



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

NORMAN A. BARRON  
CHIEF MAGISTRATE

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POLICY DIRECTIVE 84-091

TO: ALL JUSTICES OF THE PEACE, STATE OF DELAWARE  
ALL CHIEF CLERKS, COURTS OF THE JUSTICES OF THE PEACE  
ALL CAPIAS OFFICES, COURTS OF THE JUSTICES OF THE PEACE

FROM: NORMAN A. BARRON  
CHIEF MAGISTRATE

DATE: SEPTEMBER 10, 1984

RE: PROCEDURES REGARDING THE ISSUANCE OF CAPIASES<sup>1</sup>

As you are already well aware, the capias problem has continued to grow at an alarming rate. We simply must take further action to bring it under control.<sup>2</sup>

Recently the Court Administrator and Chief Clerk Gaile Kerrigan of the New Castle County Capias Control Office selected

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<sup>1</sup>My thanks and appreciation are extended to Court Administrator Michael McLaughlin for his large contribution in preparing this Policy Directive.

<sup>2</sup>The problem of outstanding capiases for failure to appear or for failure to pay fines and costs has been addressed repeatedly over the past several years. See: Legal Memorandum 81-76, dated December 2, 1981, Capias Returns By Justice Of The Peace Constables; Policy Directive 82-058, dated April 26, 1982, Taking And Holding An Operator's License As Security For Appearance At Trial Or Sentencing Or As Security For The Payment Of Fines, Costs, Restitution Or Victim Compensation Fund Assessments; Policy Directive 83-075, dated May 3, 1983, Monitoring And Collecting Deferred Payments; Policy Directive 83-082, dated December 27, 1983, Payment Of Secured Cash Bail Or Of Fines, Costs, Victim's Compensation Fund Assessments Or Restitution By VISA Or Mastercard.

a random sample of 20 overdue deferred payment cards and attempted to notify each defendant by telephone or letter of their overdue status. The results of this effort are summarized as follows:

8 people called  
12 people mailed letters

RESPONSE:

7 Paid in Full  
3 Made Partial Payments  
2 Letters Returned/Def. Moved  
8 No Response

Of the twenty cases selected, \$3,000 was due and owing the Court. Over \$1,000 was remitted as a direct result of this collection effort. Thus, the mailing of "notices" reduced the number of capiases required to be issued and reduced the amount of overdue fines and costs by a full one-third.<sup>3</sup>

Given the above results, effective upon receipt of this Policy Directive, the following shall be considered standard operating procedure for the Justice of the Peace Courts, statewide:

1. Defendant Fails to Appear for Trial, Sentencing or Any Other Bonded Hearing.

Prior to the issuance of a capias, the clerk on duty shall review the daily case file pulling all cases where there was a non-appearance. Where the defendant's telephone number can be ascertained from the Court documents, a phone call shall be placed informing the defendant that he/she has failed to appear as scheduled and that he/she must appear on a designated date and time before the Court to explain said failure to appear to the judge on duty.

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<sup>3</sup>Similar results have been achieved by Chief Clerk Rella Goodson of the Kent County Capias Control Office and Chief Clerk Carol Pini of Court No. 10.

The clerk shall further inform the defendant that if he/she does not appear voluntarily a capias will be issued for his/her arrest. The clerk shall make notes of the telephone conversation and place same in the case file. Notes shall include such information as date and time called, who was contacted and the attitude and responses of the person contacted.

If the telephone number is not available or if there is no answer, the clerk shall send a 1st class letter to the defendant's last known address informing the defendant that he/she must appear in person before the Court on the date and time as indicated to explain why he/she failed to appear. (See sample letter attached and marked as Exhibit 1.) Normally the date of appearance should be 1 week later to allow time for mailing. The case, including a copy of the above letter, shall then be placed in the appropriate date file for the defendant's appearance. If the defendant fails to appear after the phone call or letter, a capias should be issued. It should be noted on the face of the capias that the defendant had failed to appear despite the phone call/letter reminder. This information is pertinent and should be considered by the judge presiding over a capias return hearing. The excuse that the defendant "forgot" to come to Court should fall upon deaf ears in such cases.

2. Overdue Deferred Payments.

The same procedure shall be followed in regard to overdue deferred payments with documentation of phone calls/letters<sup>4</sup>

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<sup>4</sup>For a sample of a deferred payment demand letter, see Exhibit 2.

being attached to or set forth on the deferred payment card.<sup>5</sup>

Effective September 15, 1984, the individual Courts shall, after completing the above procedures, type and submit to the appropriate Capias Control Office<sup>6</sup> all capiases so that they can be entered into the computer system.<sup>7</sup> While on the subject of deferred payments, I would like to bring to your attention an excerpt from the 1980 Report on Capias:

"7. All courts should agree on a range of penalties including fines and possibly incarceration where a legitimate capias was ignored.

Frequently, a person is returned to the court on capias but is not punished on the contempt charge which resulted in the capias. [Noted with approval is the fact that] Municipal Court often assesses a \$25 fine for those brought in on a capias. It does not take much intellect to realize the lack of accountability. There is no incentive to obey the court if no additional penalty results from non-compliance.

Indeed, at least two negative results occur. First, the police officer or other capias servers become frustrated because clearly fewer people will voluntarily obey court directives, even continuously not showing on the original charge. Secondly, as the word spreads on the street, and is reinforced over time, even fewer will take court orders seriously."

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<sup>5</sup> Revised deferred payment cards are currently being printed. The revised form advises the defendant that he/she must request work referral if unable to pay the fines and costs in full by the due date. Thus, it is documented that the person has been offered work referral at the time of sentencing. Additionally, the new form provides a place for notations regarding phone and letter contacts made through the Court.

<sup>6</sup> It is noted that Sussex County does not yet have an operating Capias Control Office. We are expecting the establish such an office in FY1986.

<sup>7</sup> Justice of the Peace Court No. 11, due to the high volume of cases and their close proximity to the New Castle County Capias Control Office, shall continue under the old system where the Capias Office will prepare capiases on all overdue deferred payments.

I agree with the concept of this recommendation and would encourage all Justices of the Peace to consider additional penalties when a person has been notified and still ignores a legitimate capias.<sup>8</sup> See: 11 Del.C., §1271(3) and (8).

Where the contents of any prior Policy Directive are in conflict with the contents of this Policy Directive, the contents of this Policy Directive shall control.<sup>9</sup>

NAB:pn

Attachments (2)

cc: The Honorable Daniel L. Herrmann  
Michael E. McLaughlin  
John R. Fisher  
Files

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<sup>8</sup>The Court Administrator will be studying the actual cost per capias and these figures will be published in the near future. A realistic approach might be to assess this cost to the defendant in the form of an additional fine.

<sup>9</sup>Specifically, Policy Directive 83-075, dated May 3, 1983, Monitoring And Collecting Deferred Payments is hereby rescinded.

STATE OF DELAWARE

Justice of the Peace Court No. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Case No.: \_\_\_\_\_

Dear \_\_\_\_\_:

This letter is to serve notice that you failed to appear on \_\_\_\_\_, 19\_\_\_\_ for \_\_\_\_\_.

You are hereby informed that you are to appear at this court on \_\_\_\_\_ at \_\_\_\_\_ (AM/PM).

Your failure to respond to this notice will be considered as Contempt of Court and a Capias/Bench Warrant will be issued for your immediate arrest.

Very truly yours,

\_\_\_\_\_  
Justice of the Peace

cc: File

STATE OF DELAWARE

Justice of the Peace Court No. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Case No.: \_\_\_\_\_

Dear \_\_\_\_\_:

In reference to the above-captioned case, please be advised that we have not received a payment on your account since \_\_\_\_\_ . According to our records, your present balance is \_\_\_\_\_, and if this is not paid in full on or before \_\_\_\_\_, a capias will be issued for your arrest for failure to pay fines owed to the State of Delaware, and your driver's license will also be suspended.

Your immediate attention is directed to this matter.

Very truly yours,

\_\_\_\_\_  
Chief Clerk

cc: Files