

Initial Civil Appeals: Delaware

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A Q&A guide to appealing from a trial court of general jurisdiction in Delaware. This Q&A addresses starting an appeal (as of right or by permission), obtaining a stay pending appeal, completing preliminary requirements (like mediation), submitting a factual record or appendix, briefing the appeal, arguing the appeal, and requesting rehearing. Answers to questions can be compared across a number of jurisdictions (see Initial Civil Appeals: State Q&A Tool).

Following the suspension or modification of nonessential judicial functions in 2020 due to COVID-19, Delaware courts have resumed most operations, but local courts may impose special rules impacting some litigation. Check the [Delaware Judiciary Response to Coronavirus Disease \(COVID-19\)](#) website for the latest developments in this jurisdiction.

Overview of State Appeals

1. What types of rulings can a party appeal as of right (for example, final judgments, preliminary injunctions, interlocutory orders)?

Delaware does not have a specific court of intermediate appellate review. Parties may appeal as of right to the Supreme Court final judgments entered by:

- The Court of Chancery (Delaware's equity court).
- The Superior Court (Delaware's court of general jurisdiction).
- The Family Court.

(Del. Const. art. IV, § 11(1)(a); 10 Del C. § 1051(a); *Tyson Foods, Inc. v. Aetos Corp.*, 809 A.2d 575, 579 (Del. 2002).)

A final judgment is one that both:

- Determines the merits of the controversy or defines the parties' rights.
- Leaves nothing for future determination or consideration.

(*Tyson*, 809 A.2d at 579.)

Unless expressly certified as a final judgment by the lower court, a judgment regarding a single claim or party does not become final until entry of the last judgment resolving all claims for all parties. Without this certification or final entry, any decision regarding fewer than all the claims or all the parties is not appealable to the Supreme Court. (Del. Ch. Ct. R. 54(b); Del. Super. Ct. R. 54(b); *Harrison v. Ramunno*, 730 A.2d 653, 654 (Del. 1999).)

2. What types of rulings, if any, can a party appeal by permission (for example, interlocutory orders)?

A party may appeal by permission an interlocutory order from the Delaware Court of Chancery or Superior Court deciding a substantial issue of material importance that merits appellate review before a final judgment (Del. Const. art. IV, § 11(1)(a); Del. Sup. Ct. R. 42(b)(i)).

In deciding whether to permit an interlocutory appeal, the courts consider whether:

- The interlocutory order involves a question of law resolved for the first time in Delaware.
- The decisions of the trial courts are conflicting on the question of law.

- The question of law relates to the constitutionality, construction, or application of a Delaware statute that has not been, but should be, settled by the Delaware Supreme Court in advance of an appeal from a final order.
- The interlocutory order has sustained the controverted jurisdiction of the trial court.
- 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 that 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.
- The interlocutory order has vacated or opened a trial court judgment.
- Review of the interlocutory order may terminate the litigation.
- Review of the interlocutory order may serve considerations of justice.

(Del. Sup. Ct. R. 42(b)(iii), (d)(v).)

To begin an interlocutory appeal, a party must first apply for certification of the interlocutory appeal in the trial court (Del. Sup. Ct. R. 42(c); see Question 7). Although not a dispositive factor, the Delaware Supreme Court may consider the trial court's decision to certify or refuse to certify an interlocutory appeal as a relevant factor in determining whether to accept or reject the interlocutory appeal (Del. Sup. Ct. R. 42(d)(v)).

Under the Rules of the Supreme Court, interlocutory appeals should be exceptional, not routine. Parties should seek interlocutory review only if they believe in good faith that there are substantial benefits that will outweigh the certain costs that accompany an interlocutory appeal. (Del. Sup. Ct. R. 42(b)(ii).)

3. Are there any restrictions on the types of issues the appellate court can consider (for example, only questions of law)?

The Delaware Supreme Court reviews questions of both law and fact. The court reviews questions of law *de novo* and affirms factual issues if they are both:

- Supported by substantial evidence on the record.
- Produced from an orderly and logically deductive process.

(*Baker v. Long*, 981 A.2d 1152, 1156 (Del. 2009).)

The Supreme Court normally reviews only those questions fairly presented to the trial court; however, the court may review questions not presented to the trial court when the interests of justice require (Del. Sup. Ct. R. 8).

Starting an Appeal

4. When must a party start an appeal?

Appeals

A party must file a notice of appeal from the Delaware Chancery or Superior Court within 30 days after entry on the docket of a judgment, order, or decree from which the appeal is taken (Del. Sup. Ct. R. 6(a)(i)). However, 10 Del. C. § 146 provides for a different time frame for appeals of infants or mentally incompetent persons not represented by a guardian or trustee in the lower court action (Del. Sup. Ct. R. 6(a)(i)).

Cross Appeals

A party must file a notice of cross-appeal from the Chancery or Superior Court by the later of:

- Fifteen days after the filing of the first notice of appeal.
- Thirty days after entry of the judgment or order from which the appeal is taken.

(Del. Sup. Ct. R. 6(b)(i).)

Interlocutory Appeal

A party must serve and file an application for an interlocutory appeal within ten days of the entry of the order from which the appeal is sought (Del. Sup. Ct. R. 42(c)(i)).

5. How, if at all, can a party extend the time to start an appeal?

Appeal as of Right

The time to appeal (or cross-appeal) cannot be extended for appeals as of right (Del. Sup. Ct. R. 11(b)). The Delaware Supreme Court has held that the time to appeal is jurisdictional and untimely filing is a jurisdictional defect that is not excused without unusual circumstances not attributable to the appellant or their attorney (*Carr v. State*, 554 A.2d 778, 779 (Del. 1989)).

Appeal by Permission

The trial court may order a longer time for good cause shown (Del. Sup. Ct. R. 42(c)(i)).

6. How does a party start an appeal as of right (for example, notice of appeal, petition)?

A party begins an appeal by serving a notice of appeal on each party to the proceeding under the Delaware Supreme Court Rules. Immediately after service, the appellant must file the notice with the Supreme Court clerk together with proof of service. (Del. Sup. Ct. R. 7(a).)

When drafting a notice of appeal, counsel must comply substantially with official forms A and B of the Supreme Court Rules, which are model notices of appeal and cross-appeal (Del. Sup. Ct. R. 7(c)(7), Form A, and Form B).

The notice of appeal or cross-appeal must:

- Name the court from which the appeal is taken, the judge entering the judgment, and the case number.
- Name the party or parties taking the appeal, against whom the appeal is taken, and provide the name and address of each party's attorney of record.
- Designate the judgment or order sought to be reviewed and the date of the judgment or order. If the appeal is taken more than 30 days after the entry of the judgment or order sought to be reviewed, the notice must include the factual and legal grounds for tolling the appeal time.
- Designate by name and address the attorney of record for each party to the proceeding below against whom the current appeal is not taken.
- State the name and last known address of any party that does not have an attorney.
- Designate the transcripts for inclusion in the record on appeal as required by Supreme Court Rule 9(e).
- Have a caption, which must contain only:
 - the names of the parties below taking the appeal; and
 - the names of the parties against whom the appeal is taken.
- Include a copy of the order or judgment sought to be reviewed. The appellant must attach any separate rationale for the judgment, if available, to the notice of appeal or notice of cross-appeal. The party must indicate if the material is not available.

(Del. Sup. Ct. R. 7(c).)

7. How does a party start an appeal by permission (for example, motion to the appellate court, motion to the trial court)?

A party starts an appeal by permission by applying to both the trial court **and** the Supreme Court in Delaware.

A party must apply to the trial court for certification of an interlocutory appeal by serving and filing an application and delivering a copy to the trial court judge. The opposing party then has ten days to respond. The trial court must grant or refuse certification within either:

- Ten days of the response.
- 20 days of the application if the opposing party does not respond.

(Del. Sup. Ct. R. 42(c).)

After filing the trial court application but within 30 days after the entry of the order from which the appeal is sought to be taken, the appellant also must file a notice of appeal with the Supreme Court. The notice must:

- Comply with:
 - Supreme Court Rules 6 and 7, governing notices of appeal generally; and
 - Supreme Court Rules Form M, Notice of Appeal from Interlocutory Order.
- Include copies of:
 - the application for certification;
 - the interlocutory order or opinion from which the appeal is sought;
 - the written response, if any, to the application for certification; and
 - the order or opinion of the trial court certifying or refusing to certify the interlocutory appeal, if entered.

(Del. Sup. Ct. R. 42(d).)

If an appellant files the notice of appeal before the trial court acts on the application, the appellant must serve and file a supplementary notice of appeal within ten days after expiration of the trial court's time to act (Del. Sup. Ct. R. 42(d)(iii)). Delaware practitioners frequently file the notice of appeal before the trial court acts to avoid missing the deadline, then supplement when the trial court issues its decision.

The supplementary notice must include:

- The written response to the application, if not included with the initial notice of appeal.
- Either:
 - if the trial court has certified or refused to certify the appeal, a copy of its order; or
 - if the trial court has not entered an order on the application within 30 days of the entry of the interlocutory order, a separate certificate of appellant's counsel stating that.

(Del. Sup. Ct. R. 42(d)(iv).)

Stays Pending Appeal

8. How, if at all, can a party stay the lower court's ruling pending appeal (for example, posting a bond, making a motion, automatically by appealing)?

Filing an appeal from a Delaware Chancery Court or Superior Court decision does not automatically stay the lower court's judgment (*Sannini v. Casscells*, 401 A.2d 927, 929 (Del. 1979)). To stay the lower court's rulings pending appeal, the appellant must seek an injunction or a stay pending appeal.

Injunction Pending Appeal

The Court of Chancery permits an appellant to apply for an injunction pending appeal (Del. Ch. Ct. R. 62(c)).

When a party appeals from an interlocutory or final judgment granting, dissolving, or denying an injunction, the Chancery Court may suspend, modify, restore, or grant an injunction during the pendency of the appeal. The Chancery Court may impose terms it considers proper for the security of the rights of the adverse party, including requiring the appellant to post a bond. (Del. Ch. Ct. R. 62(c).)

Entry of an injunction pending an appeal is an unusual occurrence in Delaware.

Stay Pending Appeal

To obtain a stay pending the appeal, the appellant must give sufficient security, often in the form of a supersedeas bond (Del. Const. art. IV, § 24).

A party seeking a stay must first file the motion with the trial court (Del. Sup. Ct. R. 32(a)). The trial court may approve whether the type, amount, or form of the security

is sufficient (Del. Sup. Ct. R. 32(c)). On motion from either party, the Supreme Court then may either affirm or review the discretion of the lower court granting or denying the stay, including its decision to approve or disapprove the collateral as sufficient security (Del. Sup. Ct. R. 32(a), (c); *Homestore, Inc. v. Tafeen*, 886 A.2d 502, 506 (Del. 2005)).

In reviewing a lower court's grant or denial of a motion to stay pending appeal, the Supreme Court applies a four-prong test requiring the court to:

- Make a preliminary assessment of the likelihood of success on the merits of the appeal.
- Assess whether the petitioner will suffer irreparable injury if the stay is not granted.
- Assess whether any other interested party will suffer substantial harm if the stay is granted.
- Determine whether the public interest will be harmed if the stay is granted.

(*Kirpat, Inc. v. Del. Alcoholic Beverage Control Comm'n*, 741 A.2d 356, 357 (Del. 1998).)

The Supreme Court Rules provide further guidance concerning the type, amount, and form of security required (Del. Sup. Ct. R. 32(c)). The Supreme Court Rules also include a form for a supersedeas bond (Del. Sup. Ct. R. Form J).

Preliminary Matters

9. What, if any, preliminary matters are required before the parties brief the appeal (for example, filing informational forms, participating in mediation or settlement conferences)?

In Delaware, each party must file a Disclosure of Corporate Affiliations and Financial Interest (Supreme Court Rules Form P):

- Either:
 - within 15 days of the notice of docketing the appeal; or
 - concurrently with filing a motion or other document seeking to expedite the proceedings.
- Within two days of service of the disclosure document by all other parties.

(Del. Sup. Ct. R. 7(g).)

Court Submissions

10. What factual materials are submitted to the court (for example, the trial court record, excerpts of the record, an appendix)? When and by whom?

Record

In Delaware, the trial court clerk must:

- Transmit to the Supreme Court clerk all original papers including photographs, documentary exhibits, and transcripts of testimony.
- Transmit other exhibits only if the Supreme Court orders.
- Attach a certificate identifying the record with reasonable definiteness.

(Del. Sup. Ct. R. 9(b).)

Appellants must pay the trial court record preparation and transmittal fee within the time limit imposed by the trial court. If the appellant fails to do so, any other party may move to dismiss the appeal, or the court may dismiss the appeal *sua sponte*. Failure to pay the fee also may justify disciplinary action against the appellant's attorney. (Del. Sup. Ct. R. 9(aa).)

Transcript

Either in or as an exhibit to the notice of appeal, the appellant must include a statement either:

- Designating the parts of the proceedings that the court reporter must transcribe for inclusion in the record and complying with Supreme Court Rules Form C.
- Stating that the court reporter does not need to prepare a transcript, explaining why, and complying with Supreme Court Rules Form D.

(Del. Sup. Ct. R. 9(e)(ii).)

The appellant must designate the portions of the trial transcript necessary to give the court a fair and accurate account of the context in which the claim of error occurred (Del. Sup. Ct. R. 9(e)(ii) and 14(e); *Slater v. State*, 606 A.2d 1334, 1336 (Del. 1992)). The designation must include all of the evidence, good and bad, material to the point raised (*Cannon v. State*, 1983 WL 10912, *1 (Del. 1983)).

In cases where the notice of appeal contains a designation of parts of the proceedings that need to be transcribed,

the appellant must serve a copy of the notice of appeal on the appropriate court reporter. Within seven days after filing the notice of appeal, the appellant must file with the Supreme Court clerk a certificate that the appellant served the court reporter and paid, or will promptly pay, for the transcript's preparation. (Del. Sup. Ct. R. 9(e)(ii).)

Within 15 days after the appeal is docketed, each other party must serve on the other parties and file with the clerks of the trial court and the Supreme Court either:

- A designation of the parts of the proceedings that the court reporter must transcribe (Supreme Court Rules Form C).
- A statement explaining why the party does not need to order transcripts (Supreme Court Rules Form D).

(Del. Sup. Ct. R. 9(e)(iii).)

The attorney for each other party must then deliver the designation to the appropriate court reporter (Del. Sup. Ct. R. 9(e)(iii)).

The time limits provided for designating, ordering, and paying for the transcript or portions of the transcript are mandatory unless extended by the Supreme Court for good cause. If any party fails to comply with these rules:

- Any other party may move to dismiss the appeal.
- The court may dismiss the appeal *sua sponte*.
- Disciplinary action against the appellant's attorney may be justified.

(Del. Sup. Ct. R. 9(f).)

If the appellee fails to pay for the transcript, they will not be able to point to those portions of the record to support their defense. In addition, an appellee wishing to file a cross-appeal must also designate the transcript under Del. Sup. Ct. R. 9(e) (Del. Sup. Ct. R. 7(c)(6).)

While there is no specific authority addressing this situation, the failure to comply with the rules for designating, ordering, and paying for the transcript or portions of it should subject the cross-appellant to dismissal of their cross-appeal.

The court reporter must prepare and file any designated transcripts within 40 days after receipt of the last designation (Del. Sup. Ct. R. 9(e)(iv)).

Record in Lieu of Transcript

In any case in which the testimony or other pertinent matter has not been stenographically recorded, any

necessary factual material may become part of the record. The parties may stipulate to the substance of testimony or other proceedings essential to deciding the issues to be presented on the appeal. If the trial court approves the stipulation and certifies it to the Supreme Court in lieu of a transcript, the agreed-on materials become part of the record. (Del. Sup. Ct. R. 9(g).)

Judgment Being Appealed

The appellant's opening brief must include:

- A copy of the order or orders being appealed.
- Any separate written or transcribed rationale of the trial court.

The appellant must include these items at the end of the brief and not in the appendix. (Del. Sup. Ct. R. 14(b)(vii).)

Contents of Appendices

The appellant must serve and file an appendix along with its brief. The appendix must include:

- A table of contents.
- The trial court docket entries in chronological order.
- Unless otherwise ordered by the Supreme Court, the portions of the trial transcript necessary to convey a fair and accurate account of the context in which the claim of error occurred.
- A transcript of all evidence relevant to the challenged finding or conclusion.
- The other parts of the record material to the questions presented.

(Del. Sup. Ct. R. 14(e).)

The appellee may serve and file an appendix along with its brief. An appellee's appendix must contain parts of the record material to the questions presented that are not already in the appellant's appendix. (Del. Sup. Ct. R. 14(e).)

Alternatively, the parties may agree to a separately bound joint appendix (Del. Sup. Ct. R. 14(f)).

11. What briefs are filed and when? Does this change when there is a cross-appeal?

Filing Briefs

There are usually three appellate briefs in the Delaware Supreme Court:

- The appellant's opening brief.
- The appellee's answering brief.
- The appellant's reply brief.

(Del. Sup. Ct. R. 15(a).)

The timing of these briefs is as follows:

- The appellant must serve and file its opening brief and appendix no later than:
 - forty-five days after the notice of appeal if there is no transcript or the parties have not ordered or designated any further transcripts; or
 - thirty days after filing of the record in all other cases.
- The appellee must serve and file its answering brief no later than 30 days after service of appellant's brief and appendix.
- The appellant may serve and file a reply brief no later than 15 days after service of appellee's brief and appendix.

(Del. Sup. Ct. R. 15(a).)

The parties may not submit other argumentative briefs without leave of the Supreme Court. However, by letter to the clerk, a party may notify the court of pertinent cases decided after a party's final brief is filed or after the case is under submission for decision. (Del. Sup. Ct. R. 15(a)(vi).)

Briefing After Cross-Appeal

If the appellant's reply brief includes matter answering a cross-appeal:

- The appellant must serve and file the reply brief and reply appendix no later than 30 days after service of appellee's brief and appendix.
- The appellee may serve and file a reply brief directed to those cross-appeal matters no later than ten days after service of the appellant's reply brief.

(Del. Sup. Ct. R. 15(a)(iii), (a)(v).)

12. How, if at all, can a party extend the time to file a brief (for example, stipulation, so-ordered stipulation, motion)?

The Delaware Supreme Court may grant extensions of time to file briefs under certain circumstances. However, the court discourages parties from seeking these extensions. (Del. Sup. Ct. R. 15(b).)

The clerk may not accept untimely briefs unless the filing party obtains leave to file out of time. If the appellant fails

to obtain leave, the Supreme Court may direct the clerk to dismiss the appeal or take other action. If the appellee fails to obtain leave, the Supreme Court may decide the appeal based on the timely-filed record and papers. (Del. Sup. Ct. R. 15(b)(v).)

Timely Motions

A motion for an extension must:

- Be filed at least five days before the brief's due date.
- State the opposing party's position on the motion or specify the reasons why the appellant could not obtain the opposing party's position despite a diligent effort.
- Substantially comply with Supreme Court Rules Form F.

(Del. Sup. Ct. R. 15(b).)

If the motion is unopposed and is the party's first motion for an extension for the particular brief, the Supreme Court clerk may grant a three-day extension, unless the Supreme Court has set a special briefing schedule or orders otherwise (Del. Sup. Ct. R. 15(b)(ii)).

Untimely Motions

If a party files an extension motion less than five days before the due date of the brief, the court usually denies the motion unless the moving party demonstrates exceptional circumstances for both the extension and the late filing of the motion (Del. Sup. Ct. R. 15(b)(iv)).

Exceptional circumstances under the Supreme Court Rules include:

- A serious or disabling illness or injury.
- The death of an immediate family member.
- An act of God.
- A state or national emergency.
- Other circumstances of similar unavoidable nature.

(Del. Sup. Ct. R. 15(b)(vii).)

The court does not consider motions for extensions filed after the due date of the brief unless the moving party demonstrates that the interests of justice require relief. If it determines the interests of justice require it, the court will grant an extension of no more than three days. (Del. Sup. Ct. R. 15(b)(vi).)

Any untimely motion for an extension must include a certification from the attorney identifying all other untimely motions for extensions (whether before or after the due date) filed in all other cases during the six months

preceding the date of the current motion. Any attorney who has filed more than two untimely motions during the preceding six months is subject to discipline for a performance deficiency under Del. Sup. Ct. R. 33. (Del. Sup. Ct. R. 15(b)(viii).)

Additional Extensions

If a party needs an additional extension for the same brief, the party may move the court again and include a statement identifying the exceptional circumstances requiring an additional extension. A justice considers the motion and may grant an extension of no more than 15 days from the original due date of an opening or answering brief or ten days for a reply brief. (Del. Sup. Ct. R. 15(b)(iii).)

13. Are there word or page limits for briefs? If so, please indicate:

- The word or page limit for each type of brief (for example, appellant's brief, appellee's brief, reply brief).
- How, if at all, a party can obtain permission to exceed the usual limit (for example, stipulation, so-ordered stipulation, motion).

Word or Page Limits

Without leave of court, opening or answering briefs must not exceed 10,000 words in Delaware. Reply briefs must not exceed 5,500 words. (Del. Sup. Ct. R. 14(d).)

If there is a cross-appeal:

- The appellee's combined opening and answering brief on cross-appeal must not exceed 14,000 words.
- The appellant's reply brief must not exceed 10,000 words.
- The appellee's reply brief must not exceed 5,500 words.

(Del. Sup. Ct. R. 14(d)(1), 15(a)(v).)

Word limits in the Supreme Court do not include:

- The front cover.
- The table of contents.
- The table of citations.
- The signature block.
- Any footer included under Del. Sup. Ct. R. 10.2(5).

(Del. Sup. Ct. R. 14(d).)

The Supreme Court Rules prohibit the use of footnotes for arguments ordinarily included in the body of a brief or to avoid word limitations (Del. Sup. Ct. R. 14(d)(iv)).

Oversized Briefs

A party must obtain leave from the Supreme Court to submit an oversized brief. The Supreme Court disfavors motions to exceed the type-volume limitations and grants these motions only for good cause. (Del. Sup. Ct. R. 14(d)(v).)

A party must serve and file a motion for leave to submit an oversized brief at least five days before the due date for the filing of the brief (Del. Sup. Ct. R. 14(d)(v)).

Oral Arguments

14. Is oral argument available? If so, please indicate:

- Any restrictions on what types of cases may be argued.
- Whether the parties can request oral argument or submission on the papers.
- How much time each party or side typically receives for argument.

Types of Cases That May Be Argued

There is no limitation on the types of cases that parties may argue before the Supreme Court. The [Delaware Supreme Court's Internal Operating Procedures](#) provide that justices usually request oral argument when:

- The appeal presents a substantial or novel legal issue.
- Resolution of the issue presented by the appeal will be of institutional or precedential value.
- The justices have questions to ask counsel to clarify legal, factual, or procedural points.
- A decision, legislative act, or another event after filing the last brief may significantly bear on the case.
- An important public policy issue is implicated.

(Del. Sup. Ct. Internal Operating Procedures, IOP VIII(2)(b).)

Additionally, the Internal Operating Procedures provide that justices will usually dispense with oral argument when:

- The issue is not novel and the briefs adequately cover the arguments.
- The outcome of the appeal is clearly controlled by a decision of the US Supreme Court or the Delaware Supreme Court.

- The factual state of the record will determine the outcome and the sole issue is sufficiency of evidence, adequacy of jury instructions or discretionary rulings, and the briefs adequately refer to the record.

(Del. Sup. Ct. Internal Operating Procedures, IOP VIII(2)(a).)

Party Involvement in Decision

The parties may not request argument or submission on the briefs. The Supreme Court determines on its own whether there will be oral argument. (Del. Sup. Ct. R. 16(a).)

Length of Oral Arguments

The Supreme Court commonly hears arguments in panels of three justices, but all five justices may hear some arguments *en banc* (Del. Const. Art. 4, § 12; Del. Sup. Ct. R. 4(a)).

Each party has 20 minutes to argue before a panel and 25 minutes to argue before the *en banc* court. However, the court may limit or terminate an argument when it feels the parties have fully presented the issues. To request additional time for oral argument, a party must apply to a justice for additional time within 30 days after the filing of appellee's brief. (Del. Sup. Ct. R. 16(f).)

Rehearing for State Appeals

15. Is there a mechanism for rehearing (panel or en banc)? If so, please describe:

- The process for requesting rehearing (for example, petition, motion).
- The process for presenting the merits if the court grants rehearing (for example, decision on the existing papers, new argument, new briefing).

In Delaware, a party may request either:

- Reargument before the three-justice panel that initially decided the appeal.
- Rehearing *de novo* by the full court.

(Del. Sup. Ct. Internal Operating Procedures, IOP XVI(1) and IOP XVII.)

Requesting Reargument

A party may request reargument before the panel except for opinions or orders meeting any of the following criteria:

- Directing that the mandate issue forthwith.
- Entered under Del. Sup. Ct. R. 41 concerning certified questions from other courts.

Initial Civil Appeals: Delaware

- Entered under Del. Sup. Ct. R. 42 governing interlocutory appeals.
- Entered by a single justice and addressing matters of form rather than the substance of the case.
- Denying reargument or rehearing *en banc*.

(Del. Sup. Ct. R. 18.)

A party requests reargument by filing a motion with the Supreme Court clerk within 15 days after filing of the panel's opinion or order, unless the court alters the time for moving. The motion must conform to the page/word count and form requirements of Del. Sup. Ct. R. 13 and 30. The motion must also both:

- State the grounds for reargument.
- Include a certificate of counsel or a pro se certificate that the motion is in good faith and not for delay.

(Del. Sup. Ct. R. 18.)

No party may respond to the motion unless the panel requests a response. There is no oral argument on reargument motions. (Del. Sup. Ct. R. 18.)

Requesting Rehearing En Banc

A party cannot request a rehearing *en banc* if there is a unanimous decision of the panel of three justices providing for issuance of the mandate forthwith (Del. Sup. Ct. R. 4(f)).

In all other cases, a party may request rehearing *en banc* by filing a motion with the Supreme Court clerk within 15 days after the filing of the Supreme Court's opinion or order unless the court enlarges or shortens the time for a rehearing motion (Del. Sup. Ct. R. 4(f)).

The motion for a rehearing *en banc* must:

- State with particularity the grounds for a rehearing *en banc*.
- Include a certificate of counsel or a pro se certificate that the motion is presented in good faith and not to delay.
- Include a copy of the order or opinion to be reheard.

(Del. Sup. Ct. R. 4(f).)

A party may base a motion for rehearing *en banc* on the following grounds:

- The proceeding involves a question of exceptional importance.
- Consideration *en banc* is necessary to secure or maintain uniformity in Supreme Court decisions.
- The case may be controlled by a prior decision of the court which should be reconsidered or which may be overruled or modified.

A party may not submit an answer or response to a rehearing motion unless the court requests one. There is no oral argument for a motion for a rehearing *en banc*.

(Del. Sup. Ct. R. 4(f).)

Rehearing Procedure

If two or more of the qualified and available justices of the Delaware Supreme Court votes for rehearing *en banc*, the motion is granted and the court vacates the panel's opinion and the judgment. The case is then assigned to the calendar for rehearing on a priority basis. (Del. Sup. Ct. R. 4(f); Del. Sup. Ct. Internal Operating Procedures, IOP XVII(4).)

If the court orders oral argument for the rehearing, each party has 25 minutes to argue before the *en banc* court (Del. Sup. Ct. R. 16(f)).

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