



Trust Industry Brief

Amendment to Court of Chancery Rules to Delete Rule 5(g) and Adopt Rule 5.1

On November 5, 2012, Chancellor Leo E. Strine, Jr., signed a new Rule 5.1 into law, replacing the old Rule 5(g), to be effective as of January 1, 2013. The new Rule 5.1 makes clear that only limited types of information qualify for confidential treatment in submissions to the Court and that unless otherwise provided in Rule 5.1, proceedings in a civil action are a matter of public record.

Rule 5.1(b) provides that the person seeking confidential treatment for a document must show that “good cause” exists for such treatment. Rule 5.1(b)(2) limits “good cause” to those situations where “the public interest in access to Court proceedings is outweighed by the harm that public disclosure of sensitive, non-public information would cause.” Rule 5.1(b)(2) provides examples of the types of information that may qualify for confidential treatment, including trade secrets, sensitive proprietary, financial, business, or personnel information, sensitive personal information, personally identifying information and the names of minor children. Rule 5.1(b)(3) makes it clear that the party seeking confidential treatment always bears the burden of proof of establishing good cause.

The remaining sections of Rule 5.1 provide detailed procedures for filing public (i.e., redacted) versions of confidential documents, outline the procedure for challenging confidential treatment and provide a timeline for the expiration of confidential treatment of a document.

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