



STATE OF DELAWARE
THE JUSTICE OF THE PEACE COURT


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LEGAL MEMORANDUM 92-193 (2nd SUPPLEMENT)

TO: ALL JUSTICES OF THE PEACE COURT EMPLOYEES

FROM: ALAN G. DAVIS
CHIEF MAGISTRATE 

DATE: MARCH 4, 2019

**RE: CAPIASES (WARRANTS/CAPIASES ISSUED ON TITLE 21
VOLUNTARY ASSESSMENT AND MANDATORY APPEARANCE)**

SCOPE

This Supplement discusses the historical changes made concerning how Title 21 tickets are created, processed, and managed and how failures to pay Voluntary Assessment Center (VAC) assessments and failures to appear in court for mandatory appearances are handled, since the original, revised and 1st supplement versions of Legal Memorandum 92-193 were issued. It also clarifies that court clerks have the ministerial authority to swear police officers to tickets. However, the administration of oaths or affirmations for arrest and search warrants shall only be administered by a judge, even though clerks have the legal authority to do so. 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.

LEGAL MEMORANDA AFFECTED

This Supplement requires that Legal Memorandum 92-193 be read in conformance with Policy Directive 94-151(Revised).

DISCUSSION

Summary

Legal Memorandum 92-193 “Warrants/Capiases Issued on Title 21 Voluntary Assessment and Mandatory Appearance,” issued on September 21, 1992, presented a discussion on the use of and any differences among the terms “capias,” “warrant,” and “bench warrant.” It also presented the original position that a ticket did not have to be sworn to in order for a capias to issue, whether it was a Voluntary Assessment Center (VAC) or a mandatory appearance ticket. However, it emphasized that an unsworn ticket must be sworn to prior to trial, or the charges could be dismissed.

Legal Memorandum 92-193 (Revised) “Capiases,” issued on January 26, 1995, began with a detailed historical discussion on the origins and use of capiases for criminal and civil cases. It then put forth a discussion on a constitutional issue, specifically the guarantees of the Fourth Amendment, raised by the issuance of capiases predicated upon unsworn to tickets.¹ LM 92-193 (Revised) then modified the original policy by mandating that a ticket must be sworn to prior to the issuance of a capias. It also stated that “...any notary public, as well as a Justice of the Peace clerk, has the legal authority to administer the oath or affirmation to the police officer for traffic complaints and affidavits of probable cause for warrants.”²

Legal Memorandum 92-193 (1st Supplement) “Capiases,” issued on February 1, 1995, announced that legislation was signed authorizing the Governor to appoint notaries public to serve with police agencies in order to assist and expedite the process of swearing to traffic complaints. It reiterated the mandate that a ticket must be sworn to prior to the issuance of a capias whether it was a Voluntary Assessment Center (VAC) or a mandatory appearance ticket. It included the previous direction that “...any notary public, including clerks of court, may administer an oath or affirmation to a police officer for purposes of swearing to a traffic complaint and Affidavit of Probable Cause for a warrant.”³

History

Prior to 1995, Title 21 complaints (traffic tickets/summons) did not have to have the arresting officer swear or affirm to a ticket in order for a capias to issue for the defendant’s arrest. The judge would turn to the back of the paper ticket/summons, fill in the defendant’s name and charge or charges, then sign, date and seal the document, creating a warrant for the defendant’s arrest.⁴ The court would return the signed warrant

¹ The Fourth Amendment provides: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

² Legal Memorandum 92-193 (Revised), Justice of the Peace Court, Griffin, C.M. (Jan. 26, 1995) at 8.

³ Legal Memorandum 92-193 (1st Supplement), Justice of the Peace Court, Griffin, C.M. (Feb.1, 1995) at 1.

⁴ The terms “warrant,” “bench warrant,” and “capias” are used interchangeably throughout LM 92-193, LM 92-193(Revised) and LM 92-193 (1st Supplement).

to the police agency that issued the ticket, and an officer would arrest the defendant and bring him/her forthwith to the court to answer for the failure to pay or the failure to appear.

Judge Griffin, in LM 92-193 (Revised) discontinued that practice with a determination that probable cause must exist in order for the Court to issue a *capias* for a defendant's arrest. The Court could no longer simply turn the ticket over and turn it into a warrant, unless the arresting police officer swore or affirmed to the ticket. Judge Griffin stated that "Consequently, the constitutional guarantees of the Fourth Amendment require that arrest or bench warrants be *issued only upon a showing of probable cause, established with a sworn complaint* or sworn testimony detailing the underlying facts and circumstances" (emphasis added).⁵ She also stated that "Only the affidavit of probable cause or complaint itself may be sworn to by the police officer in the presence of the clerk or other notary, all warrants in all criminal and traffic cases must be reviewed and issued upon a finding of probable cause by a Justice of the Peace."⁶

This seems to indicate that swearing to a ticket creates a presumption that probable cause exists for the limited purpose of issuing a bench warrant or *capias*. Judge Griffin's statement that Justice of the Peace court clerks "may administer the oath or affirmation to a police officer for purposes of swearing to a traffic complaint and Affidavit of Probable Cause for a warrant" was then intended to state that clerks could swear police officers to tickets or summonses, a ministerial act, creating the probable cause necessary to satisfy the requirements of the Fourth Amendment, in order for the court to issue a *capias*. LM 92-193 (Revised) and PD 94-151 also indicated that Justice of the Peace court clerks had the authority to swear police officers to probable cause for arrest and search warrants. However, arrest and search warrants, for which a judge must find probable cause in order to approve and issue the warrant, should not be confused with the warrant or *capias* issued by the court after a traffic ticket has been sworn to by a police officer.⁷ Although the administration of the oath or affirmation to a police officer for a warrant is a ministerial act which the law permits court clerks to perform, the oath or affirmation should only be administered by a judge for arrest and search warrants. This is a more effective use of staff resources, since a finding of probable cause, which may only be determined by a judge, is necessary for the issuance of an arrest or search warrant.

The Court has since experienced several other changes in how tickets are handled. The VAC stopped issuing *capiases* for a defendant's failure to pay in July of 2002, and instituted the process of sending the ticket information to the Division of Motor Vehicles

⁵ Legal Memorandum 92-193 (Revised), Justice of the Peace Court, Griffin, C.M. Jan. 26, 1995) at 7.

Footnote omitted.

⁶ Id. at 8.

⁷ The distinction between a bench warrant/*capias* and an arrest warrant lies in the initiating document. The probable cause for a *capias* originates from the Court, in that the defendant failed to follow a court order or instruction, or failed to appear on an accusation from a charging document already before the court in the form of a ticket or summons. The probable cause for an arrest warrant originates from an interaction with a law enforcement officer who must bring evidence of a crime to the Court prior to the issuance of a charging document.

(DMV) for a suspension of the defendant's license. In 2016, legislation was passed discontinuing the process of a license suspension for a defendant's failure to pay a VAC ticket. As of April 1, 2016, the DMV instituted the process of placing a "flag" on the defendant's license, requiring the defendant to handle the ticket either by paying the balance in full or appearing in Justice of the Peace Court, prior to allowing the defendant to renew his/her license and/or registration.

The use of "E-Tickets" began in 2006. Police officers, just as before, were and continue to be able to use the notaries public serving their respective agencies to swear or affirm to the tickets.⁸ If a defendant fails to appear for arraignment *and* the respective ticket remain nonnotarized, a notice is automatically printed on the police agency's printer as a reminder that the officer must either use the police agency notary or come into the court location with jurisdiction for the court clerk to administer the oath or affirmation in order for the court to issue a *capias*. Policy Directive 07-227 "Procedures for Electronically Filed Uniform Traffic Compliant and Summons Forms" addresses the dismissal of tickets three weeks after being notified, if the tickets remain nonnotarized.

"In the case of the need for a *capias* for failure to appear at arraignment, the designated person within the Troop or police agency shall be notified of the need for a sworn version of the ticket prior to the *capias* being issued. If the officer fails to appear to swear to the ticket or fails to provide a sworn version within three weeks of notification, the case will be dismissed, unless good cause can be shown why it should not."⁹

CONCLUSION

The Court has witnessed many changes concerning how Title 21 tickets are created, processed, and managed and failures to pay VAC assessments and failures to appear in court for mandatory appearances are handled.

Notaries public serving police agencies and court clerks have the authority to swear police officers to tickets. The court may not issue a warrant/*capias* for a defendant's arrest unless the ticket has been sworn to by the police officer, establishing the probable cause deemed necessary by the Fourth Amendment.

However, the administration of oaths or affirmations for arrest and search warrants shall only be administered by a judge, even though clerks have the legal authority to do so. 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.

⁸ Notaries public began serving in police agencies in 1995.

⁹ Policy Directive 07-227, Justice of the Peace Court, Davis, C.M. (March 7, 2007) at 3.

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