

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ORDER AMENDING RULES 9 and §
28 OF THE RULES OF THE §
SUPREME COURT OF §
DELAWARE §

Before **SEITZ**, Chief Justice, **VALIHURA**, **TRAYNOR**, **LEGROW**, and
GRIFFITHS, Justices, constituting the Court *en banc*.

ORDER

This 27th day of January 2025, it appears to the Court that:

WHEREAS, the Court asked the permanent Advisory Committee on Supreme Court Rules, Rules of Civil Procedure, and Rules of Evidence (“Supreme Court Rules Committee”) to consider amendment of Supreme Court Rule 28 to require the disclosure of certain contributions to amicus curiae briefs like the disclosures required by federal appellate courts;

WHEREAS, the Supreme Court Rules Committee prepared and proposed amendments to Rule 28 that clarified the types of arguments in amicus curiae briefs that are helpful to the Court, included disclosure requirements similar to the disclosures required by the United State Supreme Court and other federal appellate courts, and conformed the content requirements for amicus curiae briefs to the content requirements for the parties, as applicable;

WHEREAS, the Supreme Court Rules Committee also proposed amendment of Rule 9(bb) in light of recent amendments to Court of Chancery Rule 5.1; and

WHEREAS, the Court has accepted the amendments proposed by the Supreme Court Rules Committee.

NOW, THEREFORE, IT IS ORDERED:

(1) Supreme Court Rule 9(bb) is amended to add the underlined text:

(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 in accordance with the trial court rules 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.

(2) Supreme Court Rule 28 is amended to add the underlined text and to delete the strikethrough text:

(a) *When permitted.*

(1) A brief of an amicus curiae may be filed only by leave of Court granted on motion or at the request of the Court.

(2) The purpose of an amicus curiae brief should be to bring to the attention of the Court relevant matters not already brought to its attention by the parties. It should avoid the repetition of facts or legal arguments contained in the principal brief. An amicus curiae brief that does not serve this purpose burdens the Court, and its filing is not favored.

(b) *Motion for leave to file.* The motion must be accompanied by the proposed brief and, for any amicus curiae which is a corporation, a Disclosure of Corporate Affiliations and Financial Interest as provided for in Form P of these Rules, and state:

(1) The movant's interest in the outcome of the particular case or appeal;

(2) A statement that indicates whether:

(i) a party's counsel authored the brief in whole or in substantial part;

(ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(iii) a person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person;

(23) The reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case; and

(34) Whether the parties to the appeal consent to or oppose the motion for leave to file.

(c) *Contents and form of brief.* 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 the following under distinctive titles, commencing on a new page, in the listed order:

(1) A table of contents reflecting each section required by this rule, including all headings designated in the body of the brief, with page references;

(2) A table of ~~authorities~~citations, including cases (alphabetically arranged), statutes, rules, textbooks and other authorities, with page references, alphabetically arranged;

(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) A statement whether:

(i) a party's counsel authored the brief in whole or in substantial part;

(ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(iii) a person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person; and

(45) 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. The front cover, material required by paragraphs (c)(1) through (4), and signature block do not count toward the limitation. All other

text must be counted toward the limitation. 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.

COMMITTEE COMMENT

~~The rule is a simplified version of Rule 29 of Federal Rules of Appellate Procedure and is in substantial compliance with ABA Standard 3.33(b)(2).~~

The amendments to Rule 28 are intended to address three primary points. First, the amendments seek to clarify the types of arguments included in amicus curiae briefs that are helpful or not helpful to the Court to focus any such submissions and discourage briefs that merely present or rehash arguments already briefed by the parties to the appeal. Second, the amendments include disclosure requirements for filing amicus curiae briefs, both to require the same filing of the Disclosure of Corporate Affiliations and Financial Interests by corporate amicus as required of the parties and to mandate disclosure of participation or financial support by persons other than the amicus curiae, including a party or its counsel. Similar disclosures are required by the United States Supreme Court and other federal appellate courts. Third, the revisions conform amicus brief content requirements to those of the parties' briefs, as applicable.

(3) These amendments are effective on March 3, 2025.

(4) 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:

/s/ Collins J. Seitz, Jr.
Chief Justice