



STATE OF DELAWARE
THE JUSTICE OF THE PEACE COURT


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ALAN G. DAVIS
CHIEF MAGISTRATE

POLICY DIRECTIVE 10-235 (2nd Supplement)

TO: ALL JUSTICES OF THE PEACE COURT EMPLOYEES

FROM: ALAN G. DAVIS
CHIEF MAGISTRATE 

DATE: MARCH 15, 2019

**RE: DISPOSITION OF CASES THROUGH THE POLICE PROSECUTION
PROCESS**

Scope

This Supplement clarifies the process for the issuance of capiases when defendants fail to appear for arraignment on a traffic summons.

Policy Directives Affected

This Supplement requires that PD 10-235 be read in conformance with PD 84-091 (Revised).

Effective Date

This policy shall take effect on May 1, 2019

Discussion:

When a defendant fails to appear for a Call of the Calendar arraignment,¹ the judge's decision whether or not to issue a *capias* is not reliant on the charge(s) listed on the summons. It is solely reliant on whether the failure to appear is for an initially-scheduled Call of the Calendar arraignment or whether the failure to appear is a subsequent failure to appear for arraignment on the same case.

Pursuant to PD 84-091(Revised), the Justice of the Peace Court shall, prior to the issuance of *capiases*, mail computer-generated reminder letters to defendants who fail to appear for their initially-scheduled Call of the Calendar arraignments. For juvenile defendants who fail to appear for their initially-scheduled Call of the Calendar arraignments, the Court shall mail "Juvenile Failure to Appear" letters to the parents or guardians.

A judge may override this policy only upon a recorded finding of aggravating factors leading the judge to issue a *capias* after a defendant's failure to appear for an initially-scheduled Call of the Calendar arraignment.

Subsequent Failure to Appear for Scheduled Call of the Calendar Arraignments

It remains within the judge's discretion to issue a *capias* for those defendants who have multiple failures to appear for scheduled Call of the Calendar arraignments on the same case, as they do for failures to appear for trial, arraignment with trial, or other hearings. The clerical staff shall review the cases remaining after Call of the Calendar is completed and the police prosecutors have left the court locations, pull all cases with a subsequent FTA and give them to a judge for review. Judges shall decide on whether to order a same-day *capias* or allow the computer-generated FTA notice to issue for all cases with multiple failures to appear for arraignment. Under no circumstances should a *capias* issue for a defendant's failure to appear at arraignment until such time as the ticket has been sworn to by the officer.

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
Alderman's Courts
Law Libraries: New Castle County, Kent County, Sussex County
Widener University School of Law

¹ For the entirety of this policy directive, any reference to "Call of the Calendar arraignments" shall mean all motor vehicle arraignments with or without a police prosecutor.