

# COURT OF COMMON PLEAS

## FOR THE STATE OF DELAWARE



### *JUSTICE OF THE PEACE COURT CIVIL APPEALS DEFENDANT BELOW INSTRUCTIONS*

<http://courts.state.de.us/commonpleas/>

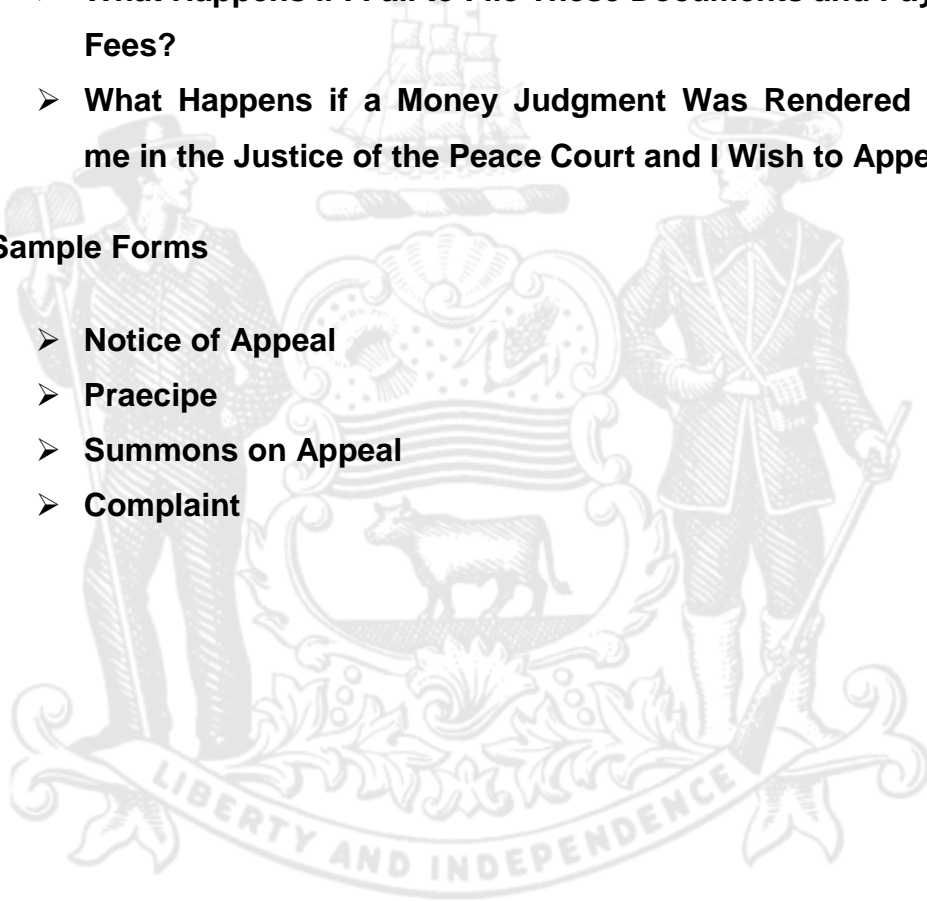
**JUSTICE OF THE PEACE COURT APPEALS OF CIVIL CASES TO THE**  
**COURT OF COMMON PLEAS**

**General Instructions for Defendant Below**

- **What is a Pre-trial Conference?**
- **What Happens if I Fail to File These Documents and Pay All Fees?**
- **What Happens if a Money Judgment Was Rendered Against me in the Justice of the Peace Court and I Wish to Appeal?**

**Sample Forms**

- **Notice of Appeal**
- **Praecipe**
- **Summons on Appeal**
- **Complaint**



## **GENERAL INSTRUCTIONS**

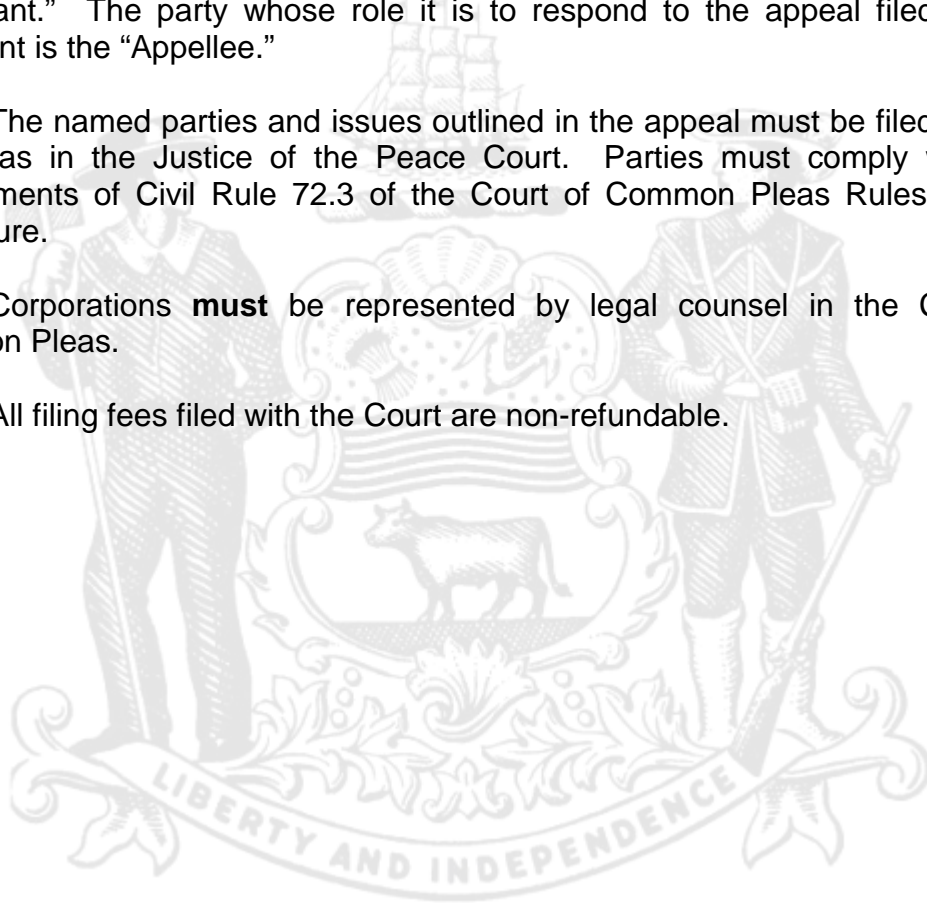
All decisions from the Justice of the Peace Court civil matters, **except landlord/tenant possession cases**, may be appealed to the Court of Common Pleas in the county in which the Justice of the Peace Court is located. The landlord/tenant cases **MUST** be appealed to a three judge panel of Justices of the Peace. Appeals to this Court are “de novo,” meaning that the case starts over in the Court of Common Pleas. (Court of Common Pleas Civil Rule 72.3(a))

The party who is appealing the Justice of the Peace Court decision is the “Appellant.” The party whose role it is to respond to the appeal filed by the Appellant is the “Appellee.”

The named parties and issues outlined in the appeal must be filed exactly as it was in the Justice of the Peace Court. Parties must comply with the requirements of Civil Rule 72.3 of the Court of Common Pleas Rules of Civil Procedure.

Corporations **must** be represented by legal counsel in the Court of Common Pleas.

All filing fees filed with the Court are non-refundable.



## **APPEALS FROM JUSTICE OF THE PEACE COURT CIVIL CASES**

### **DEFENDANT BELOW INSTRUCTIONS**

**To appeal a decision from a Justice of Peace Court civil matter, the Defendant Below must file within fifteen (15) days the following:**

- A Notice of Appeal. This must be filed within fifteen (15) days after the date of the decision in the Justice of the Peace Court. The notice has to be filed in the Clerk's Office of the Court of Common Pleas and must include an original and one copy.
- An original Praecipe and one (1) copy. A Praecipe is a document which tells the Sheriff where to serve the parties.
- An original Summons on Appeal and one (1) copy for each party to be served. The Summons on Appeal is the document that the Sheriff will serve with the pleadings.

**At the same time, or within ten (10) additional days, the Defendant Below must:**

- Pay a non-refundable \$135.00 filing fee (including the Court Security Assessment.) Payments can be made with check, cash, or money order. Currently, we are unable to accept credit/debit card payments at the Court. All checks must be made payable to the "Court of Common Pleas."
- Pay a separate non-refundable check made payable to "Sheriff." Sheriff costs are as follows:  
  
If you are serving more than one person, the costs are \$30.00 for the first address and \$30.00 for each additional address. There is a \$5.00 fee for each additional person served at the same address.
- The Appellant shall, within ten (10) calendar days, file a copy of the Notice of Appeal with the Justice of the Peace Court.

After all the pleadings mentioned above have been served on the Plaintiff Below, he or she will have twenty (20) days in which to file the Complaint with the Court and serve a copy on you. Pleadings are written statements in which a party to a lawsuit sets forth or responds to claims, allegations, denials and defenses. When you receive the Complaint, you will have twenty (20) days in

which to file an Answer to it. If the Plaintiff Below fails to file a Complaint, see the “How to Prepare a Civil Motion” packet available in the Clerk’s Office and also on the Court’s web site at <http://courts.delaware.gov/CommonPleas/index.stm>. You must file your Answer with the Clerk’s Office of the Court of Common Pleas. Your Answer must include notice to the Court that you have served a copy on the Plaintiff (See attached sample Certificate of Service.)

Once the Complaint and Answer are both filed, you will be notified by the Court of a date of a pre-trial conference with a judicial officer and the other party.

### **WHAT IS A PRE-TRIAL CONFERENCE?**

If the Defendant Below answers the Complaint, the case may be scheduled for a pre-trial conference. At the conference, the parties will meet with a judicial officer in an attempt to narrow the issues, determine the number of witnesses to be called, the length of the trial, and to discuss the possibility of settlement.

If a pre-trial conference is scheduled, you will receive notice of the date by mail along with a Civil Case Management Order, which **must** be completed by the parties and returned to the Court five (5) days before the scheduled conference. A completed copy of the Civil Case Management Order **must** also be mailed or hand-delivered to the opposing party or to the attorney representing the party.

### **WHAT HAPPENS IF I FAIL TO FILE THESE DOCUMENTS AND PAY ALL FEES?**

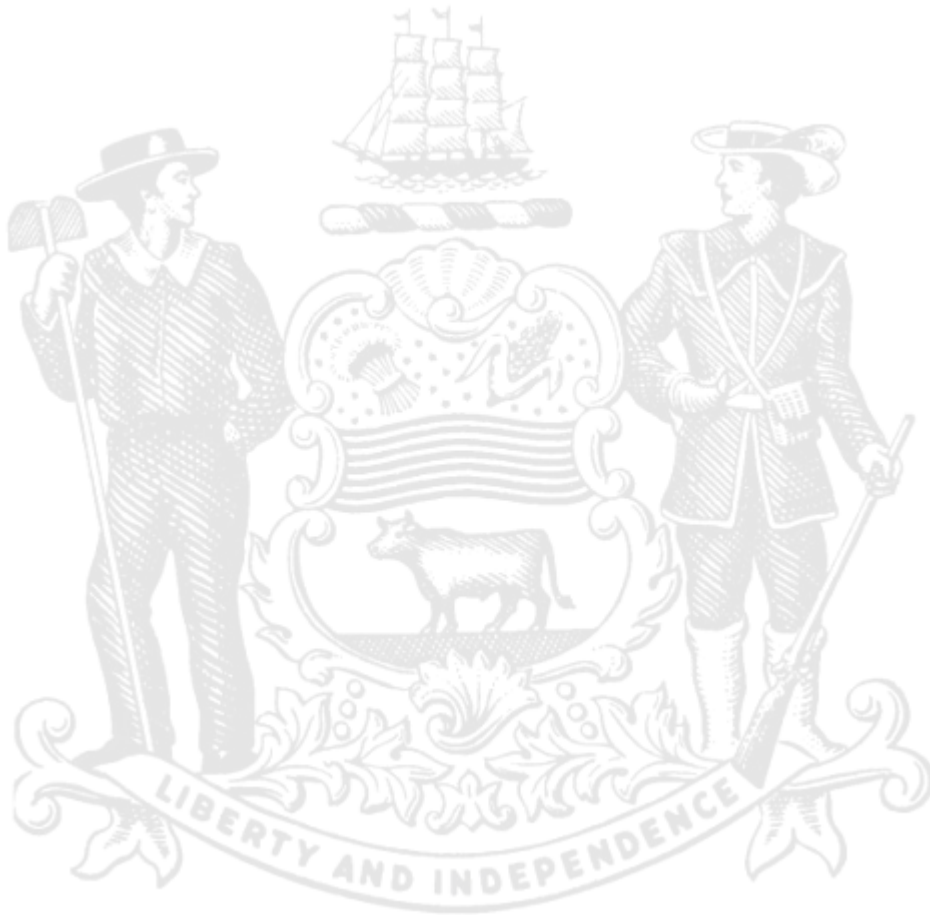
Your appeal cannot proceed until you have complied with all instructions. If you fail to file any of the required documents or submit the appropriate fees, your appeal will be dismissed by the Court. All filing fees are non-refundable.

### **WHAT HAPPENS IF A MONEY JUDGMENT WAS RENDERED AGAINST ME**

#### **IN THE JUSTICE OF THE PEACE COURT AND I WISH TO APPEAL?**

If a money judgment was rendered against you in the Justice of the Peace Court and you want to stop execution on the judgment, you must file a motion with the Clerk’s Office of the Court of Common Pleas requesting a stay of the Justice of the Peace Court judgment. The motion **must** be accompanied by a surety or cash deposit sufficient to cover the amount of the Justice of the Peace Court judgment, plus interest and court costs. The judgment will be stayed if the

motion **and** the surety are filed and approved by a judge of this Court. If you do not file such a motion, execution of the judgment can proceed against you. (Court of Common Pleas Civil Rule 62(c))



## SAMPLE FORMS

- Notice of Appeal
- Praecipe
- Summons on Appeal
- Answer
- Certificate of Service













Below is an Example of what a completed **Answer** may look like. Do not copy it exactly because there are things included such as names of parties, case number and the claims themselves that will be different for your case.

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**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE**

**IN AND FOR (Kent, New Castle, Sussex) COUNTY**

JOHN DOE, )  
 )  
 Defendant(s) Below, )  
 Appellant(s), )  
 )  
 v. ) Civil Action No. 1999-01-123  
 )  
 MARY ROE, )  
 )  
 Plaintiff(s) Below, )  
 Appellee(s). )

**ANSWER OF DEFENDANT**

1. Admitted.
2. Admitted.
3. Denied.
4. Do not know.
5. Denied.
6. No Answer Required.

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JOHN DOE (Defendant)  
1236 Main Street  
Anytown, Delaware  
(302) 961-1515

Date: \_\_\_\_\_



## Court Locations and Hours

### **New Castle County Courthouse**

500 N. King Street, Suite 1610

Wilmington, DE 19801-3704

*Telephone (302) 255-2501*

Hours of Operation:

8:30 a.m. to 4:30 p.m.

### **Kent County Courthouse**

414 Federal Street

Dover, DE 19901

*Telephone (302) 735-3900*

*Civil Matters & Name Change Petitions – Press 3*

Hours of Operation:

8:00 a.m. to 4:30 p.m.

### **Sussex County Courthouse**

Race & Market Streets

1 The Circle, Suite 1

Georgetown, DE 19947

*Telephone (302) 858-5730*

Hours of Operation:

8:30 a.m. to 4:30 p.m.

