

**ADMINISTRATIVE DIRECTIVE
OF THE
CHIEF JUDGE OF THE COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**

NO. 2010-2

POLICY ON RACIAL AND ETHNIC FAIRNESS

This 16th day of September 2010, IT IS HEREBY DIRECTED, pursuant to 10 Del.C. §1302(d), the authority being vested in the Chief Judge as the administrative head of the Court during the term of his or her appointment;

AND APPEARING THAT:

1. On April 19, 2010 the Delaware Criminal Justice Council adopted a declaration of leading practices to protect civil rights and to promote racial and ethnic fairness in the criminal justice system and called upon agencies and courts to demonstrate a fundamental and complete commitment to racial and ethnic fairness in the criminal justice system.

IT IS THEREFORE DIRECTED THAT:

1. The Court shall implement the attached Racial and Ethnic Fairness Policy to ensure that employees, others working in the Court of Common Pleas, and the general public shall be free from negative and unfair treatment based on race, color, religion, gender, national origin, age, sexual orientation or disability.

2. The attached policy incorporates early intervention into the personnel management practices to protect civil rights and to promote racial and ethnic fairness and promotes bias-free decision making.

3. The attached policy delineates practice for handling both internal and external complaints arising from alleged violations of the Racial and Ethnic Fairness policy.

4. The Court incorporates the attached Use of Force Policy in conjunction with the Racial and Ethnic Fairness policy to ensure a clear policy to specifically address the Use of Force Continuum and alternatives to use of force.

/s/ Alex J. Smalls

Alex J. Smalls

Chief Judge

**STATE OF DELAWARE
COURT OF COMMON PLEAS**

RACIAL AND ETHNIC FAIRNESS POLICY

Adopted: September 16, 2010

The Court of Common Pleas for the State of Delaware, in compliance with Delaware Criminal Justice Council, Declaration of Leading Practices to Protect Civil Rights and Promote Racial and Ethnic Fairness in the Criminal Justice Systems hereby instituted the following policy:

POLICY

It is the policy of the Court of Common Pleas that employees, others working in the Court of Common Pleas and the general public shall be free from negative and unfair treatment based on race, color, religion, gender, national origin, age, sexual orientation or disability, including, but not limited to:

- (1) Epithets, slurs, negative stereotyping, or threatening, intimidating or hostile acts that relate to race, color, religion, gender, national origin, age, sexual orientation or disability, occurring in the Court of Common Pleas;
- (2) Jokes or pranks that are hostile or demeaning with regard to race, color, religion, gender, national origin, age, sexual orientation or disability, occurring in the Court of Common Pleas;
- (3) Written or graphic material that denigrates or shows hostility toward an individual because of his or her race, color, religion, gender, sexual orientation or disability, and is placed on walls, bulletin boards, or is circulated in any manner, or elsewhere displayed on the premises of the Court of Common Pleas.

Any person, employee or public, alleging unfair treatment because of race or ethnicity is encouraged to lodge a complaint with Administration, following the procedures outlined below:

I. INTERNAL COMPLAINTS

A. Complaints of Court of Common Pleas employees against fellow employees should generally be discussed directly between affected employees. If there is no resolution through these discussions, the complaint should be brought directly to the complainant's immediate supervisor and shall be made in a constructive and professional manner. Complaints should not be communicated in the presence of other employees or outside persons.

B. PROCEDURE FOR COMPLAINT RESOLUTION:

1. This procedure applies to merit and non-merit Court of Common Pleas employees for all complaints that do not involve the application of the Merit System Rules or the Merit System statute. Complaints arising from Merit System Rules/Statute and involving Merit System employees shall be processed in accordance with procedures established under the Merit System Rules. See State of Delaware Personnel Office Merit Rules Chapter 59.
2. Whenever appropriate and/or possible, conflicts should be resolved informally between the person making the complaint and the person against whom the complaint is made. (This is not a mandatory step in the process.)
3. If a complaint is not resolved informally between the persons involved, the complaint shall be made to the complainant's immediate supervisor, or, if the complaint is against the

supervisor, to the person immediately above the supervisor. Employees are encouraged to use the written complaint form to lodge their complaints; however, they may first speak with their supervisor more informally if they choose to.

4. The complainant's immediate supervisor will handle the complaint if the complaint is against an employee who they also supervise. If the complaint is against an employee with a different supervisor, the complaint will be communicated to that supervisor by the complainant's supervisor.
5. Supervisors will use professional discretion in determining the form (complainant's written complaint, other summarized writing or verbally) in which the complaint will be communicated.
6. If more than one supervisor is involved, they will work together to try to resolve the complaint.
7. A response concerning any action taken by the supervisor or supervisors or the reason for the taking of no action, should be provided to the complainant within a reasonable period of time by the person with whom the complaint was lodged.
8. If a complaint is not resolved at the initial level (as described above) the next step is to file the complaint with the person at the next level in the chain of command.

II. EXTERNAL COMPLAINTS

- A. Complaints from persons who are not employed by the Court of Common Pleas should be handled fairly and expeditiously.

B. PROCEDURE FOR COMPLAINT RESOLUTION:

1. Anyone alleging unfair treatment due to racial or ethnic background may lodge a formal complaint with the Court of Common Pleas. The formal Complaint Form will be available in the Court Administrator's Office, the Clerk's Office, or on the court's website at <http://courts.delaware.gov/commonpleas>.
2. The form is to be returned to the Court Administrator, clocked in and a clocked-in copy given to complainant.
3. Within five (5) working days of the complaint being clocked in, the Court Administrator or designee will deliver a copy of the complaint to the person whom the complaint is alleged against as well as to their supervisor.
4. The Court Administrator or designee will investigate the complaint through interview and/or written communication as appropriate.
5. The Court Administrator will provide a written response to the complainant within thirty (30) days

**STATE OF DELAWARE
COURT OF COMMON PLEAS**

USE OF FORCE POLICY

Effective Date: September 16, 2010

I. FORWARD

It is in the public interest that a fair and appropriate Use of Force Policy guide the Court of Common Pleas security officers.

II. PURPOSE

This policy recognizes the use of force as a continuum, which needs constant evaluation. Even at its lowest level, the use of force is a serious responsibility. The purpose of this policy is to provide Court of Common Pleas security officers with guidelines on the authorized use of force, without creating any hesitation once a decision is made to use such force.

III. PHILOSOPHY

Ethics and the Use of Force

The use of force by Court of Common Pleas security officers is a matter of critical concern both to the public and the courts. Court of Common Pleas security officers are involved on a daily basis in numerous and varied human encounters and, when the situation requires, may use force in carrying out their duties.

Court of Common Pleas security officers must have an understanding of, and true appreciation for, the limitations on their authority – particularly

with respect to overcoming resistance from those with whom they come in official contact.

IV. POLICY

It is the policy of this court that Court of Common Pleas security officers shall use only that force which is reasonable given the facts and circumstances known at the time of the event to effectively bring an incident under control. "Reasonableness" of the use of force must be judged from the perspective of a reasonable security officer on the scene at the time of the incident.

V. DEFINITIONS

A. LESS THAN LETHAL FORCE

Less than lethal force is that force which is unlikely, when properly used, to result in serious physical injury or death.

B. LETHAL FORCE

Lethal force is that force likely to cause physical injury or death. *Court of Common Pleas security officers are not authorized to use force likely to cause serious physical injury or death.*

C. USE OF FORCE CONTINUUM

A Use of Force Continuum is a visual representation of force options designed to facilitate an understanding of appropriate levels of force by Court of Common Pleas security officers. This is accomplished by establishing parameters, which exhibit the actions

of both the subject and the Court of Common Pleas security officer on a comparative scale.

VI. SITUATION-BASED USE OF FORCE CONTINUUM

The attached use of force continuum (see last page) is designed to provide an overview and visual representation of the force options available to Court of Common Pleas security officers. It is a fluid instrument, which attempts to embody the dynamics of a confrontation.

The court recognizes that building flexibility into Court of Common Pleas security officers' determination of the appropriate use of force is advisable and acceptable – if not essential – given that the standard for elevating a Court of Common Pleas security officer's use of force claim is reasonableness under the facts and circumstances known to the security officer at the time. This is an affirmative stance by the Court of Common Pleas designed to provide additional confidence and needed support to Court of Common Pleas security officers in making their decisions regarding use of force.

A number of factors are taken into consideration when a Court of Common Pleas security officer selects force options and when evaluating whether a Court of Common Pleas security officer has used reasonable force. The Court recognizes that Court of Common Pleas security officers are expected to make split-second decisions and that the amount of time available to evaluate and respond to a situation may impact their decision. The establishment of a policy that includes a use of force continuum provides

additional guidance to Court of Common Pleas security officers' force option selection including, but not limited to:

- Subject factors (age, size, relative strength, skill level, injury, number of security officers versus number of subjects)
- Influence of drugs or alcohol
- Proximity to weapons
- Availability of other options
- Seriousness of the infraction in question
- Other exigent circumstances

Finally, it is important to note that a Court of Common Pleas security officer need not attempt to gain control over an individual by use of the lowest level of force on the continuum when reason dictates and the security officer can articulate that a higher level of force is reasonable. Likewise, skipping steps in the Use of Force Continuum may be appropriate given the resistance encountered.

The continuum should be viewed as an elevator, not a ladder – a Court of Common Pleas security officer may go directly to any level of the continuum providing that the force selected is reasonable. Note the category of actions which fall within the various levels.

A. **ACTIONS OF SUBJECT** (as reasonably perceived by the security officer or based on the security officer's reasonable perception)

- **COOPERATIVE:** Subject is cooperative and complies with verbal commands or other directions.
- **COOPERATIVE, NON-RESPONSIVE OR UNCOOPERATIVE:** Subject is cooperative when taken into custody, or fails to respond to verbal commands or other directions.
- **PASSIVE OR LOW LEVEL RESISTANCE:** Subject is passively or defensively resisting a security officer's authority and direction, including verbal or physical cues of non-compliance.
- **ACTIVE RESISTANCE OR AGGRESSION:** Subject is attempting to interfere with the security officer's actions by inflicting pain or physical injury to the security officer without the use of a weapon or object.
- **ASSAULT OR THREAT OF ASSAULT:** Subject assumes a fighting stance, charges a security officer or verbally or physically indicates intent to commit an assault.
- **LIFE THREATENING ASSAULT OR ASSAULT LIKELY TO CAUSE GREAT BODILY HARM:** Subject commits an attack using an object, a weapon, or an empty hand, wherein the security officer reasonably believes that the assault will result in serious physical injury and/or death.

B. **SECURITY OFFICER RESPONSE OPTIONS**

- **PROFESSIONAL PRESENCE, VERBALIZATION AND RESTRAINING AND DETAINING:** Includes display of authority as a security officer and such non-verbal means of

communication as body language, demeanor, and manner of approach. Verbalization involving the direction, and commands given to the subject. *(This is the most preferred response and should always be attempted before considering other options).* Restraining and detaining includes a security officer laying hands on a subject with the intent of gaining control of the subject. Examples include the use of firm grip, escort position or grapping type of techniques designed to hold a subject down by using the weight of a security officer's body. Also included in this level would be the application of temporary restraining devices such as handcuffs and leg restraints.

- **COMPLIANCE TECHNIQUES:** Includes joint manipulation, pressure point application, and takedown type techniques.
- **INTERMEDIATE (LESS THAN LETHAL) FORCE:** Includes chemical agents such as mace and oleoresin capsicum based products: electrical stunning devices (Advanced Taser), and use of personal weapons such as hands, feet, elbows and knees to strike a subject.
- **LETHAL FORCE:** Includes the use of a firearm or any force, which has reasonable likelihood of causing death or serious physical harm.

VII. REPORTING AND REVIEWING INDIVIDUAL USE OF FORCE INCIDENTS

A. REPORTABLE FORCE DEFINED

An incident wherein security officers, pursuant to their official capacity, use a level of force above the "Restrain/Detain" level of

force, or any incident in which an injury or complaint of injury occurs during the course of contact with a subject.

B. SECURITY OFFICERS' RESPONSIBILITIES

Security officers using reportable force shall:

- Obtain medical assistance for subjects who have sustained injuries or complain of injury, or who have been rendered unconscious
- Promptly notify their supervisor unless exigent circumstances delay the notification
- Document the use of force in an arrest report; and
- Complete a ATUR Advanced Taser Use Report when the taser is used

C. SUPERVISOR RESPONSIBILITIES

When a supervisor becomes aware of the use of reportable force the supervisor shall:

- Assess the incident, conduct an investigation, collect evidence and ascertain witness information
- Promptly prepare a memorandum outlining the circumstance of the use of force, and ensure that all reports have been completed and submitted to the Chief of Security, New Castle County, Court of Common Pleas.

VIII. SITUATION-BASED USE OF FORCE CONTINUUM

SECURITY OFFICER OPTIONS

In Response to:

LEVEL I	LEVEL II	LEVEL III	LEVEL IV
			<i>LETHAL FORCE</i>
		LESS THAN LETHAL FORCE	LESS THAN LETHAL FORCE
	COMPLIANCE TECHNIQUES	COMPLIANCE TECHNIQUES	COMPLIANCE TECHNIQUES
PROFESSIONAL PRESENCE, VERBALIZATION, RESTRAINING AND DETAINING	PROFESSIONAL PRESENCE, VERBALIZATION, RESTRAINING AND DETAINING	PROFESSIONAL PRESENCE, VERBALIZATION, RESTRAINING AND DETAINING	PROFESSIONAL PRESENCE, VERBALIZATION, RESTRAINING AND DETAINING

Actions of the Subject:

Cooperative	Uncooperative, passive or low level resistance	Active resistance or assault behavior or life threatening or assault likely to cause great bodily harm	Life threatening or assault likely to cause great bodily harm
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COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
COMPLAINT FORM

Date: _____

(Please Type or Print)

A. PERSON MAKING THE COMPLAINT:

B. Employee

Non-Employee

[M_____] _____
(Last) (First) (MI)

Address:

(Street) (City) (State) (Zip
Code)

Telephone: Home: _____ Work: _____
(Area Code) (Number) (Area Code) (Number)

C. PERSON COMPLAINT IS AGAINST:

NAME: _____ COURT: _____
(If Applicable)

Position: Clerk Court Manager Judge Security

Date

Your Signature



FOR COURT USE ONLY
NO. _____

COMPLAINT

RECEIVED BY: _____ **DATE:** _____

DIRECTED TO: _____