(EFFECTIVE JUNE 15, 2000)
RULES GOVERNING CIVIL PRACTICE IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE

I. SCOPE OF RULES – ONE FORM OF ACTION.

Rule 1. Scope of Rules.

These Rules shall govern proceedings in the Justice of the Peace Court of the State of Delaware. They shall be construed to secure the just, speedy, and inexpensive determination of every proceeding. If no procedure is specifically prescribed by these Rules, the Court may proceed in any lawful manner not inconsistent with the Rules of another Delaware Court, statute, or administrative directive.

Rule 2. One form of action.

There shall be one form of action to be known as "civil action."

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS; PLEADINGS; MOTIONS AND ORDERS.

Rule 3. Commencement of action.

(a) Commencement. A civil action is commenced by filing a complaint and praecipe with the Court in such form as the Court prescribes. Sufficient copies of the complaint shall be filed so that one copy can be served on each defendant. When an action is governed by a special statute, it shall be commenced in the manner prescribed by such statute.

(**b) Omitted.**

(c) Omitted.

(d) Omitted.

(e) Deposit for costs. The clerk shall not file any paper or record or docket any proceeding, including any third party complaint, until the required deposit for costs and fees has been made in accordance with Civil Rule 77(h)(3) or the filer has been granted permission to file *in forma pauperis* pursuant to Rule 112.

Rule 4. Process.

(a) Issuance of writs: Original, alias or pluries. Upon the commencement of an action the clerk shall forthwith issue the process specified in the praecipe and shall deliver it for service. Upon direction of the plaintiff in the praecipe, separate or additional process shall issue against any defendant.

(b) Attachment in lieu of summons.

(1) Proof. An affidavit must be filed by the plaintiff, or any credible person for the plaintiff, stating that the defendant is justly indebted to the plaintiff in a stated sum not exceeding $15,000 and has absconded, or is as that person believes, about to remove the defendant's person or property out of the State with intent to defraud the defendant's

creditors, or intentionally conceals himself or herself so that process of summons cannot be served on him or her, or is a nonresident of the State, as the case may be. A judge shall not issue a writ of attachment unless the affidavit provides specific facts demonstrating the validity of the debt and for believing that the defendant has absconded or is about to remove the defendant's person or property out of the State, with intent to defraud the defendant's creditors, or intentionally concealed himself or herself so that process of summons cannot be served on him or her, or is a nonresident of the State. The affidavit must include the defendant's last known address or a statement that such address is unknown and cannot with due diligence be ascertained.

(2) Bond required of plaintiff. No writ of attachment in lieu of summons shall be issued until the plaintiff gives bond in an amount and with surety to be approved by the Court out of which the writ is to be issued, conditioned that if the suit shall not be prosecuted with effect, or if the judgment rendered therein shall be in favor of a defendant, the plaintiff will pay any and all costs which may be awarded to a defendant, together with any and all damages, not exceeding the amount of the bond, which a defendant in the suit may have sustained by reason of such attachment; for this purpose, a bond executed by an approved surety company along, without joinder of plaintiff, shall be deemed a compliance with the provisions of this rule. In fixing the amount of such bond, the Court may consider the kind of property to be seized, the estimated value thereof, the possibility of loss to a defendant as the result of the seizure, and other relevant matters. No attachment shall be authorized of any property of an estimated value greater than $15,000**.**

(3) Release of attached property. If the defendant appears at the court and enters an appearance acknowledging that the defendant will answer the plaintiff's demand and satisfy any judgment rendered against them in such suit, the attachment shall be dissolved, and the cause proceed as in other cases. If the defendant appears at the Court at any time before final judgment and contests a wage attachment, an *ex parte* post deprivation hearing on the seizure of the defendant's wages shall be held. If it is determined that there is no longer a factual basis supporting the need for the writ, the attachment shall be dissolved, and the cause proceed as in other cases. In cases not falling within the above categories, the attachment shall, in any event, be dissolved, and the cause proceed as in other cases, 30 days from the date on which the writ of attachment issued.

(4) A writ of foreign attachment may issue against any individual or unincorporated association not an inhabitant of this State or against a foreign corporation, although joined as parties defendant with other nonresident or resident parties, with the same effect as if such nonresident defendant were the only defendant.

(5) When either goods are attached, or garnishee summoned, the Court shall, at the plaintiff's expense, cause a copy of such writ to be published in a newspaper of general circulation in the county in which the writ is issued at least once within 20 days after the issuance of such writ. The Court shall also send by certified or registered mail to every defendant whose appearance is sought to be compelled, at the address furnished by plaintiff, if such address is known, certified copies of the complaint, affidavit, writ and return. No publication shall be required if all defendants have been personally served prior to the time publication would otherwise take place and no mailing will be required to any defendant who has been personally served.

(6) If any goods, or chattels, are taken on any attachment in lieu of summons, the constable or sheriff shall make an inventory, and cause them to be appraised by two (2) judicious persons, under oath, or affirmation, and annex the inventory to the attachment. If the constable or sheriff takes any goods on attachment, the constable shall be responsible for the safe keeping of the goods.

(7) Omitted.

(8) In any action by attachment in lieu of summons, the defendant shall serve the answer within 30 days after the date of the attachment of the property or the service of the writ upon a garnishee, as the case may be. After the expiration of such 30 day period, or after the defendant's appearance, whichever first occurs, the action shall proceed as in suits commenced by summons.

(9) If any attached property is of a perishable nature, or will cause undue expense in its keeping, the Court may order the attaching officer, on due notice, to sell the same, and retain the proceeds of the sale, subject to the order of the Court. No property attached under a writ of attachment in lieu of summons or garnishment shall be sold except upon order of the Court, which order shall specify the notice required and all other pertinent matters relating to such sale.

(c) Contents of writ: Generally. The process shall bear the date of its issuance, be signed by a clerk or a judge, be under the seal of the Court, contain the name of the Court and the names of the parties, state the name of the official or other person to whom it is directed, the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these Rules require the defendant to appear and defend, and shall notify the defendant that in case of the failure to do so, judgment by default will be rendered against the defendant for the relief demanded in the complaint. The writ shall also inform the defendant as to how the attachment or garnishment may be dissolved.

(d) By whom served. Service of process shall be made by any constable, sheriff, deputy sheriff, special process server, or any other person duly authorized by statute or rule to make service of process except that a subpoena shall be served as provided in Rule 45.

(e) Process. A copy of the complaint, statement of injury, affidavit or any other pleading filed and the praecipe (if separate from the complaint) shall be served together.

(f) Service of process; how made.

(1) Summons. Service of summons shall be made as follows:

(I) Upon an individual other than an infant or an incompetent person by delivering a copy of the summons and accompanying papers, if any, to that individual personally or by leaving copies thereof at that individual's dwelling house or usual place of abode in the presence of some person of suitable age and discretion residing therein or by certified mail, return receipt requested, or by first class mail with certificate of mailing or by delivering copies thereof to an agent authorized by appointment or by law to receive service of process. Service shall be made at least four (4) days before the day of appearance, unless it is returnable forthwith. Service by leaving a copy, shall not be made for any forthwith warrant, nor in respect to any defendant who has not at the time a fixed place of abode in the county. Except where the warrant is returnable forthwith, if service is made less than 4 days before the date of appearance, a continuance shall be granted upon the motion of the defendant.

(II) A. Omitted.

B. Upon an infant under the age of 18 years, if such infant has a guardian in this State, by service upon such guardian in the same manner as upon an individual, if the guardian is an individual; or in the same manner as upon a corporation, if the guardian is a corporation; and if there is no such guardian, by service in the same manner as upon an individual, upon an adult person with whom such infant resides or who has the infant's place of abode.

C. Upon an incompetent person, if such person has a trustee or guardian in this State, by service upon such trustee or guardian, in the same manner as upon an individual, if the trustee or guardian is an individual; or in the same manner as upon a corporation, if such trustee or guardian is a corporation; and if there is no such trustee or guardian, by service in the same manner as upon an individual, upon an adult person with whom such incompetent person resides or who has the incompetent person's place of abode.

D. As used herein, trustee or guardian refers to one appointed by the court of competent jurisdiction in this State; provided, however, that a trustee or guardian duly appointed by a court of competent jurisdiction of another state may accept service and/or appear, upon filing proof of such appointment in the cause here pending.

E. Upon an infant or incompetent person, not a resident of the State, in the same manner as upon a competent adult person who is not an inhabitant of or found within the State.

(III) Upon a domestic or foreign corporation or upon a partnership or unincorporated association which is subject to suit under common name by delivering copies of the summons, complaint and affidavit, if any, to an officer, a managing or general agent or to any other agent authorized by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(IV) Upon a municipal corporation or other governmental organization subject to suit by delivering a copy of the summons, complaint and affidavit, if any, to the chief executive officer thereof or by serving copies thereof in the manner prescribed by law for the service of summons upon such defendant.

(V) (A) Upon a defendant of any class referred to in subsections (I) and (III) of this rule, it is sufficient if the summons, complaint and affidavit, if any, are served in the following manner: (i) in a civil action for debt, service is made by certified mail, return receipt requested. When service is made in this manner, service is complete when it is signed for by the defendant, or by some person of suitable age and discretion acting as agent for the defendant, or with the word "unclaimed" or "refused" noted thereon by postal authorities. (B) In summary possession actions, if service cannot, after a reasonable effort, be made by personal service or by leaving a copy with a person of suitable age and discretion who resides or is employed in the rental unit, service is made: (i) upon a natural person by affixing a copy of the notice and complaint upon a conspicuous part of the rental unit, and within one (1) day thereafter, sending by either certified mail or 1st class mail with certificate of mailing, using United States Postal Service Form 3817 or its successor, an additional copy of each document to the rental unit and to any other address known to the person seeking possession as reasonably chosen to give actual notice to the defendant; or (ii) if the defendant is an artificial entity as defined in Supreme Court Rule 57(a)(1), by sending by certified mail or by sending by 1st class mail with certificate of mailing, using United States Postal Service Form 3817 or

its successor, within one (1) day after affixation, additional copies of each document to the rental unit and to the principal place of business of such defendant, if known, or to any other place known to the party seeking possession as reasonably chosen to effect actual notice.

(VI) Whenever a statute, rule of court or an order of court provides for service of summons or of a notice or of an order in lieu of summons upon a party not an inhabitant of or found within the State, service shall be made under the circumstances and in the manner prescribed by the statute, rule or order.

(2) Attachment. Service of attachment or pre-judgment garnishee process shall be made in the manner as provided in this Rule, on those persons, firms or corporations subject to such service in this State. Service of post-judgment garnishments shall be made in accordance with Rule 69(c)(2)(a). If pre-judgment garnishees are summoned upon a writ of attachment in lieu of summons or on a forthwith summons, the person serving the writ shall leave with them a copy of the writ, the complaint and accompanying papers, if any. If execution of the writ requires seizure of personal property, the constable or sheriff shall levy thereon and make the return. In actions for distress for rent, a copy of the claim of distress and order of levy shall be delivered to each tenant found on the premises, or if no tenant is found, copies of the claim of distress, order of levy, and inventory shall be affixed to a prominent place in the interior of the premises.

(3) Omitted.

(4) Omitted.

(5) Service of original process other than summons or attachment.

(I). Garagekeeper's Liens. In garagekeeper's lien cases pursuant to 25 *Del.C.* Ch. 39, the Court shall send a notice and copy of the application by certified or registered mail, return receipt requested, to the owners, secured parties of record and any known lienholders and any other persons whose names and addresses are listed in the application. If the identity of the last registered owner or secured party cannot be determined with reasonable certainty, it shall be sufficient if the lienholder gives at least 15 days' notice of the sale by handbills posted in five (5) or more public places and advertises in a newspaper published and/or circulated in the county in which the sale is to be held. The lienholder shall notify the appropriate police auto theft unit.

(II). Other process. Service of original process other than summons, attachment or garagekeeper's liens shall be made as provided by statute or order of court.

(g) Return of process. Either an original, alias or pluries writ shall be returnable promptly when served. When a writ of summons has not been served it shall be returnable on the fourth day preceding the date established as the date of appearance on the face of said summons. A writ of attachment in lieu of summons, whether an original, alias or pluries, shall be returned promptly after service and shall be returnable within three (3) days of issuance. A forthwith summons shall be returnable immediately upon service stating the time of service. When service cannot be made, a forthwith summons shall be returnable on the 15th day after the date of issuance. When process cannot be served and shall be returnable as provided above, such return shall set forth the reason why service could not be made. When service of process has been made, the service and the manner of service shall be stated in the return, thus, "served personally by the constable or duly authorized special process server" or "served by leaving a copy at the defendant's dwelling house or usual place of abode in the presence of A.B. , a person of

suitable age and discretion residing therein," with the date of such service. Failure to make a return or proof of service shall not affect the validity of service.

(h) Actions in which service of process is secured pursuant to 10 *Del.C.* § 3104, § 3112, or § 3113.

In an action in which the plaintiff serves process pursuant to 10 *Del.C.* § 3104, § 3112, or § 3113, the defendant's return receipt and the affidavit of the plaintiff or the plaintiff's attorney of the defendant's nonresidence and the sending of a copy of the complaint with the notice required by the statute shall be filed with the Court within 10 days of receipt by the plaintiff or the plaintiff's attorney of the defendant's return receipt.

(i) Amendment of process. At any time in its discretion and upon such terms as it deems just, the Court may allow any process or return of proof of service to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(j) Omitted.

(k) Omitted.

Rule 5. Service and filing of pleadings and other papers.

(a) Service: When required. Except as otherwise provided in these Rules, every pleading subsequent to the original complaint, unless the Court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the Court otherwise orders, every written motion other than one which may be heard *ex parte*, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties by the filing party. Every order required by its terms to be served shall be served upon each of the parties by the Court. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(aa)(1) Appearance: When; how made; withdrawal**.** Except as otherwise provided by statute, a defendant may appear although a summons has not been served upon the defendant. Appearance may be made by the service and filing of notice thereof, or by the service or filing of any motion or pleading purporting to be responsive to, or affecting the complaint, except that appearance for purpose of satisfying a judgment, when appearance may be made by notation thereof on the judgment docket.

(aa)(2) Appearance of garnishee: When; how made. Any garnishee duly summoned (either on attachment in lieu of summons or execution process) shall file with the Court an answer within 20 days after service of process which shall specify what goods, chattels, rights, credits, money or effects of a defendant, if any, the garnishee has in its possession or custody. Within 10 days after service of such answer, the plaintiff may serve objections. If no objections are filed, a delivery to the constable of the property set forth in the answer by the garnishee, or so much of it as shall satisfy plaintiff's demand, shall be a complete discharge of the garnishee in the proceedings, and the constable shall make a supplemental return on the writ showing the property which has been delivered to the constable by the garnishee and shall hold such property subject to the order of the Court. If the garnishee does not deliver such property to the constable within five (5) days after the expiration of the ten (10) day period for plaintiff's objections, if any, or if the garnishee has failed to answer, the plaintiff, on motion, may

have personal judgment entered against the garnishee in favor of plaintiff in an amount equal to the value of the property of defendant in garnishee's custody or possession, or the amount of the plaintiff's judgment, whichever is less, with interest and costs. Before service of any writ of attachment, the Court shall receive from the plaintiff the sum of $20 for each party to be summoned as garnishee (except as to garnishment covered by the terms of 10 *Del.C.* § 4913) and said sum shall be delivered to each garnishee when the summons is served. The return on the writ of garnishment will show the garnishee fee paid, which will be taxed as costs in the case; no garnishee will be required to answer without first having received the garnishee fee.

(b) Service of pleadings and papers: How made. Service shall be made upon a party unless a party is represented by an attorney in which case the service shall be made upon the attorney. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney's or party's last known address. Delivery of a copy with this Rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(c) Omitted.

(d) Filing. All papers after the complaint required to be served upon a party shall be filed with the Court unless otherwise ordered by the Court.

(e) Filing with the Court defined. The filing of papers with the Court as required by these rules shall be made by filing them with the clerk. Papers may be filed by facsimile transmission or electronically if permitted by these Rules, by administrative order, or by a judge.

(f) Proof of service of papers. Pleadings required to be served by the party filing the paper shall also be filed with the Court and shall include proof of service upon the other party or the attorney of the other party. Such proof shall consist of a return receipt when service has been made by certified mail, a certificate of mailing, an affidavit stating that service has been made and how such service has been made, or as authorized by Rule 111(c)(5).

(g) Sealing of Court records. Sealing of Court records may be ordered by the Court consistent with statute or administrative directive.

Rule 6. Time.

(a) Computation. In computing any period of time prescribed or allowed by these Rules by order of Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included unless specifically included by statute, order or rule. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturday, Sundays and legal holidays shall be excluded in the computation.

As used in this rule, "legal holidays" shall be those days provided by statute or as designated by the Governor of the State of Delaware.

(b) Enlargement. When by these Rules or by notice given thereunder, or by order of court an act is required or allowed to be done at or within a specified time, unless subject to the limitation of any applicable statute, the Court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor shall be made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period, permit the act to be done when the failure to act was the result of excusable neglect; but it may not extend the time when a mandatory statutory limitation thereon shall exist.

(c) Omitted.

(d) Omitted.

(e) Additional time after service by mail. Whenever a party has the right or is required to do some act or take some action within a prescribed period after being served and service is by mail, three (3) days shall be added to the prescribed period.

III. PLEADINGS AND MOTIONS.

Rule 7. Pleadings allowed; motions

(a) Pleadings. A pleading is the formal allegation by a party of his or her claims and/or defenses. Pleadings allowed include complaint, answer, setoff, counterclaim, reply to a counterclaim, cross-claim, and a third party complaint and answer. All actions shall be commenced by filing a complaint on a form prescribed by the Court. Defendants shall file an answer as directed by the summons.

(b) Motions. A motion is an application made to the court for the purpose of obtaining a rule or order directing some act to be done.

(1) An application to the Court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, and shall set forth the relief or order sought.

(2) Omitted.

(3) All motions shall be signed in accordance with Rule 11.

(c) Demurrers, pleas, etc., abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

Rule 8. General Rules of Pleading.

(a) Claims for relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain (1) a short and plain statement of the claim and (2) what relief is sought.

(b) Defenses; form of denials. Omitted.

(c) Affirmative Defenses. Omitted.

(d) Effect of failure to deny. Omitted.

(dd) Allegations admitted unless denied by affidavit. Omitted.

(e) Pleading to be concise and direct – Consistency.

(1) Each averment of a pleading shall be simple, concise and direct.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically. The party may also state as many separate claims or defenses as the party has regardless of consistency. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of pleadings. All pleadings shall be so construed as to do substantial justice.

Rule 9. Pleading special matters. Omitted.

Rule 10. Form of Pleadings, Motions and Other Papers.

Motions and other papers may be printed or typed and reproduced by any duplicating or copying process which produces a clear black image on opaque unglazed white paper not exceeding 8 ½" x 11". Motions and papers may also be filed as otherwise authorized by statute, court rule, or administrative order. A motion shall contain a caption setting forth the name of the Court, the caption of the case, the case number, the date of filing and a brief descriptive title indicating the purpose of the paper.

Rule 11. Signing of pleadings, motions, and other papers: Representations to Court, sanctions.

(a) Signature. Every pleading, motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by statute, rule or form, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless it is corrected promptly after the omission of the signature is called to the attention of the attorney or party.

(b) Representations to Court. By representing to the Court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the Court determines that subsection (b) has been violated, the Court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subsection (b) or are responsible for the violation.

(1) How initiated.

(A) By motion. A motion for sanctions under this rule shall be made separately from other motions or requests. It shall describe the specific representation alleged to have violated subsection (b) and shall be served on the alleged violator as provided in Justice of the Peace Court Civil Rule 5. However, the motion shall not be filed with or presented to the Court if, within 21 days after service of the motion (or such other period as the Court may prescribe), the challenged representation is withdrawn or appropriately corrected. If warranted, the Court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's initiative. On its own initiative, the Court may enter an order describing the specific conduct that appears to violate subsection (b) and directing an attorney, law firm, or party to show cause why it has not violated subsection (b) with respect thereto.

(2) Nature of sanction: Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into Court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subsection (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the Court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the Court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to discovery. Subsections (a) through (c) of this Rule do not apply to discovery, including bills of particulars. Rules 26 and 37 of these Rules govern matters pertaining to discovery.

Rule 12. Defenses

A defendant shall answer as directed by the summons. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading or by motion before or at the time of trial. Except as provided by statute or these Rules, no defense shall be waived by failure to raise it prior to trial. However, when a defense is raised at trial or within such close proximity to the commencement of the trial as to give a party insufficient opportunity to prepare a defense, the judge then presiding shall grant, upon motion or request, a 15 day continuance to the party in order that the party will not be prejudiced. Whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.

Rule 13. Counterclaims and cross-claims.

(a) Mandatory Counterclaims. A mandatory counterclaim is any claim which the claimant has against any opposing party and which arises out of the transaction or occurrence that is the subject matter of the opposing party's claim unless: (1) it requires for its adjudication the presence of third parties of whom the Court cannot acquire jurisdiction; (2) at the time the action was commenced the claim was the subject of another pending action, (3) the opposing party brought suit upon the claim by attachment or other process by which the Court did not acquire jurisdiction to render a personal judgment on that claim, and the counter claimant is not stating any counterclaim under this Rule, or (4) the counterclaim exceeds $15,000. An issue decided in any previous trial may not be relitigated in a counterclaim.

(b) Permissive counterclaims. A party may state as a permissive counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim exceeding or different from opposing claim. (1) A counterclaim may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(2) If the defendant has a counterclaim exceeding $15,000, the defendant may bring it forward and plead it as a counterclaim, or not, at the defendant's pleasure, and shall not, by neglecting so to plead it, lose such cause of action. If the defendant pleads a counterclaim exceeding $15,000, and the Court finds in favor of the defendant, judgment shall be given to the defendant for the sum determined by the Court, provided it does not exceed $15,000. If it exceeds $15,000, that fact shall be stated on the record, and judgment shall be given for costs for the defendant who shall be at liberty to prosecute such cause of action in another court; or such defendant may take judgment for $15,000 and forgo the excess above $15,000.

(d) Filing of counterclaims and cross-claims. A counterclaim or cross-claim of which any party may be aware prior to the commencement of the trial on the plaintiff's claim, should be filed by the party in writing no later than five (5) days prior to the time and date of trial. In the event a counterclaim, or cross-claim is served within such close proximity to the commencement of the trial of the action as to give a party insufficient opportunity to prepare a defense thereon, the Justice of the Peace Court shall grant upon motion or request a continuance to the party in order that the party will not be prejudiced. Any party may bring any action of which the Justice of the Peace Court shall have jurisdiction as a counterclaim or cross-claim. A counterclaim or cross-claim shall be served in the same manner as provided for in the service of a bill of particulars.

(e) Counterclaim maturing or acquired after pleading. If during the course of the trial it should become evident that a party does have a counterclaim, or cross-claim of which that party was not aware previous to the commencement of the trial or other exceptional circumstances exist, the Court may, in its discretion, grant an adjournment of the proceedings so as to enable said party to file the counterclaim or cross-claim and to give the opposing party a reasonable opportunity to defend same.

(f) Summary possession cases. In a summary possession action, any counterclaim which was not raised because it was for an amount over $15,000 will be barred if not pleaded in a court of competent jurisdiction within 60 days of the date of judgment.

(g) Cross-claims against coparty. A party may state as a cross-claim any claim by one party against a coparty arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein, or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joinder of additional parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(i) Separate trials; separate judgments. If the Court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the Court has jurisdiction to do so, even if the claims of the opposing party have been dismissed or otherwise disposed of.

(j) Judgment in favor of both original claim and counterclaim. When the Court finds in favor of both the claimant and the counterclaimant, the Court shall enter judgment for the difference in the amounts found due and owing. However, the $15,000 limit of subsection (c) of this Rule applies to the full amount found in the defendant's favor and not merely to the net amount of a judgment entered for the defendant.

Rule 14. Third-party practice.

(a) When defendant may bring in third party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. A third-party action may be commenced by a defending party without leave of court no later than five (5) days, exclusive of Saturdays, Sundays, or legal holidays, prior to the time and date of trial by causing a summons and complaint to be served upon a third party defendant. Thereafter, a third-party action may be filed only with leave of court. If during the course of the trial it should become evident that a party has a claim against a third party of which the party was not aware prior to the commencement of the trial or other exceptional circumstances exist, the Court may, in its discretion, grant an adjournment of the proceedings so as to enable said party to file properly the third-party claim.

(b) When plaintiff may bring in third party. When a counterclaim or setoff is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under the circumstances which under this Rule would entitle a defendant to do so.

Rule 15. Amended and supplemental pleadings.

(a) Amendments. A party may amend the party's pleading only by leave of court or by written consent of the adverse party; leave shall be freely given when justice so requires. Wherever amendments shall be allowed at the time of trial or in close proximity thereto, adjournments shall be freely given upon motion by the adverse party. Requests for amendments shall be made in writing and become a part of the record except in the situation of an amendment requested during trial, which, if allowed, shall be entered upon the record by the judge hearing the trial. The original motion to amend

shall be filed with the Court and a copy of the motion shall be served on the defendant or the defendant's attorney of record as provided in Rule 5(b).

(b) Amendments to conform to the evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.

(c) Relation back of amendments. An amendment of a pleading relates back to the date of the original pleading when

(1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or

(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing subsection (2) is satisfied and, within the period provided by statute or these Rules for service of the summons and complaint, the party to be brought in by amendment has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against them.

(d) Supplemental pleadings. The Court may, upon motion of a party, on reasonable notice and such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. If the Court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

16. Pretrial conferences

(a) Pretrial conferences; objectives. Omitted.

(b) Scheduling and planning. Omitted.

(c) Formulating issues. In any action, the Court may, in its discretion, with or without motion, direct the attorneys for the parties or the parties themselves, to appear before it for a conference to consider:

1. The simplification of the issues;

2. The necessity or desirability of amendments to the pleadings;

3. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

4. The limitation of the number of witnesses;

5. Preparation of the evidence to be presented and determination of the admissibility of that evidence; or

6. Such other matters as may aid in the disposition of the action inclusive of entering stipulated judgment and judgments by admission.

(d) Final pretrial conference. Omitted.

(e) Pretrial Orders. The Court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of the parties; and such order

when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

(f) Sanctions. If a party or party's attorney fails in good faith to participate in a pretrial conference, or to obey a pretrial order, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just which may include reasonable expenses incurred because of any noncompliance with this Rule, including attorney's fees.

Rule 16.1. Compulsory arbitration. Omitted.

Rule 16.2. Voluntary mediation. Omitted.

IV. PARTIES.

Rule 17. Parties plaintiff and defendant; capacity.

(a) Real party in interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Omitted.

(c) Infants or incompetent persons. Whenever an infant or incompetent person has a representative, such as a general guardian, trustee, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian *ad litem*. The Court shall appoint a guardian *ad litem* for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

Rule 18. Joinder of claims and remedies.

(a) Joinder of claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims as the party has against an opposing party.

(b) Omitted.

Rule 19. Joinder of persons needed for just adjudication.

(a) Persons to be joined if feasible. A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if: (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the Court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

(b) Determination by Court whenever joinder not feasible. If a person as described in subsection (a)(1)-(2) hereof cannot be made a party, the Court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the Court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading reasons for nonjoinder. A pleading asserting a claim for relief shall state the name, if known to the pleader, of any persons as described in subsection (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

Rule 20. Permissive joinder of parties.

(a) Permissive joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate trials. The Court, in furtherance of convenience or to avoid prejudice to a party may order separate trials.

Rule 21. Misjoinder and nonjoinder of parties.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the Court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Rule 22. Interpleaders.

(**a) Use**. Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaims. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(b) Remedy in Addition to Statute. The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by the statute but actions thereunder shall be conducted in accordance with these Rules.

Rule 23. Class Actions. Omitted.

Rule 24. Intervention.

(a) Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when an applicant claims an interest relating to the property or transaction which is the subject matter of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect the interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive intervention. Upon timely application, anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion, the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of existing parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5(b). The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which

intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

Rule 25. Substitution of parties.

(a) Death. (1) If a party dies and the claim is not thereby extinguished, the Court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any county. The motion for substitution must be made not later than 90 days after a statement noting the death is filed with the Court and served on the parties in the manner prescribed above or the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the Court upon motion served as provided in subsection (a) of this Rule may allow the action to be continued by or against the party's representative.

(c) Transfer of interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the Court, upon motion, directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subsection (a) of this Rule.

(d) Public officers; death or separation from office. (1) When an officer of the State of Delaware, a county, city or other governmental agency is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When an officer of the State of Delaware, county, city or other governmental agency sues or is sued in an official capacity, the officer may be described as a party by an official title rather than by name; but the Court may require that the officer's name be added.

V. DEPOSITIONS AND DISCOVERY.

Rule 26. Bill of particulars.

(a) When required. In every claim or counterclaim based upon a debt for money due and owing which is brought in the Justice of the Peace Court, the defendant may elect, upon being served by process, to demand from the plaintiff a bill of particulars

covering the subject matter of the claim, unless the plaintiff has already provided the information which would be contained in a proper bill of particulars at the time of filing the claim with the Court. Such demand by the defendant shall be made on the form designated by the Court. Unless otherwise provided by statute, no plaintiff shall be required to file a bill of particulars except upon defendant's demand pursuant to this rule. All original, alias or pluries process shall advise the defendant of the defendant's right to a bill of particulars.

(b) Content. A bill of particulars shall be in writing and shall state with particularity the basis for the plaintiff's suit and the manner in which the sum demanded was determined. If the action is based upon a contract or promise, whether express or implied, the bill of particulars shall state specifically the date, time, and place the contract was agreed upon, the subject matter of the contract, what breach or violation of the contract occurred, the amount of damages suffered because of the breach or violation, and how those damages were determined. If the action is based upon a debt for money due and owing on a book account or other written instrument, a copy of any books of account or other written documents upon which the action is based shall be included in the bill of particulars. The bill of particulars shall include an affidavit of the plaintiff notarized by a notary public verifying that the information contained in the bill of particulars is true and correct to the best of the plaintiff's knowledge. If the plaintiff is a corporation, partnership or other artificial entity, it shall be verified by an officer of the entity as defined in Supreme Court Rule 57(a)(3) or any representative certified pursuant to Supreme Court Rule 57.

(c) Procedure. (1) Demand. The demand for a bill of particulars shall contain the current mailing address of the defendant, if different from the address provided in the complaint. The Court shall serve a copy of the defendant's demand on the plaintiff.

(2) Response. Upon receipt of the notice of the defendant's demand, the plaintiff shall serve the bill of particulars within 15 days counting the date of mailing as the first day. The bill of particulars shall be served by mailing the original to the Court where the action is pending, along with a statement certifying how and when the bill of particulars was served on the defendant, and by mailing a copy to the defendant or the defendant's attorney of record.

(3) Continuance. If the demand for a bill of particulars is filed in close proximity to the date of the trial, the Court may, in the interest of justice, continue the trial either upon motion of a party or on its own motion.

(4) Motion to compel. If the plaintiff fails to comply with the demand for a bill of particulars, the defendant may move for an order compelling compliance with the demand. A motion to compel shall be filed with the Court within five (5) days after the time for serving the bill of particulars has elapsed, or at such other time as ordered by the Court.

(d) Failure to comply with Rule. If it is brought to the attention of the Court that a party has failed to comply with this rule, the Court may order such party to file the bill of particulars, grant a continuance, dismiss the action with or without prejudice, or make such other order as it deems just under the circumstances. A dismissal shall not be granted when, in the Court's view, there has been substantial compliance with the requirements of this rule.

(e) Enlargement. The Court may enlarge the time of the demand for or service of a bill of particulars, consistent with Rule 6(b), when, in the Court's discretion, justice shall be best served by an enlargement of the time

Rule 27. Other permitted discovery. Discovery as authorized in Superior Court Civil Rules 33, 34 and 36 may be permitted by the Court, upon motion, in the interest of justice or judicial economy.

Rules 28-36. Omitted.

Rule 37. Failure to make discovery: Sanctions. Sanctions for failure to comply with Rule 26 may be ordered as provided in that rule. Sanctions for discovery permitted pursuant to Rule 27 may be ordered in accordance with Superior Court Civil Rule 37.

VI. TRIALS.

Rule 38. Jury trial of right.

In any civil action commenced pursuant to 25 *Del.C.* Ch. 57, the plaintiff may demand a trial by jury at the time the action is commenced and the defendant may demand a trial by jury within 10 days after being served.

Rule 39. Trial by jury or by the Court.

All trials shall be heard before a judge without a jury except summary proceedings for possession and the ancillary matters pertaining thereto when a party specifically demands a jury trial in accordance with 25 *Del.C.* Ch. 57.

Rule 40. Assignment of judges

Each Justice of the Peace may be assigned by the Chief Magistrate to serve in the county in which the Justice of the Peace resides, or in another county if the Justice of the Peace consents, in such courts and for such hours and length of time as the Chief Magistrate may deem advisable. The Chief Magistrate may delegate this duty to the Deputy Chief Magistrates.

Rule 41. Dismissal of actions.

(a) Voluntary dismissal: (1) By plaintiff; by stipulation. Except as otherwise provided by statute, an action may be dismissed by the plaintiff without order of court by filing a notice of dismissal at any time before trial or before the service by the defendant of a demand for bill of particulars or other discovery or by filing a stipulation of dismissal signed by all the parties who appeared in the action. Unless otherwise stated in notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

(2) By order of Court. Except as provided in subsection (a) (1) of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the Court and upon such terms and conditions as the Court deems proper. If a counterclaim has been pleaded by the defendant prior to the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the Court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Dismissal upon motion of defendant. For failure of the plaintiff to prosecute or to comply with these Rules or any order of Court, a defendant may move for dismissal of an action or of any claim against the defendant. After the plaintiff has completed a presentation of plaintiff's evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that upon the facts and the law, the plaintiff has shown no right to relief. Upon such motion the Court may render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. Unless the Court in its order for dismissal otherwise specifies, a dismissal under this paragraph and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to prosecute, operates as an adjudication upon the merits.

(c) Dismissal of counterclaim, cross-claim or third-party claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim or third-party claim.

(d) Costs of a previously dismissed action. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the Court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action before the Court until the plaintiff has complied with the order.

(e) *Sua sponte* dismissal for failure to prosecute. In the case of any action which has been pending in a Justice of the Peace Court for more than 1 year without any proceedings having been taken therein during that year, the Court shall dismiss the action without prejudice and without prior notice for want of prosecution.

(f) Dismissal without prior notice. The Court may order a complaint, petition or appeal dismissed, *sua sponte*, without notice, when such complaint, petition or appeal manifestly fails on its face to invoke the jurisdiction of the Court and where the Court concludes, in the exercise of its discretion, that the giving of notice would serve no meaningful purpose and that any response would be of no avail.

Rule 42. Consolidation; Separate trials.

(a) Consolidation. When actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate trials. The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of claims, cross-claims, third-party claim, or of any separate issues.

Rule 42.1. Opening statements. The plaintiff or the plaintiff's attorney may make an opening address. The defendant or the defendant's attorney may make an opening address either before any testimony is taken on behalf of the plaintiff or at the close of plaintiff's testimony and before any testimony is offered on behalf of the defendant.

Rule 43. Taking of testimony; conferences during trial.

(a) Form. In every trial, the testimony of witnesses shall be taken in open court, unless otherwise provided by statute, by the Delaware Uniform Rules of Evidence, by these rules, or by order for cause. The Court may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location.

(b) Conferences during trial. Omitted.

(c) Affirmation in lieu of oath. Whenever under these Rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(d) Evidence in motions. When a motion is based on facts not appearing of record the Court may hear the matter on affidavits presented by the respective parties, but the Court may direct that the matter be heard wholly or partly on oral testimony.

(e) Interpreters. The Court may appoint an interpreter of its own selection and may fix reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the Court may direct, and may be taxed ultimately as costs, in the discretion of the Court.

Rule 44. Proof of official records.

(a) Authentication. (1) Domestic. An official record kept within the United States, or any state, district, or commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subsection in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subsection in which the record is kept, authenticated by the seal of the officer's office.

(2) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certification of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of the embassy or legation, consul general, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the united States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the Court may,

for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) Lack of record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records, designated by the statement, authenticated as provided in subsection (a)(1) of this Rule in the case of a domestic record, or complying with the requirements of subsection (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other proof. This Rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

Rule 44.1. Determination of foreign law.

A party who intends to raise an issue concerning the law of a foreign country shall give notice in the party's pleadings or other reasonable written notice. The Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Delaware Uniform Rules of Evidence. The Court's determination shall be treated as a ruling on a question of law.

Rule 45. Subpoena.

(a) Form; issuance. (1) Every subpoena shall

(A) state the name of the Court and the county from which it is issued; and

(B) state the title of the action, the name of the court in which it is pending, and its civil action number; and

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents, or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) set forth the text of subsection (e) of this rule.

A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or may be issued separately.

(2) A subpoena shall issue from the county in which the action is pending.

(3) The clerk shall issue a subpoena, signed by either the clerk or a judge. A Delaware attorney, as an officer of the Court, may also issue and sign a subpoena.

(4) A subpoena to compel any judge to testify concerning actions taken in his or her official capacity shall not be issued without the prior approval of the Court. A party or attorney seeking a subpoena to compel a judge to testify concerning his or her official actions shall seek an order of approval by written motion which shall specify the purposes for which the testimony is sought. The Court may hold a hearing. A judge shall not be required to respond to a subpoena concerning official actions unless it is accompanied by a copy of the court order approving the subpoena.

(5) Where a subpoena requested by a *pro se* litigant appears to be unreasonable or to subject a person to an undue burden, the Court may, on its own motion, deny the issuance of the subpoena or hold a hearing, as it deems necessary.

(b) Service. (1) A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy of the subpoena to such person and providing a copy of the subpoena, with return of service noted, to the Court. Prior notice of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b).

(2) Proof of service, when necessary, shall be made by filing with the Court from which the subpoena issued a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(c) Protection of persons subject to subpoenas. (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 15 days after service of the subpoena or before the time specified for compliance if such time is less than 15 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the Court. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) The Court may quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iii) subjects a person to undue burden.

(B) If a subpoena requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the Court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without under hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the Court may order appearance or production only upon specified conditions.

(d) Duties in responding to subpoena. (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(e) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of court.

Rule 46. Objections in jury trials. In a jury trial, a party, at the time the ruling or order of the Court is made or sought, must make known to the Court the party's objection to the action of the Court. If a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

Rule 47. Jurors and Jury Trials.

(a) Selection of Jurors. (1) Not later than three (3) days, or as soon as is practicable, before a case is scheduled for trial the Court shall submit to the parties a list showing the names and addresses of at least 12 proposed jurors who appear to be impartial, disinterested and judicious citizens of the county where the real estate is situated.

(2) Examination on *voir dire*. In jury trials, the Court alone shall examine all jurors on the *voir dire* unless it shall otherwise direct. When the Court examines, either attorney or party, if unrepresented, may request the Court to examine the jurors as to certain matters, and the Court may do so if in its opinion such matters are the proper subject of inquiry. *Voir dire* examination of the jury panel concerning contact with prospective witnesses shall be freely granted. All questions proposed by an attorney, or party, if unrepresented, to be used in *voir dire* examinations shall be submitted to the Court prior to the commencement of the drawing of the jury.

(3) After the *voir dire* examination, six (6) names shall be drawn randomly by the Court to be seated as jurors from those remaining after any prospective jurors have been stricken for cause. Each party shall be entitled to no more than three (3) peremptory challenges and the Court may reduce this number if the jury panel is insufficient. Several defendants or several plaintiffs may be considered as a single party for the purposes of making challenges, and the Court, for good cause, may allow additional peremptory challenges and permit them to be exercised separately or jointly so long as there is sufficient numbers in the jury panel to accommodate those challenges. A request for additional challenges shall be made before commencement of the drawing of the jury or at such earlier time as ordered by the Court.

(4) Immediately prior to the trial and before entering upon their duties, six (6) jurors shall be sworn or affirmed faithfully and impartially to perform the duties assigned to them as provided in Chapter 57 of Title 25 of the Delaware Code.

(5) Alternate jurors. The Court may direct that not more than two (2) jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors shall replace jurors in the order in which they are called when, prior to the time the jury retires to consider its verdict, regular jurors become or are found to be unable to

perform their duties or are otherwise disqualified. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to one (1) peremptory challenge in addition to those otherwise allowed pursuant to subsection (1) above if one or two alternate jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

(b) Procedure in jury trials. 1. Evidence. During the course of the trial, any party may present competent and material evidence upon the issue which is the subject of the suit. The Court shall, during the course of the trial, determine all questions of law and the admissibility of evidence. A faithful record of the trial shall be made by an electronic recording device which shall be kept for possible appellate review.

2. Instructions to jury; objections. At the close of the evidence or at such earlier time as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the requests. The Court shall inform counsel, or the party, if unrepresented, of its proposed action upon the requests prior to the arguments to the jury. The Court shall instruct the jury after the arguments are completed and such other times as the Court may desire. In an appeal taken before an appellate court composed of three (3) judges, no party may assign as error the giving or the failure to give an instruction unless the party objects thereto before or at a time set by the Court immediately after the jury retires to consider its verdict, stating distinctly the matter and the grounds of the party's objection. Opportunity shall be given to make the objection out of the hearing of the jury.

3. Verdict. After all of the evidence is presented and the jury has been charged by the Court with the applicable law, they shall retire and, in secret, arrive at a verdict. Thereafter, the verdict shall be announced by the jury in open court.

4. Judgment and appeal. After the jury has returned its verdict, the judgment shall be final. If either party of the suit shall feel aggrieved by the judgment rendered in such proceeding, the party may request, in writing, within five (5) days after the judgment, a review by an appellate court composed of three (3) judges, as appointed by the Chief Magistrate or the Chief Magistrate's designee. This review shall be on the record, and the party seeking the review must designate with particularity the points of law which the party feels were erroneously administered at the trial-court level. The decision on the record may be by majority vote. No such request shall stay proceedings on such judgment unless the aggrieved party, at the time of making such request, shall execute and file with the Court an undertaking to the successful party, with such bond or other assurances as may be required by the Court, to the effect that the aggrieved party will pay all costs of such proceedings which may be awarded against the aggrieved party and abide the order of the Court therein, and pay all damages, including rent, justly accruing during the pendency of such proceedings. All further proceedings in execution of the judgment shall thereupon be stayed.

Rule 48. Majority verdict.

When four (4) or more jurors agree on the verdict, they shall make a report under their hands and return the same to the judge who shall give judgment according to the report.

Rule 49. Special verdicts and interrogatories. Omitted.

Rule 50. Judgment as a matter of law in actions tried by jury.

(a) Judgment as a matter of law. (1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the Court may determine the issue against the party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

(2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

(b) Omit.

(c) Omit.

(d) Same: Denial of motion for judgment as a matter of law. If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

Rule 51. Instructions to jury; objection. *See* Rule 47(b)(2).

Rule 52. Findings by the Court. Omitted.

Rule 53. Masters. Omitted.

VII. Judgment.

Rule 54. Judgment; costs.

(a) Definition. "Judgment" as used in these Rules includes any order from which a writ of error or an appeal lies.

(b) Judgment upon multiple claims. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, the Court may direct the entry of a final judgment upon fewer than all of the claims or parties only upon an express determination that there is no just reason for delaying the entry of judgment and upon an order by the judge. In the absence of such determination and order, any decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate

the action as to any of the claims, or parties and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Omitted.

(d) Costs. Except when express provision therefor is made either in a statute or in these Rules, costs shall be allowed as of course to the prevailing party unless the Court otherwise directs. The amount of the costs shall be entered in the judgment docket as a part of the entry of judgment and in the same manner as the entry of judgment.

(e) Unnecessary costs. If at any time during the progress of an action it appears to the Court that the amount claimed is exorbitant so that the opposite party is put to unnecessary expense in giving bond, or if any party unnecessarily swells the record or otherwise causes unnecessary expense, the Court may, in its discretion, order such unnecessary expense to be taxed against the party causing the same, without regard to the outcome of the action.

(f) Attorney's fees. Attorney's fees are not allowed except when specifically permitted by a statute or a contract. In no event are attorney's fees allowed in cases involving residential units brought pursuant to the Landlord Tenant Code.

(g) Judgment by admission. Judgment may be entered by judge or clerk on any claim or counterclaim when the party against whom the judgment is sought shall appear and/or acknowledge in writing the validity of the judgment sought against that party.

(h) Judgment upon trial. Judgment shall be entered by the Court on any claim or counterclaim upon the conclusion of the trial of the action. Said judgment shall be based upon the law and upon the evidence which has been presented in the trial. Nothing herein contained shall prevent any judge from reserving decision or requesting briefs from the parties. Judgments upon trial should be given and entered as promptly as possible following the conclusion of the trial. When judgment is given in favor of both a claimant and counterclaimant, the Court shall enter judgment for the difference in the amounts found due and owing in accordance with Rule 13(j).

(i) Judgment on warrant of attorney. Judgment may be entered by the clerk on warrant of attorney in accordance with the statute.

(j) Judgment on *Scire Facias*. Judgment on *Scire Facias* shall be entered as provided by statute.

(k) Judgments, how entered. Judgments shall be entered upon the docket of the Justice of the Peace Court and shall bear the date of entry and the particulars of the judgment.

(l) Judgments for want of appearance in actions of attachment in lieu of summons. In actions begun by an attachment in lieu of summons, judgment shall be given as provided by statute.

Rule 55. Default judgments.

(a) Default judgment. Except as otherwise provided by this Rule or by statute, when a party has failed to appear, plead or otherwise defend, as provided by these Rules, and that fact is made to appear, judgment by default may be entered as follows: (1) By the clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk, upon written direction of the plaintiff and upon affidavit of the amount due, may enter judgment for that amount and

costs against the defendant. Judgment on the following types of claims may not be entered by the clerk: summary possession, replevin, trespass, or deficiency claims filed pursuant to 6 *Del.C.* § 9-504, or any other claim which the clerk can tell is not for a sum certain.

(2) By the Court. The party entitled to a judgment by default shall apply to the Court therefor. If, in order to enable the Court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the Court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by statute.

(b) Persons against whom default may not be entered; amount; interest. No judgment by default shall be entered against: 1) an infant or incompetent person unless represented in the action by a guardian, trustee or other representative, or 2) a party then in the military services as defined by the Soldiers and Sailors Civil Relief Act of 1940. The amount of the judgment by default shall not exceed the amount demanded giving credit for any payments, except in a summary possession action. In a summary possession action, the amount demanded may be increased to include the reasonable value of the use and occupation to the time when a writ of possession was issued and for any period of time with respect to which the agreement does not make any provision for payment of rent. This period of time may include the time between the issuance of the writ and the landlord's actual recovery of the premises. In any judgment by default, interest may be given.

(c) Verification of service for entry of default judgment. A judgment by default shall not be rendered until the service shall be verified by (1) the constable's or the special process server's affidavit in writing, or (2) in a civil action for debt in which service has been made by certified mail return receipt requested, the certified mail return receipt signed by the defendant, or by some person of suitable age and discretion, as agent for the defendant, or with the word "unclaimed" or "refused" noted thereon by the postal authorities, or (3) in a summary possession action in which service was made by posting and 1st class mail, an affidavit by the constable and a certificate of mailing.

Rule 56. Summary Judgment. Omitted.

Rule 57. Declaratory Judgment. **Omitted.**

Rule 58. Entry of judgment. A judgment is effective only when entered in the docket. Immediately upon the entry, the Court shall serve a notice of the entry and the time and manner of appeal upon every party affected thereby.

Rule 58A. Transfer of judgment to Superior Court.

(a) Motion. All applications to transfer a civil judgment to the Superior Court pursuant to 10 *Del.C*. § 9569 shall be by motion. If the Court grants such a motion, the clerk shall prepare a transcript of the judgment in this Court.

(b) Effect of filing transcript. The filing of a transcript with the Prothonotary constitutes a transfer of the judgment to the Superior Court. Once a judgment has been

transferred to Superior Court, the Justice of the Peace Court shall retain jurisdiction for purposes of all post-judgment proceedings with the exception of execution upon the judgment and/or the sale of real estate.

Rule 59. New trials and rearguments.

(a) On motion of party. A new trial may be granted to all or any of the parties and on all or part of the issues in an action in which there has been a trial for any of the reasons for which new trials have heretofore been granted in this or other Delaware courts. On a motion for a new trial in an action tried without a jury, the Court may open the judgment if one has been entered, take additional testimony and direct the entry of a new judgment. The motion for a new trial shall be served on the opposing party and filed with the Court not later than 10 days after the entry of the judgment. The motion shall briefly and succinctly state the grounds therefor.

(b) On initiative of Court. Not later than 10 days after entry of judgment, the Court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Court may grant a motion for a new trial. In either case, the Court shall specify in the order the grounds therefor.

(c) Motion to alter or amend judgment. A motion to alter or amend the judgment shall be served and filed not later than 10 days after entry of the judgment. The same procedure with respect to new trials shall also apply.

(d) Rearguments. A motion for reargument after the filing of the Court's opinion or decision on the motion for a new trial or on the motion to amend or alter the judgment shall not be permitted.

Rule 60. Relief from judgment or order.

(a) Clerical mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court any time of its own initiative, or on motion of any party and after such notice, if any, as the Court orders.

(**b) Mistake; inadvertence, neglect, newly discovered evidence, fraud, etc**. On motion and upon such terms as are just the Court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons: 1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered at the time of the trial; (3) fraud, misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective applications; or (6) any other reason justifying relief from the operation of the judgment. Such motion shall be made within a reasonable time. A motion under this paragraph does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to grant any relief provided by statute, or to set aside a judgment for fraud upon the Court

(c) Default judgments. For the reasons in subsections (b) (1), (2), and (3) in this Rule, a motion to vacate a default judgment shall be made: (A) in debt, trespass and replevin actions, not more than 15 days after judgment was given by default or not more than 30 days, if service was made by certified mail; (B) in summary possession actions, not more than 10 days after entry of the default judgment. For all other reasons, the motion shall be made in a reasonable time.

(d) Nonsuit judgments. A motion to vacate a nonsuit in a summary possession action may be made within 10 days of the entry of the nonsuit.

Rule 61. Harmless error.

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 62. Stays by trial court and on appeal.

(a) Automatic stay. Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry except in summary possession or replevin cases. In summary possession cases no writ of possession shall issue nor shall any proceedings be taken for enforcement for 10 days after entry of judgment unless an appeal has been filed.

(b) Stay on motion for new trial or for judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59 or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50.

(c) Omitted.

(d) Supersedeas or stay pending appeal. Supersedeas, and stay pending appeal, and supersedeas, stay and costs bonds shall be governed by Article IV, Section 24 of the Constitution of the State of Delaware and by Supreme Court Rule 32.

(e) Omitted.

(f) Stay according to statute. A judgment debtor is entitled to a stay of execution where such stay is accorded by statute.

(g) Omitted.

(h) Stay of judgment as to multiple claims or multiple parties. When a Court has ordered a final judgment under the conditions stated in Rule 54(b), the Court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

Rule 63. Inability of a judge to proceed; disqualification.

(a) Inability of a judge to proceed. If for any reason a judge before whom any matter has been tried or heard is thereafter unable to perform the duties to be performed by the Court under these Rules, then another judge may perform those duties. If necessary to prevent prejudice to the parties, the successor judge may grant a new trial or rehearing.

(b) Disqualification. If at any time prior to the trial of any action, during the trial of any action, or at the conclusion of the trial of any action, any judge cannot perform the duties to be performed by the Court under these Rules, or it should appear to the judge that any situation has arisen which affects the ability of the judge to be impartial in the conduct of the trial or the rendering of the decision, the judge shall be disqualified from any other proceedings in the cause. In the event the trial has either concluded or started, the judge shall thereupon order a new trial of the action.

VIII. Provisional and Final Remedies and Special Proceedings.

Rule 64. Seizure of persons or property.

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of compelling appearance or securing satisfaction of a judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the statute or the Rules.

Rule 64.1. Orders in rules to show cause.

A rule to show cause may be issued only when permitted by law. An order for a rule to show cause shall set forth the return date and time thereof, and shall require the respondent to answer or to otherwise plead at or before the return date and time. The order shall also state whether or not a hearing upon the rule will be held at the return date and time and, if not, what action the Court contemplates will be taken.

Rule 65. Injunction.

(a) Preliminary injunction. 1) Preliminary injunctions may be issued only as permitted by law. No preliminary injunction shall be issued without notice to the adverse party and without a request appearing in a verified complaint or a motion filed and supported by affidavit.

2) Before or after the commencement of the hearing of an application for a preliminary injunction, the Court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial.

(b) Security. No preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the Court deems proper, for the payment of such

costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined.

(c) Form and scope of injunction. Every order granting an injunction shall describe in reasonable detail, and not by reference to the complaint or other document unless such document is served with the injunction, the act or acts to be enjoined.

Rule 65.1. Security; Proceedings against sureties.

Whenever these Rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the Court and irrevocably appoints the clerk as agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the clerk, who shall forthwith mail copies to the sureties if their addresses are known.

Rule 66. Receivers appointed by federal courts. Omitted.

Rule 67. Deposit in Court. Omitted.

Rule 68. Offer of judgment.

At any time prior to the commencement of the trial a party defending against the claim may either in writing or in open court offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer with costs then accrued. If such offer shall be accepted by the party bringing the claim, the clerk shall enter judgment in accordance with the offer and acceptance. An offer not accepted by the commencement of the trial shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer.

Rule 69. Execution.

(a) Issuance. All executions shall issue from the Justice of the Peace Court on forms prescribed by the Court.

(b) Returns. All writs of execution shall bear a return date thereon. A constable shall return a writ of execution unless otherwise provided by statute by the date of the return specified upon the writ or upon the satisfaction by the defendant of the claim whichever shall first occur. All monies received by a constable pursuant to a writ of execution shall be forthwith paid over by the constable to the clerk. Disbursements of partial payments by the clerk shall not be made until the return day specified on the writ. Except pursuant to constable's sales, payments pursuant to writs that have been satisfied in full shall be disbursed upon the return of the writ. Disbursements of the proceeds of a constable's sale shall be made in accordance with subsection (d)(D) of this Rule. The

return of the constable shall: 1) be in writing, upon the writ, 2) be signed by the constable, and 3) state what action the constable has taken in the execution of the writ.

(c) Money Judgments; Methods of Collection. The methods for collecting a money judgment are: 1) attachment, by which assets or money in the possession of the judgment debtor are seized by levy and may be sold at constable's sale to collect the debt; 2) garnishment of property, by which assets belonging to the judgment debtor, but in the possession of a third party, are held for either constable's sale or distribution to the judgment creditor and 3) garnishment of wages, by which wages are held by the employer for distribution to the judgment creditor.

(1) Attachments. (A) Service. Attachments under this subsection shall be served by the constable in compliance with Rule 5(b).

(B) Date of return. Writs of attachment (levies) shall be returned by the constable promptly. All writs of attachment shall bear a return date thereon. Levies shall be completed within 30 days of the date of the delivery of the execution to the constable.

(C) Procedure. Upon receiving the writ of execution, the constable shall record upon it the precise time of delivery. Within 30 days of receipt, the constable shall levy upon sufficient property to satisfy the judgment and costs and any known liens and shall inventory and appraise the levied goods. If the constable is refused entry to make the levy, the constable shall note this on the return. The Court shall then notify the judgment creditor that entry to make a levy has been refused. Upon motion of the judgment creditor, the Court may hold a show cause hearing, with notice of the hearing provided to all parties. If the judgment debtor fails to appear at the hearing, a capias should be issued and the judgment debtor charged with contempt of court. If the judgment debtor appears at the hearing, the Court may issue a new writ of *fi. fa.* and schedule a time for the levy to be made, or take other appropriate action. If the judgment debtor fails to appear or refuses the constable entry to make the levy on the new writ of *fi. fa.*, a capias should issue and the judgment debtor charged with contempt of court.

(D) Attachments in actions for distress for rent. Upon a finding of compliance with the requirements of 25 *Del.C.* Ch. 63, the Court shall promptly issue an order requiring plaintiff to file a cash bond or a bond with surety in such amount and in such form as the Court shall determine. Once Plaintiff has filed said bond, the Court shall issue an order to a constable or sheriff of that county to levy on all goods on the leased premises. A copy of the claims of distress and order of levy shall be served upon each tenant on the leased premises. The constable shall make the levy between 8:00 a.m. and 8:00 p.m. and shall provide a copy to each tenant found on the premises. The goods levied upon shall remain on the leased premises unless, upon application to the Court, the Court permits the removal, sale, or both, in whole or in part, of the levied goods as necessary to protect either party. Upon the filing of a bond with surety, the Court may release from the levy and return the property of the tenant. Such bond shall be in an amount not exceeding the fair market value of the goods levied as determined by the Court or the amount of rent in arrears plus two (2) months' rent, whichever is less. The Court may order the constable to enter the premises forcibly if entry cannot otherwise be gained and the plaintiff has shown under oath or affirmation that there is a need for protective measures because the tenant may abscond or remove the goods. When entry is gained forcibly and if no tenant is found on the premises, a copy of the claim, order, and inventory shall be affixed on a prominent place on the interior of the leased premises. The constable shall thereafter contact the tenant if the tenant's whereabouts are known.

(2) Garnishment of assets. (A) Service. An initial attempt to serve a garnishment may be made by 1st class mail. If a timely answer is not received, service shall be made in compliance with Rule 4(f).

(B) Appearance of garnishee. A garnishee duly summoned shall file an answer with the Court within 20 days after service of process. The answer shall specify what goods, chattels, rights, credits, money or effects of a judgment debtor, if any, the garnishee has in its possession or custody. Within 10 days after receipt of such answer, the judgment creditor may file objections. If no objections are filed, a delivery to the constable of the property set forth in the answer by the garnishee, or so much of it as shall satisfy the judgment creditor's demand, shall be a complete discharge of the garnishee in the proceedings, and the constable shall make a supplemental return on the writ showing an inventory and appraisement of the property which has been delivered to the constable by the garnishee and shall hold such property subject to the order of the Court.

(C) Disposition of property. If the property held by the garnishee is goods, upon order of the Court, the constable shall sell as much of the goods at constable's sale as needed to satisfy the judgment and costs in accordance with subsection (d). If the property returned by the garnishee is money, the constable shall return it to the court.

(D) Failure of garnishee to deliver the property. If the garnishee does not deliver the property to the constable within five (5) days after the expiration of the 10 day period for plaintiff's objections, if any, or, if the garnishee fails to answer, the Court, on motion, may enter personal judgment against the garnishee in favor of the judgment creditor in an amount equal to the value of the property of the judgment debtor in garnishee's custody or possession, or the amount of the judgment creditor's judgment, whichever is less.

(3) Garnishment of Wages. (A) An initial attempt to serve a garnishment may be made by 1st class mail. If a timely answer is not received, service shall be made in compliance with Rule 5(b).

(B) Appearance of garnishee. A garnishee duly summoned shall file an answer with the Court within 20 days after service of process. The answer shall specify: (1) whether or not the judgment debtor is employed by the garnishee; (2) if so, the rate or basis of pay; (3) any reasons for failing to garnish the defendant's wages, including other attachments against the employee's wages. Objections may be filed within 10 days of receipt of the answer. Amounts withheld from the judgment debtor's wages shall be calculated in accordance with directions served on the garnishee by the Court and shall be sent directly to the judgment creditor or the judgment creditor's legal representative.

(C) Failure of garnishee to withhold wages. If the garnishee fails to answer, or having answered and indicated that wages would be withheld, fails to do so, the Court, on motion, may enter personal judgment against the garnishee in favor of the judgment creditor in an amount equal to the value of the property of the judgment debtor in garnishee's custody or possession, or the amount of the judgment creditor's judgment, whichever is less.

(d) Constable's Sales (A) Lien Search. Prior to execution, plaintiff shall file a lien search as may be required by the Court.

(B) Scheduling of constable's sales. Except in constable's sales held for distress for rent, a constable's sale shall be held upon the request of the plaintiff following notification that the levy has been completed. The constable's sale should be held within 45 days of the date of the request. In actions for distress for rent, the constable's sale

should be held at least 10 days from the date of the issuance of a final order of sale by the Court and not more than 60 days from the date of the levy.

(C) Notice of constable's sales**.** No constable's sale shall be held unless at least 10 days before the date of the sale: 1) the constable ensures that a copy of the notice is delivered or mailed to a) every person whose goods are to be sold, b) the sheriff of the county, c) each plaintiff in the execution and any plaintiff in any other execution against the same defendant whose execution is in the hands of the constable, and d) the county tax collecting authority; 2) the Court mails a copy of the notice to all lienholders identified by the judgment creditor, 3) the constable posts the advertisement sale in 5 of the most public places in the neighborhood; 4) if the Court knows of a federal tax lien on nonperishable property, the Court shall give notice to the Internal Revenue Service in writing by registered or certified mail not less than 25 days prior to the date of the sale on a form prescribed by the Court. If the property to be sold is perishable, the Court shall give such notice to the Internal Revenue Service as soon as possible prior to the sale; and 5) the notice shall contain: 1) the date, time and location of the sale and 2) a statement that anyone claiming an interest in the property to be sold must file a motion requesting a hearing concerning their rights in the distribution of the proceeds. Such motion must be received by the Court prior to or within 15 days following the date of the sale.

(D) Distribution of the proceeds of the constable's sale**.** The constable shall submit the proceeds of the sale to the Court with his or her return. No distribution of the proceeds shall be made for 15 days following the return. Thereafter, the Court shall distribute the proceeds of any sale of nonperishable goods, or of perishable goods upon which there is no federal tax lien, to the execution creditor as soon as practicable following the 15 day waiting period unless a lienholder has filed a motion regarding the distribution of the proceeds of the sale. If a lienholder has filed a motion, the Court shall schedule a hearing to determine how the proceeds shall be distributed.

If the sale is of perishable goods and the Court knows there is a federal tax lien on the defendant's property, the Court shall not distribute the proceeds for 30 days following the sale.

If any proceeds remain after all claims have been satisfied, they shall be returned to the debtor.

(E) Setting aside a constable sale. Upon motion of any party in interest, before distribution of the proceeds, the Court may set aside the constable sale upon the finding of a defect or irregularity in the process or mode of conducting the sale or for any other sufficient reason and enter any other order which may be just and proper under the circumstances.

(e) Replevin. An execution in a replevin action returns the goods which were wrongfully withheld or, if unavailable or so ordered by the court, the value of the goods.

(1) Issuance. Writs of replevin shall issue from the Justice of the Peace Court to the constable on forms prescribed by the Court.

(2) Procedure. When the constable receives the writ of replevin, the constable shall make arrangements with the plaintiff and defendant for the goods to be turned over to the plaintiff. If the defendant refuses to turn over the goods or the goods are not in substantially the same condition as they were when they were taken, or the defendant has disposed of the goods, the plaintiff may request a rule to show cause hearing. The Court will determine the appropriate remedy which may include a monetary judgment or a finding of contempt.

(f) Summary possession. An execution in a summary possession action gives legal possession of the rental unit to the prevailing party.

(1) Issuance of writ. A writ of possession may not issue for 10 days following judgment, unless an appeal has been filed. A plaintiff shall request the writ of possession within 30 days of judgment unless another time period is agreed to by both parties and approved by the Court or a hearing is held on a motion to revive the writ.

(2) Service. Writs of possession shall be served in the same manner as provided for service of process in summary possession actions.

(3) Procedure. Writs of possession shall be executed in accordance with statute.

(4) Return. Writs of possession shall be returned within 15 days of issuance.

(g) Garagekeeper's Liens.

(1)Persons entitled to liens pursuant to 25 *Del.C*. Ch. 39 may apply to the Court for a judgment and permission to conduct a lienholder's sale in accordance with the forms prescribed by the Court. In addition to the application requirements of 25 *Del.C.* § 3903(b), the application shall include a copy of any work order(s) related to the item which is the subject of the sale application.

(2) If the claim is contested, the Court shall determine the amount of indebtedness and the right to sale by the garagekeeper.

(3) If a claim for storing or safekeeping any motor vehicle towed at the request of a party other than the owner is contested by the title holder of record or by another lienholder whose lien the Court finds to be valid, the garagekeeper shall be required to prove that the notice requirements of 25 *Del.C.* § 3907(b) were met. If the garagekeeper fails to so prove, the garagekeeper may be permitted to sell the vehicle, but shall be required to return all proceeds of the sale to the Court for distribution in accordance with the priority determined by the court.

(4) If the claim is not contested or if the garagekeeper is otherwise found to have a right to sale (other than as permitted under subsection(g)(3) of this Rule), the proceeds of the sale shall be applied to discharge of the garagekeeper's lien and the cost of keeping and selling the property. The balance, if any, of the proceeds of the sale shall be deposited not later than 10 days from the date of the sale with the court to be applied by the court to the payment of any lien or security interest to which the property may be subject in the order of their priority, with any remaining proceeds to be paid to the owner or owners of the property sold, but in case such owner or owners cannot be found, such balance shall be turned over to the State Treasurer not later than 60 days from the date of the sale.

(h) Stay of execution. Execution process shall be stayed in accordance with Rule 62(a) and may also be stayed either upon direction by the plaintiff in writing, as is provided by statute, or upon the Court's own motion.

Rule 70. Petitions For Title To Abandoned Property

(a) Persons seeking to obtain title to abandoned property pursuant to 25 *Del.C.* Ch. 40 may petition the Court for title using the forms prescribed by the Court.

(b) The Court shall send, by certified mail, a copy of the petition, notice and request for information and order to: (1) all owners and other parties with an interest in

the property who have been identified by the petitioner; and (2) all other owners and other parties with an interest in the property who have been identified on any answer received by the Court.

(c) The Court may only grant title to the petitioner: (1) for any property for which registration of ownership is required by law if the petitioner certifies that he or she has checked ownership with the appropriate agency and has performed all statutory requirements. Title shall also be given for any property for which sufficient information is available to search for liens only if a lien search has been conducted with the appropriate agencies and a copy of the lien search report has been attached to the petition. If the property is a motor vehicle registered in Delaware, a copy of the certificate of lien from the Delaware Division of Motor Vehicles and a report from the Delaware Auto Theft Unit must be attached.

(2) for any other type of property, if the applicant has made a reasonable effort to locate the owner/lienholders/other parties with an interest in the property. The Court may prescribe such methods of locating the owner as it deems reasonable in the circumstances, including posting a notice of the filing of the petition in the courthouse and in three or more public places, and advertising in a newspaper published and/or circulated in the county. The petitioner must file proof with the Court that petitioner has provided the notice required by statute, and paid the applicable filing fee.

(d) If the Court receives an answer from an owner or other party with an interest in the property, the Court shall schedule a hearing, notifying all owners/other parties with an interest in the property who have not filed a release of their interest. If no answer is received within 20 days of the date the notice was sent to the last owner, any lienholder or other parties with an interest, the court shall issue an order declaring that the petitioner has full right, title and interest to the abandoned property provided that the court is satisfied that the petitioner has submitted all required information and that a reasonable effort has been made to locate the owner/lienholders/other parties with an interest in the property.

(e) If the petitioner is found to have a valid claim for the property pursuant to 25 *Del.C.* Ch. 40, but one or more other parties are also found to have a valid interest in the property, the Court shall order that a sheriff's sale of the property be held.

(f) Prior to the sheriff's sale, the petitioner must give at least 30 days notice of the sale by handbills posted in the courthouse and three or more public places and by advertising in newspapers published and/or circulated in the county in which the sale is to be held. Petitioner must file with the Court a copy of the posted handbill, a list of the locations at which the handbill was posted, and the original and one copy of an affidavit of the newspaper publishing the notice.

(g) The balance, if any, from the proceeds of the sheriff's sale after payment of the costs of keeping and selling the property, costs of execution, and court costs, shall be deposited with the Court within 10 days from the date of the sale, along with a disposition of proceeds. The Court shall apply such balance to the payment of any lien or other interest which was determined at the hearing to be valid. The Court should distribute any balance remaining after payment of the liens to the petitioner.

(h) Whenever title to a motor vehicle is awarded to the petitioner or when a motor vehicle is purchased at sheriff's sale pursuant to 25 *Del.C.* § 4004, the Court shall

enter an order requiring the Department of Motor Vehicles to issue title to the vehicle in the name of the petitioner or purchaser.

(i) The sheriff shall file a disposition of proceeds with the Court following any sheriff's sale under this Rule.

Rule 71. Process in behalf of and against persons not parties. Omitted.

IX. Appeals.

Rule 72. Appeals to the Court of Common Pleas

Appeals to the Court of Common Pleas from this Court shall be governed by the Rules of the Court of Common Pleas.

Rule 72.1 Appeals in Summary Possession Cases

(a) Requests for appeals. Appeals in summary possession cases must be requested in writing within five (5) days of judgment.

(b) Stay. No request for an appeal shall stay proceedings on such judgment unless the aggrieved party, at the time of making such request, shall execute and file with the Court an undertaking to the successful party, with such bond or other assurances as may be required by the Court, to the effect that the aggrieved party will pay all costs of such proceedings which may be awarded against that party and abide by the order of the Court therein and pay all damages, including rent, justly accruing during the pendency of such proceedings. All further proceedings in execution of the judgment shall thereupon by stayed.

(c) Three judge panel. An appeal following a summary possession trial shall be made to a three (3) judge panel comprised of three (3) judges other than the judge who presided at the trial. The members of the panel shall be appointed by the Chief Magistrate or the Chief Magistrate's designee. All decisions shall be by majority vote.

(d) Appeals *de novo*. An appeal of a decision following a nonjury trial shall be a trial *de novo.* An appeal by trial *de novo* may include claims and counterclaims not raised in the initial proceeding provided that, within five (5) days of filing of the appeal, the claimant also files a bill of particulars identifying any new issues which claimant intends to raise at the hearing which were not raised in the initial proceeding.

(e) Appeals on the record. An appeal of a decision resulting from a jury trial shall be on the record and the party seeking the review must designate with particularity the points of law which the party appealing feels were erroneously applied at the trial court level. An appeal on the record may include any issue on which judgment was rendered at the trial court level, including the issue of back rent due.

(f) Failure of a party to appear on appeal. In either an appeal by trial *de novo* or an appeal on the record, if the appellant (or both parties) fails to appear for trial of the appeal, the judgment below shall stand. If the appellee fails to appear, the Court may enter a default judgment pursuant to Rule 55(b).

Rules 73-76. Omitted

X. THE JUSTICE OF THE PEACE COURT

Rule 77. Justice of the Peace Court; clerks; records and exhibits, fees.

(a) Justice of the Peace Court always open. The Justice of the Peace Court shall be deemed always open for the purpose of the transaction of business.

(**b) Trials and hearings; orders in chambers**. All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials within the discretion of the judge.

(c) Omitted.

(d) Notice of orders of judgments. Immediately upon the entry of an order of judgment, the Court shall serve a notice of the entry by mail and shall make a note in the docket of service.

(e) Omitted.

(f) Records and exhibits. (1) Custody of. The clerk shall have custody of the records and papers of the Court. The clerk shall not permit any original record, paper or exhibit to be taken from the courtroom or the location where it is filed except at the direction of the Court or as provided by statute or by these Rules or by Rules of the Supreme Court.

(2) Removal of exhibits. Exhibits shall not be removed prior to the time provided in these rules except on order of the Court.

(3) Disposition of exhibits. After the final determination of a cause by the Court and the expiration of the period for filing a notice of appeal, if no notice of appeal has been filed, all exhibits shall be removed by the party who introduced them. Parties shall be notified at the time of judgment or later that exhibits may be removed by the party who introduced them no sooner than 16 days and no later than 30 days, from the date the judgment is entered. If not removed, the clerk may obtain an order of the Court for their disposition.

(4) Tape recordings. All tape recordings of proceedings shall be retained for a period of 60 days following the decision. Upon notice of an appeal, tapes shall be saved for the duration of the appeal and for 60 days thereafter unless they are transcribed prior to that time.

(g) Opinions to be dated. Each written opinion (including letter opinions) shall bear two dates immediately under the caption of the case:

(1) The date of the last hearing, or brief filed, or other final submission of the case for decision; and

(2) The date of the filing of the opinion or order.

(h) Fees. (1). All filing fees are non-refundable unless exceptional circumstances exist.

(2). The clerk may refuse a filing if the fees set forth in the rule have not been paid and the filer has not been granted permission to file *in forma pauperis* pursuant to Rule 112.

(3). The fees of the Justice of the Peace Court for the services specified shall be as follows:

For receipt, issuance and process of a civil action……$30.00

In addition to the above:

Issuance of an alias, pluries or any subsequent writ of process……..$15.00
Action of replevin……$15.00
Attachment in lieu of summons……$20.00
Scire Facias……...$10.00
Hearings for relief from judgment or order or to vacate a default judgment or a non-suit judgment……$10.00
Preparation of docket entries or full copies of records, duly certified……...$10.00

Landlord/Tenant
Appeal to 3 judge court……$50.00
Service of writ of summary possession……$35.00

Executions
Prothonotary fee and *fieri facias*……...$25.00
Garnishment……..$25.00
Venditiona exponas……...$20.00

Issuance/Service of civil subpoena…….…… $5.00

Mailing of civil subpoena……..at prevailing mail rate.

For processing applications for authorization to sell motor vehicles under Chapter 39 of Title 25, and Chapter 69 of Title 21.

a. For issuing orders without necessity of a hearing……..$3.00
b. For issuing orders with a hearing……$15.00

Dishonored Checks

In connection with any Justice of the Peace Court proceeding, for processing a check dishonored for insufficient funds or closed account……$30.00

(4) The Court may order the parties to pay other costs such as postage, printing, advertising and lodging/meals for jurors.

(5) All other fees for services not provided for in this Rule shall be approved by the Chief Magistrate.

Rule 78. Motion Days. Omitted.

Rule 79. Dockets. The clerk shall maintain an electronic or manual docket containing judgments and executions for the Court. Indexing of these dockets shall be as prescribed by the Chief Magistrate.

(a) The judgment docket. The clerk shall enter in the docket every action commenced before the Court and shall include the names of the parties, the cause of action, the sum or relief demanded, the day of issuing process and when it is returnable, the return, and in the case of a "forthwith" summons the date of the return, every adjournment and the date to which the trial is adjourned, any setoff or counterclaim pleaded and the amount thereof, the amount of the judgment and for which party, the costs regularly taxed, entries of bail or of security and the issuing of any execution, and the date thereof.

(b) The execution docket. The clerk shall make an entry in the docket for every execution issued by the Court, including, where applicable, the names of the parties, the day of issuing, and the day when it is returnable, the debt and the costs, how directed, to whom delivered, when returned, and the amount of any appraisement, and a note of any further proceedings.

Rules 80-84. Omitted

XI. General Provisions.

Rule 85. Title.

These rules may be known and cited as the Justice of the Peace Court Rules of Civil Procedure.

Rule 86. Effective date.

These Rules shall take effect on June 15, 2000.

They govern all proceedings in actions brought in the Justice of the Peace Court after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the Court their application in a particular action pending when the Rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

Rules 87-88. Omitted.

Rule 89. Appointment of counsel for State officers and employees.

Appointment of counsel for State officers and employees shall be governed by Supreme Court Rule 68, which states the procedure to be followed.

Rule 90. Attorneys.

(a) Requirement. Except as provided in Supreme Court Rules 55-57 and Rule 90.1 of these Rules, only members of the Bar of the Supreme Court of this State currently entitled to practice in that Court who: 1) maintain an office in Delaware for the practice

of law, or 2) who maintain an office outside of Delaware and have a Delaware address (which is not a post office box) shall be entitled to practice as an attorney in this Court.

(b) Withdrawal. No appearance by an attorney shall be withdrawn except upon motion and order of the Court, which motion and order of the Court shall be noted on the docket of the cause of action. Appearances may also be made in any other manner as shall be prescribed or allowed by statute, rules, or administrative order.

(c) Agreements between attorneys. Agreements between attorneys will not be considered by the Court unless they are in writing and filed with the clerk or stated in the presence of the Court.

Rule 90. 1 Admission *pro hac vice*.

(a) Application. Attorneys who are not members of the Delaware Bar may be admitted *pro hac vice* in the discretion of the Court, and such admission shall be made only upon written motion by a member of the Delaware Bar who maintains an office in this State for the practice of law ("Delaware Counsel"). Application for admission *pro hac vice* must be made separately before each Court in which admission is sought. The admission of an attorney *pro hac vice* shall not relieve the moving attorney from responsibility to comply with any Rule or order of the Court.

(b) Certification by applicant. Any Attorney seeking admission *pro hac vice* shall certify the following in a statement attached to the motion:

(i) That the attorney is a member in good standing of the bar of another state;

(ii) That the attorney shall be bound by the Delaware Lawyers' Rules of Professional Conduct and has reviewed the Statement of Principles of Lawyer Conduct;

(iii) That the attorney and all attorneys of the attorney's firm who directly or indirectly provide services to the party or cause at issue shall be bound by all Rules of the Court;

(iv) That the attorney has consented to the appointment of the Court Administrator as agent upon whom service of process may be made for all actions, including disciplinary actions, that may arise out of the practice of law under this rule and any activities related thereto;

(v) The number of actions in any court of record of Delaware in which the attorney has appeared in the preceding twelve months;

(vi) That a payment for the *pro hac vice* admission assessment in the amount of $300 is attached made payable to the Justice of the Peace Court;

(vii) Whether the applying attorney has been disbarred or 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; and

(viii) The identification of all states or other jurisdiction in which the applying attorney has at any time been admitted generally.

(c) Deposit of fees. The Court Administrator shall cause the *pro hac vice* admission assessment to be deposited in the Supreme Court Registration fund for distribution as the Supreme Court directs.

(d) Appearance of Delaware counsel. Delaware counsel for any party shall appear in the action in which the admission *pro hac vice* is filed and shall sign or receive service of all notices, orders, pleadings or other papers filed in the action, and shall attend all proceedings before the Court or other officers of the Court unless excused by the

Court. Attendance of Delaware counsel at depositions shall not be required unless ordered by the Court.

(e) Withdrawal. Withdrawal of attorneys admitted *pro hac vice* shall be governed by the provisions of Rule 90(b) of the Superior Court Civil Rules. The Court may revoke a *pro hac vice* admission *sua sponte* or upon the motion of a party, if it determines, after a hearing or other meaningful opportunity to respond, the continued admission *pro hac vice* to be inappropriate or inadvisable.

(f) Filing of motion and certificate. The motion and certificate described in subsections (a) and (b) of this rule shall be filed as soon as reasonably possible, and they shall be filed no later than the date of the first appearance of the attorney who seeks admission *pro hac vice* before the Court in the matter for which admission is sought.

(g) Ruling on *pro hac vice* motion. In exercising its discretion in ruling on a motion for admission *pro hac vice*, the Court shall also consider whether, in light of the nature and extent of the practice in the State of Delaware of the attorney seeking admission, that attorney is, in effect, practicing as a Delaware Counsel without complying with the Delaware requirements for admission to the Bar. In its consideration of this aspect of the motion, the Court may weigh the number of other admissions to practice sought and/or obtained by this attorney from Delaware courts, the question of whether or not the attorney in fact maintains an office in Delaware although the attorney is not admitted to practice in Delaware courts, and other relevant facts.

(h) Certification by Delaware counsel. The Delaware Counsel filing a motion *pro hac vice* for the admission of an attorney not a member of the Delaware Bar shall certify that the Delaware attorney finds the applicant to be a reputable and competent attorney and is in a position to recommend the applicant's admission.

(i) Form of motion. The motion for admission *pro hac vice* shall follow the form set forth in Form 40 in the Appendix of Forms of the Superior Court Civil Rules of Procedure.

Rule 91. Artificial Entity and Public Body Representation.

Civil actions may be prosecuted and/or defended in the Justice of the Peace Court by an officer or employee of a party which is an artificial entity or public body, who need not be an attorney licensed to practice law in Delaware, if the officer or employee (with the authorization of the artificial entity or public body) has filed a Certificate of Representation with the Chief Magistrate and complied with the other provisions of Supreme Court Rule 57. An annual registration fee of $15 must accompany the Certificate of Representation filed with the Chief Magistrate.

Rules 92-105. Omitted.

XII. MISCELLANEOUS PROVISIONS

Rule 106. Attorneys and other court officers as bondsmen.

A Justice of the Peace Court shall not accept any cash bail, special bail bond, or surety bond in respect of which an attorney or court officer acts, directly or indirectly, as bail or surety. This prohibition shall also apply to any agent, employee, member of the

immediate family of any such attorney or court officer, or any corporation in which such attorney or court officer owns a controlling interest. This prohibition shall not apply to any bond in which the attorney, court officer, agent, employee or family member, as above defined, may be the principal. The phrase "member of the immediate family" shall include the spouse, father, mother, father-in-law, mother-in-law, son, daughter, brother, sister, brother-in-law or sister-in-law of such attorney or court officer.

Rules 107. Court Seals.

All judicial documents, including but not limited to, warrants, subpoenas, court process, and judgments which emanate from a Justice of the Peace Court shall, whenever a signature of a judge is required, carry the seal of the Court. Notwithstanding the above, failure to carry the Court seal on a Justice of the Peace Court judicial document will not fatally affect said document so long as the document is sealed promptly after the omission is called to the attention of the Court.

Rule 108. Education requirements for Justices of the Peace.

(a) Minimum continuing legal education requirement. (1) Each Justice of the Peace shall complete a minimum of 30 hours of actual instruction in approved continuing legal education during each two (2) year period. This shall include a minimum of two (2) hours of instruction in the area of judicial or legal ethics.

(2) For purposes of paragraph (a)(1), "approved continuing legal education" means courses which are pre-approved by the Chief Magistrate.

(b) Basic Legal Education requirement. (1) Each Justice of the Peace shall successfully complete a basic legal education program as presented by the Chief Magistrate within a time prescribed by the Chief Magistrate.

(2) Basic legal education program course credits shall not be included as a part of the credit requirements of the approved continuing legal education program of the Justice of the Peace Courts.

(c) Exception. (1) The requirements of paragraphs (a)(1) and (b)(1) shall be subject to the availability of approved continuing legal education and basic legal education credits offered through the Justice of the Peace Courts education program. The maximum number of credit hours which can be required of a Justice of the Peace during the applicable period cannot exceed the total number of credit hours offered through the approved continuing legal education program of the Justice of the Peace Court during the same period.

(2) Justices of the Peace admitted to the practice of law in Delaware who comply with the requirements of the Delaware Rules for Mandatory Continuing Legal Education are exempted from these requirements.

(d) Reporting requirements. (1) A certificate of attendance in each pre-approved course must be submitted to the Chief Magistrate for a Justice of the Peace to receive approved continuing legal education or basic legal education credit for the course.

(2) The Chief Magistrate shall maintain the list of approved continuing legal education and basic legal education credits for Justices of the Peace.

(e) Noncompliance. (1) In the event a Justice of the Peace fails to fulfill the basic legal education and/or continuing legal education requirements by the end of each applicable period, the Chief Magistrate shall send a notice of noncompliance to the Justice of the Peace. The notice of noncompliance shall specify the nature of the noncompliance.

(2) The Justice of the Peace shall submit, within 90 days after receipt of the notice of noncompliance, a written plan for making up the deficiency in necessary credits. The Chief Magistrate shall advise the Justice of the Peace whether the plan is accepted within 30 days after receipt of the plan. Full completion of the plan shall occur within 60 days after the Justice of the Peace receives notice from the Chief Magistrate of the acceptance of the plan.

(3) If the Justice of the Peace fails to comply with the requirements of paragraph (e)(2), the Chief Magistrate shall notify the Chief Justice of the Delaware Supreme Court of the noncompliance of the Justice of the Peace. A copy of the notice shall be placed in the personnel file of the Justice of the Peace.

Rule 109. Authority of the Chief Magistrate.

The Chief Magistrate is the administrative head of the Justice of the Peace Court and has authority, subject to the direction of the Chief Justice of the Delaware Supreme Court, to develop and implement administrative policies and procedures which are binding on all justices of the peace and court personnel.

Rule 110. Deputy Chief Magistrates.

(a) Appointment. Deputy chief magistrates are appointed by the Chief Magistrate for each county. The Chief Magistrate may select a deputy chief magistrate from the justices of the peace in the appropriate county. Deputy chief magistrates serve in that capacity at the pleasure of the Chief Magistrate.

(b) Duties. The Chief Magistrate may define the duties of the deputy chief magistrate. In addition to their regular judicial duties, the duties of the deputy chief magistrates may include, but are not limited to, the following administrative functions: scheduling the justices of the peace at the various courts within their jurisdiction, acting on leave requests, investigating complaints against justices of the peace, working on caseflow management issues, and assisting with the basic legal education program.

Rule 111. Facsimile Transmission.

(a) Documents issued by the Court. The Court may use facsimile transmission for the sending of orders and other documents. All procedural and statutory requirements for the issuance of the order shall be met. Unless otherwise provided by law, a facsimile order or summons issued by the Court shall, for all procedural and statutory purposes, have the same force and effect as the original document. The Court shall retain the original of the document.

(b) Filing of documents by facsimile transmission. Documents, other than those for which a filing fee must be paid, may be filed with the Court by facsimile transmission. The original of all such filings, other than motions, briefs, and requests for

continuances, shall be filed with the Court within five business days. Any facsimile filed with the Court shall be accompanied by a cover sheet which states the title of the document, case number, number of pages, identity and voice telephone number of the transmitter and any instructions. Filing shall be deemed complete at the time that the facsimile is received by the Court, unless the filing is not received during the normal operating hours of the Court. In that case, the filing shall be deemed complete on the next day on which the Court is open. The filed facsimile shall have the same force and effect as the original.

(c) Service by facsimile transmission. (1) When service by ordinary mail or personal delivery is provided by these Rules or otherwise by law, such service may be made by facsimile transmission of a copy to any attorney or party to be served who maintains a device for receipt of facsimile transmission.

(2) Publishing a facsimile phone line number by pleading, letterhead or listing in a telephone directory or otherwise, constitute *prima facie* evidence of maintenance of a device for receipt of facsimile transmission.

(3) Risk of loss in transmission, receipt or illegibility of the document transmitted by facsimile is upon the sender.

(4) The document faxed is presumed delivered and served, unless otherwise indicated by the readout of the sender's device, to the phone number indicated by the sender's readout and at the date and time of the end of transmission. The sender shall maintain a printout of such readout and file the same if ordered by the Court.

(5) Proof of service by facsimile machine shall be made by the person causing the document to be transmitted. Such proof of service shall indicate the telephone number to which the document was transmitted and the method of confirmation that the transmission was received.

Rule 112. Proceedings *in forma pauperis.*

Where a party seeks to commence, prosecute or defend any civil action or civil appeal without prepayment of fees and costs, the party shall apply to the Court to proceed *in forma pauperis*. The application shall be accompanied by any affidavit(s) required by the Court.

(a) Financial eligibility. Any applicant who fits within the Court's financial eligibility guidelines should be deemed financially eligible to have all costs and fees waived. If an applicant has income above these guidelines, based upon the information in the affidavit, the Court may: 1) waive all fees and costs, 2) direct partial payment of fees and costs, or 3) deny the application. If fees are not fully waived, a schedule for the payment of any costs and fees may be established. The Court may, in its discretion, hold a hearing to determine financial eligibility.

(b) Eligibility of complaint. The Court shall dismiss any *in forma pauperis* action which it finds is factually frivolous, malicious, or so legally frivolous that even a *pro se* litigant, acting with due diligence, should have found well-settled law disposing of the issues(s) raised. If a complaint is dismissed or a judgment otherwise entered against a litigant proceeding *in forma pauperis*, the jurisdiction of the Court over the litigant shall continue until all costs and fees ordered have been paid. In addition, if the Court finds that the litigant has filed a frivolous or malicious action, the Court may enjoin that litigant from filing future claims without leave of court.

(c) Prisoners. All *in forma pauperis* applications made by prisoners must include a certified summary of the prisoner's account. If the Court determines that a prisoner may proceed *in forma pauperis*, the Court will issue an order: 1) setting forth the total amount to be paid and 2) establishing a schedule for payment. If the Court finds that a prisoner has filed an action which is factually frivolous, malicious, or so legally frivolous that even a *pro se* litigant, acting with due diligence should have found well-settled law disposing of the issues(s) raised, the Court may, in addition to dismissing the complaint, order the Department of Corrections, or other appropriate agency, to forfeit the portion of the litigant's behavior good time credits accumulated from the date the action was received by the court up to and including every month until the action was disposed of by the court.

(d) Notification of applicant. The Court shall notify the applicant whether or not the *in forma pauperis* applicant has been approved and whether any partial payment or payment schedule, has been ordered. The date for any full or partial payment shall be indicated and shall be at least 15 calendar days from the date of the order. If the amount is not paid by that date, the action will be dismissed.