FAMILY COURT OF THE STATE OF DELAWARE

REVIEW OF COMMISSIONER'S ORDER / RE-ARGUMENTS / MOTION TO REOPEN

What is a Review of Commissioner's Order?

A Request to Review a Commissioner's Order is a way of appealing a Commissioner's decision. By filing this request, you are asking a judge to make a new determination about the portions of the Commissioner's Order to which you object.

How do I Request a Review of Commissioner's Order?

You must file a Request for Review of Commissioner's Order with the Court. These forms are available at the Family Court Resource Centers and on our webpage http://courts.delaware.gov/family

When should I file?

You must file a request for Review Commissioner's Order within **30 days** from the date of the Commissioner's Order. If you fail to file within that timeframe, the Court may not consider your request. You may not appeal a consent or default Order.

What will happen after I file?

After you file your Request for Review of Commissioner's Order, the Court will send you a letter explaining how much it will cost to have a transcript of the hearing prepared. After you have paid for the transcript, it will be sent along with your Request for Review to a Judge for a decision. The Judge will issue an Order informing you of their decision. The Judge can either deny your request, send the Order back to the Commissioner for their reconsideration or issue a new Order.

What if I cannot afford the transcript preparation?

If you cannot afford to pay for the transcript, you may file a Motion to Waive Transcript Fees. In this motion, you should clearly explain to the Court why you cannot pay the costs associated with the preparation of the transcript.

What is a Motion for Re-argument?

A Motion for Re-argument is a request that the Court reconsider an argument that was made during a hearing. The purpose is not to reargue an entire case, rather, to ask the Court to reconsider its decision by briefly rearguing one's position.

Why should I file a motion for re-argument?

You should file a Motion for Re-Argument whenever you want the Commissioner who decided the case to
reconsider his or her decision. It is especially useful if you think the Commissioner misunderstood some of the evidence, made an unintentional mistake, or you don't understand the Commissioner's reasoning. There is no filing fee for a Motion for Re-argument.

When do I file a Motion for Re-argument?

You must file a Motion for Re-argument within 15 days from the date of the Court Order. Motions to Reargue are governed by Family Court Rule of Civil Procedure 59.

How do I file a Motion for Re-argument?

You may obtain a Generic Motion form from the Family Court Resource Center or on our webpage at
http:// www.state.de.us/family. In your Motion for Re-argument, you must briefly and distinctly state your reasons for requesting that the Court reconsider its decision.

What will happen after I file?

After you file your Motion for Re-argument and the Respondent is served with that Motion, the Respondent will have 10 days to file a brief answer to each ground asserted in the Motion. Then, the Court will review the Motion and Answer and determine whether Re-argument will be granted.

Can I file both a Motion for Re-argument and a Review of Commissioner's Order?

You may, but it is not necessary. You have 15 days from the date of the Order to file a Motion for Re- argument. You have 30 days to file for a Review of Commissioner's Order. However, a timely filing for Re- argument stops the time to file a Review of Commissioner's Order. In other words, if your Motion for Re-argument is unsuccessful, you will then have 30 days to file a Review of Commissioner's Order.

What is a Motion to Reopen?

A Motion to Reopen is the only available remedy to get the Court to reconsider a decision after the period allowed for a Motion for Re-argument or Review of a Commissioner's Order. It is especially useful to fix typographical or mathematical errors that are discovered later in time, or to present newly discovered evidence. However, it is also available to persuade the Court for reasons of law or fairness that the original Order should not have issued.

A litigant should carefully read Family Court Civil Rule 60 before filing a Motion to Reopen. In most instances, the person who files such a motion will have to persuade the Court that the alleged flaws in the original decision could not have been fixed by use of the usual appeal process such as a timely Motion for Re-argument or a Review of a Commissioner's Order.

A Motion to Reopen can also be filed if you could not attend the hearing because of an emergency or lack of notice. In your motion, you should describe exactly why you did not attend the hearing on the scheduled date and time. If there was an emergency or some other good reason that prevented you from attending, attach documents to your

Motion to Reopen that show why you were not able to attend the hearing. A filing fee is required on a Motion to Reopen in most types of cases.

How do I file a Motion to Reopen?

You may obtain a Generic Motion form from the Family Court Resource Center or on our webpage at

Family Court - Delaware Courts - State of Delaware

Related Forms:

Form 455 – Request for a Review of Commissioners Order

Form 191, 192, 193 – Generic Motion Packet

All forms can be found on the Family Court Website.

Family Court Contact Information

New Castle County	Kent County	Sussex County
500 NORTH KING STREET	445 SOUTH GOVERNORS AVENUE	100 EAST MARKET STREET
WILMINGTON, DE 19801	DOVER, DE 19904	GEORGETOWN, DE 19947
(302) 255-0300	(302) 672-1000	(302) 855-7400

For more information, visit the Family Court webpage or scan the QR code.