

Litigation Overview: Delaware

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Status: Law stated as of 16 May 2021 | Jurisdiction: Delaware, United States

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A Q&A guide to general litigation information for Delaware. This State Q&A covers the Delaware state court structure, state statutes and rules governing litigation procedure, and the attorney admissions process (including admission without examination, pro hac vice admission, and in-house counsel registration). Answers to questions can be compared across a number of jurisdictions (see Litigation Overview: State Q&A Tool).

Due to the ongoing COVID-19 pandemic, the Delaware courts have modified or suspended many court rules and procedures on a statewide or court-by-court basis. For more information, see [The Delaware Judiciary Response to Coronavirus Disease \(COVID-19\)](#).

State Courts

1. What are your state's appellate courts? For each appellate court, please identify:

- The courts from which a direct appeal may be taken to this appellate court.
- The appellate court's general subject matter jurisdiction.
- The court(s), if any, to which a further appeal may be sought.

Delaware has one appellate-level court and two other courts that possess appellate jurisdiction in limited circumstances. These are:

- The Supreme Court of the State of Delaware (see Supreme Court).
- The Superior Court of the State of Delaware (see Superior Court).
- The Court of Common Pleas for the State of Delaware (see Court of Common Pleas).

Supreme Court

The Supreme Court is Delaware's highest court and only true appellate court.

Jurisdiction

The Supreme Court has appellate jurisdiction over:

- Final and interlocutory judgments of the Court of Chancery.
- Final and interlocutory judgments of the Superior Court in civil actions.
- Final judgments of the Superior Court in criminal proceedings, on application of the accused, where:
 - the sentence is death;
 - imprisonment exceeds one month;
 - the fine exceeds \$100; or
 - it is otherwise provided by law.
- Final judgments of the Superior Court in criminal proceedings, on application of the state, where the Superior Court has granted an accused any of the following:
 - a new trial or judgment of acquittal after a verdict;
 - a modification of a verdict;
 - an arrest of judgment;
 - relief in any post-conviction proceeding or in any action collaterally attacking a criminal judgment;



- a new punishment hearing in a capital case after imposition of a death sentence;
- an order or judgment that declares an act or portion of an act of the General Assembly unconstitutional under the US Constitution or the Delaware Constitution; or
- other cases as provided by law.

(10 Del. C. § 9902(d).)

- Final and interlocutory judgments of the Family Court in civil actions (10 Del. C. § 1051).
- An order of the Family Court relating to child custody (10 Del. C. § 1052).
- Final judgments of the Family Court in delinquency proceedings (10 Del. C. § 1053).
- Cases of prosecution of election offenses under Section 8, Article V of the Delaware Constitution.

(Del. Const. art. IV, § 11.)

The Supreme Court has discretionary jurisdiction over the following:

- To issue writs of prohibition, *quo warranto*, certiorari, and mandamus to any inferior courts or to any judges of these courts.
- To issue advisory opinions on the request of the Governor of Delaware or the Delaware General Assembly (10 Del. C. § 141).
- To hear and determine questions of law certified to it by other courts and agencies including:
 - other Delaware courts;
 - the US Supreme Court;
 - a US Court of Appeals;
 - a US District Court;
 - a US Bankruptcy Court;
 - the US Securities and Exchange Commission; and
 - the highest appellate court of any other state.

(Del. Const. art. IV, § 11(5), (7), and (8).)

Further Appellate Review

The US Supreme Court may review a decision of the Delaware Supreme Court in certain situations, for example, where:

- The validity of a US treaty or statute is challenged.
- A state statute is claimed to violate the US Constitution.

(28 U.S.C. § 1257(a).)

Superior Court

Although primarily a trial-level court, the Superior Court has limited intermediate appellate jurisdiction.

Jurisdiction

The Superior Court has jurisdiction over appeals from:

- Final judgments of the Court of Common Pleas in civil actions (10 Del. C. § 1326).
- Final judgments of the Court of Common Pleas in criminal proceedings, on application of the accused, where:
 - imprisonment exceeds one month; or
 - the fine exceeds \$100.

(Del. Const. art. IV, § 28; 11 Del. C. § 5301.)

- Final judgments of the Court of Common Pleas in criminal proceedings, on application of the state, only as provided by law (10 Del. C. §§ 9901 to 9905).
- Final judgments of the Family Court in criminal proceedings, on application of the accused (10 Del. C. § 1051(b)).
- Final judgments of the Family Court in criminal proceedings, on application of the state, only as provided by law (10 Del. C. § 1053).

(Del. Const. art. IV, §§ 7, 28.)

The Superior Court has exclusive jurisdiction to issue writs of habeas corpus, except in cases:

- Within the jurisdiction of the Family Court.
- Where jurisdiction is concurrent with the Family Court.
- Involving child support enforcement, where the Family Court has exclusive jurisdiction.

(Del. Const. art. IV, § 7; 10 Del. C. § 6901.)

The Superior Court has jurisdiction to issue all remedial writs necessary for bringing an action in the court to trial and for executing a judgment of the court, including writs of habeas corpus and *certiorari* (Del. Const. art. IV, § 7; 10 Del. C. § 562; 21 Del. C. § 703(g)).

Further Appellate Review

The Supreme Court has appellate jurisdiction over the Superior Court (Del. Const. art. IV, § 11; 10 Del. C. § 1051(b)).

Court of Common Pleas

Although primarily a trial-level court, the Court of Common Pleas has limited intermediate appellate jurisdiction.

Jurisdiction

The Court of Common Pleas has jurisdiction over appeals from:

- Final judgments of the Justice of the Peace Court in civil actions where:
 - judgment is given without a referee trial; and
 - the amount exceeds \$5, exclusive of costs.

(10 Del. C. § 9570(a).)

- Final judgments of the Justice of Peace Court in criminal proceedings, on application of the accused, where:
 - imprisonment exceeds one month; or
 - the fine exceeds \$100.

(11 Del. C. § 5920.)

- Final judgments of the Justice of the Peace Court in criminal proceedings, on application of the state, only as provided by law (10 Del. C. §§ 9901 to 9905).

- Final judgments of the Justice of the Peace Court in motor vehicle cases where the sentence imposed was imprisonment or a fine exceeding \$100 (21 Del. C. § 708(b)).

- Final judgments of an Alderman's Court or a Mayor's Court in criminal proceedings for violation of any city or town ordinance, on application of the accused, where:

- imprisonment exceeds one month; or
- the fine exceeds \$100.

(11 Del. C. § 4503(a).)

- Final judgments of an Alderman's Court or a Mayor's Court in motor vehicle cases (21 Del. C. § 708(a)).

Further Appellate Review

The Superior Court has appellate jurisdiction over the Court of Common Pleas (Del. Const. art. IV, § 28; 10 Del. C. § 1326; 11 Del. C. § 5301).

2. What are the trial courts in your state? For each trial court, please identify:

- The court's general subject matter jurisdiction.
- The state court(s) to which a direct appeal may be taken.

Delaware has five trial courts:

- The Court of Chancery of the State of Delaware (see Court of Chancery).

- The Superior Court of the State of Delaware (see Superior Court).
- The Family Court of the State of Delaware (see Family Court).
- The Court of Common Pleas for the State of Delaware (see Court of Common Pleas).
- The Justice of the Peace Court for the State of Delaware (see Justice of the Peace Court).

Although outside the scope of this Q&A, certain municipalities in Delaware have Alderman's Courts and Mayor's Courts (see Alderman's and Mayor's Courts).

Court of Chancery

Jurisdiction

The Court of Chancery has jurisdiction to hear and determine all matters and causes in equity (10 Del. C. § 341).

Appeals

The Supreme Court hears appeals from the Court of Chancery (Del. Const. art. IV, § 11).

Superior Court

Jurisdiction

The Superior Court is Delaware's court of general jurisdiction. The Superior Court has original jurisdiction over all criminal proceedings and civil actions, except matters in equity and certain matters relating to children and domestic relations. (Del. Const. art. IV, § 7; 10 Del. C. §§ 341, 541, 921, and 922; 11 Del. C. § 2701(c).) The Superior Court has exclusive jurisdiction over felonies and most drug offenses (11 Del. C. § 2701(c); 16 Del. C. § 4795).

Appeals

The Supreme Court hears appeals from the Superior Court (Del. Const. art. IV, § 11).

Family Court

Jurisdiction

The Family Court has exclusive jurisdiction over virtually all family and juvenile matters, including:

- Child abuse, dependency, and neglect.
- Child delinquency.

- Custody and visitation of children.
- Divorce and annulment.
- Division of marital property.
- Child support.
- Illegitimacy proceedings.
- Delaware Child Protection Registry proceedings.
- Certain motor vehicle charges against children.

(10 Del. C. §§ 921 to 931; 16 Del. C. § 4795; 21 Del. C. § 704.)

The Family Court has exclusive discretionary jurisdiction to issue writs of habeas corpus in cases involving child support enforcement and concurrent discretionary jurisdiction with the Superior Court to issue writs of habeas corpus in other cases that are otherwise within its jurisdiction (10 Del. C. §§ 924 and 6901).

Appeals

The Supreme Court hears appeals from civil proceedings of the Family Court (10 Del. C. § 1051(a)). The Superior Court hears appeals from criminal proceedings of the Family Court, with a further right of appeal to the Supreme Court (10 Del. C. § 1051(b)).

Court of Common Pleas

Jurisdiction

The Court of Common Pleas has jurisdiction over:

- All civil actions where the matter or thing in controversy is \$75,000 or less. This jurisdiction is concurrent with the Superior Court. (Del. Const. art. IV, § 7; 10 Del. C. § 1322.)
- All misdemeanors and motor vehicle offenses, except for certain drug-related offenses and certain offenses relating to minors (11 Del. C. §§ 2701(b) and 5303; 16 Del. C. § 4795; 21 Del. C. §§ 703 and 704).

Persons charged with a crime in a Justice of Peace Court, an Alderman's Court, or a Mayor's Court generally have the right to elect to be tried in the Court of Common Pleas (11 Del. C. §§ 4503, 5303, and 5901).

Appeals

The Superior Court hears appeals from the Court of Common Pleas (Del. Const. art. IV, § 28; 10 Del. C. § 1326; 11 Del. C. § 5301).

Justice of the Peace Court

Jurisdiction

The Justice of the Peace Court has concurrent civil jurisdiction with the Court of Common Pleas and the Superior Court over the following civil cases where the demand, damage claimed, or value of property does not exceed \$25,000:

- Common law contract actions. However, the \$25,000 limit does not apply to monetary claims, counter-claims, or cross-claims asserted in an action for summary possession and arising from or relating to a commercial lease.
- Common law tort actions for damage, destruction or taking of personal property (including replevin), injury to real property, and trespass on land.
- Actions for penalty or forfeiture incurred under any statute, bylaw, or ordinance.

(Del. Const. art. IV, § 7; 10 Del. C. §§ 1322 and 9301.)

The Justice of the Peace Court has concurrent criminal jurisdiction with the Court of Common Pleas and the Superior Court over:

- All violations.
- Certain misdemeanors.
- Certain non-felony motor vehicle cases.

(11 Del. C. §§ 2701(b), 2702, and 5917; 21 Del. C. §§ 703 and 804.)

The Justice of the Peace Court has exclusive jurisdiction over:

- Certain landlord/tenant actions, including:
 - summary possession actions;
 - tenant receivership petitions; and
 - distress for rent actions.(10 Del. C. § 9301(3); 25 Del. C. §§ 5701, 5901, and 6301.)
- Truancy actions until August 9, 2021, at which point it will have concurrent jurisdiction with the Family Court over truancy actions (10 Del. C. § 9301(5); 14 Del. C. § 2733; 2020 Delaware Laws Ch. 224 (H.B. 250)).

Persons charged with a crime (but not a violation of any ordinance, code, or regulation) in a Justice of the Peace Court generally have the right to elect to be tried in the Court of Common Pleas (11 Del. C. §§ 5303, 5901, and 5917).

Appeals

The Court of Common Pleas hears appeals from the Justice of the Peace Court, except in summary possession actions (10 Del. C. § 9570; 21 Del. C. § 708; DE R COM PL CT CIV Rule 72.3).

Appeals in summary possession actions are heard by a special court comprised of three justices of the peace other than the justice of the peace who presided over the trial (25 Del. C. § 5717).

Alderman's and Mayor's Courts

Jurisdiction

Alderman's Courts and Mayor's Courts are independent entities within certain municipalities in Delaware whose municipal charters provide for these courts. Delaware law requires prosecution of motor vehicle offenses in the appropriate Alderman's Court or Mayor's Court if police arrest a person charged with that offense without a warrant in an incorporated municipality where the charter places original jurisdiction for these offenses in an Alderman's Court or Mayor's Court (21 Del. C. 703(e)). Alderman's Courts and Mayor's Courts also have jurisdiction over violations of municipal ordinances (11 Del. C. § 4503).

Appeals

Criminal cases may be transferred to the Court of Common Pleas where either:

- The defendant may be incarcerated.
- The maximum fine is \$100 or more.

(11 Del. C. § 5303.)

Final judgments in criminal cases may be appealed to the Court of Common Pleas, on application of the accused, where either:

- Imprisonment exceeds one month.
- The fine exceeds \$100.

(11 Del. C. § 4503.)

Final judgments in motor vehicle cases may be appealed to the Court of Common Pleas, on application of the accused, where either:

- The sentence imposed is imprisonment.
- The fine exceeds \$100.

(21 Del. C. § 708(b).)

State Litigation Procedure

3. What are the key statutes and rules governing litigation procedure in your jurisdiction?

The following are the primary sources of Delaware law governing litigation procedure:

- **The Delaware Constitution.** Article IV of the Delaware Constitution governs the creation and jurisdiction of the state's various courts.
- **The Delaware Code.** The sections of the Delaware Code that apply to litigation include:
 - Title 10, Sections 101 to 9905 of the Delaware Code, which covers the Delaware courts and judicial procedure; and
 - Title 11, Sections 101 to 9703 of the Delaware Code, which covers the Delaware Criminal Code and criminal procedure.
- **Delaware Court Rules.** Court rules include:
 - the Supreme Court Rules (Del. Sup. Ct. R. 1 to 300);
 - the Court of Chancery Rules (Del. Ch. Ct. R. 1 to 207);
 - the Superior Court Rules of Civil Procedure (Del. Super. Ct. Civ. R. 1 to 140);
 - the Superior Court Rules of Criminal Procedure (Del. Super. Ct. Crim. R. 1 to 64);
 - the Family Court Rules of Civil Procedure (DE R FAM CT RCP Rule 1 to 510);
 - the Family Court Rules of Criminal Procedure (DE R FAM CT RCRP Rule 1 to 63);
 - the Court of Common Pleas Civil Rules (DE R COM PL CT CIV Rule 1 to 113);
 - the Court of Common Pleas Rules of Criminal Procedure (DE R COM PL CT RCRP Rule 1 to Rule 65);
 - the Justice of the Peace Court Civil Rules (DE R JP CTS CIV Rule 1 to 112);
 - the Justice of the Peace Court Rules of Criminal Procedure (DE R JP CTS CR Rule 1 to 64); and
 - the Justice of the Peace Court Civil Violations Rules (DE R JP CTS CIV VIOL Rule 1 to 13).
- **The Delaware Supreme Court Internal Operating Procedures.** The Delaware Supreme Court Internal Operating Procedures are intended to provide a general

understanding of how the Supreme Court typically operates and include details on key operational aspects of the Court, such as court administration, communications within and with the Court, oral argument, decisional conference procedures, and the Court's procedures for opinions, reargument/rehearings, and responding to motion practice. The procedures are subordinate to the Constitution, statutes, the Court's rules and the interests of justice (DE R S C T IOP I to XXII).

- **The Delaware Board of Bar Examiners Rules.** The Delaware Board of Bar Examiners Rules govern the bar examination, including application, form, and process (DE R BD BAR EXAM BR-1 to BR-54).
- **The Delaware Uniform Rules of Evidence.** The Delaware Uniform Rules of Evidence govern the use of evidence in litigation, including testimony, writings, and material objects (Del. R. Evid. 101 to 1103).
- **The Delaware Lawyers' Rules of Professional Conduct.** The Delaware Lawyers' Rules of Professional Conduct establish the obligations and responsibilities of attorneys practicing in Delaware (DE R RPC Rule 1.0 to 8.5).
- **The Delaware Judges' Code of Judicial Conduct.** The Delaware Judges' Code of Judicial Conduct is the standard of conduct for judges and judicial nominees in Delaware (Del. Code of Jud. Conduct, Rule 1.1 to Rule 4.1).

Issues for Attorneys

4. Please describe how an attorney becomes a member of the state bar in your jurisdiction, including whether the state offers attorneys admitted in other states reciprocity or the ability to register as in-house counsel.

Admission on Examination

To apply for admission to the Delaware State Bar, all applicants must:

- Be at least 21 years old.
- Pass the Delaware bar examination.
- Demonstrate sufficient character and aptitude.
- Be vouched for by a member of the Delaware bar who:
 - has been a member for at least ten years; and
 - is designated as the applicant's preceptor.

- Complete a clerkship in Delaware under the direct and constant supervision of a member of the Delaware bar for at least five months (21 40-hour workweeks) of substantially full-time service. The five months does not have to be continuous but must begin after the applicant starts law school.
- Complete the legal activities included in a [checklist](#) provided by the [Delaware Board of Bar Examiners](#) (Board).
- Have completed sufficient pre-legal education to be admitted to an American Bar Association (ABA) accredited law school.
- Have a juris doctor degree from an ABA accredited law school.
- Pass the Multistate Professional Responsibility Examination.
- Complete a pre-admission program.
- Complete any other requirements required by the Board.
- File an electronic application with the Board and pay an admission fee.

(Del. Sup. Ct. R. 52.)

An applicant must electronically file an application for admission and pay the required fee by May 1 of the year in which the applicant seeks to take the bar examination (DE R BD BAR EXAM BR-5).

The Delaware Supreme Court has made certain temporary modifications to the bar admission process to accommodate the cancellation of the 2020 bar exam due to COVID-19 (see [August 12, 2020 Order Regarding Certified Limited Practice Privilege for 2020 Delaware Bar Applicants](#)).

Admission Without Examination

There is no admission without examination in Delaware. Delaware also does not offer reciprocity to attorneys admitted in other states. An attorney seeking admission to the Delaware bar must comply with all of the requirements for bar admission, including passing the Delaware bar examination (see Admission on Examination).

However, attorneys admitted to practice in other jurisdictions and law school graduates who are employed by certain public organizations may, in the Board's discretion, be permitted to practice law on matters related to the organization. These organizations include:

- The Delaware Volunteer Legal Services.
- The Community Legal Aid Society, Inc.

- The Legal Services Corporation of Delaware, Inc.
- The Delaware Department of Justice.
- The Wilmington Office of City Solicitor.
- The Office of the Public Defender.
- The Delaware Office of the Child Advocate.
- The New Castle County Office of Law.

Applicants who are granted limited permission to practice are not deemed to have been admitted to the Delaware bar (Del. Sup. Ct. R. 55).

Attorneys admitted out-of-state may also apply to practice as in-house counsel in Delaware (see Registration of In-House Counsel).

Registration of In-House Counsel

An attorney admitted to practice in another US jurisdiction may apply to the Delaware Supreme Court for a Delaware Certificate of Limited Practice. This certificate allows the attorney to practice as in-house counsel in Delaware. In-house counsel eligible for this certificate must be employed as an attorney working exclusively for a for-profit or non-profit corporation, association, or other organizational entity. (DE R S CT Rule 55.1.)

An applicant for a Delaware Certificate of Limited Practice must:

- File under oath an application provided by the Supreme Court.
- Provide a certificate signed by the licensing authority in each jurisdiction where the applicant is admitted to practice law stating that the applicant is:
 - licensed to practice law; and
 - an active member in good standing of the bar of at least one of these jurisdictions.
- File an affidavit provided by the Supreme Court from the applicant's employer in which the employer attests that:
 - the applicant is employed as a lawyer to provide legal services exclusively to the employer;
 - the applicant will remain an active member in good standing of another state or national bar during the entire course of the applicant's employment;
 - the nature of the applicant's employment conforms to the requirements of the Supreme Court Rules; and
 - the employer will notify the Supreme Court immediately on termination of the applicant's employment.

- Certify that the applicant has read and is familiar with the Delaware Lawyers' Rules of Professional Conduct.

- Pay a \$100 application fee.

(Del. Sup. Ct. R. 55.1(b).)

In-house counsel eligible for this certificate cannot make any court appearances or engage in other activities where *pro hac vice* admission is required except as permitted under Rule 57 of the Delaware Supreme Court Rules (Del. Sup. Ct. R. 55.1(a); see Question 5).

While an application for a Delaware Certificate of Limited Practice is pending, an applicant may be employed in Delaware as in-house counsel on a provisional basis by the applicant's employer (Del. Sup. Ct. R. 55.1(c)).

5. Please describe the process for becoming admitted on a *pro hac vice* basis in your jurisdiction.

In Delaware, an application for *pro hac vice* admission must be made separately before each court and each agency in which *pro hac vice* admission is sought. An attorney may be admitted *pro hac vice* in the court's discretion and only on filing of a written motion by a member of the Delaware Bar who maintains an office in Delaware (Delaware Counsel). The Delaware Counsel must certify that the applicant is a reputable and competent attorney and that the Delaware Counsel is in a position to recommend the applicant's admission. (Del. Sup. Ct. R. 71; Del. Ch. Ct. R. 170; Del. Super. Ct. Civ. R. 90.1; DE R FAM CT RCP Rule 90; DE R COM PL CT CIV Rule 90.1; DE R JP CTS CIV Rule 90.1.)

An out-of-state attorney seeking admission *pro hac vice* must also certify the following in a statement attached to the motion:

- That the attorney:
 - is a member in good standing of the bar of another state;
 - will be bound by the Delaware Lawyers' Rules of Professional Conduct; and
 - has reviewed the [Principles of Professionalism for Delaware Lawyers](#).
- That the attorney and all attorneys of the attorney's firm who directly or indirectly provide services to the party or cause at issue will be bound by all rules of the court in which *pro hac vice* admission is sought.

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- That the attorney has consented to the appointment of one of the following persons as an agent for service of process for all actions that may arise out of the *pro hac vice* practice of law:
 - the Supreme Court Clerk, for *pro hac vice* admission in the Supreme Court or before an administrative agency;
 - the Register in Chancery, for *pro hac vice* admission in the Court of Chancery;
 - the Prothonotary, for *pro hac vice* admission in the Superior Court;
 - the Clerk of the Family Court, for *pro hac vice* admission in the Family Court;
 - the Clerk of the Court of Common Pleas, for *pro hac vice* admission in the Court of Common Pleas; or
 - the Justice of the Peace Court Administrator, for *pro hac vice* admission in the Justice of the Peace Court.
- Whether the applying attorney has been disbarred, suspended, or is the subject of pending disciplinary proceedings in any jurisdiction where the applying attorney has been admitted generally, *pro hac vice* or in any other way.
- That a payment for the *pro hac vice* admission fee in an amount determined by the Delaware Supreme Court is attached.
- The identification of any other states or jurisdictions in which the attorney has been admitted at any time.
- The number of actions in any court of record of Delaware in which the attorney has appeared in the preceding 12 months. The Superior Court also requires the

attorney to provide the civil action number or criminal identification number and presiding judge in all of these actions. In practice, attorneys should provide this information to all Delaware courts.

(Del. Sup. Ct. R. 71(b); Del. Ch. Ct. R. 170(c); Del. Super. Ct. Civ. R. 90.1(b); DE R FAM CT RCP Rule 90(b); DE R COM PL CT CIV Rule 90.1(b); DE R JP CTS CIV Rule 90.1(b).)

The *pro hac vice* motion and certification should be filed as soon as reasonably possible, but no later than the attorney's first appearance before the court or the court's designated agent for service of process. The court may consider any relevant facts, including:

- Whether the attorney is in effect practicing in Delaware without complying with the requirements for admission.
- The number of other admissions to practice sought or obtained by the attorney from Delaware courts.
- Whether the attorney maintains an office in Delaware.

(Del. Sup. Ct. R. 71(e), (f); Del. Ch. Ct. R. 170(f), (g); Del. Super. Ct. Civ. R. 90.1(f), (g); DE R FAM CT RCP Rule 90(b)(6); DE R COM PL CT CIV Rule 90.1(f), (g); DE R JP CTS CIV Rule 90.1(f), (g).)

In 2016, the *pro hac vice* admission fee was set at \$400. The fee will increase annually in an amount determined by the Delaware Supreme Court. (Del. Sup. Ct. R. 71(b); Del. Ch. Ct. R. 170(c)(vi); Del Super. Ct. Civ. R. 90.1(b)(vi); DE R FAM CT RCP Rule 90(b)(2)(F); DE R COM PL CT CIV Rule 90.1(b)(vi); DE R JP CTS CIV Rule 90.1(b)(vi).)

The Superior Court *pro hac vice* certification form is available on the Delaware Courts [website](#).

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