Questions and Answers about the Rules of Evidence
in the Justice of the Peace Court

(This information is not a complete description of the Rules of Evidence. For complete information, the Delaware Rules of Evidence (D.R.E.) should be consulted. These can be found in the Delaware Rules volume of the Delaware Code. The following information is not legal advice and is not a substitute for seeking legal advice from an attorney. It is not binding on the Court if incorrect or misunderstood.)

What is evidence?

Evidence is **any form of proof** presented to the Court to show the existence or nonexistence of a fact. It may include testimony (what a person says under oath during a trial), documents, photographs, recordings, or other things.

What are the Rules of Evidence?

The **Delaware Rules of Evidence** determine whether various types of evidence are admissible (may be used), or are not admissible, in a Delaware court. Although the Justice of the Peace Court is less formal than the higher courts, the Rules of Evidence must be followed in the Justice of the Peace Court. The judge can consider only admissible evidence in making their decision about a case.

How does a party object to evidence?

The way for a party to object is to say, "Objection." When a party objects, the judge will rule on the objection. Where the judge overrules the objection, the evidence will be admitted. Where the judge sustains the objection, the evidence will be excluded. Frequently, the judge will listen to the disputed evidence before determining whether to receive or exclude it.

What makes evidence admissible?

A basic requirement of admissibility is that the evidence **must be relevant**. (D.R.E. 402) This means that it must be helpful in deciding the action before the court. (D.R.E. 401) For example, in a case in which a roofer is suing a homeowner for failing to pay his bill, the bill sent to the homeowner would be relevant, but testimony that the homeowner had been convicted of shoplifting would not be relevant.

However, even relevant evidence may not be admissible if it is repetitive (said more than once), confusing, or will unfairly influence the judge's decision as compared to what it adds to the case, or for certain other reasons.

What other reasons make relevant evidence inadmissible (not usable in court)?

While there are a number of reasons why relevant evidence may be inadmissible, two of the most common reasons for not admitting evidence are that it is **hearsay** or has not been properly **authenticated**.

What is hearsay?

Hearsay is a statement, other than one made by a person while testifying at trial, that is used to prove the truth of the statement. (D.R.E. 801) It is generally not admissible because there is no opportunity to cross-

examine the statement maker at trial (the person who made the statement is not at the trial). Examples of hearsay include:

***** Peter Plaintiff's offer of a letter (even if notarized) from his boss stating that Peter was working on Monday when used to show that Peter was working on Monday;

***** Donna Defendant's offer of a newspaper article about traffic light problems at an intersection when used to show problems with the traffic lights.

***** Larry Landlord's offer of a written statement by his wife about phone calls with Terry Tenant (and the wife is not in court to testify).

***** Pauline Plaintiff's testimony that Jim's auto repair told her it would cost $500 to repair the bad work of Defendant Auto Fix It. Pauline has no estimate (documentation) to show the court, just Jim's statement.

What <u>is not</u> hearsay?

A statement is <u>not</u> hearsay when it is used to show something other than the truth of what the statement says. Examples of statements which are not hearsay are:

***** Statements used to show why a person who heard the statement did or did not do something. For example, Don Defendant is charged with driving without a license. Don testifies that he drove his son Sam to the hospital because Sam complained of severe chest pains. Don's statements are not hearsay because they are used to explain <u>why</u> Don drove his car and not that he drove the car.

***** Statements by a party or party's employees (regarding their work) offered against the party by the opposing party. (D.R.E. 801(2)). For example, in plaintiff's suit against defendant Garage for improperly fixing her brakes, plaintiff may offer the statements of the Garage's owner and mechanics. Ordinarily, a plaintiff may offer anything a defendant says; a defendant may offer anything a plaintiff says.

***** A witness's previous statements which are inconsistent with the witness's testimony may be offered to show that the witness was lying. (D.R.E. 801(1)). For example, a witness's statement at the time of the accident that "the light was green" may be used to challenge the witness's testimony that "the light was red."

Are there any situations in which hearsay evidence is admissible?

Yes. A hearsay statement is admissible if made under certain kinds of circumstances which make it more reliable (likely to be true). The following are **examples** of evidence which may be admitted **without regard to whether the speaker or writer is in court to testify**:

*** Bills, estimates** - in Justice of the Peace Court civil cases only, a bill, estimate, receipt or statement of account which appears to have been made in the regular course of business may be admitted if the justice of the peace is satisfied that it is reliable. (D.R.E. 803(25))

*** Certain other types of records** - including, but not limited to: public records (these include records kept by courts, such as judgments and marriage/divorce records as well as records kept by other government agencies, such as birth and death records and tax records), records of religious organizations, judgments of previous convictions. (D.R.E. 803(6)-(16), (22)-(23))

*** A statement relating to an event or condition** made while the speaker saw, heard or experienced the event or condition or immediately thereafter or while still affected by it. (D.R.E. 803 (1) and (2)). For example, Peter Plaintiff's daughter phones him to tell him that Donald Defendant is cutting down the tree in Peter Plaintiff's yard as she is watching. Peter Plaintiff's testimony as to what his daughter said is admissible.

What is authentication?

Evidence, including photographs and documents must be properly authenticated before it can be admitted for the judge to consider. Authentication is proof that the evidence is what the person introducing it claims it to be. (D.R.E. 901). Most often, evidence will be authenticated by testimony of a witness that what they want admitted comes from their own memory - what they saw, heard, touched, smelled or tasted. They must recognize the thing they wanted admitted, or have marked it in some way, or kept it separate and secure to ensure that it was not changed. Examples of methods of authentication include:

- Handwritten document (such as a letter) - a person familiar with the handwriting of the person who wrote the document can testify that this is the person's handwriting or the person who wrote the document can testify about when and where they wrote it. Also, a handwriting expert can compare the document with another writing by the person and state that they were written by the same person.
- Photographs - testimony that the photograph fairly and accurately shows what the party introducing it claims that it shows. For example, if a photograph of a damaged car is shown, the owner may testify that it is a picture of his car as it appeared immediately after the accident and when and where and by whom the picture was taken. (Testimony by the photographer is not required.)

Are there any types of evidence which do not have to be authenticated?

Yes. Examples of evidence which do not need to be authenticated are: public documents under seal (from a government agency or a court), or certified copies of public records, newspapers and periodicals, and inscriptions. (D.R.E. 902)

When must a document be shown to the Court?

Documents include writings, recordings and photographs. Generally, a witness is not permitted to testify to what a document says, shows, or means without showing it to the Court. However:

1) Testimony is permitted where a document has been lost, has been destroyed by or is in the possession of the opposing party, or is not about an important issue in the case (D.R.E. 1004).

2) Testimony about the same information contained in a document may be given without showing the document if the witness is testifying from his or her memory of the event. For example, a witness may generally not testify as to what a receipt said without showing the receipt. However, a witness need not show the receipt if he is testifying from his memory that the item he purchased cost $125.00.

Can copies of documents, recordings, or photographs be used?

Yes - most of the time. A duplicate, copy, computer printout, or enlargement is admissible in place of the original unless (1) there is a question as to whether it is an exact copy of the original, or (2) it would be unfair to admit it. (D.R.E. 1003)

How are witnesses questioned?

Witnesses are questioned first by the party who called them. This is called direct examination. During the direct examination, leading questions generally may not be used. (D.R.E. 611) (A leading question is one which suggests to the witness the answer desired and the answer is usually "yes" or "no". For example, "You notified the contractor in writing, didn't you?" is a leading question.)

After the direct examination, the witness may be cross-examined by the opposing side. The questions asked on cross-examination must generally be about statements made during the direct examination. (D.R.E. 611(b)) Leading questions may be used on cross-examination.

Leading questions may also be used whenever a party calls a hostile witness (one who shows a lack of cooperation or anger toward the party who has called him or her to testify), an adverse party (a party on the other side of the case), or a witness identified with an adverse party (a witness who has been called to testify on direct examination by the party on the opposite side of the case). (D.R.E. 611(c))

What can a witness testify to?

It depends if the witness is an expert or non-expert. Expert witnesses are persons who have been shown to the court to be qualified by their special knowledge, skill or experience (scientific, technical, or other) and can testify as an expert in a specific field. Expert witnesses may testify about their opinions based on such special knowledge or skill. (D.R.E. 701 and 702). For example, a building contractor may be qualified to be an expert witness as to whether building repair work was defective.

Non-expert witnesses may testify only to (1) facts about which the witness has personal knowledge (what they saw, heard, smelled, etc.) (D.R.E. 602) or (2) opinions which do not require any special knowledge or skill (D.R.E. 701). Non-expert witnesses may testify as to such things as sobriety, age, distance, value of an item that the average person would know, or speed, but may not give an opinion as to fault. For example, a non-expert witness may testify to the speed a car was traveling but may not give an opinion as to whether the driver was at fault. (Comment to D.R.E. 701)

In order for a witness to be able to testify as an expert, the witness must first explain to the Court what education, training, knowledge, skill or experience she or he possesses which make her or him more skillful in the field about which she or he will testify than the average person. For example, a building contractor who plans to testify that work was defective should briefly explain to the Court her experience and training in building which makes her able to determine that the work was defective.

Can a witness be required to testify?

Yes. If a party is not sure that a witness will show up at court, the party may subpoena the witness (have the court order the person to appear at court to testify) by filing a request for a subpoena with the Court at least five days prior to the trial date. (There is a nominal fee for each subpoena.) A judge or juror may usually not be called as a witness to testify with regard to a case he or she has heard. (D.R.E. 605 and 606 and Justice of the Peace Court Policy Directive 98-168). Also, in certain cases, a privilege may be claimed so that a witness may not be required to testify. (D.R.E. 501-510). For example, a defendant may prevent his or her spouse (D.R.E. 504), attorney (D.R.E. 502) or physician (D.R.E. 503) from testifying.