

# STATE OF DELAWARE THE COURTS OF THE JUSTICES OF THE PEACE 820 NORTH FRENCH STREET, 11TH FLOOR WILMINGTON, DELAWARE 19801

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CHIEF MAGISTRATE

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### **POLICY DIRECTIVE 94-147**

TO:

ALL JUSTICES OF THE PEACE

ALL JUSTICE OF THE PEACE CLERKS OF COURT

FROM:

PATRICIA W. GRIFFIN

CHIEF MAGISTRATE V

DATE:

**OCTOBER 3, 1994** 

RE:

APPEAL AND OTHER POST-JUDGMENT PROCEDURES IN

CIVIL CASES: LITIGANT INFORMATION

This policy directive expands on information provided in Chief Magistrate Legal Memorandum 94-201 ("Motions for New Trial and Other Post Conviction Motions in Civil Cases: Tolling Time for Appeal"), dated September 1, 1994 and its Supplement, dated September 20, 1994.

# Appeal Procedures

1. Litigant Information Sheet - Attached to this directive is an information sheet entitled "Justice of the Peace Courts Civil Post-Judgment Procedures," which should be provided by the Justice of the Peace Court to litigants in a civil case with the judgment of the Justice of the Peace. To save postage, copies should be two-sided (on one page). Copies may be obtained from the Administrative Office by contacting Judy Gonce until such time as this document is printed. This document is for their information only and no rights inhere to the benefit of the litigants regarding receipt of this document. [Please note that this information sheet will be revised prior to January 15, 1995 to indicate the change of Justice of the Peace Court appeals from Superior Court to the Court of Common Pleas.]

2. **Provision of Appeal Information to Litigants** - Pursuant to 10 <u>Del.</u> <u>C.</u> § 9505, Justices of the Peace, after passing judgment in all civil cases, are required to

immediately advise the party litigants in civil cases . . . of their right to taken an appeal from the decision of the justice of the peace and shall inform all party litigants . . . of the time and manner in which the appeal shall be taken. The records of the justice of the peace shall contain an entry indicating the information given by the justice of the peace.

If the Justice of the Peace fails to properly notify the parties of the time, manner and right to appeal, the appeal period does not begin to run. Paley v. State, Del. Super., 55 A.2d 279, 281 (1947); Ademski v. Ruth, Del. Supr., 220 A.2d 837, 839 (1967)("The right of appeal should not be defeated by the dereliction of a public officer charged with the performance of a duty."); Catts v. Al-Arnasi, Del. Super., No. 89C-SE18, Lee, J. (February 12, 1990)("[W]here a party has taken all steps necessary to perfect his appeal, and a default by a clerk or officer of the court prevents the timely filing of the appeal, then the Court will not dismiss the appeal for lack of jurisdiction.").

Pursuant to 10 <u>Del. C.</u> § 9505, the Justice of the Peace Court has the duty to provide the correct appeal date. <u>Catts</u>, <u>supra</u>, at 3. In cases where the appellants were <u>pro se</u> during the appeals procedures and the Justice of the Peace Court provided an incorrect final appeal date, the Superior Court has refused to dismiss an appeal for failure to timely file. <u>Id.</u>, citing <u>Petrucelli v. McFarland</u>, Del. Super., C.A. No. 88C-AP-138, Taylor, J. (March 20, 1989)(Order), <u>reargument denied</u>, Taylor, J. (April 11, 1989), <u>appeal refused</u>, Del. Supr., No. 192, 1989, Christie, J. (June 5, 1989)(Order)(also cited as decision without published opinion at 561 A.2d 117 (1971); <u>Harrison v. Simon</u>, Del. Super., C.A. No. 83C-SE-15, Poppiti, J. (March 18, 1985)(Order).

To ensure that the proper information is provided to litigants, Justices of the Peace shall, as a part of the written judgment, advise the parties in civil cases as follows:

Any party in a civil case has the right to appeal the decision of a Justice of the Peace to Superior Court within 15 days of the judgment. In this case, the appeal must be filed in Superior Court on or before . Additional information on appeal procedures is

found in the attached sheet entitled "Justice of the Peace Courts Civil Post-Judgment Procedures."

The Justice of the Peace or Clerk shall calculate and insert the proper appeal date in the appeal information. Clerks and Justices of the Peace should carefully review the attached sheet entitled "Justice of the Peace Courts Civil Post-Judgment Procedures," Chief Magistrate Legal Memorandum 94-201 ("Motions for New Trial and Other Post Conviction Motions in Civil Cases: Tolling Time for Appeal"), dated September 1, 1994, and its Supplement, dated September 20, 1994, to ensure that the calculation of the appeal date will be accurate. If questions remain concerning the proper appeal date in a particular case, please contact either your DCM or me. A copy of the "Justice of the Peace Courts Civil Post-Judgment Procedures" information sheet shall be forwarded with each civil judgment.

3. Mailing of Civil Judgments - Recently, a problem occurred related to appeal rights when the decision in a Justice of the Peace Court case was not mailed to the parties until 10 days after the decision was dated. Freedman and Sutton V. Arnoff, Del. Super., No. 94C-05-041, Lee, J. (August 25, 1994). In Freedman, the Superior Court held that:

The failure to mail the decision on the day on which it was dated was an error on the part of the Justice of the Peace Court, and a court employee who fails to perform his or her job cannot defeat the litigant's right to appeal.

- <u>Id.</u> at 4. The Court also cautioned that Justices of the Peace should mail their decisions on the day they are dated to avoid future difficulties. <u>Id.</u> at 2. As a consequence, it is the policy of the Justice of the Peace Courts that <u>judge's</u> decisions will be mailed on the date that the decision was dated.
- 4. **Post-Judgment Procedures Chart** Attached is a chart outlining civil post-judgment procedures (except landlord/tenant) which may be useful as a guideline for court personnel.

PWG:crm

Cc: The Honorable E. Norman Veasey
The Honorable Randy J. Holland
The Honorable Henry duPont Ridgely
The Honorable Arthur F. DiSabatino
The Honorable Vincent J. Poppiti
The Honorable Alfred R. Fraczkowski
The Honorable Charles M. Oberly
Lawrence M. Sullivan, Esquire
Thomas W. Nagle
Anna A. Lewis
H. John Betts

# JUSTICE OF THE PEACE COURTS CIVIL POST-JUDGMENT PROCEDURES

[This information is not legal advice and not a substitute for seeking legal advice from an attorney. This information is not binding on the court if incorrect or misunderstood. It relates to frequently asked questions concerning post-judgment procedures but does not address all of the possible procedures and may not apply in your particular case. Forms for these procedures may be obtained from any Justice of the Peace Civil Court. All motions must include the name of the court, the names of the parties, the case number, the date the motion is filed with the Justice of the Peace Court and a title indicating the reason for the motion. Appropriate court costs or fees must accompany the motion, unless the person has requested, and the court determined, that the person may proceed in forma pauperis due to their indigency.]

#### **DEFAULT JUDGMENTS**

Default judgments are normally entered against a defendant who fails to appear in court on the scheduled trial date in answer to the summons. If a default judgment has been entered, the defendant has 15 calendar days, starting the day after the judgment is signed by the judge, to enter a motion asking that the judgment be vacated and the case be reopened so the defendant may present evidence on the case. If service was made by certified mail, return receipt requested, and the certified mail was returned unclaimed, the defendant has 30 calendar days to file a motion to vacate a default judgment. This motion must be in writing and should briefly state the reason for the request to vacate the judgment as provided by 10 Del. C. § 9538. The time to appeal a judgment continues to run even after a movement to vacate the default judgement is filed (see below for additional information on appeal procedures). (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.

#### **NON-SUIT JUDGMENTS**

Non-suit judgments are entered against a plaintiff who fails to appear in court on the scheduled trial date to pursue the case. Non-suit judgments against the plaintiff are similar to default judgments against the defendant. (See above section.) If a non-suit judgment has been entered, the plaintiff has 15 calendar days, starting the day after the judgment is signed by the judge, to enter a motion requesting that the judgment be vacated and the case reopened so the plaintiff may present evidence on the case. This motion must be in writing and should briefly state the reasons for the request, as provided by 10 Del. C. § 9539. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.

## CIVIL ACTIONS IN DEBT, TRESPASS OR REPLEVIN

APPEAL - Either party has 15 calendar days, starting the day after the judgment is signed by the judge, to appeal the judgment to the Superior Court. The appeal in Superior

Court is a trial de novo (new trial). 10 <u>Del. C.</u> § 9571. To file an appeal in the Superior Court, the appellant (party seeking the appeal) must appear in Superior Court, make the appeal in writing, file a certified transcript of the Justice of the Peace Court record and pay the filing fee to Superior Court within 15 days after the judgment is entered. A certified transcript of Justice of the Peace Court record may be obtained from the Justice of the Peace Court which issued the judgment at least five (5) days prior to the final date of the appeal to Superior Court. A FEE OF \$10.00 MUST ACCOMPANY A CERTIFIED TRANSCRIPT REQUEST. To prevent execution on the judgment during the time of the appeal, an appellant must apply to the Superior Court for a bond to stay the execution.

. . . . . . .

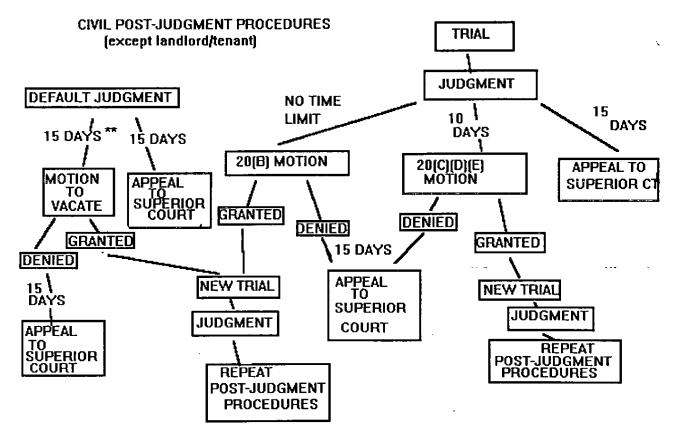
MOTION FOR A NEW TRIAL - Either party has 10 days, starting the day after the judgment is signed by the judge, to file a motion for a new trial as provided under Justice of the Peace Court Civil Rule 20. This motion shall be in writing and shall briefly state the reasons for the request. A motion for a new trial will be heard by the Justice of the Peace who originally heard the case. The ability of the Justice of the Peace to grant a motion for a new trial is limited. For example, the reason given for requesting a new trial may be newly discovered evidence. However, for a judge to grant a motion for a new trial based upon newly discovered evidence, the party requesting the new trial must show all of the following: (1) the newly discovered evidence is important enough to change the result in the case; (2) the evidence could not have been discovered prior to the original trial with reasonable investigation; and (3) the evidence does not merely repeat or dispute evidence presented in the original trial. A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.

In civil cases, if a motion for a new trial is filed after 10 days from the entry of judgment, the time for filing the appeal continues to run and the 15 days allowed for the appeal may pass before any action is taken by the Court. If that happens, the party may be unable to file an appeal. If the motion is filed within 10 days from the date of judgment, the 15-day time for appeal does not include the days between the filing of the motion for a new trial and the judge's decision on the motion.

#### LANDLORD/TENANT APPEALS

FOR POSSESSION OF RENTAL UNIT - Either party has five (5) business days, starting the day after the judgment is signed by the judge, to appeal the judgment of a Justice of the Peace which relates to the possession of a rental unit and other rental matters (including back rent due) to a special Justice of the Peace court. (The five-day period does not include Saturdays, Sundays or legal holidays.) The special court trial will be a completely new trial before three other Justices of the Peace. The appellant (seeking to appeal to the three-judge special court) must appear in the originating Justice of the Peace Court and make the appeal in writing. A FEE OF \$50.00 MUST ACCOMPANY THIS MOTION. To prevent execution on the judgment during the time of the appeal, the appellant must provide a bond or other assurances, as required by the court, to demonstrate the ability to pay all court costs, money damages, and other payments ordered by the judge.

<u>FOR DEBT (Rent Only)</u> - The procedures for appealing or filing a motion for a new trial in a civil debt action explained above apply to an appeal of a landlord/tenant action involving rent or money damages only (and not possession of the rental unit).



\*\* 30 DAYS IF PROCESS SERVED BY CERTIFIED MAIL AND MAIL RETURNED "UNCLAIMED."