

Review of Commissioner's Order/Re-arguments

A GUIDE TO APPEALING A COMMISSIONER'S DECISION IN THE FAMILY COURT

FAMILY COURT OF THE STATE OF DELAWARE

<https://courts.delaware.gov/family>

What May I File?

Request For Review of Commissioner's Order

- You want to appeal an order from a Commissioner
- You want a Judge to review the hearing and the Commissioner's decision.
- You are prepared to pay the costs of a transcript

Motion for Re-argument

- You want the Court to reconsider its decision
- You want to reargue your position to the hearing officer that issued the decision.
- You are prepared to briefly reargue your position in your motion.

Rule 60 Motion

- You believe that the Court made a clerical or mathematical error in its decision
- You have newly discovered evidence to present to the Court

1. 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.

2. 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>

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. When do I file a Motion for Re-argument?

You must file a Motion for Re-argument within **10 days** from the date of the Court Order.

Motions to Reargue are governed by Family Court Rule of Civil Procedure 59.

9. 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.

10. What will happen after I file?

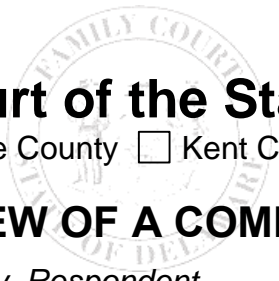
After you file your Motion for Re-argument and the Respondent is served with that Motion, the Respondent will have 10 days to file a brief answer to each ground asserted in the Motion. Then, the Court will review the Motion and Answer and determine whether Re-argument will be granted.

11. 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 10 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.

12. What is a Motion to Reopen?

A Motion to Re-open 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. 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 Re-open. 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 and/or a Review of a Commissioner's Order. A filing fee is required on a Motion to Re-open in most types of cases.



The Family Court of the State of Delaware

In and For New Castle County Kent County Sussex County

REQUEST FOR REVIEW OF A COMMISSIONER'S ORDER

Petitioner

v. Respondent

Name	Name	File Number
Street Address	Street Address	
Apt. or P.O. Box Number	Apt. or P.O. Box Number	Petition Number
City State Zip Code	City State Zip Code	
Attorney Name and Phone Number	Attorney Name and Phone Number	

(If party seeking the Review of a Commissioner's Order is the Original Petitioner in a **PROTECTION FROM ABUSE** action, please **DO NOT DISCLOSE YOUR ADDRESS** above, as a copy of this request must be mailed to the Respondent.)

1. I am the original Petitioner Respondent in this action.

2. Nature of Proceedings:

3. _____, Petitioner herein, appeals the Order Entered by _____ Commissioner and dated _____

4. Objections to the Commissioner's Order (*Please set forth specific objections to the Commissioner's Order, and describe in detail the basis for each objection*):

5. I hereby request that a transcript of the proceedings before the Commissioner be prepared

- I certify that I will pay all costs associated with the preparation of the transcript.
- I certify that I have completed and attached an Affidavit to Proceed In Forma Pauperis and Motion to Waive Transcript Fees

Date

Petitioner/Petitioner's Attorney

VERIFICATION

STATE OF DELAWARE)
) ss.:
COUNTY OF _____)

_____, being duly sworn, says:

I _____. Affirm that a true and correct copy of this Request for Review of a Commissioner's Order was placed in the U.S. Mail on the _____ day of _____, _____ and sent to the last known address of the other party or attorney, being _____, first class postage prepaid.

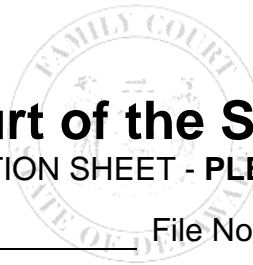
Subscribed and sworn before me on this date,

Movant/Attorney/Court Staff

Date

Clerk of Court/Notary Public

NOTE: IN PROTECTION FROM ABUSE CASES ONLY, THE AFFIDAVIT OF MAILING ONLY APPLIES WHEN THE REQUEST FOR REVIEW OF COMMISSIONER'S ORDER IS BEING FILED BY THE ORIGINAL PETITIONER. IF THE REQUEST FOR REVIEW OF COMMISSIONER'S ORDER IS BEING FILED BY THE ORIGINAL RESPONDENT IN THIS ACTION, A TRUE AND CORRECT COPY OF THE MOTION WILL BE SENT TO THE ORIGINAL PETITIONER BY COURT STAFF.



The Family Court of the State of Delaware

INFORMATION SHEET - PLEASE PRINT

Date: _____ File No.: _____

**Please fill in A to K pertaining to you the Applicant/Petitioner. (For additional petitioners use additional sheets)
PLEASE PRINT CLEARLY**

A. Name: _____

B. Address: _____

City/State/Zip: _____

C. Phone – Home: _____ Work: _____ Cell: _____

D. Employer & Address: _____

Hours/Shift _____

E. Social Security No.: _____ F. Date of Birth: _____

G. Place of Birth (City & State): _____

H. Sex: _____ Race: _____ Height: _____ Weight: _____ Hair: _____ Eyes: _____

Marks/Scars/Tattoos: _____

I. Type of motor vehicle operated by you: _____

J. Driver's License No.: _____ State of Issue: _____ Expiration Date: _____

K. Your relationship to the Defendant/Respondent: _____

L. Attorney: _____

I authorize Family Court to deliver court orders in my case(s) to my email address instead of to my mailing address. My email address is: _____.

*Please note that if you provide an email address, all orders in your pending civil cases in Family Court will be sent in an encrypted email via Egress to the email address provided and will not be mailed to your physical address. For information on how to receive encrypted emails through Egress, please visit <https://judicial.state.de.us/courtdox/Download.aspx?id=94888&court=readonly>.

Please fill out the information below in reference to the child(ren) who are involved.

Children

Name	Relationship	Sex	Race	D.O.B.	SSN	Birthplace City & State

Please fill in L to Y pertaining to the Defendant/Respondent. (For additional respondents use additional sheets)

M. Defendant/Respondent is a: (Check One) ADULT JUVENILE

N. Name: _____

O. Address: _____

City/State/Zip: _____

P. Phone – Home: _____ Work: _____ Cell: _____

Q. Employer & Address: _____

Hours/Shift _____

R. Social Security No.: _____ S. Date of Birth: _____

T. Place of Birth (City & State): _____

U. Relationship to Child: Not Applicable Mother Father Relative Non-Relative

Other (Please Describe) _____

V. Sex: _____ Race: _____ Height: _____ Weight: _____ Hair: _____ Eyes: _____

Marks/Scars/Tattoos: _____

W. Driver's License State & No.: _____ X. Type of vehicle operated by Defendant/Respondent: _____

Y. Parent's Name (if a juvenile): _____

Z. Time when Respondent is usually home: _____

AA. Additional information about Respondent that may aid the process server in locating him/her to serve petition:

DIRECTIONS TO RESPONDENT'S RESIDENCE