



STATE OF DELAWARE  
**THE JUSTICE OF THE PEACE COURT**


5 E. PINE STREET  
GEORGETOWN, DELAWARE 19947  
TELEPHONE: (302) 856-5871  
FAX: (302) 856-5919

2 PENNS WAY  
SUITE 100 B  
NEW CASTLE, DELAWARE 19720  
TELEPHONE: (302) 323-4530

ALAN G. DAVIS  
CHIEF MAGISTRATE

**POLICY DIRECTIVE 94-151 (REVISED)**

**TO: ALL JUSTICES OF THE PEACE COURT EMPLOYEES**

**FROM: ALAN G. DAVIS**  
**CHIEF MAGISTRATE** 

**DATE: MARCH 4, 2019**

**RE: ADMINISTRATION OF OATHS OR AFFIRMATIONS BY  
JUSTICE OF THE PEACE COURT PERSONNEL AND  
NOTARIES PUBLIC**

---

**Scope:**

This Policy Directive consolidates Policy Directives 94-151, 94-151 (1st Supplement), 94-151 (2<sup>nd</sup> Supplement), and Policy Directive 02-198 and revises the policy in order to clarify when Justice of the Peace Court Magistrates, court personnel, and notaries public may swear or affirm a police officer or other affiant to a court document.

**Justice of the Peace Court Policy:**

It is the policy of the Justice of the Peace Court that Justice of the Peace Court Magistrates and court clerical personnel may act as notaries public in specific and identifiable ministerial situations allowed by statute. Although a ministerial act, the administration of oaths or affirmations for arrest and search warrants, regardless of the method by which the warrant is presented to the Court, shall only be administered by a judge. This is a more effective use of staff resources, since the finding of probable cause for the issuance of the warrant may only be determined by a judge.

**Policy Directives Affected:**

The following Policy Directives are rescinded, but may be retained for historical purposes:

- \*Policy Directive 94-151 dated November 18, 1994
- \*Policy Directive 94-151 [1<sup>st</sup> Supplement] dated December 20, 1994
- \*Policy Directive 94-151 [2<sup>nd</sup> Supplement] dated March 14, 1995
- \*Policy Directive 02-198 dated August 28, 2002

**Effective Date:**

This policy shall take effect immediately upon publication.

**Discussion:**

Any judge, justice of the peace, or notary public has the authority to administer an oath or affirmation, "...in any case in which an oath or affirmation is necessary or proper..."<sup>1</sup> Additionally, statutory authority is given for justices of the peace to administer oaths, "...in all cases where an oath is required by law."<sup>2</sup>

Chapter 43 of Title 29 relates to "Notaries Public" in its entirety. It provides that "[t]he Governor shall appoint every person who is appointed to the office of justice of the peace and as Secretary of Finance also as a notary public."<sup>3</sup> The provisions in Chapter 43 also require that the Governor appoint as notaries public other officers, bank representatives, court reporters, and representatives of certain service organizations and authorizes the Governor to commission as many notaries public as are needed in each county.<sup>4</sup>

Acts which are considered "notarial acts" are statutorily delineated.<sup>5</sup> Notarial acts may be performed within the State of Delaware by: (1) A notary public; (2) A judge, clerk or deputy clerk of any court in Delaware; (3) A person licensed to practice law in Delaware; (4) A person authorized by Delaware law to administer oaths; and (5) Any other person authorized to perform the specific act by Delaware law.<sup>6</sup> Deputy Attorneys Generals (DAGs) in Delaware have the authority to administer oaths and affirmations so that, for example, law enforcement officers may contact DAGs for purposes of swearing to a complaint before them.<sup>7</sup>

Based upon the above-mentioned statutes, justices of the peace have authority to administer oaths or affirmations in court-related matters. Justice of the Peace Court clerks have authority to perform notarial acts in Delaware that are ministerial in nature, including taking the

---

<sup>1</sup> 10 *Del. C.* § 5301.

<sup>2</sup> 10 *Del. C.* § 9503.

<sup>3</sup> 29 *Del. C.* § 4303.

<sup>4</sup> 29 *Del. C.* §§ 4301 - 4306.

<sup>5</sup> 29 *Del. C.* §§ 4322 - 4326.

<sup>6</sup> 29 *Del. C.* § 4323.

<sup>7</sup> 29 *Del. C.* § 2508(a).

verification upon oath or affirmation.<sup>8</sup> Therefore, Justice of the Peace Court clerks or any notary public are authorized to take verifications upon oath or affirmation for police officers or other affiants swearing to (1) traffic complaints (voluntary assessments and mandatory appearances); (2) criminal complaints and summonses; (3) parking tickets; (4) County Code/Licenses and Inspections summonses; and (5) truancy summonses.<sup>9</sup> Clerical staff or other notaries public are also authorized to notarize Justice of the Peace Civil Form 50 “Corporate and Other Artificial Entity *Pro Se* Representation in Civil Actions in the Justice of the Peace Court”, *in forma pauperis* applications filed in either civil and criminal court locations, and any other document required by the laws of another state, territory or country when the requirements for the document have been established.<sup>10</sup>

### Proper Notarization

Proper notarization requires (1) the personal, videophone, or electronic appearance of the person before the notarial officer who is administering the oath or affirmation; (2) the identification of the person being sworn; (3) the assurance by the person being sworn that they made the statement in the document; (4) the administration of the oath or affirmation by the notarial officer and the assertion that the statement is true; and (5) the execution of the certificate of notarial act by the notarial officer.<sup>11</sup> An explanation of each step follows:

- (1) Appearance of the Affiant - Clerks may only notarize documents for individuals who personally appear before them. Although also a ministerial act, the administration of oaths or affirmations for arrest and search warrants shall only be administered by a judge, whether the affiant personally appears before them or appears through videophone or other electronic medium. This is a more effective use of staff resources, since the finding of probable cause for the issuance of the warrant may only be determined by a judge.
- (2) Identification of the Person - In taking a verification upon oath or affirmation, the judge, clerk, or other notarial officer administering the oath, must determine, "...either from personal knowledge of identity or from satisfactory evidence of identity, that the person appearing before the officer and making the verification is the person whose true signature is on the instrument."<sup>12</sup> A notarial officer must either: (1) personally know the person to whom the administration of the oath or affirmation is given; (2) identify the person upon the oath or affirmation of a

---

<sup>8</sup> The “verification upon oath or affirmation” means a statement by a person who asserts it to be true and makes the statement under oath or affirmation. *Frank v. Libco*, Del. Ch., Civ.A.No. 12,412, Hartnett, V-C, Mem. Op. at 2 (Dec. 8, 1992).

<sup>9</sup> The judge or court clerk may sign Truancy, County Code, and Licenses & Inspection summonses below the affiant signatures on the “Sworn to and subscribed to before me this (date)” lines, but the judge must sign after the “Given Under My Hand, this (date)” line.

<sup>10</sup> Two examples of such documents are: 1) Sales of property in foreign countries (i.e. when an American citizen is buying a vacation property and foreign law requires notarization on the sales contract;) and 2) Proof of life documents relating to pensions (i.e. when a document must be notarized verifying that a pensioner is in fact still alive in order to receive the pension).

<sup>11</sup> 29 Del. C. § 4322.

<sup>12</sup> 29 Del. C. § 4322(a).

credible witness who is personally known to the notarial officer; or (3) identify the person by identification documents (such as a driver's license).

- (3) Assurance of Person Making the Verification – The notarial officer should ask the person if they made the statement set forth in the document and receive a "yes" answer.
- (4) Administration of the Oath/Affirmation and Statement as to its Truthfulness – The notarial officer should administer the oath or affirmation to the person making the verification and the person should attest, under oath or affirmation, that the statement is truthful.
- (5) Execution of Certificate of Notarial Act - The notarial officer must fill in their name, title, and the date the document was sworn to in the section which states:

"Sworn and subscribed to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, \_\_\_\_\_."

Name/Title

Justice of the Peace/Clerk/Notary

This directive is not intended to mandate that it is the responsibility of the clerk, instead of the justice of the peace, to take verifications upon oath or affirmation. The determination of whether the clerk or the justice of the peace performs this function depends upon the availability of the justice of the peace, the easiest and quickest means of getting the process accomplished, and the type of document presented to the court. For a traffic complaint to be sworn to by a police officer, the officer who executed the complaint must personally appear before the justice of the peace, court clerk or notary public. When a summons is obtained by a person that is not a police officer, but an individual granted police powers by statute to be the affiant, Justice of the Peace Court clerks or other notaries public may administer the oath or affirmation for those documents. Although a ministerial act, the administration of oaths or affirmations for arrest and search warrants, regardless of the method by which the warrant was presented to the Court, shall only be administered by a judge, as this is a more effective use of staff resources, since the finding of probable cause for the issuance of the warrant may only be determined by a judge.

#### Notarizing Previously-Signed Affidavits of Probable Cause via Videophone Applications

***All police agencies in the State of Delaware are currently presenting arrest warrants to the Court via the DELJIS Portal. Therefore, the following applies for: 1) an arrest warrant presented to the Court when the DELJIS Portal is not functioning correctly and the police officer presents the warrant via videophone; and 2) all search warrants presented to the Court via videophone.***

The Justice of the Peace Court Statewide Video Court Protocol, updated July 1, 2017, provides for the police officer to fax a previously-signed copy of the affidavit of probable cause prior to taking the oath. The judge may notarize the affidavit as long as: 1) the officer gives the

oath (stating, for example, that the information is true and correct to the best of the officer's knowledge) before the judge by videophone; 2) the officer makes an acknowledgment before the judge that the signature on the affidavit is his or her signature; and 3) the judge determines either from personal knowledge or from satisfactory evidence that the person appearing before the judge is the person whose true signature is on the affidavit.

**In order to adhere to notarial requirements, if the judge accepts a videophone affidavit which has already been signed by the affiant, the judge must cross out the words "subscribed to" and hand-write the words "signature acknowledged" in their place. Previously-signed warrants may only be submitted via videophone application.**

Acknowledgment is defined in 29 *Del. C.* § 4321(1). "Acknowledgment" shall mean a statement by a person that the person has executed an instrument for the purposes stated therein, and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein.<sup>13</sup>

The judge notarizing a previously-signed affidavit of probable cause should be very careful to follow the required steps listed here. Notarial requirements have been strictly construed and failure to comply with these requirements can result in a false certification and concomitant disciplinary action. *See, e.g., In the matter of Tos, II.*, Del. Supr., 576 A.2d 607, 613 (1990) (finding that the lawyer had engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation by notarizing a divorce petition when he had not witnessed his client signing the petition but had relied on a law clerk's statement that the client had signed it.)

### **Conclusion:**

There will be times when a judge is not immediately available to administer oaths or affirmations. This Policy Directive provides specificity as to when a Justice of the Peace Court clerk may administer the oath or affirmation to a police officer or other affiant to a court document. Currently for criminal court locations, that list is limited to: (1) traffic complaints (voluntary assessments and mandatory appearances); (2) criminal complaints and summonses; (3) parking tickets; (4) County Code/Licenses and Inspections summonses; and (5) truancy summonses. Clerical staff or other notaries public are also authorized to notarize Justice of the Peace Civil Form 50 "Corporate and Other Artificial Entity *Pro Se* Representation in Civil Actions in the Justice of the Peace Court", *in forma pauperis* applications filed in either civil and criminal court locations, and any other document required by the laws of another state, territory or country when the requirements for the document have been established. Although a

---

<sup>13</sup> Caselaw from jurisdictions outside of Delaware illustrates that, under the common law, a signature on a previously-signed document could be acknowledged by the affiant at the time the affiant was swearing to the document. *See McCain v. Bonner*, Ga. Supr., 51 S.E. 36, 38 (1905). *See also Harris v. Murray*, Ga. App., 504 S.E.2d 736, 744 (1998), *reconsid. den.* (1998), *cert. den.* (1998) ("In McCain, the Court determined that there was evidence the previously signed affidavit was valid when the affiant presented it to the officer, the affiant swore the affidavit was true, and then the officer signed the jurat."); *Gunstream v. State*, La. App., 353 So.2d 355, 356 (1997) ("We find that, albeit Officer White may have signed the report outside the presence of the notary, when he appeared before the notary and affirmed his signature on the report, he consciously took on himself the obligation of an oath. Accordingly, the report was a "sworn" report within the terms of LSA-R.S. 32:661 *et. seq.*").

ministerial act, the administration of oaths or affirmations for arrest and search warrants shall only be administered by a judge. This is a more effective use of staff resources, since the finding of probable cause for the issuance of the warrant may only be determined by a judge.

If the judge accepts a videophone affidavit (an arrest warrant when the DELJIS Portal is not functioning properly or a search warrant) which has already been signed by the affiant, the judge must cross out the words "*subscribed to*" and hand-write the words "*signature acknowledged*" in their place. Previously-signed warrants may only be submitted via videophone application.

Cc: The Honorable Leo E. Strine, Jr.  
The Honorable Andre Bouchard  
The Honorable Jan Jurden  
The Honorable Alex J. Smalls  
The Honorable Michael K. Newell  
Amy Quinlan, SCA  
Marianne Kennedy  
Jody Huber, Esquire  
Mark Hitch  
All Delaware Police Agencies  
Alderman's Courts  
Law Libraries: New Castle County, Kent County, Sussex County  
Widener University School of Law