Family Court Rules of Criminal Procedure

I. Scope, Purpose, and Construction

Rule 1. Scope; title; effective date; definitions; application of terms.

(a) *Scope.* These rules shall govern the procedure in the Family Court of the State of Delaware in all criminal and delinquency proceedings.

(b) *Title.* These Rules may be known and cited as the "Family Court Rules of Criminal Procedure."

(c) *Effective date.* These Rules shall take effect on January 1, 1987. They shall govern all criminal and delinquency proceedings commenced after the effective date of these Rules, and shall apply, so far as is just and practicable, to all proceedings pending after the effective date of these Rules even though commenced before such effective date.

(d) *Definitions.* For the purpose of these Rules, unless the context requires otherwise, any words used herein which are also defined in Title 10 of the Delaware Code shall have the same meaning.

(e) *Application of terms.* As used in these Rules, the words "Attorney General" shall include any deputy attorney general; "committing magistrate" shall include a master or any judicial officer authorized to issue a warrant for a person alleged to have committed a violation of the law; "crime" shall, in the case of a child, mean "act of delinquency"; "criminal" shall similarly include "delinquent"; "defendant" shall similarly include "respondent"; "demurrer," "motion to quash," "plea in abatement," "plea in bar" and "special plea in bar" or words to the same effect in any statute of this State shall be construed to mean the motion raising a defense or objection provided in Rule 12; "felony" shall also mean "act of delinquency which would constitute a felony if committed by an adult"; "guilt" shall, in the case of a child, mean "delinquency"; "guilty" shall similarly mean "delinquent"; "misdemeanor" shall also mean "act of delinquency which would constitute a misdemeanor if committed by an adult"; "plead" shall, in the case of a child, mean "admit or deny"; "plead guilty" shall similarly mean "admit"; "plead not guilty" shall similarly mean "deny"; "pleas" shall similarly mean "admissions or denials;" "Public Defender" shall include any assistant public defender; "sentence" shall, in the case of a child, mean "disposition"; and "trial" shall similarly mean "fact-finding hearing."

Rule 2. Purpose and construction.

(a) *Purpose.* The Rules are intended to provide for the just determination of every criminal and delinquency proceeding and are adopted by the Family Court pursuant to its statutory authority to adopt rules for court administration, practice and procedure, not inconsistent with statute.

(b) *Construction.* These Rules shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay. If a Rule or subdivision thereof is invalid, all valid parts that are severable from the invalid part shall remain in effect. If a Rule or subdivision thereof is invalid in one or more of its applications, the Rule or subdivision thereof remains in effect in all valid applications that are severable from the invalid applications.

II. Preliminary Proceedings

Rule 3. Commencement of action.

(a) *Commencement.* Proceedings may be instituted by filing of an information, petition or complaint, or as otherwise provided by the Constitution of this State, by statute, or by these Rules.

(b) *Complaint filed in another court.* A complaint filed in another court may be forwarded forthwith to this Court; or, if appropriate under the circumstances, a committing magistrate may issue a warrant for the person alleged to have violated any law, order or act within the jurisdiction of this Court.

(c) *Contents of the complaint.* The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a committing magistrate and may be based upon personal knowledge or upon reasonable information and belief.

Rule 4. Warrant or summons upon complaint.

(a) *Issuance.* If it appears from the complaint or from an affidavit or affidavits filed with the complaint that there is probable cause to believe that an offense has been committed and that the person charged has committed it, a warrant to take into custody the person charged may issue to any officer authorized by law to execute same. If a warrant is not issued, upon receipt of the original complaint, this Court may issue a summons instead of a warrant. If a person charged fails to appear in response to the summons, or there is a reasonable cause to believe the person will not appear, a warrant may issue. In any case in which it is lawful for an officer to take into custody without a warrant a person charged, the officer may issue a summons instead of taking the person charged into custody.

(b) *Form.*

(1) *Warrant.* The warrant shall be signed by the committing magistrate; it shall contain the name of the person charged and a description (age, race, sex, date of birth, color of hair and eyes, height and weight and present or last known address) and, if the person's name or full description is unknown, any name or description by which that person can be identified with reasonable certainty. It shall describe the offense charged in the complaint but need not set out all the elements of the offense. It shall command that the person charged be taken into custody and brought before the nearest available Justice of the Peace of the county in which the offense is alleged to have been committed, unless the warrant is signed by a person other than a Justice of the Peace, in which case the warrant may command that the person charged be taken into custody and brought before the committing magistrate or court out of which the warrant was issued. A copy of the complaint shall be attached to the warrant.

(2) *Summons.* The summons shall be in the same form as the warrant except that it shall summon the person charged to appear before the Court at a stated time and place. A copy of the complaint shall be attached to the summons.

(c) *Execution or service and return.*

(1) *By whom.* The warrant shall be executed by any officer authorized by law. The summons may be served by any person authorized to serve a summons in a civil action.

(2) *Territorial limits.* The warrant may be executed or the summons may be served at any place within the jurisdiction of the State of Delaware.

(3) *Manner.* The warrant shall be executed by the taking into custody the person charged. The officer need not have the warrant in possession at the time of the apprehension, but, upon request, shall show the warrant to the person charged as soon as possible. If the officer does not have the warrant in possession at the time of apprehension, the officer shall then inform the person charged of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a person charged by delivering a copy to the person charged personally, or by leaving it at the person's

dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the last known address of the person charged.

(4) *Return.* The officer executing the warrant shall make return thereof to the committing magistrate before whom the person charged is brought. At the request of the Court or Attorney General any unexecuted warrant shall be returned to and may be cancelled by the judge or other person by whom it was issued. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the judge, master or other person before whom the summons is returnable.

(d) *Defective complaint, warrant or summons.*

(1) *Amendment.* No person taken into custody under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any formal defect in the complaint, warrant or summons, which may be amended so as to remedy any such formal defect.

(2) *Issuance of new warrant or summons.* If it appears that the complaint, warrant or summons does not properly name or describe the person charged, or the offense charged, or that although not guilty of the offense specified in such complaint, warrant or summons there is reasonable ground to believe that the person is guilty of some other offense, the committing magistrate shall not discharge or dismiss such person charged but shall forthwith cause a new complaint to be filed and shall thereupon issue a new warrant or summons.

Rule 5. Initial appearance before the committing magistrate.

(a) *Taking an adult into custody.*

(1) *Initial appearance.* Any peace officer taking into custody, with or without a warrant, an adult charged with an offense within the original jurisdiction of this Court may take the person apprehended without unreasonable delay before:

(a) the nearest available Justice of the Peace; or

(b) the court out of which the warrant issued, all in accordance with the command of the warrant.

When apprehension is made without a warrant, a complaint shall be filed forthwith which shall comply with the requirements of Rule 4(a) with respect to the showing of probable cause.

(2) *Statement by the committing magistrate.* The adult charged shall not be called upon to plead. The committing magistrate shall inform the adult of the charge and of any affidavit filed therewith, of the right to retain counsel, of the right to request the assistance of the Public Defender if indigent, and of the general circumstances under which pretrial release may be secured. The committing magistrate shall inform the adult charged that the adult is not required to make a statement and that any statement made may be used against that adult. The committing magistrate shall allow the adult charged reasonable time and opportunity to consult counsel and shall admit the adult to bail with appropriate conditions of continued release that may include a requirement to appear in this Court at a specified time for a review of bail, as provided by statute or in these Rules.

(3) *Records.* After concluding the proceeding the committing magistrate shall transmit forthwith to the Clerk of the Court for the proper county all papers in the proceeding and any bail taken.

(4) *Bond review hearing.* If the adult charged or any adult material witness shall have been committed to a facility of the Department of Adult Correction in default of bail, by a committing magistrate, such person shall be delivered to this Court at its next session to review the bond fixed by such committing magistrate and this Court may (1) approve the bond, or (2) fix new bond in a greater or lesser amount, or (3) require different surety, or (4) release such person on own recognizance without surety, or (5) make such other disposition as may be appropriate.

(b) *Taking a child into custody.*

(1) *Duties of peace officer.* Any peace officer who takes a child into custody shall immediately attempt to notify the child's custodian of this fact. Without unreasonable delay after apprehending a child without a warrant a peace officer shall:

(a) release the child to the child's custodian with a brief report of the reason for the apprehension; or

(b) take the child before a court for the purpose of filing a complaint.

Rule 5(b)(1)(a) and (b) notwithstanding, if the apprehension is on an outstanding warrant, without unreasonable delay the peace officer shall take the child charged before the court to which the warrant is to be returned.

In the event a child is not taken before this Court or another court by a peace officer, the peace officer shall forthwith file with this Court the original and one copy of the complaint.

(2) *Duties of other courts.* Upon a child being brought before a court other than this Court by a peace officer, such court shall immediately attempt to notify the child's custodian of the child's presence and the reason for being there and, thereafter:

(a) may release the child to the custodian to appear before this Court at a time to be established by this Court; or

(b) may require bail for the child's appearance before this Court; or

(c) may order the child detained in a facility of the Department of Services for Children, Youth and Their Families provided:

(i) the child fails to furnish bail after having been given ample opportunity to do so; and

(ii) detention appears necessary pursuant to Rule 5.1; and

(iii) such detention shall continue only until the next session of this Court; and

(iv) the child's custodian, if the address be known, be notified of the disposition of the matter.

In the event a child is not detained, the Court shall transmit forthwith to the Clerk of Court for the proper county all papers in the proceeding and any bail taken. In the event a child is detained in default of bond, the child shall be brought before this Court for a detention hearing at its next session. The court which commits a child to detention shall forthwith file with this Court the original of such complaint and cause 2 copies of the complaint to be delivered to the detention facility, along with the child's commitment and a statement as to whether the child's custodian was notified of the commitment to detention, and, if not, the efforts made to do so. The detention facility shall thereafter forward a copy of such complaint and statement to this Court at the time of said child's detention hearing. If the child's custodian was not notified at the time of the child's commitment to detention, the detention facility shall attempt to do so immediately and if they are unable to do so, the Court shall, at the time of the detention hearing, be advised of that fact and the efforts made.

Rule 5.1. Child detention.

(a) *Detention hearing.*

(1) *Time limits.* If a child has been detained by another court pursuant to Rule 5(b)(2)(c), a detention hearing shall be held by this Court on the next day it is in session.

(2) *Explanation of rights.* Upon a child being brought directly before this Court by a peace officer or detention facility officer for a hearing, prior to the commencement of the detention hearing, this Court shall advise the child and custodian of the following:

(a) the nature and purpose of the pending proceeding and the possible consequences thereof;

(b) the right to counsel, the right to request representation by the Public Defender or appointment of counsel if the child and custodian are indigent, the right of a child who wishes counsel to request appointment of counsel at the expense of the custodian if the custodian is not indigent and has refused to obtain counsel for the child; and

(c) if the child is not represented by counsel, the child's Constitutional rights.

(b) *Conduct of detention hearing.* At the detention hearing, the Court shall consider all available information with respect to the possible release of the child from custody, including:

(1) the child's prior delinquency record, if any;

(2) the present home situation;

(3) the availability of adequate adult supervision pending a trial;

(4) the nature and circumstances of the alleged misconduct;

(5) the protection of the public interest;

(6) the general welfare of the child; and

(7) the factors set forth in subparagraph (a).

(c) *Pre-adjudication detention.* No child alleged to be delinquent shall be ordered by this or any other court to be detained in a secured facility pending adjudication unless one or more of the following grounds for detention exists:

(1) the nature of the alleged offense is such that the physical safety of persons or property could be threatened if the child is not detained;

(2) there is no custodian or other suitable person available to adequately supervise the child;

(3) it is likely that the child may flee the jurisdiction of this Court or another court;

(4) the child has escaped after a commitment ordered by this Court or is a fugitive from another state;

(5) there are reasonable grounds to believe that the child's physical, mental or emotional health and well-being appear to be threatened or impaired and there is no less restrictive alternative placement available; or

(6) the child has a prior record of delinquency.

(d) *Legal sufficiency.* The Court shall make a determination of the legal sufficiency of the complaint alleging the child's delinquency and shall act accordingly.

(e) *Order of release or detention.* Pending adjudication the Court may:

(1) release the child alleged to be delinquent to the child's custodian or upon own recognizance or upon the recognizance of the child's custodian or near relative, with or without bail for the child's appearance and impose any conditions of release in the best interests of the child or that are reasonably necessary to assure the child's appearance as requested;

(2) detain the child alleged to be delinquent in default of bond, pursuant to Rule 5(b)(2)(c), in a facility of the Department of Services for Children, Youth and their Families and may order the person legally liable therefor to pay for the child's care during the period of placement outside the home;

(3) defer proceedings pending further investigation, medical or other examination, or where the interest of the child and the community will thereby be served; or

(4) schedule a hearing on the merits.

(f) *Detention over 30 days.* The Court shall review every 30 days the status of the case and the reasons for detention of any child detained by order of the Court.

Rule 5.2. Manner of notice.

(a) *Notice after service of process.* When a person charged has been properly served with process or has appeared before any court of this State or a Commissioner for any offense or complaint, it shall be sufficient that notice of further proceedings be mailed to the last known address with a copy to the bondsman, if any.

(b) *Notices.* Notice of the time, date and place of any proceeding shall be (1) given in Court, or (2) sent by ordinary first-class mail to the last known addresses of the parties, or (3) served personally, or (4) communicated in such other manner as this Court may direct. If any party to a proceeding is represented by counsel who has entered an appearance in that proceeding, copies of all notices given to the party shall also be given to counsel.

Rule 6. The grand jury.

Omitted.

Rule 6A. Arbitration conferences.

(a) *Arbitration conference.* If the Court refers an action to arbitration upon receipt of a complaint, an arbitration conference shall be scheduled and notice of same shall issue to the person charged, the custodian if the person is a child, the attorney, the complainant, the victim, and to any investigating law enforcement official, informing them of:

(1) the requirement that the person charged and, if the person charged is a child, the custodian appear at the arbitration conference;

(2) the nature, purpose, time and place of the conference;

(3) that the complainant, victim and investigating law enforcement official have the right to appear at the conference;

(4) that the person charged may withdraw from the arbitration process at any time;

(5) that the arbitration officer, a master or a judge may terminate the arbitration process at any time prior to the conclusion of the conference or subsequently, if the conditions set by arbitration are violated or new charges are filed;

(6) that if the person charged withdraws from the arbitration process or the Court terminates the arbitration process, will be referred to the Attorney General for review and action in accord with Rule 7(b);

(7) that the person charged may be represented by counsel;

(8) that the arbitration conference shall be informal without requiring adherence to normal Court procedure or the Delaware Rules of Evidence, and nothing said by the parties or other persons participating during the conference may be used against them in subsequent proceedings in any court;

(9) that the arbitration agreement will not extend beyond a period of time established by the Court; and

(10) that upon successful completion of the conditions of arbitration, the action will be dismissed.

(b) *Written agreement.* At the commencement of the conference, the arbitration officer shall explain the arbitration process to those present. Any settlement reached by the parties and approved by the arbitration officer shall be reduced to writing and a written agreement shall be executed by the arbitration officer, the person charged, and if the person is a child the custodian as well, and the attorney. Such agreement may include:

(1) reasonable conditions imposed on the child and custodian; and

(2) restitution or community service requirements.

(c) *Continuances.* A party may request a continuance of an arbitration conference. If the request is made for good cause and in a timely manner, it may be granted by the arbitration officer, after consideration of the timeliness and merit of the request, the age of the case, the number of previous continuances and the reason(s) therefor, and the position of the opposing party. In the event the arbitration officer grants a continuance, the reason for the continuance shall be stated in writing in the Court's record of the action.

(d) *Failure of defendant to appear.* If a defendant fails to appear for an arbitration conference after having been properly served and notified of same, a capias may issue for defendant's arrest for failure to appear and/or the defendant may be deemed to have waived the privilege of arbitration.

Rule 6B. Amenability hearings in child delinquency proceedings.

Amenability hearings in the Family Court shall be as provided by statute.

Rule 6C. Preliminary hearing.

(a) *When entitled.* A child is entitled to a preliminary hearing when charged with an offense within the original jurisdiction of the Superior Court or has been found non-amenable after a hearing as provided by statute. If the preliminary hearing is waived, the Court shall forthwith hold the child to answer in the Superior Court. If the child charged does not waive the preliminary hearing, the Court shall schedule a preliminary hearing.

(b) *Scheduling.* Such hearing shall be held within a reasonable time but in any event not later than 10 days following the finding of non-amenability if the child is detained and no later than 20 days if not detained, provided, however, that the preliminary hearing shall not be held if the child is indicted or if any information against the child is filed in Superior Court before the date set for the preliminary hearing. With the consent of the child charged and upon a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases, time limits specified in this paragraph may be extended 1 or more times by a judge of the Family Court. In the absence of such consent by the child charged, time limits may be extended only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

(c) *Probable cause finding.* If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the child charged committed it, the Court shall forthwith hold the child to answer in Superior Court. The finding of probable cause may be based upon hearsay evidence in whole or in part. The child charged may cross-examine prosecution witnesses and may introduce evidence in defense. Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary hearing. Motions to suppress must be made to the trial court.

(d) *Discharge of person charged.* If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the child charged committed it, the Court shall dismiss the proceeding and discharge the child. The discharge of the child charged shall not preclude the State from instituting a subsequent prosecution for the same offense.

(e) *Records.* After the conclusion of the proceeding, the Clerk of Court shall transmit forthwith to the Prothonotary for the proper county all papers in the proceeding and any bail taken.

History.

Amended, effective Sept. 1, 1987.

III. The Information and Petition

Rule 7. The information and petition.

(a) *Information and petition.* Except where otherwise provided by the Constitution of this State, or by statute, an offense within the jurisdiction of the Family Court alleged to have been committed by an adult shall be prosecuted by an Attorney General's information and such an offense alleged to have been committed by a child shall be prosecuted by an Attorney General's petition.

(b) *Review of complaint by Attorney General.* Upon receipt of a complaint or copy thereof referred by the Court the Attorney General shall:

(1) enter a nolle prosequi of the complaint; or

(2) prepare and forward to the Clerk of Court for filing an original and 2 copies of an information or petition which is based upon the complaint and which conforms to the requirements of Rule 7(c).

In the instance where there has been no complaint filed and the Attorney General commences an action by filing an information or petition, a warrant or summons upon same may be issued pursuant to Rule 9.

(c) *Nature and contents.* The information or petition shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the Attorney General. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the person charged committed the offense are unknown or that the person charged committed it by one or more specified means. The information or petition shall state for each count the official or customary citation of the statute, rule, regulation or other provisions of law which the person charged is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the information or petition or for reversal of a conviction if the error or omission did not mislead the person charged to that person's prejudice.

(d) *Surplusage.* The Court on motion of the person charged may strike surplusage from the information or petition.

(e) *Amendment of information or petition.* The Court may permit an information or petition to be amended at any time before adjudication if no additional or different offense is charged and if substantial rights of the person charged are not prejudiced.

(f) *Bill of particulars.* The Court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within 10 days after arraignment or at such later time as the Court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires.

Rule 7.1. Cases transferred from the Court of Common Pleas for New Castle County.

Omitted.

Rule 8. Joinder of offenses and of persons charged.

(a) *Joinder of offenses.* Two or more offenses may be charged in the same information or petition in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on 2 or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) *Joinder of persons charged.* Two or more persons may be charged in the same information or petition if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such persons may be charged in one or more counts together or separately and all of the persons need not be charged in each count.

Rule 9. Warrant or summons upon information or petition.

(a) *Issuance of warrant or summons.*

(1) *Warrant.* Upon request by the Court or the Attorney General, the Clerk of the Court shall issue a warrant instead of a summons for any person charged in an information or petition when:

(i) the person charged has failed to comply with a prior summons or a prior summons is returned unserved, as per Rule 9(a)(2); or

(ii) the Attorney General shall have submitted a certification that the person charged has failed to comply with a summons or warrant currently outstanding that was issued by any court of this State in a criminal prosecution; or

(iii) the Attorney General shall have submitted a certification that there is substantial risk to the safety of the public or risk of departure of the person charged from the State unless the person charged is arrested immediately; or

(iv) the Attorney General shall have submitted a certification which has been approved by the Court that there is other good reason to believe that a warrant should issue in lieu of a summons in the particular case.

The Clerk of the Court shall direct the warrant to the sheriff or other person authorized by law to execute and serve it, and additional warrants may be issued upon request. The Court may direct that a warrant be issued for a person charged upon application by the Attorney General.

(2) *Summons.* Upon request by the Court or the Attorney General, the Clerk of the Court shall issue a summons for any person charged in an information or petition and additional summonses may be issued upon request. The Clerk of the Court shall direct the summons to the sheriff or other person authorized by law to execute and serve it. If a person charged fails to appear in response to the summons or if the summons is returned unserved, a warrant shall issue upon direction of the Court.

(b) *Form.*

(1) *Warrant.* The form of the warrant shall be as provided in Rule 4(b)(1) except that it shall be signed by the Clerk of the Court, describe the offense charged in the information or petition and command that the person charged be apprehended and brought before this Court. A copy of the information or petition shall be attached to the warrant. The amount of bail may be fixed by the Court.

(2) *Summons.* The summons shall be in the same form as the warrant except that it shall summon the person charged to appear before this Court at a stated time and place. A copy of the information or petition shall be attached to the summons.

(c) *Execution or service and return.*

(1) *Execution or service.* The warrant shall be executed or the summons served as provided in Rule 4(c)(1), (2) and (3). The officer executing a warrant shall bring the apprehended person without unreasonable delay before the Court for the purpose of admission to bail.

(2) *Return.* The officer executing a warrant shall make return thereof to the Court. At the request of the Court or the Attorney General, any unexecuted warrant shall be returned and canceled. On or before the return day, the person to whom a summons was delivered for service shall make return thereof. At the request of the Attorney General made at any time while the information or petition is pending, a warrant returned unexecuted and not canceled or a summons returned unserved or a duplicate thereof may be delivered by the Clerk of the Court to the sheriff or other authorized person for execution or service.

IV. Arraignment and Preparation for Trial

Rule 10. Arraignment.

(a) *Prior to commencement.* Prior to the commencement of the arraignment, the Court shall advise the person charged and, if the person charged is a child, the custodian as well of the following:

(1) the nature and purpose of the pending proceedings;

(2) the right to counsel; the right to request the assistance of the Public Defender if indigent; the right of a child to have counsel appointed at the expense of the custodian in the case of a child who wishes counsel and whose custodian is not indigent but has refused to obtain counsel for the child; and

(3) if the person is not represented by counsel, the person's Constitutional rights.

(b) *Arraignment proceeding.* In conducting the arraignment and before the person charged pleads to the allegation(s) in the information or petition, the Court shall inform the person charged and, if the person is a child, the custodian as well of the following:

(1) the allegation(s) set forth in the information or petition;

(2) the right to plead guilty or not guilty to the allegation(s); and

(3) the right to a speedy trial on the allegation(s).

(c) *Arraignments in open court.* Except as otherwise provided in this Rule, arraignments shall be conducted in open court. If the person charged has not already received same, the person charged, or the attorney, shall be given a copy of the information or petition before the person charged is called upon to plead. A reading of same may be waived by the person charged or counsel. The Court may inquire of the person charged whether or not the person understands the charges. If the Court is not satisfied that the person charged understands the nature of the allegation(s), the Court shall read or have the information or petition read to the person charged and/or the Court shall state the substance of the charge(s) to the person charged before accepting a plea.

(d) *Arraignment by prior pleading.* Except where prohibited by local practice or the presiding judge, the defendant may waive arraignment in open court and enter a plea in writing if, on or before the date and time of the scheduled arraignment, there shall have been served upon the Attorney General and filed with the Court a response to the information or petition signed by the person charged, his attorney, if any, and the custodian of any child-defendant setting forth the following:

(1) an acknowledgment that they have read the information or petition and that they understand the nature of the accusation(s) made; and

(2) the date and time of the schedule arraignment; and

(3) a waiver of the requirement of reading the information or petition in open court; and

(4) the plea of the person charged, which shall not be a plea of guilty or nolo contendere; and

(5) the current address of the person charged and his custodian, if any; and

(6) the date, time and nature of the next hearing or proceeding obtained from the appropriate Court scheduling authority.

For the purpose of computation of applicable time periods within these Rules, when the procedure for arraignment by prior pleading shall have been followed, the day of filing of the pleading shall be deemed the day of the arraignment.

Rule 11. Pleas.

(a) *Types of pleas.* A person charged may plead not guilty, guilty or, with the consent of the Court, nolo contendere. If a person charged refuses to plead or if the Court, which may do so, refuses to accept a plea of guilty, the Court shall enter a plea of not guilty.

(b) *Nolo contendere; guilty without admission.* A defendant may plead nolo contendere or guilty without admitting the essential facts constituting the offense(s) charged only with the consent of the court. Such a plea shall be accepted by the court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

(c) *Requirements for accepting plea of guilty or nolo contendere.* The Court shall not accept a plea of guilty or a plea of nolo contendere from a person charged without first addressing the person charged and ascertaining the following:

(1) that the person charged is the person named as the person charged in the information or petition;

(2) that the person charged understands the facts alleged in the information or petition and that these facts constitute the particular offense(s) charged;

(3) that the person charged has fully discussed the facts alleged in the information or petition and the plea of guilty to the offense charged therein with counsel, if the person is represented, and if the person is a child with the custodian as well;

(4) that the person charged is knowingly, intelligently and voluntarily admitting the offense charged, in the information or petition;

(5) that no threats, promises, or representations have been made to the person charged or, if the person is a child to the person or the custodian, to induce entry of a plea of guilty or nolo contendere;

(6) that the person charged, and if the person is a child the custodian as well, understands the sentencing alternatives available to the Court if the person charged enters a plea of guilty or nolo contendere, including, if the person is a child, the provisions of the Mandatory Sentencing Act, if applicable;

(7) that there have been no promises or representations made to the person charged, or if the person is a child to the person or the custodian, with respect to the sentence the Court will impose;

(8) that the person charged understands that the following Constitutional rights will be waived if the plea of guilty or nolo contendere is accepted by the Court:

(a) the right to a speedy trial;

(b) if the person is an adult, the right to be represented by counsel at trial and sentencing;

(c) the right to cross-examine witnesses and present defense witnesses; and

(d) the right to be presumed innocent until proven guilty beyond a reasonable doubt;

(9) that the person charged understands that the next step in the proceedings will be sentencing; and

(10) that the person charged, and if the person is a child the custodian as well, fully understands the consequences of the plea of guilty to the offense(s) charged in the information or petition.

(d) *Factual basis required.* The Court shall not enter judgment upon a plea unless it is satisfied that there is a factual basis for the plea.

(e) *Court action after entry of guilty plea.* After entering a plea of guilty in the Court records, the Court may:

(1) hear testimony, review documents, or make further inquiry as it deems appropriate;

(2) proceed directly to adjudication of the matter and sentencing; or

(3) continue the matter for sentencing.

History.

Amended May 5, 2000; July 18, 2018, effective Dec. 1, 2018.

Rule 12. Pleadings and motions before trial; defenses and objections.

(a) *Pleadings and motions.* Pleadings in criminal proceedings shall be the information or petition and the pleas of not guilty, guilty and nolo contendere. All other pleas, demurrers and motions to quash the pleadings are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these Rules.

(b) *The motion raising defenses and objections.*

(1) *Defenses and objections which may be raised.* Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.

(2) *Defenses and objections which must be raised.* Defenses and objections based on defects in the institution of the prosecution or in the information or petition, other than that it fails to show jurisdiction in the Court or to charge an offense, may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the person charged. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the Court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the information or petition to charge an offense shall be noticed by the Court at any time during the pendency of the proceeding.

(3) *Time of making motion.* The motion shall be made not later than 10 days after arraignment, but the Court may permit it to be made within a reasonable time thereafter.

(4) *Hearing on motion.* A motion before trial raising defenses or objections shall be determined before trial unless the Court orders that it be deferred for determination at the trial of the general issue. With the consent of the defendant, issues of fact may be determined by the Court on affidavits.

(5) *Effect of determination.* If a motion is determined adversely to the person charged the person shall be permitted to plead if not having previously pleaded. A plea previously entered shall stand. If the Court grants a motion based on a defect in the institution of the prosecution or in the information or petition, it may also order that the person charged be held in custody or that bail be continued for a specified time pending the filing of a new information or petition. Nothing in this Rule shall be deemed to affect the provisions of any statutes of this State relating to periods of limitations.

Rule 12.1. Notice of insanity.

If the person charged intends to rely on the defense of insanity at the time of the alleged offense the person shall, not less than 30 days before the date set for trial, serve upon the Attorney General a notice of such intention. The Court may for cause shown allow late filing of the notice or may make such other order as may be appropriate.

Rule 13. Joinder for trial of informations or petitions.

The Court may order 2 or more informations or petitions to be tried together if the offenses, and the persons charged if there is more than one, could have been joined in a single information or petition. The procedure shall be the same as if the prosecution were under such single information or petition.

Rule 14. Relief from prejudicial joinder.

If it appears that a person charged or the State is prejudiced by a joinder of offenses or of persons charged in an information or petition or by such joinder for trial together, the Court may order an election or separate trials of counts, grant a severance of persons charged or provided whatever other relief justice requires. In ruling on a motion by a person charged for severance, the Court may order the Attorney General to deliver to the Court or inspection in camera any statements or confessions made by the person charged which the State intends to introduce in evidence at the trial.

Rule 15. Depositions.

(a) *When taken.* Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the Court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording or other material, not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the Court on written motion of the witness and upon notice to the parties may direct that the witness' deposition be taken. After the deposition has been subscribed the Court may discharge the witness.

(b) *Notice of taking.* The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the Court for cause shown may extend or shorten the time or change the place of taking the deposition. The officer having custody of a person charged shall be notified of the time and place set for the examination and shall, unless the person charged waives in writing the right to be present, produce the person charged at the examination and keep the person charged in the presence of the witness during the examination, unless the person charged, after being warned by the Court that disruptive conduct will cause the person charged to be removed from the place of the taking of the deposition, persists in conduct which is such as to justify the person charged being excluded from that place. A person charged not in custody shall have the right to be present at the examination upon request subject to such terms as may be fixed by the Court, but failure of the person charged, absent good cause shown, to appear after notice and tender of expenses in accordance with paragraph (c) of this Rule shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(c) *Payment of expenses.* Whenever a deposition is taken at the instance of the State, or whenever a deposition is taken at the instance of a person charged who is unable to bear the expense of the taking of the deposition, the Court may direct that the expenses of travel and subsistence of the person charged and counsel for attendance at the examination and the cost of the transcript of the deposition shall be paid by the State or the county.

(d) *How taken.* Subject to such additional conditions as the Court shall provide, a deposition shall be taken and filed in the manner provided in civil actions except as otherwise provided in these Rules, and said deposition shall be filed with the Clerk of the Court provided that (1) in no event shall a deposition be taken of a person charged without consent, and (2) the scope and manner of examination and cross-examination shall be such as would be allowed in the trial itself. The State shall make available to the person charged or that person's counsel for examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the State and to which the person charged would be entitled at the trial.

(e) *Use.* At the trial or upon any hearing, a part or all of the deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness is unavailable or gives testimony at the trial or hearing inconsistent with a prior deposition. "Unavailability as a witness" includes situations in which the declarant:

(1) is exempted by ruling of the Court on the ground of privilege from testifying concerning the subject matter of the deposition; or

(2) persists in refusing to testify concerning the subject matter of the deposition despite an order of the Court to do so; or

(3) testifies to a lack of memory of the subject matter of the deposition; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of the deposition has been unable to procure declarant's attendance.

A declarant is not unavailable as a witness if the exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of declarant's statement for the purpose of preventing the witness from attending or testifying. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require an offer of all of it which is relevant to the part offered and any party may offer other parts.

(f) *Objections to deposition testimony.* Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition.

(g) *Deposition by agreement not precluded.* Nothing in this Rule shall preclude the taking of a deposition, orally or upon written questions, or the use of the deposition, by agreement of the parties with the consent of the Court.

Rule 16. Discovery and inspection.

(a) *Statements of persons charged; reports of examinations and tests.* The person charged may serve upon the Attorney General a request to permit the person charged or someone acting in that person's behalf to inspect and copy or photograph any relevant (1) written or recorded statements or confessions made by the person charged, or a co-defendant (whether or not charged as a principal, accomplice or accessory in the same or in a separate proceeding), or copies thereof, and the substance of any oral statement which the State intends to offer in evidence at the trial made by the person charged whether before or after apprehension in response to interrogation by any person then known to the person charged to be a state agent which are known by the Attorney General to be within the possession, custody or control of the State, (2) written reports of autopsies, ballistics tests, fingerprint analysis, handwriting analysis, blood, urine and breath tests, and written reports of physical or mental examination of the person charged or the alleged victim by a physician, dentist or psychologist made in connection with the particular case, or copies thereof, which are known by the Attorney General to be within the possession, custody or control of the State.

(b) *Other books, papers, documents or tangible objects.* The person charged may serve upon the Attorney General a request to permit the person charged or someone acting on that person's behalf to inspect and copy or photograph designated books, papers, documents, tangible objects, buildings or places, copies or portions thereof which are within the possession, custody or control of the State, upon a showing that the items sought may be material to the preparation of defense and that the request is reasonable. This subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal State documents made by agents in connection with the investigation or prosecution of the case, except as provided in subdivision (a) of this Rule, or of statements made by State witnesses or prospective State witnesses (other than the person charged or a co-defendant) to agents of the State.

(c) *Discovery by the State.* If a person charged requests materials designated in subsection (a)(2) of this Rule, the State may request the person charged to permit the State to inspect, copy or photograph any written reports designated under subdivision (a)(2) of this Rule which may be within the possession, custody or control of the person charged. Provided, however, with respect to any such condition imposed upon the person charged, the Court must be satisfied that the Attorney General has shown good cause therefor, that the items sought are material, that the imposition of any such condition is reasonable, and that the best interest of justice will be served thereby.

(d) *Procedure.* The request under subdivisions (a) and (b) may, without leave of Court, be served after commencement of the action not later than ten days after arraignment, or at such reasonable later time as the Court may permit. The request under subdivision (c) may, without leave of Court, be served not later than 10 days after service upon the Attorney General or a request by the person charged for materials designated in subsection (a)(2), or such reasonable later time as the Court may permit. The request shall set forth the items to be inspected either by individual item or by category and shall describe each item and category with reasonable particularity. The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts.

> The party upon whom the request is served shall in turn serve a written response within 20 days after service of the request. The Court may fix a shorter or longer time for response. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. If objection be made by the Attorney General to the time, place and manner of making inspection and performing the related acts, and that is the sole nature of the objection, the Attorney General will specify an alternative time, place and manner in the course of objecting to the request, but in no event shall the response of the Attorney General suggest a time later than 10 days prior to trial.
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> If a party fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling inspection in accordance with the request. Any motion with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested, shall be made within 10 days after the time for response to the request, or at such reasonable later time as the Court may permit.

(e) *Protective orders.* Upon a sufficient showing, the Court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by the State, the Court may permit the State to make such showing in whole or in part, in the form of a written statement to be inspected by the Court in camera. If the Court enters an order granting relief following a showing in camera, the entire text of the State's statement shall be sealed and preserved in the records of the Court to be made available to the appellate court in the event of an appeal by the person charged.

(f) *Continuing duty to disclose; failure to comply.* If, subsequent to disposition of a motion filed under this Rule, and prior to or during trial, a party discovers additional material previously requested, or falling within the scope of an order previously entered, which is subject to discovery or inspection under the Rule, the party shall promptly notify the other party or counsel or the Court of the existence of the additional material. If at any time during the course of the proceedings it is brought to the attention of the Court that a party has failed to comply with this Rule or with an order issued pursuant to this Rule, the Court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence material not disclosed, or it may enter such other order as it deems just under the circumstances.

Rule 17. Subpoena.

(a) *For attendance of witnesses; form; issuance.* A subpoena shall be issued by the Clerk of the Court under the seal of the Court. It shall state the name of the Court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The Clerk of the Court shall issue a subpoena, signed and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served.

(b) *Indigent persons charged.* The Court may order at any time that a subpoena be issued upon motion or request of an indigent person charged. If the Court orders the subpoena to be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the State.

(c) *For production of documentary evidence and of objects.* A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The Court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The Court may direct that books, papers, documents or objects designated in the subpoena be produced before the Court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected and copied by the parties and their attorneys.

(d) *Service.* A subpoena may be served by the sheriff, by the sheriff's deputy or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named therein.

(e) *For taking deposition; place of examination.*

(1) *Issuance.* The attendance of witnesses and production by them of designated documents or tangible things, which constitute or contain evidence relating to any of the matters included within the scope of the examination permitted by Rule 15 and Rule 17(c) may be compelled, within the State of Delaware, by the same means as at trial or hearing; and elsewhere, by whatever means are available under the laws of the place where the examination is held.

(2) *Place.* A resident of Delaware whose deposition is to be taken may be required to attend an examination only in the county wherein that person resides or is employed or transacts business in person. A nonresident of Delaware may be required to attend in accordance with the law of the state in which served.

(f) *Contempt.* Failure by any person without adequate excuse to obey a subpoena properly served may be deemed a contempt.

Rule 17.1. Pre-trial conference; case review.

At any time after the filing of the information or petition the Court upon motion of any party or upon its own motion may order one or more pre-trial conferences or case reviews to consider such matters as will promote a fair and expeditious trial. At the conclusion of a pre-trial conference or case review, the Court may cause to be prepared and filed a memorandum of the matters agreed upon. No admissions made by the person charged or counsel at the pre-trial conference or case review shall be used against the person charged unless the admissions are reduced to writing and signed by the person charged and counsel or made in open Court on the record. This Rule shall not be invoked in the case of a person charged who is not represented by counsel.

V. Venue

Rule 18. County.

Except as otherwise permitted by statute or by these Rules, the prosecution shall be had in the county in which the offense was committed.

Rule 19. Transfer within the district.

Omitted.

Rule 20. Transfer from the district for plea and sentence.

Omitted.

Rule 21. Transfer from the county for trial.

(a) *For prejudice in the county.* The Court upon motion of the person charged shall transfer the proceeding as to that person to another county if the Court is satisfied that there exists in the county where the prosecution is pending so great a prejudice against the person charged as to preclude a fair and impartial trial in that county.

(b) *Proceedings on transfer.* When a transfer is ordered the Clerk of the Court shall transmit to the clerk of the county to which the proceeding is transferred all papers in the proceeding or duplicates thereof and any bail taken, and the prosecution shall continue in that county.

Rule 22. Time of motion to transfer.

A motion to transfer under these Rules may be made at or before arraignment or at such other time as the Court or these Rules may prescribe.

VI. Trial

Rule 23. Continuances: Contents of motion or request; absence of material witness.

(a) *Requests for continuances.* All motions for continuances must be made in a timely manner and in writing to the judge or master assigned to hear the case. The written request shall contain:

(1) a statement of the original filing date of the complaint;

(2) the position of opposing counsel on the request, or, if there is no opposing counsel, the position of the opposing party;

(3) the number of times that the case has been scheduled for conference, hearing or trial previously;

(4) the reason(s) why the request is being made; and

(5) should the reason involve a conflict with a case scheduled in another court, the name of the other court and the name of the case must be recited, along with the date that the case was scheduled in the other court.

(b) *Situations of scheduling conflicts.* Where a scheduling conflict exists, the parties or their attorneys shall supply the information required by and the determination shall be made in accordance with the provisions of the Statement of the Judicial Conference in Respect to Scheduling Conflicts adopted by the Judicial Conference on June 2, 1976 which provides as follows:

> The Courts comprising the Judicial Conference are greatly concerned about the increasing number of requests by attorneys for continuances based upon conflicts in their schedules.
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> The Conference, therefore, wishes to remind each attorney of this responsibility to keep a close personal check on this trial schedule. When a conflict exists, the attorney should promptly attempt to resolve it, either by arranging for another attorney to handle one of the conflicting matters, or otherwise resolving the conflict without the necessity of a continuance of either matter.
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> If the scheduling conflict cannot be resolved, the Judge or Judges to whom the conflicting cases are assigned (or the Clerk if a Judge has not been assigned) should immediately be notified in writing of the existence of the conflict, the caption, nature and subject matter of the conflicting cases, the names of all attorneys involved in each, and a statement of (a) the reasons why the conflict cannot be resolved, (b) the relative importance of the conflicting cases, (c) the relative inconvenience to parties, witnesses and others if a continuance is granted, (d) the dates on which each court fixed the trial dates and whether the court which created the scheduling conflict was aware that a conflict was being created, (e) whether the other parties (or attorneys) object to the continuance, and (f) other information which will be helpful to the Judge or Judges in deciding which of the conflicting matters should take precedence.
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> It is expected that the Judges will then confer and attempt to arrive at a harmonious ruling on the request consistent with the interest of justice. If the Judges involved cannot agree as to an appropriate resolution of the conflict, then priority shall be given to criminal cases over civil cases and to constitutional courts (excluding Justice of the Peace Courts) over statutory courts.

(c) *Failure to comply.* Any request that fails to contain all of the above may not be considered.

(d) *Emergency.* When an emergency or unforeseeable situation prevents full compliance with Rule 23(a), the judge or master assigned to the case may consider an oral or incomplete request for continuance and may require subsequent submission of appropriate correspondence and/or documentation.

(e) *When continuance granted; notice.* Should a continuance be granted by the Court, further notices of any proceeding in the case may be oral, rather than written, directed to counsel or the parties if unrepresented, and it shall be their responsibility to notify witnesses of the date, time and place of the proceeding, and to request subpoenas, if appropriate, to compel the attendance of a witness, at least 5 business days prior to the proceeding.

(f) *Entry of reason in record.* A judge or master granting a continuance shall make a written entry in the Court record of the reason for continuance.

(g) *Unavailability of material witness.* Every motion for continuance upon the ground of the absence of or unavailability of a material witness shall be filed as soon as said absence or unavailability becomes known and, in addition to furnishing the information set forth in subparagraph (a) above, shall be accompanied by an affidavit on behalf of the party applying therefor, setting forth the facts expected to be proved by such witness, the efforts made to procure attendance, and the date when the absence or unavailability of the witness became known. If it be stipulated by the opposite party that the witness if called would testify as set forth in the affidavit, the Court in its discretion may refuse the motion and under such circumstances the affidavit may be offered in evidence at the trial.

History.

Amended, effective Sept. 1, 1987.

Rule 23.1. Right to trial by jury.

Omitted.

Rule 24. Type of trial; record.

(a) *Type of hearing.* Unless otherwise required by statute or rule, all hearings or trials shall be conducted publicly by the Court without a jury, unless the Court in its discretion determines that there is sufficient reason to close the hearing or trial.

(b) *Sequestration of witnesses.* Sequestration of witnesses, other than parties, may be allowed upon request of any party or on the Court's own motion.

(c) *Record of proceedings.* All hearings or trials shall be recorded by stenographic notes, stenotype machine or by electronic, mechanical or other appropriate means. All sidebar conferences and chambers conferences during trial shall be recorded unless the trial judge or master determines, in advance, that neither evidentiary nor substantive issues are involved.

History.

Amended, effective Sept. 11, 2007.

Rule 25. Judge; disability.

(a) *During trial.* If by reason of death, sickness or other disability the judge or master before whom a trial has commenced is unable to proceed with the trial, any other judge or master regularly sitting in or assigned to the Court, upon certifying familiarity with the record of the trial or upon written stipulation of the Attorney General, attorney for the person charged, and the person charged, and if the person is a child the custodian as well, may proceed with and finish the trial.

(b) *After finding of guilt.* If by reason of absence, death, sickness or other disability the judge or master before whom the person charged has been tried is unable to perform the duties to be performed by the Court after a verdict or finding of guilt, any other judge or master regularly sitting in or assigned to the Court may reform those duties; but if such other judge or master is satisfied of inability to perform those duties because of not having presided at the trial, or for any other reason, the other judge or master may grant a new trial.

Rule 26. Evidence.

Omitted.

Rule 27. Proof of official record.

An official record or an entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions.

Rule 28. Expert witnesses and interpreters.

(a) *Expert witnesses.* The Court may order the person charged or the State or both to show cause why expert witnesses should not be appointed and may request the parties to submit nominations. The Court may appoint any expert witnesses agreed upon by the parties and may appoint witnesses of its own selection. An expert witness shall not be appointed by the Court unless the witness consents to act. A witness so appointed shall be informed of the duties by the Court in writing, a copy of which shall be filed with the Clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of findings, if any, and may thereafter be called to testify by the Court or by any party. The expert witness shall be subject to cross-examination by each party. The Court may determine the reasonable compensation of such a witness and direct its payment out of such funds as may be provided by law. The parties also may call expert witnesses of their own selection.

(b) *Interpreters.* The Court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter, to be paid as the Court may direct.

Rule 29. Motion for judgment of acquittal.

Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The Court on motion of a person charged or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the information or petition after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If the motion of a person charged for judgment of acquittal at the close of the evidence offered by the State is not granted, the person charged may offer evidence without having reserved the right.

Rule 30. Instructions.

Omitted.

Rule 31. Finding; adjudication.

(a) *Finding by the Court.*

(1) *In favor of the person charged.* If the Court determines that the offense or any material element thereof has not been proven beyond a reasonable doubt, it shall find the person charged not guilty or shall dismiss the information or petition and enter an order accordingly in the record. An adjudication in favor of the person charged or a dismissal of the case may be made in the court or by notification to the parties or their attorneys by ordinary mail.

(2) *In favor of the State.* After the hearing, if the Court determines that all material facts essential to a finding of guilt of the person charged have been proved beyond a reasonable doubt, it shall announce such adjudication of guilty and enter an order accordingly on the record.

(b) *Several persons charged.* If there are 2 or more persons charged, the Court may return a finding of guilt with respect to fewer than all of the persons charged.

(c) *Conviction of lesser offense.* A person charged may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense or of any other offense where specifically authorized by statute.

VII. Judgment

Rule 32. Sentence and judgment.

(a) *Sentence.*

(1) *In general.* Sentence shall be imposed without unreasonable delay. Pending sentence, the Court may commit the person charged or continue or alter the bail. Before imposing sentence, the Court shall afford counsel an opportunity to speak on behalf of the person charged and shall address the person charged personally and allow opportunity to make a statement and to present any information in mitigation of punishment. The Court shall also offer the victim, if present, the opportunity to speak.

(2) *Information on issue of sentence.* The Court may admit any information that is material and relevant, including hearsay and opinion evidence. The Court on its own motion or that of a party may order that a presentence investigation or diagnostic reports be prepared and submitted to the Court for consideration at the sentencing hearing, in accordance with the provisions of subparagraph (c) of this Rule.

(3) *Conditions and restrictions imposed.* Conditions or restrictions imposed on the conduct of the person charged shall be set forth in writing by the Court, or by another person or agency if delegated the authority by Court order to impose such conditions or restrictions, and a copy thereof shall be furnished to the person charged, and if the person charged is a child to the custodian as well, at the earliest possible time. The conditions or restrictions shall become effective upon the person charged being notified, either orally or in writing, by the Court or its delegee.

(b) *Judgment.* A judgment of conviction shall set forth the plea, the findings, the adjudication and sentence. If the person charged is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge or master and entered by the Clerk of the Court.

(c) *Presentence investigation.*

(1) *When made.* The appropriate officer of the court shall make a presentence investigation or report to the Court before the imposition of sentence or disposition or the granting of probation, if the Court so directs. The report shall not be submitted to the Court, or its contents disclosed to anyone, unless the person charged has entered a plea of guilty or has been found guilty.

(2) *Report.* The report of the presentence investigation shall contain any prior criminal record of the person charged and such information about characteristics, financial condition and the circumstances affecting behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the person charged and such other information as may be required by the Court. The parties or their counsel shall be afforded an opportunity to examine and controvert written reports and to cross-examine the individuals who prepared the reports.

(3) *Disclosure.* The presentence report is not a public record. The report shall be reviewed by the sentencing judge or master prior to imposition of sentence. In addition, the presentence report shall be available for inspection as a matter of right by the following persons or agencies, subject to such deletions, restrictions or conditions as the Court may deem proper:

(i) the person charged and counsel and, if the person charged is a child, the custodian;

(ii) the Department of Justice;

(iii) the Department of Corrections if the person charged is an adult and sentenced to a period of incarceration;

(iv) the Department of Services for Children, Youth, and their Families if the person charged is a child and committed to its custody; and

(v) the appropriate probation authorities if the Court imposes a term of probation upon the person charged.

The presentence report may also be made available in the Court's discretion to persons or agencies having a legitimate professional interest in information likely to be contained therein and volunteers working in Court approved programs.

(d) *Withdrawal of plea of guilty.* A motion to withdraw a plea of guilty or of nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice, the Court after sentence may set aside the judgment of conviction and permit withdrawal of the plea.

(e) *Probation.* The Court may, after conviction or after a plea of guilty or nolo contendere for any offense, suspend the imposition or execution of sentence and place the person charged upon probation for such period and upon such terms and conditions as it may deem best; or the Court may impose a fine and may also place the person charged upon probation. Unless the order of sentencing provides otherwise, a person charged who is placed on probation shall be supervised by the appropriate probation authorities which shall, without further Court order, have full power and authority to impose conditions and restrictions on the person charged in addition to any which may have been imposed by the Court, subject, however, to the requirement of notice to the person charged as set forth in subparagraph (a)(3).

(f) *Revocation of probation.* The Court shall not revoke probation except after a hearing at which the person charged shall be present and apprised of the grounds on which such action is proposed. The person charged may be admitted to bail pending such hearing.

(g) *Restitution.* The Court, to provide a uniform and equitable approach in considering an order for restitution as part of any sentence, shall adhere to the following guidelines:

(1) restitution is discretionary and its imposition shall be governed by statute;

(2) restitution should be ordered when the victim has suffered an actual monetary loss through damage, destruction, or theft of property, or personal injury;

(3) restitution should cover the victim's own out-of-pocket expenses and losses as a first priority with losses covered by insurance given the lowest priority;

(4) the Victim Loss Statement shall request the victim to complete the statement setting forth market value, as opposed to replacement value or cost, with respect to damage, destroyed, or lost property, and to include a receipt, receipted invoice, canceled check, appraisal, or other verification of the loss claimed;

(5) the Court must consider the ability of the person from whom restitution is sought to pay such restitution in determining whether to order restitution and, if so ordering, in determining the amount of restitution and the schedule of payments; and

(6) where there is a disagreement as to the amount of the loss sustained, the State shall have the burden of proving the amount of loss by a preponderance of the evidence.

(h) *Court costs.* At the time of sentencing or dispositional hearing the Court shall, in writing, assess or specifically waive court costs, as established in the Schedule of Assessed Costs maintained and published by the Clerk of Court. In the case of an adult, the court shall also order, in writing, the Victim's Compensation Fund assessment of 15% of the fine imposed. The Court may also order, in writing, payment of additional Court costs in accordance with the Schedule of Assessed Costs maintained and published by the Clerk of the Court.

History.

Amended, effective Apr. 25, 1988; May 1, 1998.

Rule 33. New trial.

The Court on motion of a person charged may grant a new trial if required in the interest of justice. The Court, on motion of a person charged for a new trial, may vacate the judgment, if entered, take additional

testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only before or within 2 years after final judgment, but if an appeal is pending, the Court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within 10 days after finding of guilt or within such further time as the Court may fix during the 10 day period.

Rule 34. Arrest of judgment.

The Court on motion of a person charged shall arrest judgment if the information does not charge an offense or if the Court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 10 days after finding of guilty or after plea of guilty or nolo contendere, or within such further time as the Court may fix during the 10 day period.

Rule 35. Correction or reduction of sentence.

(a) *Postconviction remedy.* Any person who has been sentenced may apply by motion for postconviction relief for any meritorious claim challenging the judgment of conviction including claims:

(i) that the judgment of conviction was obtained or sentence imposed in violation of the Constitution and laws of this State or the United States;

(ii) that the Court was without jurisdiction to do so; or

(iii) that the sentence imposed exceeded the maximum authorized by law, or is otherwise not in accordance with the sentence or disposition authorized by law.

An application may be filed at any time, provided, however, that postconviction relief shall not be available so long as there is a possibility of taking a timely appeal from the judgment. Unless the motion and the files and records of the case show to the satisfaction of the Court that the applicant is not entitled to relief, the Court shall cause notice thereof to be served on the Attorney General, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the Court finds the applicant is entitled to relief, the Court may set aside the judgment of conviction or sentence, release the applicant from custody, resentence the applicant, grant the applicant a new trial, or otherwise correct the judgment of conviction or sentence as may appear appropriate. The Court need not entertain a second motion or successive motions for similar relief on behalf of the same applicant.

(b) *Reduction of sentence.* The Court may reduce a sentence within 60 days after imposition, or within 60 days after receipt by the Court of a mandate issued upon affirmance of the judgment or dismissal of an appeal, writ of error or writ of certiorari. Nothing herein contained shall prevent the reduction of a sentence after the expiration of the 60 day period specified above if such reduction is made pursuant to an application made within the specified 60 day period. The Court may modify costs, fine, and conditions of probation at any time.

A motion for reduction of sentence will not be noticed for presentation in open Court but will be filed with the Clerk of the Court who will refer it to the judge or master who imposed the sentence. Such motions will be considered and decided without formal presentation, hearing or argument unless the Court requests a presentation, hearing or argument.

Rule 35.1. Preparation of transcript on appeal.

The procedure for preparation of transcript on appeal shall be in accordance with the rules of the appellate court.

Rule 36. Clerical mistakes.

Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the Court at any time and after such notice, if any, as the Court orders.

VIII. Appeals

Rule 37. Taking appeal; time.

The procedure and time for taking appeal shall be in accordance with statute and the rules of the appellate court.

Rule 37.1. Notice to Attorney General; appeals de novo; appeals on the record.

Omitted.

Rule 38. Stay of execution and relief pending review.

Stay of execution and relief pending review shall be as provided by statute.

Rule 38.1. Appeals by the State in criminal cases.

The procedure for appeals by the State in criminal cases shall be in accordance with the rules of the appellate court.

Rule 38.2. Court-appointed counsel in appeals.

(a) *Appointment of counsel.* Counsel appointed in the Family Court to represent indigent persons charged in criminal proceedings shall also represent such persons on appeal from the Family Court unless relieved of the obligation by the appellate court.

(b) *Costs and fees on appeals.* Application for costs and fees on appeal shall be made in accordance with Rule 44(b) through (g).

Rule 39. Appeals to Family Court.

(a) *Time.* All appeals to Family Court shall be taken within 15 days from the date of sentence, unless otherwise provided by statute. When an appeal is taken the clerk of the court below shall forthwith transmit the appeal bond and a certified transcript of the record, to the Clerk of the Court.

(b) *De novo.* The Clerk shall not enter an appeal de novo until the appeal bond and a certified transcript of the record is filed with the Clerk's office. On the entry of an appeal the Clerk shall forthwith give notice in writing thereof to the Attorney General. On receipt of such notice the Attorney General shall promptly file an information with the Clerk's office, whereupon the proceeding will continue in accordance with these rules.

(c) *On the record.* An appeal on the record shall proceed in accordance with Family Court Civil Rule 72 as it is applicable to criminal cases and is not inconsistent with a statute or these rules.

(d) *Stay.* An appeal to, or writ of certiorari issuing from, Family Court shall operate as a stay of the judgment and proceedings in the court below on giving the required bond and surety. The decision of the judge of the court below as to bond and surety may be reviewed by a judge of this court.

(e) *Assigned counsel.* Counsel assigned in other courts to represent an indigent defendant in criminal proceedings shall also represent said defendant on appeal in this court. This court may appoint additional or substitute counsel for the appellant. Fees and disbursements for the representation of an indigent defendant before this court shall be governed by Rule 44.

(f) *By the State.* The State shall file a notice of appeal under 10 Del. C. § 9902, or an application for appeal under 10 Del. C. § 9903 within 30 days of the entry of the order appealed from. An application for appeal shall contain a statement of the nature of the proceeding below and of the substantial question of law or procedure to be decided. An appeal by the State shall be on the record.

(g) *Dismissal.* An appeal may be dismissed for lack of jurisdiction or for failure to comply with a statutory requirement or rule or order of this court.

History.

Added, effective Dec. 8, 2007.

Rule 39.1. Dismissal of appeals.

Omitted.

IX. Supplementary and Special Proceedings

Rule 40. Commitment to another district; removal.

Omitted.

Rule 41. Search and seizure.

(a) *Authority to issue warrant.* The authority to issue a search warrant shall be as provided by statute.

(b) *Grounds for issuance.* The grounds for issuance of a search warrant shall be as provided by statute.

(c) *Issuance and contents.* The issuance and contents of a search warrant shall be as provided by statute.

(d) *Motion for return of property and to suppress evidence.* An application for the return of property and to suppress for use as evidence anything obtained as a result of an unlawful search and seizure shall be made by motion supported by the affidavit of the person on whose behalf the motion is made. The motion shall state the grounds upon which it is made and shall set forth the standing of the moving party to make the application. The motion shall be made before the trial or hearing in which the property seized may be used as evidence, unless opportunity therefor did not exist or the moving party was not aware of the grounds for the motion; but the Court in its discretion may entertain the motion at the trial or hearing. Issues of fact shall be determined by the Court on affidavits or in such other manner as the Court directs.

(e) *Certification for appeal by the State.* When any order is entered before trial suppressing or excluding substantial and material evidence, the Attorney General may, within 30 days of the date of entry of the order suppressing the evidence, file a certification that the evidence is essential to the prosecution of the case and a proposed order, which shall set forth the reasons of the dismissal, dismissing the information or petition or any count thereof, to the proof of which the evidence suppressed or excluded is essential, and shall forthwith present the certification and the proposed order to the judge or master who entered the order suppressing evidence.

Rule 41.1. Forfeiture of property used for unlawful purpose.

(a) *Procedure.* Whenever the State seeks to forfeit property allegedly used in the commission of a crime, as authorized by statute, it shall, prior to trial, file a motion of forfeiture to be served upon the person charged, or counsel of record, not later than 20 days prior to the scheduled date of trial.

(b) *Trial of the use issue.* If the person charged is found guilty of the offense in which the property was allegedly used, the Court shall then be required to determine the issue of unlawful use. Both the State and the person charged shall be entitled to present additional evidence on the use issue but the State shall have the burden of proving unlawful use by a preponderance of the evidence. If the Court determines that the property was used in the commission of a crime, the property shall be ordered forfeited and disposed of as the Court shall direct, subject to subdivision (c) of this Rule. If the Court determines that the property was not used in the commission of a crime, the property shall be returned to the person charged.

(c) *Interests of third parties.* If the property is declared forfeited in accordance with subdivision (b) of this Rule, the Court shall require public notice of the forfeiture for a period of not less than 30 days, with direct notice to such parties as the Court deems appropriate. Any person, other than the person charged, 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 property was used in the commission of a criminal offense without the knowledge of said party, the court shall protect said interest in any final disposition of the property on such terms and conditions as the Court deems just.

Rule 42. Criminal contempt.

(a) *Summary disposition.* A criminal contempt may be punished summarily if the Court certifies that it saw or heard the conduct constituting the contempt and that the conduct was committed in the actual presence of the Court. The order of contempt shall recite the facts and shall be signed by the Court and entered of record.

(b) *Prosecution by complaint, information or petition; prosecution by order to show cause; disqualification; disposition.*

(1) An action for prosecution of criminal contempt may be commenced by filing of a complaint in accordance with Rule 3 or by filing by the Attorney General of an information or petition and pursued in accordance with statute and these Rules.

(2) Except when pursued in accordance with Rule 42(a) or 42(b)(1), a criminal contempt shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge or master in open court in the presence of the person charged or on application of the Attorney General or of an attorney appointed by the Court for that purpose by an order to show cause or an order of apprehension. The person charged is entitled to admission to bail as provided in these Rules.

(3) If the contempt charged involves disrespect to or criticism of a judge or master, that judge or master is disqualified from presiding at the trial or hearing except with the consent of the person charged.

(4) Upon a verdict or finding of guilt, the Court shall enter an order fixing the punishment.

X. General Provisions

Rule 43. Presence of the person charged.

The person charged shall be present at the arraignment, at every stage of the trial and at the imposition of sentence, except as otherwise provided by these Rules. The voluntary absence of the person charged after the trial has been commenced in the person's presence shall not prevent continuing the trial to its conclusion. The presence of the person charged is not required at a reduction of sentence under Rule 35.

Rule 44. Appointment of counsel for adults.

(a) *Appointment of counsel.* If the person charged appears in Court without counsel, the Court shall advise of the right to counsel and, in every case in which the law requires and in any other case in which the Court deems it appropriate, the Court shall appoint counsel to represent the person charged at every stage of the proceeding unless the person charged elects to proceed without counsel or is able to obtain counsel. The Court may appoint the Public Defender to represent a person charged if it finds at or after arraignment that the person charged is indigent.

(b) *Application for fees and disbursements of court-appointed counsel for indigent persons.* A separate claim for compensation and reimbursement shall be made to this Court for compensation and reimbursement for representation of the client in this Court. Each claim before this Court shall be supported by a written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before this Court, and all compensation and reimbursement applied for, expected or received in the same case from any other source. The Court shall thereupon set the compensation and reimbursement to be paid to the attorney.

(c) *Standards for setting counsel fees.* Any attorney appointed under this Rule for an indigent person shall be compensated at a rate not to exceed $50 per hour, and shall be reimbursed for expenses reasonably incurred. Compensation paid hereunder for services performed in this Court shall not exceed $2,000 for each attorney in a proceeding in which 1 or more felonies are charged; or $1,000 for each attorney in a proceeding in which only misdemeanors are charged. These maximum amounts shall not prevent any such attorney from being compensated for services performed in other Courts involving the same representation.

(d) *Waiver of maximum amounts.* Payments to Court-appointed counsel in excess of the maximum amounts provided herein may be made for extended or complex representation if the Court finds that the amount of such payment is necessary to provide fair compensation and the payment is approved by the Chief Judge of the Family Court. Any application for a fee exceeding $2,000 shall be made only upon reasonable notice to the Attorney General. Application for less amounts may be ex parte unless, in a specific instance, the Court directs otherwise.

(e) *Costs and disbursements.* Upon prior application, counsel for a person who is financially unable to pay for transcripts, witness' travel expenses, or investigative, expert or other services or costs necessary for an adequate presentation of the case may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the expenditures are necessary and that the person is financially unable to bear them, the Court shall authorize counsel to incur such necessary expenditures in such amounts as the Court shall authorize. Such counsel may also make expenditures without prior authorization and subject to later review for investigative, expert or other services or costs necessary for an adequate presentation of the case, but the total of such expenditures made without prior authorization shall not exceed $200.

(f) *Counsel for State officers and employees.* Appointment of counsel for State officers and employees, under 60 Del. Laws, c. 474, is governed by Supreme Court Rule 68.

(g) *Costs and fees on appeals.* In any case where an indigent appeal to the appellate court and the ground of the appeal requires a review of the evidence, counsel shall make a request to the trial Court to be furnished without charge a copy of the transcript of relevant trial testimony. The cost of such transcript shall be certified by the Court for payment. In cases where the appellate court certifies to this Court the appointment of counsel and the amount set by the appellate court as compensation for said counsel's services and expenses, this Court, upon receipt of such certificate, shall certify such amount for payment.

(h) *Contracts with attorneys to render services.* Notwithstanding any provision of this Rule to the contrary, the Court may elect to contract with one or more attorneys to render services as Court-appointed counsel to represent indigent persons charged who cannot be represented by the Office of the Public Defender. The Court may appoint said attorneys for a fixed term and at a fixed monthly compensation to include all services rendered by said attorney during the contract period. Disbursement of said funds shall be subject to the approval of the Administrative Office of the Courts as the disbursing agency.

History.

Amended Feb. 16, 2017, effective Apr. 10, 2017.

Rule 44.1. Appointment of counsel for juveniles.

(a) *Right to counsel.* A juvenile against whom delinquency proceedings have been initiated shall have the right to counsel at all stages.

(b) *Appointment of counsel where juvenile not represented.* If a juvenile is not represented by counsel at his or her initial Family Court appearance, the Court shall order the Chief Defender to assign counsel to represent the juvenile.

(c) *Cases in which the right to counsel may not be waived.* The juvenile's right to be represented by counsel under subsection (a) of this Rule shall not be waived:

(1) By a juvenile of any age where the delinquent act the juvenile is accused of is a felony.

(2) By a juvenile of any age who is in the custody of the Division of Family Services.

(3) By a juvenile who is younger than 16 years of age at the time of the attempted waiver.

(4) By a juvenile whose family member, guardian, or custodian is the alleged victim of the delinquent act or whose interest is determined by the Court to be adverse to the juvenile's interest.

(d) *Waiver of counsel.* In cases not listed in subsection (c) of this Rule, the juvenile may waive the right to counsel only after following the procedures of this subsection of the Rule.

The following shall be the sole method of waiver by a juvenile of his or her right to counsel:

(1) If the juvenile wishes to waive his or her right to counsel, the juvenile shall be fully and effectively informed, through an in-person meeting with counsel, of the disadvantages of self-representation.

(2) If, after this meeting, the juvenile still wishes to waive the right to counsel, the Court shall conduct an in-court hearing to determine whether the waiver is knowing, intelligent, and voluntary. The juvenile shall bear the burden of proving the waiver is knowing, intelligent, and voluntary by clear and convincing evidence.

(3) In determining whether a juvenile's waiver is knowing, intelligent, and voluntary, the Court shall consider the circumstances surrounding the waiver, including, but not limited to:

A. The juvenile's mental and emotional health and maturity;

B. Whether the juvenile understands the consequences of the waiver;

C. Whether the juvenile understands the seriousness of the offense;

D. Whether the juvenile understands the potential, direct and collateral consequences of being adjudicated delinquent of the offense;

E. Whether the parent, guardian, or custodian understands the consequences to the juvenile of the waiver; and

F. Whether the waiver of the right to counsel is the result of any coercion, force, or inducement.

(4) Before the Court may accept the waiver, the juvenile must provide to the Court a written statement, signed by both the juvenile and his or her parent, guardian, or custodian, affirming that the juvenile has followed the procedures of this Rule and understands the rights he or she is waiving and the potential consequences of the waiver.

(5) If a juvenile waives counsel for any proceeding, the waiver only applies to that proceeding, and the juvenile may revoke the waiver of counsel at any time.

History.

Adopted Feb. 16, 2017, effective Apr. 10, 2017.

Rule 45. Time.

(a) *Computation.* In computing any period of time prescribed or allowed by these Rules, by order of court, or by statute, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, or other legal holiday, or other day on which the office of the Clerk of the Court is closed, in which event the period shall run until the end of the next day on which the office of the Clerk of the Court is open. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation. As used in this Rule, “legal holidays” shall be those days provided by statute or appointed by the Governor or the Chief Justice of the State of Delaware.

(b) *Enlargement.* When an act is required or allowed to be done at or within a specified time, the Court for cause shown may at any time in its discretion:

(1) with or without motion or notice, order the period enlarged if request thereof is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) upon motion made after the expiration of the specified period permit the act to be done if the failure to act was the result of excusable neglect; but the Court may not extend the time for taking any action under Rules 29, 33, 34, and 35 except to the extent and under the conditions stated therein.

(c) *For motions; affidavits.* A written motion, other than one which may be heard ex parte, and notice of request for hearing thereof shall be served in a timely manner. For cause shown, such an order thereon may be made on an ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not less than 1 day before the hearing unless the Court permits them to be served at a later time.

(d) *Additional time after service by mail.* Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper and the notice or other paper is served by mail, 3 days shall be added to the prescribed period, unless the time period was prescribed by statute.

History.

Amended, effective Sept. 1, 1987.

Rule 46. Bail [See interim Superior Court Criminal Rules 5.2 to 5.4 regarding application of 11 Del. C. Chapter 21].

(a) *Right to bail; modification for delay.* A person charged shall be admitted to bail either before conviction or after conviction and pending appeal in accordance with the Constitution and laws of this State. If there is unnecessary delay in bringing a person charged to trial, the Court may modify the terms for release on bail.

(b) *Bail for witness.* If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure that person's presence by subpoena, the Court or the committing magistrate may require bail for that person's appearance as a witness, in an amount fixed by the Court or the committing magistrate. If the person fails to give bail, the Court or committing magistrate may commit that person to custody pending final disposition of the proceeding in which the testimony is needed, may order release if detention has been unreasonably long and may modify at any time the requirement as to bail.

(c) *Terms.* If the person charged is admitted to bail, the terms thereof shall be such as in the judgment of the Court will insure the presence of the person charged, having regard to the nature and circumstances of the offense charged, the weight of the evidence, the financial ability of the person charged to give bail, the character of the person charged and the policy against unnecessary detention of persons charged pending trial.

(d) *Form: Conditions and place of deposit.* A person required or permitted to give bail shall execute an appearance bond. The Court having regard to the considerations set forth in subdivision (c) may require 1 or more sureties, may authorize the acceptance of cash or bonds or notes of the United States or State of Delaware in an amount equal to or less than the face amount of the bond, or may authorize the release of the person charged without security upon that person's written agreement to appear at a specified time and place and upon such conditions as may be prescribed to insured appearance.

(e) *Justification of sureties.* Every surety, except a corporate surety which is approved as provided by law, shall justify by affidavit and may be required to describe in the affidavit the property by which surety proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by that surety and remaining undischarged and all other liabilities. No bond shall be approved unless the surety thereon appears to be qualified. See Supreme Court Rule 83 and Superior Court Civil Rule 108(b) for the prohibition against attorneys and other court officers acting as bondsmen.

(f) *Forfeiture.*

(1) *Declaration.* If there is a breach of condition of a bond, the Court shall declare a forfeiture of the bail.

(2) *Setting aside.* The Court may direct that a forfeiture be set aside, upon such conditions as the Court may impose, if it appears that justice does not require the enforcement of the forfeiture.

(3) *Enforcement.* When a forfeiture has not been set aside, the Court shall on motion enter a judgment of default and execution may issue thereon. By entering into a bond the obligors submit to the jurisdiction of the Court and irrevocably appoint the Clerk of the Court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Clerk of the Court, who shall forthwith mail copies to the obligors to their last known addresses.

(4) *Remission.* After entry of such judgment, the Court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision.

(g) *Exoneration.* When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the Court shall exonerate the obligors and release any bail. A surety may be exonerated

by a deposit of cash in the amount of the bond or by a timely surrender of the person charged into custody.

Rule 47. Motions, briefs and other papers.

(a) *Motions: How and when made; contents.* An application to the Court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing and in conformity with this Rule unless the Court permits otherwise. All motions shall consist of a notice of motion, motion, proposed form of order and supporting affidavits and other material which shall be filed with the Court and served on the opposing party or counsel. The other party shall file affidavits and other material in response to the motion, including a proposed form of order with the Court within 10 days, unless otherwise provided in these Rules or upon leave of Court. All affidavits shall be signed by the parties unless they relate exclusively to matters within the knowledge of counsel or third parties. If the affidavits and other materials submitted with the original moving papers do not make out a prima facie case for the relief requested, the motion may be denied by the Court. If no affidavits or other materials are filed in opposition to the motion within the time allowed therefor, it may be granted by the Court.

(b) *Service: When required.* Written motions and petitions other than those which are heard ex parte, written notices, and similar papers shall be served upon each of the parties.

(c) *Service: How made.* Whenever under these Rules or by an order of the Court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the Court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

(d) *Filing.* Papers required to be served shall be filed with the Court. Papers shall be filed in the manner provided in civil actions.

(e) *Setting down for hearing.* While either party may request, in the moving papers, oral argument of a motion or an evidentiary hearing thereon, the judge or master to whom the motion is presented may decide the motion on the moving papers submitted to the Court without further notice to either party unless the interests of justice require otherwise, or may enter an interim order based on the moving papers subject to modification at a later hearing if requested.

(f) *Notice of orders.* Immediately upon the entry of an order made on a written motion subsequent to arraignment, the Clerk of the Court shall mail to each party a notice thereof and shall make a note in the Court's record of the mailing.

(g) *Form.* The form of briefs and letter memoranda shall be as set forth in Family Court Civil Rule 107; the form of motions and other papers shall be as set forth in Family Court Civil Rule 7.

History.

Amended, effective Apr. 25, 1988.

Rule 48. Nolle prosequi and dismissal.

(a) *Nolle prosequi by Attorney General.* The Attorney General may file a nolle prosequi in writing or orally on the record. The latter need not be reduced to writing as long as same is reflected in the written record of the judge or master accepting the nolle prosequi on the record. Upon entry of a nolle prosequi of an information, petition or complaint, the prosecution thereof shall terminate; however, in any case in which a plea of guilty or nolo contendere shall have been entered or a finding of guilt made, a nolle prosequi shall be filed and entered only by and with the consent of the Court.

(b) *Dismissal by Court.* If there is unnecessary delay in bringing to trial a person held to answer, the Court may dismiss all proceedings in that action and release the accused and vacate any appearance bonds.

Rule 49. Masters.

(a) *Appointment; qualifications.* The Chief Judge shall appoint, commission and set salaries of qualified persons to act as masters in the Court, all of whom shall hold office at the pleasure of the Chief Judge, shall be residents of the State for at least 5 years immediately preceding their appointment.

(b) *Authority.*

(1) Masters may hear and determine any matters properly before them as the Chief Judge may direct and may order the issuance of legal process to compel the attendance of necessary parties and witnesses, set bail, determine and punish civil contempt, render and enforce judgments, including default judgments, and assess fees and costs.

(2) The findings and recommendations of a master shall become the judgment of the Court, with rights of appeal reserved to all parties, unless they be disapproved in writing by an order of the Chief Judge or designee or unless application for a review de novo has been made in writing within 15 days from the date of a master's announcement of decision.

(c) *Duties.* A master shall inform all parties unrepresented by counsel that he or she is a master in the Court and shall advise them of the provisions of Rule 49(b)(2) and Rule 49(d). As soon after announcement of decision is practicable, the master shall transmit to the Chief Judge or such associate judge as the Chief Judge designates all papers and records relating to the case.

(d) *Reviews de novo; appeals.* Any defendant in an action before a master who desires to have the matter reheard by a judge of the Court shall, within 15 days after the master announces decision, file with the Court a written petition requesting trial de novo before a judge. Any party authorized by law to do so may appeal the master's judgment to the appellate court.

Rule 50. Calendars; order of business.

(a) *Calendars.* The Court may provide for placing criminal proceedings upon appropriate calendars. Preference shall be given to criminal proceedings as far as practicable.

(b) *Motions.* Scheduling of hearings on motions shall be as directed by the Court on each motion.

(c) *Oral argument.* There will be no oral argument unless scheduled by the Court, except as may be otherwise expressly provided by statute or rule.

(d) *Scheduling.* Arguments scheduled will be scheduled as to date and time by the assigned Judge.

(e) *Time.* If oral argument is scheduled, each side shall be allowed 15 minutes for argument. Any application for additional time must be presented to the assigned Judge promptly after receipt of the scheduling notice. The Court may limit or terminate an argument when, in its opinion, the issues have been fully presented. Counsel will be expected not to read at length from briefs or opinions.

Rule 51. Exceptions unnecessary.

Exceptions to rulings or orders of the Court are unnecessary and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the Court is made or sought, makes known to the Court the action sought or objection to the action of the Court and the grounds therefor. Where justice requires, the Court may relieve a party from the consequences of failure to assign the proper reasons in support of an objection. If a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice that party.

Rule 52. Harmless error and plain error.

(a) *Harmless error.* Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) *Plain error.* Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the Court.

Rule 53. Regulation of conduct in the courtroom.

The taking of photographs in the courtroom during the progress of judicial proceedings or radio or television broadcasting or transmitting of judicial proceedings from the courtroom shall not be permitted by the Court.

Rule 54. Application and exception.

Omitted.

Rule 55. Books and records kept by the Clerk and entries therein.

(a) *Record.* The Clerk of the Court shall keep a record of all criminal actions filed in such form and manner as the Chief Judge shall direct.

(b) *Notation of judicial action.* The Clerk or other staff as the Chief Judge shall direct shall make appropriate record entries noting Court orders or dispositions in every matter whenever occurring, including but not limited to, the dates of all conferences, hearings or trials, the arbitration officer, master or judge, and the date of any action or decision.

(c) *Statistics.* The Clerk of the Court shall keep such statistics in such form as the Chief Judge shall direct.

Rule 56. The Family Court; duties of the Clerk; records and exhibits.

(a) *The Family Court always open.* The Family Court shall be deemed always open for the purpose of the transaction of business. The Court may at any time make any order, including a final order.

(b) *Notice of amendment of rules.* The Clerk shall give to all members of the Bar of this Court notice of any amendment to these Rules 30 days in advance of the effective date thereof.

(c) *Records and exhibits.*

(1) *Custody.* The Clerk shall have custody of the records and papers of the Court. The Clerk shall not permit any original record, paper or exhibit to be removed from the Clerk's custody except at the direction of the Court or as provided by statute or by these Rules.

(2) *Removal of exhibits.* Exhibits shall not be removed prior to the time provided in these Rules except on motion or stipulation and order of the Court.

(3) *Disposition of exhibits.* After the final determination of a cause by the Court and the expiration of the period for taking an appeal, if no appeal has been filed, all exhibits shall be removed by the party who introduced them. If not so removed, the Clerk shall notify the parties by mail to remove them forthwith; and if they are not removed within 15 days from the date of mailing said notice, the Clerk may obtain an order of the Court for their disposition.

(d) *Opinions to be dated.* Each written opinion (including letter opinions) shall bear 2 dates immediately under the caption of the case:

(1) The date of the last oral argument, or brief filed, or other final submission of the case for decision; and

(2) The date of the filing of the opinion or order.

(e) *Captioning and reporting.* All adult criminal proceedings shall be captioned and reported with the full name of the defendant. All delinquency proceedings shall be reported by only first name, middle initial and last initial of the respondent.

Rule 56.1. Supreme Court mandate.

Upon receipt of a mandate from the Supreme Court, the Clerk shall act in accordance with any instruction therein and in such a manner so as to enable the Family Court to comply with the requirements of Supreme Court Rule 19(c).

Rule 56.2. Certification of questions of law to the Supreme Court.

Certification of questions of law shall be governed by Supreme Court Rule 41. A party filing a petition requesting the Family Court to certify a question of law of the Supreme Court shall set forth therein facts and issues at such length and with such clarity as to enable the Family Court to make a finding necessary to warrant a certification under the terms and conditions of Supreme Court Rule 41. There shall be attached to such petition a proposed form of certification substantially in the form set forth in Official Form K of the Rules of the Supreme Court. In the event the Family Court enters an order of certification, the petitioner shall file with the Clerk the copies necessary to conform to the requirements of Supreme Court Rule 41. The Clerk shall, within 5 days of the filing of such certification, file with the Clerk of the Supreme Court 6 certified copies thereof.

Rule 57. Rules of Court.

If no procedure is specifically prescribed by rule, the Court may proceed in accordance with the corresponding Family Court Civil Rule or in any lawful manner not inconsistent with these Rules, with the Rules of the Supreme Court, or with any applicable statute.

Rule 58. Forms.

Omitted.

Rule 59. [Reserved]

Reserved.

Rule 60. Entry of appearance by counsel.

(a) *Methods.* An attorney shall appear for the purpose of representing a person charged with respect to a specific information, petition or complaint (1) by filing a written notice of appearance with the Court, or (2) by filing any paper with the Court over the attorney's signature, or (3) by appearing personally at any

Court arbitration conference, hearing or trial and advising the arbitration officer, judge or master that that attorney is representing the person charged, or (4) by requesting on behalf of a person charged a continuance of a conference, hearing or trial.

(b) *Notices to attorney.* Once an attorney has appeared, that attorney shall receive copies of all notices to the person charged.

(c) *Withdrawal of appearance.* No appearance shall be withdrawn except upon application by the attorney and order of the Court for good cause.

Rule 61. Attorneys.

(a) *Admission.* Except as provided in paragraph (b) of this Rule, only an active member of the Bar of the Supreme Court of this State who maintains an office in Delaware for the practice of law as defined by Delaware Supreme Court Rule 12(d) shall be entitled to practice as an attorney in this Court.

(b) *Admission pro hac vice.*

(1) Attorneys who are not members of the Delaware Bar may be admitted pro hac vice in the discretion of the Court and such admission shall be made only upon written motion by a member of the Delaware Bar who maintains an office in this State for the practice of law ("Delaware Counsel"). Application for admission pro hac vice must be made separately before each Court in which admission is sought. The admission of an attorney pro hac vice shall not relieve the moving attorney from responsibility to comply with any Rule or order of the Court.

(2) Any attorney seeking admission pro hac vice shall certify the following in a statement attached to the motion:

(A) That the attorney is a member in good standing of the Bar of another state;

(B) That the attorney shall be bound by the Delaware Lawyer's Rules of Professional Conduct and has reviewed the Statement of Principles of Lawyer Conduct;

(C) That the attorney and all attorneys of the attorney's firm who directly or indirectly provide services to the party or cause at issue shall be bound by all Rules of the Court;

(D) That the attorney has consented to the appointment of the Clerk of the Family Court as agent upon whom service of process may be made for all actions, including disciplinary actions, that may arise out of the practice of law under this Rule and any activities related thereto;

(E) The number of actions in any court of record of Delaware in which the attorney has appeared in the preceding 12 months;

(F) That a payment for the pro hac vice admission assessment determined by the Delaware Supreme Court is attached to be deposited in the Supreme Court registration fund for the purpose of the governance of the Bar of its Court and may be distributed pursuant to Supreme Court Rule 69. The pro hac vice admission assessment shall be $375 in calendar year 2015, $400 in calendar year 2016, and thereafter increased annually by the rate of inflation as determined by the Delaware Supreme Court;

(G) Whether the applying attorney has been disbarred or suspended or is the object of pending disciplinary proceedings in any jurisdiction where the applying attorney has been admitted generally, pro hac vice, or in any other way; and

(H) The identification of all states or other jurisdictions in which the applying attorney has at any time been admitted generally.

(3) Delaware Counsel for any party shall appear in the action in which the motion for admission pro hac vice is filed and shall sign or receive service of all notices, orders, pleadings or other papers filed in the action, and shall attend all proceedings before the Court, Clerk of the Court, or other officers of

the Court, unless excused by the Court. Attendance of Delaware Counsel at depositions shall not be required unless ordered by the Court.

(4) Withdrawal of attorneys admitted pro hac vice shall be governed by the provisions of Rule 60(c). The Court may revoke a pro hac vice admission sua sponte, or upon the motion of a party, if it determines, after a hearing or other meaningful opportunity to respond, the continued admission pro hac vice to be inappropriate or inadvisable.

(5) The motion and certificate described in subsections (1) and (2) of this Rule shall be filed as soon as reasonably possible, and they shall be filed no later than the date of the first appearance of the attorney who seeks admission pro hac vice before the Court or the Clerk of the Court in the matter for which admission is sought.

(6) In exercising its discretion in ruling on a motion for admission pro hac vice, the Court shall also consider whether, in light of the nature and extent of the practice in the State of Delaware of the attorney seeking admission, that attorney is, in effect practicing as a Delaware Counsel without complying with the Delaware requirements for admission to the Bar. In its consideration of this aspect of the motion, the Court may weigh the number of other admissions to practice sought and/or obtained by this attorney from Delaware courts, the question of whether or not the attorney in fact maintains an office in Delaware although the attorney is not admitted to practice in Delaware courts, and other relevant facts.

(7) The Delaware Counsel filing a motion pro hac vice for the admission of an attorney not a member of the Delaware Bar shall certify that the Delaware attorney finds the applicant to be a reputable and competent attorney, and is in a position to recommend the applicant's admission.

(c) *Agreements between attorneys.* Agreements between attorneys will not be considered by the Court unless they are in writing and filed with the Clerk or stated on the record in the presence of the Court.

History.

Amended, effective Apr. 1, 1987; Nov. 19, 1992, effective Dec. 21, 1992; Jan. 28, 2015, effective Feb. 1, 2015; Nov. 13, 2014, effective Apr. 20, 2015.

Rule 62. Records; privacy.

(a) *Release of information.* Without the permission of the Court, no complaint, petition, information, or other paper instituting an action and no paper ordered to be served shall be released for examination or publication by the Clerk or by the sheriff until a return showing service on all designated parties is made to the Clerk.

(b) *Nonresident.* If service is to be made on a nonresident, the material shall not be released, without the permission of the Court, until at least 10 days after any required mailing.

(c) *Records of proceedings.* Unless otherwise required by statute or rule, all records of proceedings before the Court shall be public. If sufficient reasons exist, the Court in its discretion may close records of proceedings.

(d) *Examination of Court records.* Examination of Court records is also governed by instructions to the Clerk from the Court from time to time.

History.

Amended, effective Sept. 11, 2007.

Rule 62.1. Electronic copy of audio record.

(a) Any party to a proceeding, or the party's authorized attorney, may obtain an electronic copy of the audio record of such proceeding upon the filing of an Application and Affidavit of Proper Use and upon payment of assessed costs, unless the audio record of such proceeding has been destroyed in accordance with the Court's archiving and retention policy.

(b) The individual requesting the electronic copy must submit a notarized affidavit stating that the electronic copy of the audio record will not be copied altered, transferred, or otherwise used in an inappropriate manner. Inappropriate use includes, but is not limited to, using the electronic copy on CD of the audio record for the purposes of harassment, embarrassment, entertainment, inflicting emotional distress, exploitation, blackmail, loss of employment, and/or commerical gain. Inappropriate use may implicate various criminal offenses.

(c) Requests for an electronic copy of any child interview shall be made by motion setting forth the reason for the request.

History.

Added, effective Oct. 24, 2007.

Rule 63. Sealing records.

Upon motion by a party who is subject to the Court's jurisdiction or any other person who may be affected, the Court may order sealed all or part of the legal and social files, records of the court and any private or confidential records of a party if the Court determines such actions to be for the best interest of the party or person affected.

Index follows Rules.

INDEX TO CRIMINAL RULES OF THE FAMILY COURT