

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

**IN RE: AMENDMENT TO SUPERIOR COURT RULES TO AMEND
 RULES 3 (e), 4, 71.2, 71.3 AND 133**

This 13th day of August, 2025, **IT IS HEREBY ORDERED** that:

1. Superior Court Civil Rule 3 (e) is amended by adding the underlined text and deleting the strikethrough text:

Rule 3. Commencement of an action.

(e) ~~Deposit~~Nonrefundable deposit for costs. The Prothonotary shall not file any paper or record or docket any proceeding until ~~the required~~a nonrefundable deposit for costs and fees has been made. Before any civil suit, action or other proceeding is instituted in the Superior Court, the Prothonotary shall demand and receive the sum of ~~\$125200~~, as a deposit of guaranty for the payment of the fees and costs in the Prothonotary's office, and the Prothonotary shall apply the sum of ~~\$125200~~ from time to time in payment of such fees and costs in that office. If the amount of the deposit is not exhausted in payment of such fees and costs, any balance is not refundable and shall be retained by the Prothonotary's office at the end of the case. If the sum of ~~\$125200~~ is expended in the payment of the fees and costs in the Prothonotary's office as the fees and costs accrue from time to time, the Prothonotary shall demand and receive a sufficient amount, which shall be necessary, in the Prothonotary's judgment, to defray the fees and costs for additional service or services before any such additional service or services shall be performed by the Prothonotary. This Rule shall not apply to any suit, action or other proceeding which is exempted by law from the requirement of a deposit for costs.

~~A~~A nonrefundable deposit of not less than \$750 shall be required in every case where a special jury is requested.

Before any third-party complaint is filed, the Prothonotary shall demand, and receive, from the party who filed it, the sum of ~~\$125200~~ as a deposit of guaranty for the payment of the fees and costs in the Prothonotary's office arising out of the third-party complaint; and the Prothonotary shall apply the sum of ~~\$125200~~

from time to time in payment of such fees and costs in that office. If the amount of the deposit is not exhausted in payment of such fees and costs, any balance is not refundable and shall be retained by the Prothonotary's office at the end of the case. If the sum of \$125200 is expended in the payment of such fees and costs as they accrue from time to time, the Prothonotary shall demand and receive from the filing party a sufficient amount which shall be necessary, in the Prothonotary's judgment, to defray the fees and costs for additional services with respect to the third-party complaint before any additional services shall be performed by the Prothonotary.

2. Superior Court Civil Rule 4 (a) and (e) are amended by adding the underlined text and deleting the strikethrough text:

Rule 4. Process.

(a) *Issuance of Writs.* Upon the commencement of an action, ~~the Prothonotary shall forthwith issue the process specified in the praecipe and shall deliver it for service to the sheriff of the county or counties specified in the praecipe or to a person especially appointed by the Court to serve it.~~ The party requesting the issuance of process shall prepare a form thereof for signature by the Prothonotary under the seal of the Court. That form shall be filed with the complaint. Blank forms shall be provided by the Prothonotary on request of a party. Upon direction of the plaintiff in the praecipe, separate or additional process shall issue against any defendants. The Prothonotary shall forthwith issue the process specified in the praecipe and shall add the signed and sealed process to the electronic docket. After the process is added to the electronic docket, the plaintiff shall deliver the necessary service documents to the sheriff of the county or counties specified in the praecipe or to a person especially appointed by the Court to serve it.

(e) *Process and complaint to be served together.* The process, complaint and affidavits, if any, shall be served together. ~~The Prothonotary shall furnish the person making service with such copies as are necessary.~~ After the process is issued, the plaintiff shall deliver the necessary service documents to the sheriff of the county or counties

specified in the praecipe or to a person especially appointed by the Court to serve it. Service shall be made as follows:

3. Superior Court Civil Rule 71.2 is repealed:

Rule 71.2. Medical ~~malpractice~~ negligence.

~~Repealed, effective August 13, 2025. (a) *In general.* This rule is applicable to all cases commenced in this Court alleging health care malpractice medical negligence within the meaning of 18 Del. C. Chapter 68. To the extent practicable this rule shall be construed consistently with all other civil rules of this Court. Where there is a conflict between the provisions of this rule and other rules of this Court in a proceeding commenced pursuant to 18 Del. C. Chapter 68 the provisions of this rule shall govern. The requirements contained in this rule may be changed by the Court for good cause shown or by agreement among the parties subject to approval by the Court.~~

~~(b) *Demand for review panel hearing.* A party may file a demand to convene a malpractice review panel at any time subsequent to entry of appearance by all defendants who have been served and after a reasonable time for discovery unless otherwise stipulated to by the parties or ordered by the Court. If a party files a motion for summary judgment, any other party that desires a malpractice review panel must file a demand to convene within 10 days after the filing of the opening brief in support of the motion for summary judgment, at which time the summary judgment proceedings may be stayed pending the review panel's decision. The parties may agree that certain issues may be decided by summary judgment (for example, statute of limitations) and other issues reserved for the panel. If the parties are unable to agree, the Court will determine which matters are to be decided. Once a demand to convene a malpractice review panel has been filed, no party may move for summary judgment or dismissal unless otherwise stipulated to by the parties or ordered by the Court. If the Court rules that any matter raised in the pleadings is barred as a matter of law, then neither party may thereafter submit any issue that was so barred to the malpractice review panel. Once a case has been pre-tried before the Court and scheduled for trial, no party may file a demand to convene a malpractice review panel unless stipulated to or ordered by the Court.~~

~~(c) *Motion for review of panel opinion.* Any party who files a motion for review of a malpractice panel opinion pursuant to 18 Del. C. § 6812 shall simultaneously certify to the Prothonotary and the panel reporter those portions of the panel record to be considered by this Court. Within 5 days of the receipt of such certification any other party to the proceeding shall certify in the same manner any additional portions of the panel record to be considered by this Court. The moving party shall file any brief in support of the motion for review within 20 days of receipt of the panel record from the panel reporter; any other party shall file any answering brief within 20 days of receipt of movant's brief. Thereafter the Court shall decide the motion for review based upon the record before it and without oral argument unless the Court so orders. There shall be no remand of the matter to the panel following decision on a motion for review unless, on application of a party, the Court finds that (1) on its face the panel decision does not conform to the requirements of 18 Del. C. § 6811, or (2) there was an irregularity or impropriety in the review panel proceedings that substantially impaired the integrity of the review panel proceedings. A party who files a motion for review shall bear the cost of preparing the certified transcript of the panel proceedings, such costs to be taxable at the conclusion of the case pursuant to Rule 54(d).~~

~~(d) *Submission of panel opinion to jury.* In the event the case is tried before a jury, and on application of a party, any malpractice review panel opinion that has been rendered in the matter will be read under appropriate instructions by the Court and the opinion shall then be introduced into evidence as the first exhibit of the moving party.~~

4. Superior Court Civil Rule 71.3 is amended by adding the underlined text and deleting the strikethrough text:

Rule 71.3. Forfeitures pursuant to 16 Del. C. { 4784.

(a) Notification of seizure. -- Notification of seizure pursuant to 16 Del. C. { 4784(j) shall be made within 60 days of the date of seizure. In addition to the notification of seizure required by 16 Del. C. { 4784(j), should any known party having a possessory interest in the seized property be incarcerated, the State shall send notification of seizure by first class mail sent to the correctional facility in which said party is confined. In all such cases, the notification shall consist of:

- (1) A description of the seized property,
- (2) The person or persons seized from,
- (3) The seizing agency,
- (4) The time and place where the seizure took place, and,
- (5) A statement that persons claiming an interest in said property may seek to have it returned pursuant to Superior Court Civil Rule 71.3(c) by filing a petition with the Superior Court in the County in which the property was seized no later than 45 days after the date of the notice, to establish: (1) that they have a lawful possessory interest in the seized property; and (2) the property was unlawfully seized or not subject to forfeiture under 16 Del. C. { 4784.

(b) Application for forfeiture. -- At any time after the expiration of 45 days from the date of the last notice required by 16 Del. C. { 4784(j) and paragraph (a) of this Rule, the State may obtain an order from the Superior Court forfeiting property seized pursuant to 16 Del. C. { 4784 by filing, costs prepaid, an application in rem with the Superior Court sitting in the County in which the property was seized. Such application, which shall be under oath, shall set forth the following:

- (1) A description of the property to be forfeited;
- (2) The date of the seizure of such property;
- ~~(3)~~ (3) a statement of the unlawful act or omission to which the property is alleged to be connected;
- (4) if the item is not currency, the approximate value of the item
- (5) Proof of the mailing and publication of the notice required by 16 Del. C. { 4784(j) and an affidavit of mailing the notification required by paragraph (a) of this Rule; and
- ~~(4)~~ (6) A statement that no petition for the return of such property has been filed. Applications for forfeiture may be consolidated under one application provided that each separate article can be identified.

(c) Petition for the return of property. -- An owner or interest holder may seek the return of property seized by the State pursuant to 16 Del. C. { 4784 by filing, costs prepaid, a civil petition, with the Superior Court sitting in the County in which the property was seized no later than 45 days after the date of the notice required by 16 Del. C. { 4784(j) measured from the date of mailing or the date of publication whichever shall be later. Such petition which must be signed by the owner or interest holder, under oath, and which must be served on the Attorney General, shall set forth the following:

- (1) The name and address of the claimant;
- (2) A description of the property sought to be returned;
- (3) The nature and extent of the claimant's possessory interest in the property;
- (4) The date, identity of the transferor, and circumstances of the claimant's acquisition of the interest in the property;
- (5) The specific provisions of 16 Del. C. { 4784 relied on in asserting that it is not subject to forfeiture; and
- (6) All essential facts supporting each assertion.

If the petition is not timely filed, the State may proceed as provided in paragraph (b) above.

(d) Trial. –

(1) Except where a jury trial is demanded pursuant to Rule 38(b), unless otherwise ordered, no later than 90 days following the filing of the petition, the Court shall hold a non-jury trial at which the claimant shall have the burden of proving, by a preponderance of the evidence, a lawful possessory interest in the seized property and that the property was unlawfully seized or is not subject to forfeiture under 16 Del. C. { 4784.

(2) If the Court determines that the property is subject to forfeiture, it shall also determine whether any lawful lienholder who has filed a timely petition had knowledge, or reasonably should have had knowledge, of such intended unlawful use. If the Court shall find such knowledge, then the lienholder's rights, title and interest to the property shall likewise be deemed forfeited. If the Court does not find such knowledge and the property is otherwise subject to forfeiture, it shall be forfeited and the person into whose custody the property is given shall either pay the outstanding indebtedness secured by such lawful lien and keep the property or deliver the property to the said lienholder.

(3) If a trial by jury is demanded, the Case Scheduling Office shall set a trial date as may be available. At such a trial, the jury shall make those determinations required by the Court under subparagraphs (1) and (2) above, based upon a preponderance of the evidence.

(e) Ex parte orders. -- The Court may issue at the request of the State ex parte any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought. Process for seizure of said property shall issue only upon a showing of probable cause, and

the application therefore and the issuance, execution, and return thereof shall be subject to the provisions of 16 Del. C. § 4784.

(f) Effect of conviction, acquittal or dismissal. -- (1) A defendant convicted in any criminal proceeding is precluded from later denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding brought pursuant to this Rule, regardless of the pendency of an appeal from that conviction. (2) An acquittal or dismissal in a criminal proceeding does not preclude civil proceedings under this Rule.

~~(g) Interests of third parties. — If the property is declared forfeited in accordance with subdivisions (b) or (d) of this Rule, the Court shall require public notice of the forfeiture for a period of not less than thirty (30) days, with direct notice to such parties as the Court deems appropriate. Any person, other than those who received notification of seizure pursuant to paragraph (a) of this Rule, who claims an interest in said property may appear and assert such interest in a manner and within such time as the Court may direct in said notice. If the Court is satisfied that said party has asserted a legitimate interest in said property and that said party had no knowledge or reasonably should not have had such knowledge of the intended unlawful use to which the property had been put, the Court shall protect said interest in any final disposition of the property on such terms and conditions as the Court deems just.~~

5. Superior Court Civil Rule 133 is amended by adding the underlined text and deleting the strikethrough text:

Rule 133. Single-transaction guardianship; settlement of tort claims for disabled person.

(a) In a settlement of a single-transaction matter arising out of a tort claim for a person with a disability, including persons under the age of 18, the Court may, in its discretion, enter an order:

- (1) approving the settlement;
- (2) approving the disbursement of funds for the payment of the expenses of prosecuting the tort claim, subrogation claims and unpaid obligations of the person with a disability associated with the tort claim;
- (3) in matters involving settlement of tort claim(s) for persons under the age of 18 involving property or funds the gross amount of which is \$25,000 or less, inclusive

of costs and attorney's fees, approving the deposit of the net settlement funds in a Uniform Transfer to Minor Act ("UTMA") account for the benefit of the minor without the need to appoint a guardian for the minor's property;

(4) in matters involving settlement of tort claim(s) for persons under the age of 18 involving property or funds the gross amount of which is in excess of \$25,000, inclusive of costs and attorney's fees:

(i) approving the placement of the net settlement funds in a court-approved annuity or structured financial instrument for the benefit of the minor without the need to appoint a guardian for the minor's property; or

(ii) approving the placement of no greater than \$25,000 of the net settlement funds in a UTMA account, with the balance of the net settlement funds to be placed in a court-approved annuity or structured financial instrument for the benefit of the minor without the need to appoint a guardian for the minor's property; or

(5) appointing a guardian of the property of the person with a disability to be derived from the settlement, subject to the following:

(i) if the person with a disability is less than 18 years of age, settlement funds which are placed in a UTMA account of no greater than \$25,000, a court-approved annuity, or a structured financial instrument for the benefit of the person, may be excluded from guardianship property; and

(ii) if the petition to authorize the tort settlement proposes that all net settlement funds be placed in a manner qualifying for approval under (a)(3) or (a)(4) of this rule, a guardian for the property will be appointed only upon good cause shown, in the best interests of the minor, for the purpose of protecting the estate and maximizing benefits available to the minor, including public benefits.

(b) Upon entry of an order pursuant to subsection (a)(5), jurisdiction shall be transferred to the Court of Chancery for administration of the guardianship property pursuant to Chapter 39, Title 12 of the

Delaware Code. Notwithstanding the foregoing, the Superior Court shall retain jurisdiction with respect to the enforcement of its orders issued pursuant to this Rule

(c) Any annuity or structured financial instrument approved under this rule shall provide for payment of funds to the minor no earlier than the date the minor reaches majority, and shall prohibit the encumbrance, liquidation, sale, or other transfer of the policy before such time. Unless otherwise ordered, proof of the annuity or structured financial instrument shall be filed within 60 days of the entry of the order approving the settlement.

(d) The proposed form of Order for settlements involving monies being deposited into a UTMA account shall be consistent with Superior Court Form Rule 133A.

(e) A petition supporting the relief sought under this Rule shall be supported by an affidavit. The affidavit shall be consistent with Superior Court Form Rule 133B.

(f) The Petition shall also be accompanied by medical reports, affidavits or other evidence satisfactory to the Court for the Court to be able to make an independent determination that the proposed settlement is fair and reasonable in light of the facts and circumstances giving rise to the minor's claim, and, in the absence of such evidence, the Court may require oral testimony. The Petition must also include an affidavit evidencing the non-petitioning parent's consent to the settlement or an affidavit from the petitioner stating the reasons the non-petitioning parent's consent cannot be obtained.

For settlement petitions with gross settlement proceeds of less than \$50,000, the Court will decide such petitions to authorize the settlement on the papers submitted unless otherwise ordered by the Court. All other petitions to authorize a settlement shall be heard in open court, with the person with a disability present, unless otherwise ordered.

(g) Notwithstanding anything to the contrary in Superior Court Civil Rule 5(g), any petition, and accompanying documents filed pursuant to Rule 133, will be deemed filed under seal without the need to file a separate motion to seal the pleadings. The Court retains discretion to unseal any filings as necessary or appropriate.

~~(d) A petition to authorize settlement of a tort claim for a person with a disability shall be accompanied by medical reports, affidavits or other evidence satisfactory to the Court and, in the absence of such evidence, the Court may require oral testimony. For settlements~~

~~meeting the criteria of (a)(3) of this rule, the Court will decide petitions to authorize the settlement on the papers submitted unless otherwise ordered by the Court. All other petitions to authorize settlement shall be heard in open court, with the person with a disability present, unless otherwise ordered.~~

Superior Court Form Rule 133A and Form Rule 133B are attached as Exhibit A.

6. These Rule changes shall take effect September 1, 2025.

BY THE COURT:

/s/ Eric M. Davis
President Judge

oc: Prothonotaries

cc: Superior Court Judges

Superior Court Commissioners

Kathleen M. Jennings, Attorney General

Kevin O'Connell, Public Defender

Court Administrators

Michael Ferry, Director of Operations

Charlene Wickman, Lexis Nexus

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