

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ORDER ADOPTING RULE 57.1 OF §
THE RULES OF THE SUPREME §
COURT OF DELAWARE §

Before **SEITZ**, Chief Justice; **VALIHURA**, **VAUGHN**, **TRAYNOR**, and **MONTGOMERY-REEVES**, Justices, constituting the Court *en Banc*.

ORDER

This 28th day of January 2022, it appears to the Court that:

WHEREAS, the three legal-aid agencies in Delaware have worked together in an effort to fund and expand the representation of low-income tenants who are facing eviction, but have faced significant challenges in recruiting a sufficient number of attorneys to assist tenants through a legal-aid office to meet the demand;

WHEREAS, the legal-aid agencies requested that the Supreme Court consider amending the Supreme Court Rules, which already permit the representation of landlord entities by non-attorney agents in eviction proceedings in the Justice of the Peace Court, to permit tenants to be represented by non-attorneys, under the supervision of the legal-aid agencies, in eviction proceedings in the Justice of the Peace Court;

WHEREAS, on July 21, 2021, the Court established a Committee to Examine Amendment of the Supreme Court Rules to Permit Non-Attorney Representation of Tenants in Residential Eviction Proceedings (the “Eviction Representation Committee”);

WHEREAS, the Eviction Representation Committee recommended that the Court adopt a new Rule 57.1 of the Rules of the Supreme Court of Delaware and proposed a draft rule and associated forms;

WHEREAS, the Court has considered the draft rule and determined that it is desirable to adopt the proposed rule;

NOW, THEREFORE, IT IS ORDERED that:

(1) The Rules of the Supreme Court of Delaware are amended to add Rule 57.1 and Forms 57.1-1, 57.1-2, and 57.1-3 as set forth in the attached Exhibit A;

(2) The amendments are effective on March 1, 2022;

(3) The Justice of the Peace Court is directed to review its rules and to make such amendments and additions as may be necessary to make them consistent with the attached rule; and

(4) The Clerk of this Court is directed to transmit a certified copy of this order and Exhibit A to the clerk for each trial court in each county.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice

EXHIBIT A

Rule 57.1. Representation of Residential Tenant by Qualified Tenant Advocate in the Justice of the Peace Court.

(a) Authorized representation as Qualified Tenant Advocate. —

(1) Notwithstanding the provisions of any other Rule of this Court or the Board of Bar Examiners to the contrary, a Qualified Tenant Advocate, as hereinafter defined, may represent a “tenant,” as defined in 25 *Del. C.* § 5141, of a residential property in an action in the Justice of the Peace Court for summary possession under chapter 57 of Title 25 of the Delaware Code. If, after such representation has begun, the issue of possession becomes moot, or is withdrawn or resolved, but another issue or issues between the landlord and tenant remains, the representation may continue. Subject to the limitations set forth in this rule, the Qualified Tenant Advocate may engage in such activities as are necessary or appropriate to prosecute or defend the action, including but not limited to providing advice regarding defenses, engaging in settlement negotiations, filing pleadings or other documents with the Justice of the Peace Court, and appearing before the court.

(2) Written consent. —Before a Qualified Tenant Advocate shall begin such representation, the tenant shall consent thereto by executing Form 57.1-1 attached hereto, which shall be signed by the Supervising Attorney, as hereinafter defined, and filed in the record of the proceedings.

(3) Privilege. —Communications between the tenant and the Qualified Tenant Advocate shall be privileged under the same rules that govern the attorney-client privilege and work-product doctrine.

(b) Eligibility and supervision of Qualified Tenant Advocate. —

(1) Definition. —A “Qualified Tenant Advocate” under this rule is an employee or independent contractor of Community Legal Aid Society, Inc., Delaware Volunteer Legal Services, or Legal Services Corporation of Delaware, Inc. (each, a “Supervising Agency”) who:

(i) has successfully completed a course of training provided by a Supervising Agency regarding Part III of Title 25 of the Delaware Code, the Rules of Evidence, the Rules of the Justice of the Peace Court, and principles of professionalism for lawyers appearing before the Justice of the Peace Court, which principles shall apply to Qualified Tenant Advocates;

(ii) is certified by an attorney at the Supervising Agency to possess competence and eligibility to participate in the Qualified Tenant Advocate program. The certification is to be made on Form 57.1-2 attached hereto and filed with the Clerk of the Supreme Court; and

(iii) has filed with the Clerk of the Supreme Court the oath or affirmation attached hereto as Form 57.1-3.

(2) Supervision. —In any appearance under this rule, the Qualified Tenant Advocate shall be supervised by an attorney of the Supervising Agency, duly admitted to practice in this State (the “Supervising Attorney”). The Supervising Attorney is not required to be personally present when the Qualified Tenant Advocate appears before the court. The Supervising Attorney shall:

(i) ensure that the certification required by section (b)(1)(ii) of this rule and the oath or affirmation required by section (b)(1)(iii) of this rule have been filed before the Qualified Tenant Advocate appears in any proceeding;

(ii) sign the consent to representation as required by paragraph (a)(2) of this rule, and ensure that the consent is filed in the record of any proceeding in which a Qualified Tenant Advocate will appear;

(iii) ensure that the Qualified Tenant Advocate is in compliance with the procedures established by the Justice of the Peace Court for obtaining access to the court’s e-filing system;

(iv) in each matter in which a Qualified Tenant Advocate will appear in the Justice of the Peace Court, enter an appearance as counsel of record, which appearance shall state the names of the tenant or tenants to be represented, identify the Qualified Tenant

Advocate and the Supervising Attorney, and state that the Qualified Tenant Advocate is authorized under this rule to appear in the proceeding;

(v) assume personal professional responsibility for the Qualified Tenant Advocate's guidance in any work undertaken and for supervising the quality of the Qualified Tenant Advocate's work;

(vi) assist the Qualified Tenant Advocate's preparation to the extent that the Supervising Attorney considers it necessary; and

(vii) carry malpractice insurance that will sufficiently cover the Supervising Attorney's supervision of the Qualified Tenant Advocate and the work and actions of the Qualified Tenant Advocate.

(3) Notice of termination by Supervising Agency. —If the Qualified Tenant Advocate leaves the employment of the Supervising Agency or is otherwise no longer eligible to participate in the program, or upon the Supervising Agency's termination of the Qualified Tenant Advocate's participation in the program for any other reason, an attorney at the Supervising Agency shall notify the Clerk of the Supreme Court forthwith. Moreover, in each proceeding in which the Supervising Attorney has entered an appearance in accordance with section (b)(2)(iv) of this rule, the Supervising Attorney shall notify the Justice of the Peace Court promptly, and in no event later than one day before the next scheduled hearing, if the Qualified Tenant Advocate will no longer be representing a tenant or tenants in the proceeding.

(c) Compensation prohibited. —A Qualified Tenant Advocate may neither ask for nor receive any compensation or remuneration of any kind from or on behalf of the tenant. This shall not prevent the Qualified Tenant Advocate from receiving compensation from the Supervising Agency, nor shall this prevent any Supervising Agency from seeking compensation for its services that it may otherwise properly request or receive.

(d) Applicability of Rule 11, Sanctions. —By representing a tenant as a Qualified Tenant Advocate, the Qualified Tenant Advocate shall be subject to the requirements and sanctions applicable to attorneys that are set forth in Justice of the Peace Court Civil Rule 11.

(e) Revocation. —The ability of a non-lawyer to represent a tenant as a Qualified Tenant Advocate under this rule is a privilege, not a right. A Qualified Tenant Advocate's authorization to appear in any particular proceeding shall be subject to revocation by the Chief Magistrate, exercising his or her sole discretion. A Qualified Tenant Advocate's eligibility under this rule shall be subject to termination by this Court, in its sole discretion, upon review of a recommendation of the Chief Magistrate.

Form 57.1-1 Consent to Representation

(CASE CAPTION)

I, [name], am a [plaintiff/defendant] in the above-entitled summary-possession matter in the Justice of the Peace Court. [Name of Supervising Agency] has arranged for me to be represented in this matter by [name of Qualified Tenant Advocate], under the supervision of [name of Supervising Attorney], an attorney admitted to practice law in the State of Delaware. I have been given a copy of Rule 57.1 of the Supreme Court of the State of Delaware. I understand that [Name of Qualified Tenant Advocate] is not an attorney but is authorized to provide representation to tenants in summary-possession actions in the Justice of the Peace Court under the supervision of a Delaware attorney. I consent to representation by [Name of Qualified Tenant Advocate], and I voluntarily and knowingly waive any right I may have to representation by a member of the Delaware Bar.

Dated: _____
_____ [Tenant]

STATE OF DELAWARE

COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this _____ day of _____ 20__.

(Duly authorized official)

I agree to provide the representation described above in accordance with Rule 57.1.

[Qualified Tenant Advocate]

I will supervise [Name of Qualified Tenant Advocate] in accordance with Rule 57.1, and I hereby assume personal professional responsibility for the Qualified Tenant Advocate's guidance in any work undertaken, and for supervising the quality of the Qualified Tenant Advocate's work.

[Supervising Attorney]

Form 57.1-2 Certification of Qualified Tenant Advocate

Name of Qualified Tenant Advocate

Date

To: The Justices of the Supreme Court of the State of Delaware

Re: The Application of [Name of Qualified Tenant Advocate] for permission to participate as a Qualified Tenant Advocate under Rule 57.1 of the Rules of the Supreme Court of the State of Delaware.

I, [Attorney of Supervising Agency], an attorney duly admitted to practice in the State of Delaware, affirm and certify the following:

I am an attorney at [Name of Supervising Agency]. Upon the facts known to me, [Name of Qualified Tenant Advocate] (1) is competent and eligible to participate as a Qualified Tenant Advocate under Rule 57.1 of the Rules of the Supreme Court of Delaware; (2) has not been disbarred from, and is not currently under suspension or probation with respect to the practice of law in any state or jurisdiction within the United States; (3) has not been convicted of a crime involving dishonesty or false statement in the ten-year period immediately preceding the date of this certification; (4) has not been determined to have engaged in the unauthorized practice of law in this or any other jurisdiction; and (5) has not had any prior authorization under this Rule revoked by the Chief Magistrate or the Supreme Court of Delaware.

[Attorney of Supervising Agency]

Form 57.1-3 Oath or affirmation.

I, [Name of Qualified Tenant Advocate], do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Delaware; I will conduct myself before the Justice of the Peace Court strictly in accordance with Supreme Court Rule 57.1 and any implementing Rule of the Justice of the Peace Court; I will behave myself according to the best of my learning and ability and with all good fidelity to the Court as well as to the client; I will use no falsehood nor delay any person's cause through lucre or malice; and I will abide by the Delaware Lawyers' Rules of Professional Conduct to the best of my ability.

[Qualified Tenant Advocate]

Witnessed:

[Attorney of Supervising Agency]

Dated: _____

STATE OF DELAWARE

COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this _____ day of _____ 20__.

(Duly authorized official)