 ½ by 11 inches, with double spacing. Quotations of at least ¼ inch between each line of text (measured from the bottom of the preceding line to the top of the highest letters in the next line) except for quotations more than 50 words and footnotes shall be single-spaced. Top, bottom, and side margins of briefs shall be not less than 1 inch.

- (5) Supreme Court Rule 13(b) shall be amended to strike the following

language:

(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 ½ by 11 inches and shall otherwise conform with the requirements for briefs, as provided under paragraphs (a)(i) and (a)(ii) above. ~~Printed motions shall be 7 by 9 ½ inches.~~ 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.

- (6) Supreme Court Rule 13(c) shall be amended to strike the following

language:

(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, ~~and, when used, the use of recycled paper must be indicated on the last page of the paper being filed.~~

- (7) Supreme Court Rule 14(d) is stricken and shall be replaced with:

(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.

(8) Supreme Court Rule 15(a)(5) shall be amended to strike the following

language:

(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, ~~which shall not exceed a total of 20 pages, exclusive of appendix.~~

(9) Supreme Court Rule 26(c)(i) shall be amended to add the following language:

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

(10) Supreme Court Rule 26(c)(ii) shall be amended as follows:

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

(A) Copy to Client. Supplied the client with a copy of the motion ~~and the~~, 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.

(11) Supreme Court Rule 26.1(c)(i) shall be amended to add the following

language:

(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.

(12) Supreme Court Rule 26.1(c)(ii) shall be amended as follows:

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

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

(13) Official Form R shall be added:

Form R. Certificate of Compliance [Rule 13(a)(i) and Rule 14(d)(i)].

**IN THE SUPREME COURT OF THE
STATE OF DELAWARE**

.....[1]....., : No.[5].....
.....[2].... Below, :
Appellant, :
v. :
.....[3]....., :
.....[4].... Below, :
Appellee. :
:

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT
AND TYPE-VOLUME LIMITATION**

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

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

Dated:.....

Signature of filing attorney or unrepresented person

Insertions to Official Form R

- [1] Appellant’s name.
- [2] Appellant’s lower court status.
- [3] Appellee’s name.
- [4] Appellee’s lower court status.
- [5] Supreme Court appeal number.
- [6] Name and version of word processing program.
- [7] Number of words.

(14) Internal Operating Procedure XVIII(7)(j) shall be amended as follows:

~~(j) page limit extension~~(j) type-volume extensions of no more than 4,000 words for an opening or answering brief and 1,900 words for a reply in a non-capital case; or no more than 6,700 words for an opening or answering brief and 3,200 words for a reply in a capital case. For unrepresented parties without access to a word processing program, page limit extensions of no more than 15 pages for an opening or answering brief and 7 pages for a reply in a non-capital case; or no more than 25 pages for an opening or answering brief and 12 pages for a reply in a capital case. Motions for type-volume and page limit extensions are disfavored and will usually not be granted by the Court *en banc* beyond these limits in total;

(15) 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