

Rules Governing Criminal Procedure for the Justice of the Peace Court of the State of Delaware

I. Scope, Purpose and Construction

Rule 1. Scope of Rules.

These Rules govern procedures in all criminal proceedings in the Justice of the Peace Court of the State of Delaware.

Rule 2. Purpose and Construction.

These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity and uniformity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

II. Preliminary Proceedings

Rule 3. Commencement and complaint.

(a) *Commencement.* Proceedings may be by complaint or information or, when lawful, by arrest or summons without a warrant or complaint.

(b) *Complaint.* The complaint is a written statement of the essential facts constituting the offense charged and shall further include the title, section, and subsection of the applicable statute, rule, regulation or other provision of law, which is allegedly violated. It shall be made upon oath or affirmation by the complainant before any person authorized by law to perform a notarial act. The complaint may be based upon personal knowledge or upon reasonable information and belief.

Rule 4. Arrest warrant or summons; *capias*.

(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 defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. A summons instead of a warrant may issue in the discretion of the Justice of the Peace. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons or there is reasonable cause to believe the defendant will not appear, a warrant shall issue. In any case in which it is lawful for an officer to arrest a person without a warrant, the officer may, without a complaint having been filed, issue a summons in the form prescribed by statute instead of arresting the person.

(b) *Probable Cause.* The finding of probable cause may be based upon hearsay evidence in whole or in part.

(c) *Form.*

(1) *Warrant.* The warrant shall be signed by the Justice of the Peace and shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before the nearest available committing magistrate of the county in which the offense is alleged to have been committed or such other committing magistrate as provided by statute, court rule or administrative order. 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 defendant to appear before a Justice of the Peace at a stated time and place. When a complaint has been filed, a copy thereof shall be attached to the summons.

(d) *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 arrest of the defendant. The officer need not have the warrant at the time of the arrest but upon request shall show the warrant to the defendant as soon as practicable. If the officer does not have the warrant at the time of the arrest, the officer shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to the defendant personally, by leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, by mailing a copy of the summons to the defendant's last known address, or by facsimile transmission pursuant to Rule 64.

(4) *Return.* The officer executing a warrant shall make return thereof to the Justice of the Peace Court before which the defendant is brought pursuant to Rule 5. At the request of the prosecuting agency any unexecuted warrant shall be returned to and cancelled by a Justice of the Peace at the court from which it was issued. On or before the return day the person to whom a summons was delivered for service shall make return to the Justice of the Peace Court before which the summons is returnable. At any time while the complaint is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the Justice of the Peace to the authorized person for execution or service.

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

(1) *Amendment.* No person arrested 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, but the complaint, warrant or summons 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 defendant, or the offense with which the defendant is charged, or that although not guilty of the offense specified in such complaint, warrant or summons there is reasonable ground to believe that the defendant is guilty of some other offense, the Justice of the Peace shall not discharge or dismiss such defendant but shall forthwith cause a new complaint to be filed and shall thereupon issue a new warrant or summons.

(f) *Capias.* A *capias* issued by any Delaware court shall be executed in the same manner as an arrest warrant. The Justice of the Peace before whom the defendant is brought shall hold the defendant to answer in the appropriate court. Bail shall be fixed as endorsed on the *capias* or, in the absence thereof, as the Justice of the Peace deems appropriate in the circumstances.

(g) *By audiovisual device.* A Justice of the Peace may issue a warrant in conjunction with an audiovisual appearance. If an audiovisual device is used for communication, the Justice of the Peace may exercise all powers conferred by law and all communications and proceedings shall be conducted in the same manner as if the appearance were in person. A Justice of the Peace may, by means of a facsimile transmission, receive a complaint and an affidavit in support of the issuance of a warrant or summons and may issue a warrant or summons by the same method in accordance with Rule 64. The facsimile of documents transmitted pursuant to this Rule shall be treated as the original. The officer executing the warrant shall receive proof that the Justice of the Peace has signed the warrant or summons before the warrant or summons is executed. Proof that the Justice of the Peace has signed the warrant or summons may consist of receipt of the facsimile of the signed warrant or summons.

Rule 5. Appearance before the Justice of the Peace acting as committing magistrate.

(a) *In general.* An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unreasonable delay before the nearest available Justice of the Peace Court of the county in which the offense is alleged to have been committed or such other Justice of the Peace Court as provided by the warrant or by statute, court rule or administrative order. If a person arrested without a warrant is brought before a Justice of the Peace, a complaint shall be filed forthwith, which shall comply with the requirements of Rule 4(a) with respect to the showing of probable cause. When a person, arrested with or without a warrant or given a summons, appears initially before the Justice of the Peace, the Justice of the Peace shall proceed in accordance with the applicable subsections of this rule.

(b) *Offenses triable by the Justice of the Peace Court.* If the charge against the defendant is triable by the Justice of the Peace Court, the Justice of the Peace may proceed to try or otherwise dispose of the charge in accordance with the rules of procedure of the Justice of the Peace Court.

(c) *Offenses not triable by the Justice of the Peace Court.* If the Justice of the Peace Court does not try or otherwise dispose of the charge against the defendant under subsection (b) of this rule, the defendant shall not be called upon to plead. The Justice of the Peace shall inform the defendant of the defendant's right to retain counsel or to request the assignment of counsel if the defendant is unable to obtain counsel, and of the general circumstances under which the defendant may secure pretrial release. The Justice of the Peace shall inform the defendant that the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant. The Justice of the Peace shall also inform the defendant of the right to a preliminary examination. The Justice of the Peace shall allow the defendant reasonable time and opportunity to consult counsel and shall detain or conditionally release the defendant as provided by statute or in these rules.

(d) *Scheduling preliminary examination.* A defendant is entitled to a preliminary examination when charged with any offense that is within the exclusive jurisdiction of, or that the attorney general chooses to prosecute in, Superior Court. The preliminary examination shall be held in either the Court of Common Pleas or in the Family Court, as appropriate. Such examination shall be held within a reasonable time, but in any event not later than 10 days following the initial appearance if the defendant is in custody and no later than 20 days if the defendant is not in custody provided, however, that the preliminary examination shall not be held if the defendant is indicted or if an information against the defendant is filed in Superior Court before the date set for the preliminary examination.

History.

Amended May 18, 2021.

III. Charging Documents

Rule 6. The arrest warrant or summons.

Except where otherwise provided by the Constitution of the State, or by statute, an offense within the jurisdiction of the Justice of the Peace Court may be prosecuted by warrant or summons as provided in Rule 4.

Rule 7. The information.

(a) *Use of information.* Except where otherwise provided by the Constitution of this State, or by statute, an offense within the jurisdiction of the Justice of the Peace Court may be prosecuted by information.

(b) Omitted.

(c) *Nature and contents.*

(1) *In general.* The information 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 allege in a single count that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. The information shall state for each count the official or customary citation, including applicable subsection, of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated.

(2) *Harmless error.* Error in the citation or its omission shall not be ground for dismissal of the information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice.

(d) *Surplusage.* The Court on motion of the defendant may strike surplusage from the information.

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

Rule 8. Joinder of offenses and of defendants.

(a) *Joinder of offenses.* Two or more offenses may be charged in the same charging document in a separate count for each offense if the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) *Joinder of defendants.* Two or more defendants may be charged in the same charging document 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 defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

Rule 9. Return of warrant or summons upon indictment or information issued by another court.

An officer executing a warrant issued under Rule 9 of the Superior Court, Court of Common Pleas, or Family Court shall bring the arrested person without unreasonable delay before the nearest available committing magistrate of the county in which the offense is alleged to have been committed or such other committing magistrate as provided by the warrant or by statute, court rule or administrative order. When a defendant arrested with a warrant issued pursuant to this rule is brought before a Justice of the Peace Court, the Justice of the Peace shall hold the defendant to answer in the appropriate court. Bail shall be fixed as endorsed on the warrant or, in the absence thereof, as the Justice of the Peace deems appropriate in the circumstances.

IV. Arraignment and Preparation for Trial

Rule 10. Initial appearances and arraignments.

(a) *Proceedings preliminary to initial appearance and arraignment.* Before the Justice of the Peace shall proceed with an initial appearance or with an arraignment of a defendant, the Justice of the Peace shall advise the defendant in accordance with statute of the defendant's rights of election, where applicable, and of the defendant's right to counsel, and, where applicable, the effect of a plea of guilty and the fact that such advice was given shall be noted in the record of the case. The defendant shall be given a copy of the charging document before being called upon to plead. If the defendant wishes to have the defendant's case heard in the Justice of the Peace Court, the defendant must execute a waiver of the right to be tried on the charge in the Court of Common Pleas, when such right exists.

(b) *How conducted.*

(1) *In open court.* Except as otherwise provided in this rule, initial appearances and arraignments shall be conducted in open court. They shall consist of reading the complaint to the defendant or stating to the defendant the substance of the charge and, where applicable, calling on the defendant to plead thereto after the Court is satisfied that the defendant understands the nature of the accusation made against the defendant.

(2) *By audiovisual device.* Initial appearances and arraignments may be conducted by audiovisual device in the same manner as if the appearance were in person. Audiovisual monitors shall be situated in the courtroom and at the place of incarceration or detention of the defendant so as to provide the public, the Court, and the defendant with a view of the proceedings. Documents may be transmitted by electronically or electromagnetically transmitted facsimile process in accordance with Rule 64. The facsimile of documents transmitted pursuant to this Rule shall be treated as the original.

(3) *By written pleading.*

1. *When permitted; effect.* In lieu of arraignment in open court or by audiovisual device, an attorney for a defendant may, at or before the time scheduled for arraignment, direct the entry of a not guilty plea by written pleading to any charge for which the defendant has been held to answer in the Justice of the Peace Court, whether or not the defendant has been released on bail. The date that the pleading is filed shall be considered the date of arraignment. An attorney who files a not guilty plea by written pleading shall be deemed to have entered a general appearance for the defendant and shall thereafter be permitted to withdraw only with leave of the Court for good cause.

2. *Form; service.* The pleading shall state (1) the name and criminal action number of all charges to which a not guilty plea is entered, (2) the defendant's current address, (3) if the defendant wishes to have the defendant's case heard in the Justice of the Peace Court, a waiver by the defendant and the defendant's attorney of the right to be tried on the charge in the Court of Common Pleas, and (4) the next scheduled court appearance which shall have been obtained from the Court. In addition to service on the Court, the pleading shall be served on the defendant and, if bail has been posted, on the surety.

(c) *When conducted.*

(1) All initial appearances and arraignments in the Justice of the Peace Court shall be held on the day and at the time as prescribed by the Chief Magistrate with the exception that a Justice of the Peace may hold an immediate or forthwith initial appearance or arraignment of the defendant when the nature and circumstances of the charge shall indicate the necessity thereof in the interest of the furtherance of justice or when the defendant requests an immediate or forthwith initial appearance or arraignment and the conducting of the proceeding will not interfere with the other proceedings of the Court.

(2) All summonses shall indicate the date, time and location for the defendant's initial appearance/arraignment.

Rule 10.1. Establishment of trial dates.

At the time of the arraignment of any defendant as hereinabove provided, the Court shall, when a trial of the charge against the defendant shall be necessary, advise the defendant of the date and the time of the trial. The date and time of the trial shall be subsequent to and not the same as the date of the arraignment except the Court, of its own motion and with the consent of the defendant and the prosecuting agency, may order an immediate trial where the interest of justice demands, or where the defendant requests an immediate trial which request is agreed to by the prosecuting agency. The Justice of the Peace Court shall enter upon the docket the date and the time of the trial to be held and the fact that the defendant was advised thereof upon arraignment. No trial date shall be established sooner than 5 days from the date of the arraignment unless with the consent of both the prosecuting agency and the defendant.

Rule 11. Pleas.

(a) *Alternatives.*

(1) *In general.* A defendant may plead not guilty, guilty, or *nolo contendere*. If a defendant refuses to plead or if a defendant corporation fails to appear, the Court shall enter a plea of not guilty.

(2) Omitted.

(b) *Nolo contendere; guilty without admission.* A defendant may plead *nolo contendere* or guilty without admitting the essential facts constituting the offense 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) *Advice to defendant.* No plea of guilty or *nolo contendere* shall be accepted to a class B misdemeanor, an unclassified misdemeanor or a violation for which no sentence of imprisonment will be imposed unless the Court is satisfied that the defendant understands the nature of the charge and the maximum possible penalty provided by law. Before accepting a plea of guilty or *nolo contendere* to a class A misdemeanor, or to any other offense for which a sentence of imprisonment will be imposed, the Court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

(1) The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law, the fact that the Court is required to consider any applicable sentencing guidelines but may depart from those guidelines under some circumstances, and, when applicable, that the Court may also order the defendant to make restitution to any victim of the offense; and

(2) If the defendant is not represented by an attorney, that the defendant has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent the defendant; and

(3) That the defendant has the right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a jury, when applicable, and at trial the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses, and the right against compelled self-incrimination; and

(4) That if a plea of guilty or *nolo contendere* is accepted by the Court there will not be a further trial of any kind, so that by pleading guilty or *nolo contendere* the defendant waives the right to a trial; and

(5) If the Court intends to question the defendant under oath, on the record, and in the presence of counsel about the offense to which the defendant has pleaded, that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement.

(d) *Insuring that the plea is voluntary.* The Court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The Court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the prosecuting agency and the defendant or the defendant's attorney.

(e) *Plea agreement procedure.*

(1) *In general.* The prosecuting agency and the attorney for the defendant or the defendant when acting *pro se* may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or *nolo contendere* to a charged offense or to a lesser or related offense, the prosecuting agency will do any of the following:

(A) File a dismissal of other charges; or

(B) Make a recommendation, or agree not to oppose the defendant's request for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the Court; or

(C) Agree that a specific sentence is the appropriate disposition of the case. The Court shall not participate in any such discussions.

(2) *Notice of such agreement.* If a plea agreement has been reached by the parties, the Court shall require the disclosure of the agreement in open court or, on a showing of good cause, *in camera*, at the time the plea is offered. If the agreement is of the type specified in subsection (e)(1)(C), the Court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider a presentence report. If the agreement is of the type specified in subsection (e)(1)(B), the Court shall advise the defendant that if the Court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea.

(3) *Acceptance of a plea agreement.* If the Court accepts the plea agreement, the Court shall inform the parties either after taking the plea where immediate sentencing is contemplated or immediately prior to sentencing in cases where a presentence report has been ordered that it will embody in the judgment and sentence the disposition provided for in the plea agreement. Nothing stated herein precludes the Court from thereafter reducing the sentence imposed pursuant to Rule 35(b) of these rules.

(4) *Rejection of a plea agreement.* If the Court rejects the plea agreement, the Court shall inform the parties of this fact, advise the parties personally in open court or, on a showing of good cause, *in camera*, that the Court is not bound by the plea agreement, afford either party the opportunity to then withdraw the plea agreement, and advise the parties that if the plea agreement is not withdrawn that the disposition of the case may be less or more favorable to the defendant than that contemplated by the plea agreement. In the event a plea agreement is rejected or withdrawn under this Rule and a subsequent plea agreement is presented to the Court, counsel shall disclose to the Court the fact that an earlier plea agreement was rejected or withdrawn under this Rule.

(5) *Time of plea agreement procedure.* Except for good cause shown, notification to the Court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the Court.

(6) *Inadmissibility of pleas, plea discussions, and related statements.* Except as otherwise provided in this paragraph, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

(A) A plea of guilty which was later withdrawn;

(B) A plea of *nolo contendere*;

(C) Any statement made in the course of any proceedings under this rule regarding either of the foregoing pleas; or

(D) Any statement made in the course of plea discussions with the prosecuting agency which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

However, a judgment of conviction upon a plea of guilty or *nolo contendere* may be admissible in any proceeding, and a statement under (C) or (D) of this paragraph is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

(f) *Determining accuracy of plea.* Notwithstanding the acceptance of a plea of guilty or *nolo contendere*, the Court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the judgment.

(g) *Record of proceedings.* A record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty or *nolo contendere*, the record shall include, without limitation, the Court's advice to the defendant, the inquiry into the voluntariness of the plea including any plea agreement, and the inquiry into the accuracy of a guilty plea. The record shall also include a completed and executed waiver of rights on a form approved by the Court.

(h) *Harmless Error.* Any variance from the procedures required by this Rule which does not affect substantial rights shall be disregarded.

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

(a) *Pleadings and motions.* Pleadings in criminal proceedings shall be the charging document and the pleas of not guilty, guilty, and *nolo contendere*. All other pleas, demurrers and motions to quash 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) *Pretrial motions.* Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial:

(1) Defenses and objections based on defects in the institution of the prosecution; or

(2) Defenses and objections based on defects in the charging document (other than that it fails to show jurisdiction in the Court or to charge an offense, which objections shall be noticed by the Court at any time during the pendency of the proceedings); or

(3) Motions to suppress evidence; or

(4) Motions to compel discovery under Rule 16; or

(5) Motions for severance of charges or defendants under Rule 14.

(c) *Motion date.* The motion may be made by the party at any time up to the time and date of trial. In the event a motion is made within such close proximity to the commencement of the trial of the action as to give the opposing party insufficient time to prepare a defense thereon, the presiding Justice of the Peace shall grant upon motion, a request for a continuance in order that the opposing party shall not be prejudiced.

(d) Omitted.

(e) *Ruling on motion; certification for appeal.* A motion made before trial shall be determined before trial unless the Court, for good cause, orders that it be deferred for determination at the trial of the general

issue but no such determination shall be deferred if a party's right to appeal is adversely affected. Where factual issues are involved in determining a motion, the Court shall state its essential findings in open court. Within 30 days of the entry of an order suppressing evidence before trial, the attorney general may present to the judge who entered the order a certification for appeal and a proposed order, in accordance with 10 Del. C. § 9902(b).

(f) *Effect of failure to raise defenses or objections.* Failure by a party to raise defenses or objections or to make requests which must be made prior to trial, at the time set by the Court pursuant to subsection (c), or prior to any extensions thereof made by the Court, shall constitute waiver thereof, but the Court for cause shown may grant relief from the waiver.

(g) Omitted.

(h) *Effect of determination.* If the Court grants a motion based on a defect in the institution of the prosecution or in the charging document, it may also order that the defendant be continued in custody or that bail be continued for a specified time pending the filing of a new charging document.

Rule 13. Trial together of the offenses charged in two or more documents.

The Court may order the offenses charged in two or more documents to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single charging document. The procedure shall be the same as if the prosecution were under such single charging document.

Rule 14. Relief from prejudicial joinder.

If it appears that a defendant or the prosecuting agency is prejudiced by a joinder of offenses or of defendants in a charging document or by such joinder for trial together, the Court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the Court may order the prosecuting agency to deliver to the Court for inspection *in camera* any statements or confessions made by the defendants which the prosecuting agency intends to introduce into evidence at the trial.

Rule 15. Depositions.

Omitted.

Rule 16. Discovery and inspection.

(a) *Information subject to disclosure.*

(1) Upon request of a defendant the prosecuting agency shall disclose to the defendant and make available for inspection, copying or photographing, designated books, papers, documents, tangible objects, results of scientific tests or experiments, and relevant written or recorded statements made by the defendant or co-defendants within the possession or control of the prosecuting agency. Discoverable items must be material to the preparation of the defendant's defense or intended for use by the prosecuting agency as evidence in chief at trial.

(2) Upon request, the prosecuting agency shall furnish to defendant a copy of defendant's prior criminal record.

(b) *Procedure.*

(1) *Request.* The defendant may serve a request for discovery under this rule not later than 10 days after the defendant's arraignment, or such other time as ordered by the Court, with the prosecuting agency in the county in which the crime is alleged to have been committed. A statement certifying how and when the request was served on the prosecuting agency shall be filed with the Court.

(2) *Response.* The prosecuting agency shall serve a response within 15 days after service of the request or at such other time as ordered by the Court. The response shall comply with the request or specify any objection to it. The response may specify a reasonable time, place and manner of compliance with the request no later than 10 days before trial. A statement certifying how and when the response was served on the defendant shall be filed with the Court.

(3) *Motion to compel.* If the prosecuting agency fails to comply with a request, the defendant may move for an order compelling compliance with the request. A motion to compel shall be filed with a Court within 10 days after the time for response, or at such other time as ordered by the court.

(c) *Continuing duty to disclose.* If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, such party shall promptly notify the other party or that other party's attorney or the Court of the existence of the additional evidence or material.

(d) *Failure to comply with a request.* If it is brought to the attention of the Court that a party has failed to comply with this rule, the Court, after hearing, may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or enter such other order as it deems just under the circumstances. However, failure of the prosecuting agency to comply with a request pursuant to subsection (a)(2) of this rule shall not prohibit the introduction or consideration of a defendant's prior conviction in a sentencing proceeding. The Court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

Rule 16.1. Bill of particulars.

The Court for cause shown may direct the filing of a bill of particulars. A motion for a bill of particulars may be made at the time of arraignment or at any time previous to the trial provided that such motion for said bill of particulars shall not be made in such close proximity to the commencement of the trial as to necessitate an unnecessary delay. A bill of particulars, if granted by the Court, shall be and shall contain such information as shall be prescribed by order of the Court. A bill of particulars may be amended at any time subject to such conditions as justice requires.

Rule 17. Subpoena.

(a) *For attendance of witnesses.*

(1) *Form; issuance.* A subpoena shall be issued by the clerk 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.

(2) *Bail in lieu of subpoena.* If it appears by affidavit that the testimony of a person is material in any criminal proceeding and that it may be impracticable to secure the presence of the witness by subpoena, the Court may require the witness to give bail as security for appearance as a witness and shall commit a witness who fails to give bail. The Court may order the release of a witness who has been detained for an unreasonable length of time.

(b) Omitted.

(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 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 by the parties and their attorneys.

(d) *Service.* A subpoena may be served by any person authorized by law to so do. Service of a subpoena shall be made in any manner in which a summons may be served under these Rules.

(e) *Place of service.* A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the State of Delaware.

(f) Omitted.

(g) *Contempt.* Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.

Rule 17.1. Pretrial conference.

At any time after the commencement of the action, the Court, upon motion of any party or upon its own motion, may order one or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference the Court shall prepare and file a memorandum of the matters agreed upon. No admissions made by the defendant or the defendant's attorney at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and the defendant's attorney.

V. Venue and Transfer

Rule 18. Place of prosecution and trial.

Except as otherwise proved by statute or by these Rules, the prosecution and trial shall be had in the county in which the offense is alleged to have been committed. When two or more offenses that may be charged in the same charging document pursuant to Rule 8(a) are alleged to have been committed in more than one county, the prosecution and trial may be had in any county in which one or more of the offenses is alleged to have been committed.

Rule 19. Continuances and adjournments.

(a) *Time for request.* Continuances should be requested as soon as the requesting party/counsel recognizes that a conflict exists.

(b) *Form of continuance or adjournment request.* Parties are encouraged to submit continuance requests in writing. Continuance requests shall include the following information:

(1) The specific reason for the continuance;

(2) The position of opposing counsel or party on the requested continuance unless not possible to obtain;

(3) If the request is made because of an attorney's or party's appearance in another court, a copy of the other court's trial notice (or, if the notice is not available, the name of the case, the court, the date and time of appearance and the date the other case was scheduled).

(c) *Granting of continuance or adjournment requests.*

(1) *Before trial.* Continuance or adjournment requests made prior to the day of the trial shall be given in the discretion of the Court if the interest of justice shall appear to be better served thereby.

(2) *On the day scheduled for trial or after the start of trial.* Continuances or adjournments requested on the day scheduled for trial or after the commencement of the trial shall not be granted except in cases of extreme emergency. An exception to the requirement of subsection (b)(2) may be made in the event of such an emergency request.

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

(a) Omitted.

(b) *Pending Charge Within the Jurisdiction of the Justice of the Peace Court.* A defendant, including a juvenile, arrested, held, or present, in a county other than the county in which a complaint is pending against that defendant may state in writing a wish to plead guilty or *nolo contendere*, to waive venue and trial in the county in which the warrant was issued, and to consent to disposition of the case in the county in which that defendant was arrested, held, or present, subject to the approval of the prosecuting agency. Upon filing the written waiver of venue in the county in which the defendant is present, the prosecution may proceed as if venue were in such county.

(c) *Effect of not guilty plea.* If after the proceeding has been transferred pursuant to subsection (b) of this rule the defendant, including a juvenile, pleads not guilty, the clerk of court shall return the papers to the county in which the prosecution was commenced, and the proceeding shall be restored to the docket of the Court in which it originated. The defendant's statement that the defendant wished to plead guilty or *nolo contendere* shall not be used against that defendant.

Rule 21. Transfer from the county for trial.

(a) *For prejudice in the county.* The court upon motion of the defendant shall transfer the proceeding as to that defendant to another county, whether or not such county is specified in the defendant's motion, if the Court is satisfied that there exists in the county where the prosecution is pending a reasonable probability of so great a prejudice against the defendant that the defendant cannot obtain a fair and impartial trial in that county.

(b) *Transfer in other cases.* For the convenience of parties and witnesses, and in the interest of justice, the Court, upon motion of the defendant, may transfer the proceeding as to that defendant or any one or more of the counts thereof to another county.

(c) *Proceedings on transfer.* When a transfer is ordered the clerk shall transmit to the clerk of the court to which the proceeding is transferred all papers in the proceeding and any bail taken, and the prosecution shall continue in the Court to which the proceeding is transferred.

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. Trial.

(a) *By whom.* Trials shall be conducted by a Justice of the Peace and without a jury.

(b) *Swearing of witnesses.* All persons who shall give testimony during a trial shall be sworn or affirmed as to the truthfulness of their testimony before they shall commence to give their testimonies.

(c) *Where conducted.* Trial shall be conducted in open court and shall be held only at those locations established by the Chief Magistrate as the locations of the Justice of the Peace Court of this State for purpose of conducting criminal proceedings.

Rule 24. Trial jurors.

Omitted.

Rule 25. Justice of the Peace; disability.

(a) *Disability.* If for any reason a Justice of the Peace before whom any matter has been tried or heard is thereafter unable to perform the duties to be performed by the Court under these Rules, then any other Justice of the Peace may perform those duties, but if such other Justice of the Peace cannot perform those duties for any reason, the successor Justice of the Peace may grant a new trial or rehearing.

(b) *Disqualification.* If at any time previous to the trial of any action, during the trial of any action, or at the conclusion of the trial of any action, any Justice of the Peace cannot perform the duties to be performed by the Court under these Rules, or it should appear to the Justice of the Peace that any situation has arisen which affects the ability of the Justice of the Peace to be impartial in the conduct of the trial or the rendering of the decision, then the Justice of the Peace shall be disqualified from any other proceedings in the cause. In the event the trial has either concluded or started, the Justice of the Peace shall thereupon order a new trial of the action.

Rule 26. Taking of testimony.

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by law or by these Rules, the Delaware Uniform Rules of Evidence, or the Rules of the Supreme Court.

Rule 26.1. Conferences during trial.

Omitted.

Rule 26.2. Production of statements of witnesses.

Omitted.

Rule 26.3. Mistrial.

Before ordering a mistrial, the Court shall provide an opportunity for the State and for each defendant to comment on the propriety of the order, including whether each party consents or objects to a mistrial, and to suggest any alternatives.

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. Interpreters.

When in the course of any proceeding it shall appear to the Court that either the defendant or witnesses shall not be capable of speaking the English language to such an extent as to understand the proceedings or any part thereof, the Justice of the Peace, either on request of a party or *sua sponte*, may employ the services of an interpreter who shall be paid reasonable compensation by the Justice of the Peace Court.

Rule 29. Motion for judgment of acquittal.

The Court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the charging document after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the State is not granted, the defendant may offer evidence without having reserved the right.

Rule 29.1. Closing argument.

After the closing of evidence the prosecution shall open the argument. The defense shall be permitted to reply. The prosecution shall then be permitted to reply in rebuttal.

Rule 30. Instructions.

Omitted.

Rule 31. Verdict.

Omitted.

VII. Judgment

Rule 32. Sentence and judgment.

(a) *Sentence.*

(1) *Imposition of sentence.* Sentence shall be imposed without unnecessary delay, but the Court may, when there is a factor important to the sentencing determination that is not then capable of being resolved, postpone the imposition of sentence for a reasonable time until the factor is capable of being resolved. When there is a presentence investigation, the Court shall provide the counsel for the defendant or the defendant, if acting *pro se*, and the prosecuting agency with the presentence officer's determination of the sentencing classifications and sentencing guideline range believed to be applicable to the case. At the sentencing hearing, the Court shall afford the counsel for the defendant

and the prosecuting agency an opportunity to comment upon the presentence officer's determination and on other matters relating to the appropriate sentence. Before imposing sentence, the Court shall also —

(A) Determine that the defendant's counsel or, when the defendant is acting *pro se*, the defendant, have had the opportunity to read the presentence investigation report made available pursuant to subsection (c)(3);

(B) Afford counsel for the defendant an opportunity to speak on behalf of the defendant, and

(C) Address the defendant personally and determine if the defendant wishes to make a statement and to present any information in mitigation of the sentence.

The prosecuting agency shall have an equivalent opportunity to speak to the Court. The victim shall have an opportunity to speak, in accordance with guidelines established by the Court. Upon a motion that is jointly filed by the defendant and by the prosecuting agency, the Court may hear *in camera* such a statement by the defendant, counsel for the defendant, or the prosecuting agency.

(2) *Notification of right to appeal.* After imposing sentence in a case which has gone to trial on a plea of not guilty, the Court shall advise a defendant who is not represented by counsel of the defendant's right to appeal and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal *in forma pauperis*. There shall be no duty on the Court to advise the defendant of any right of appeal after sentence is imposed following a plea of guilty or *nolo contendere* or where no right of appeal exists.

(b) *Judgment.* A judgment of conviction shall set forth the plea, findings, adjudication and sentence. If the defendant 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 and entered by the clerk.

(c) *Presentence investigation.*

(1) *When made.* A presentence officer shall make a presentence investigation and report to the Court before the imposition of sentence when the Court, after considering the benefit of immediate sentencing and whether there is in the record information sufficient to enable a meaningful exercise of sentencing authority, directs. Except with the written consent of the defendant, the report shall not be submitted to the Court or its contents disclosed to anyone unless the defendant has pleaded guilty or *nolo contendere* or has been found guilty.

(2) *Report.* Unless the Court orders a limited investigation, the report of the presentence investigation shall contain information about the history and characteristics of the defendant, including prior criminal record, if any, financial condition and any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in the correctional treatment of the defendant. The investigation shall also include such other information as may be required by statute or the Court.

(3) *Disclosure.* Prior to sentencing, the Court shall allow the defendant's counsel or, when the defendant is acting *pro se*, the defendant, and the prosecuting agency to read the report of the presentence investigation, but not including any final recommendation as to sentence. The Court shall afford the parties an opportunity to comment on the report and, in the discretion of the Court, to present information relating to any alleged factual inaccuracy contained in it. If the comments or information presented allege any factual inaccuracy in the presentence investigation report, the Court shall, as to each matter controverted, make (i) a finding as to the allegation, or (ii) a determination that no such finding is necessary because the matter controverted will not be taken into account in sentencing. At the request of a party at sentencing a written record of such findings and determinations shall be appended to and accompany any copy of the presentence investigation report thereafter made available to the Department of Correction.

(d) *Plea withdrawal.* If a motion for withdrawal of a plea of guilty or *nolo contendere* is made before imposition or suspension of sentence or disposition without entry of a judgment of conviction, the Court may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason. At any later time, a plea may be set aside only to prevent manifest injustice.

(e) *Partial confinement; probation.* After conviction of an offense, the Court may impose a term of partial confinement or probation if permitted by law, or any other disposition authorized by 11 Del. C. § 4204.

Rule 33. New trial.

The Court on motion of a defendant may grant a new trial to that defendant if required in the interest of justice. The Court on motion of a defendant 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 within 60 days after final judgment. A motion for a new trial based on any other grounds shall be made within 15 days after a finding of guilty. The Court may not grant a motion for a new trial if an appeal is pending.

Rule 34. Arrest of judgment.

Omitted.

Rule 35. Correction or reduction of sentence.

(a) *Correction of illegal sentence.* A Justice of the Peace may correct an illegal sentence at any time.

(b) *Reduction of sentence.* A Justice of the Peace may reduce a sentence on a motion made within 60 days after the sentence is imposed. A motion for reduction of sentence will be considered without presentation, hearing, or argument unless otherwise ordered by the 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. Appeal [Omitted].

Rule 37. Appeal and certification to the Supreme Court.

Omitted.

Rule 38. Stay of execution.

Omitted.

Rule 39. Appeal to Superior Court.

Omitted.

Rule 40. Criminal Forfeiture.

Omitted.

IX. Supplementary and special proceedings

Rule 41. Search and seizure.

(a) *In general.* The procedure governing search and seizure shall be as provided by 11 Del. C. Chapter 23 or other applicable law.

(b) Omitted.

(c) Omitted.

(d) Omitted.

(e) Omitted.

(f) *Motion to suppress.* A motion to suppress evidence may be made in the Justice of the Peace Court in which trial will be held as provided in Rule 12. The motion shall set forth the standing of the movant to make the application and shall state the grounds upon which it is made with sufficient specificity to give the prosecuting agency reasonable notice of the issues and to enable the Court to determine what proceedings are appropriate to address them. The Court shall receive evidence on any issue of fact necessary to the decision of the motion, but the Court shall not receive evidence on motions challenging the manner of execution of a search warrant or the veracity of a sworn statement used to procure a search warrant unless the motions are supported by affidavits, or their absence is satisfactorily explained in the motion, and the allegedly false statement is necessary to the finding of probable cause.

(g) *Return and filing of papers.* The items seized may be brought before a Justice of the Peace by means of a photograph or videotape. In addition, the officer executing the return may use an audiovisual device to bring the items seized and/or the person in whose custody they were found before the Court. The Justice of the Peace before whom the warrant is returned shall attach to the warrant a copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk.

Rule 42. Criminal contempt.

(a) *Summary disposition.* A criminal contempt under 11 Del. C. § 1271(1) may be punished summarily if the judge certifies that the judge saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the Court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(b) *Disposition upon notice and hearing.* A criminal contempt except as provided in subsection (a) of this Rule 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 in open court in the presence of the defendant or, on application of the prosecuting agency by an order to show cause or an order of arrest as determined by the Court. The defendant is entitled to admission to bail as provided in these Rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a finding of guilt the Court shall enter an order fixing the punishment.

X. General Provisions

Rule 43. Presence of the defendant.

(a) *Presence required.* The defendant shall be present at the arraignment, at the time of the plea, at every stage of the trial including the entry of the judgment and the imposition of sentence, except as otherwise provided by this Rule.

(b) *Continued presence not required.* The further progress of the trial to and including the return of the judgment shall not be prevented and the defendant shall be considered to have waived the right to be present whenever a defendant, initially present,

(1) is voluntarily absent after the trial has commenced (whether or not the defendant has been informed by the Court of the obligation to remain during the trial), or

(2) after being warned by the Court that disruptive conduct will cause the removal of the defendant from the courtroom, persists in conduct which is such as to justify exclusion from the courtroom.

(c) *Presence not required.* A defendant need not be present in the following situations:

(1) A corporation may appear by counsel for all purposes.

(2) In exceptional circumstances, the Court, with the written consent of the defendant, may permit arraignment, plea, trial, and imposition of sentence in the defendant's absence. Except as provided in subsection (b), the defendant may not be absent for arraignment, plea, trial or imposition of sentence if the sentence includes Sentencing Accountability Level IV or V sanctions as defined in Title 11, Chapter 42 of the Delaware Code.

(3) At a conference or argument upon a question of law.

(4) At a reduction of sentence under Rule 35.

(5) At an arraignment by written pleading under Rule 10.

(6) Where the defendant has signed a legally authorized voluntary assessment form.

(d) *Defendant deemed present.* For purposes of initial appearances and arraignments and court rule, the defendant shall be deemed to be present if the defendant appears before the court by audiovisual device.

Rule 44. Right of counsel.

If the defendant appears in court without counsel the Justice of the Peace shall advise the defendant of the defendant's right to counsel. No appearance by an attorney shall be withdrawn except upon motion and order of the Court.

Rule 44.1. Appointment of counsel for juveniles.

(a) *Right to counsel.* A juvenile against whom criminal contempt proceedings pursuant to 14 Del.C. § 2731 and 11 Del.C. § 1271 have been initiated shall have the right to counsel at all stages.

(b) *Appointment of counsel where juvenile not represented.*

(1) Before the issuance of a criminal contempt charge, if a juvenile is not represented, the Court may contact the Chief Defender to request the appointment of counsel for the juvenile if a contempt charge appears probable or the parties are engaged in pre-contempt deliberations.

(2) After the issuance of a criminal contempt charge, if a juvenile is not represented by counsel, the Court shall order the Chief Defender to assign counsel to represent the juvenile. The appointment of counsel shall occur before the juvenile's arraignment on the contempt charge.

(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, then an in-person meeting with counsel shall be held at which counsel explains, 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:

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.

Added, Dec. 15, 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, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. 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 therefor 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.

(c) Omitted.

(d) Omitted.

(e) *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 upon that party and the notice or other paper is served by mail, 3 days shall be added to the prescribed period.

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) *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 reappearance of the person charged, compliance with conditions set forth in the bond and the safety of the community, having regard to the nature and circumstances of the offense charged, the recommended bail guidelines (if applicable), and the policy against unnecessary detention of persons charged pending trial.

(c) *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 subsection (b) may require one 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 insure appearance.

(d) *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.

(e) *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 in whole or in part, upon such conditions as the Court may impose, if a person released upon execution of an appearance bond with a surety is subsequently surrendered by the surety into custody or if it appears that justice does not require 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. All forfeiture proceedings in real property interests shall be handled by the Attorney General before the Superior Court in accordance with the Rules thereof.

(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 subsection.

(f) *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.

(g) *Deposit of Funds.* All funds received as bail shall be deposited in a bank account maintained by the Justice of the Peace Court or the State of Delaware. Amounts under \$10,000 shall be deposited in the account by the next banking day. Amounts of \$10,000 or more shall be deposited immediately, using a night deposit, if necessary. The clerk shall maintain an accurate and complete record of all funds received, returned, and forfeited. Bail money which is forfeited shall be deposited into the account of the General Fund of the State of Delaware within no less than 30 days nor more than 45 days of the forfeiture.

Rule 47. Motions; pro se applications.

Omitted.

Rule 48. Nolle prosequi and dismissal.

(a) *Nolle prosequi by prosecuting agency.* The prosecuting agency may file a *nolle prosequi* in writing, or orally at the discretion of the Court. If a *nolle prosequi* is not reduced to writing, it must be reflected in a written record made by the Justice of the Peace accepting the *nolle prosequi*. Upon *nolle prosequi* of an information 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. Service and filing of papers.

(a) *Service—When required.* Written motions and petitions other than those which can be heard ex parte, written notices and similar papers shall be served upon the adverse parties.

(b) *Service—How made.* Whenever, under these Rules or by an order of the Court, service is required to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party personally is ordered by the Court. Service upon the attorney or upon a party shall be made by the party or by the party's attorney making the motion or petition or by any person designated to make service by any order of Court.

(c) *Notice of orders.* Immediately upon the entry of an order made on a written motion subsequent to arraignment, the clerk shall mail to each party affected thereby, a notice thereof, and shall make a note on the docket of the mailing.

(d) *Filing.* Papers required to be served shall be filed with the Court except as provided in Rule 16(b).

Rule 50. Calendars; plans for prompt disposition.

Omitted.

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 which that party desires the Court to take or that party's objection to the action of the Court and the grounds therefor; but 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. 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, except as authorized by the Supreme Court.

Rule 54. Application and exception.

(a) *Courts.* These rules apply to all criminal proceedings in the Justice of the Peace Court.

(b) *Other proceedings.* These rules are not applicable to extraordinary writs, extradition and rendition of fugitives, civil forfeiture of property or the collection of fines and penalties, except to the extent expressly provided.

(c) *Application of terms.* As used in these Rules the following terms have the designated meanings.

“Attorney General” means the Attorney General of the State of Delaware and any authorized deputy attorney general.

“Civil action” refers to a civil action in the Justice of the Peace Court.

“Court” refers to the Justice of the Peace Court and any individual Justice of the Peace thereof, unless the content shows that another court is intended.

“Court of Common Pleas” means the Court of Common Pleas of the State of Delaware.

“Dismissal” includes *nolle prosequi*.

“Family Court” means the Family Court of the State of Delaware.

“Justice of the Peace Court” means the Justice of the Peace Court of the State of Delaware.

“Law” includes the state and federal constitutions, statutes, and judicial decisions.

“Oath” includes affirmations.

“Clerk” and “Clerk of Court” means any non-judicial personnel authorized to perform functions of the Clerk of Court.

“Prosecuting agency” means any public agency of the state, county or municipal government authorized by statute or by the Attorney General under 29 Del. C. § 2516 to proceed on a criminal charge in a court of law.

“State” refers to the State of Delaware.

“Statute” means any public law enacted by the General Assembly of the State of Delaware.

“Superior Court” means the Superior Court of the State of Delaware.

“Supreme Court” means the Supreme Court of the State of Delaware.

Rule 55. Records and exhibits.

(a) *Generally; sealed records.* The Court shall keep records in criminal proceedings in such form as the Court may prescribe. No record shall be kept under seal except as provided by statute or these Rules, or by order of the Court for good cause.

(b) *Case numbers; docket entries.* The Court shall keep a record of all criminal cases and shall assign each a consecutive identification number.

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

(d) Omitted.

(e) Omitted.

(f) *Statistics.* The clerk shall keep such judicial statistics as the Court may direct.

Rule 56. Court and proceedings.

(a) *When open.* The Court shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders.

(b) *Courtroom; chambers.* All pleas, hearings, trials and sentencings shall be conducted in open court and so far as convenient in a regular courtroom, unless otherwise provided by statute or these Rules or administrative order.

Rule 57. Rules; procedure not provided.

(a) *Adoption; amendments.* The Chief Magistrate, in consultation with the Justices of the Peace, may from time to time make and amend rules governing the practice of the Justice of the Peace Court in criminal proceedings in accordance with the Delaware Constitution and statutes.

(b) *Administrative orders.* The Chief Magistrate may enter administrative orders modifying or supplementing the rules governing the practice of the Court in criminal proceedings.

(c) *Publication; effective date.* Copies of rules, amendments and administrative orders shall be published in the manner prescribed by the Chief Magistrate and made available to the public. Unless otherwise provided, they shall take effect immediately upon approval and shall govern all criminal proceedings thereafter commenced and, so far as just and practicable, all proceedings then pending.

(d) *Procedure not provided.* If no procedure is specifically prescribed by these Rules, the Court may proceed in any lawful manner not inconsistent with the Rules of another Delaware Court, with applicable Justice of the Peace Court Civil Rules, or with any applicable statute.

Rule 58. Fees and costs; deposit of funds.

(a) *Fees and costs.* The fees and costs for processing traffic and criminal cases shall be as follows:

- a. For issuing, processing a filing a warrant or summons \$ 29.50
- b. For processing a voluntary assessment agreement 20.00
- c. For conducting a trial or accepting a plea of guilty (including
a Robinson plea) or nolo contendere 5.50
- d. For preparing commitment and detention forms; each form 2.00
- e. For preparing of bail, judgment and appeal bonds; each bond 2.00
- f. For preparing certified transcript of the record 7.00
- g. For issuing a capias 15.00
- h. Capias returned by constable 25.00
- i. For processing a Petition for Expungement of Record 30.00

In connection with any Justice of the Peace Court proceeding,
for processing a check or credit card dishonored for insufficient
funds or closed account 30.00

(b) *Deposit of funds.* All funds received for criminal and traffic fines, fees and costs shall be deposited by the next banking day to the account of the General Fund of the State of Delaware. The clerk shall keep an accurate and complete record of all funds received and deposited.

(c) *Court Security Fund assessment.* In addition to any other amounts assessed as fees or costs by any other statute, rule, or law, the clerk shall collect from the defendant, on each traffic or criminal charge for

which there is a conviction, or a finding or an admission of responsibility for an infraction for which a civil penalty may be assessed, an amount equal to \$10.00 as an assessment for the Court Security Fund established by 10 Del. C. § 8505(b). The amounts collected under this paragraph shall be deposited into a separate account known as the “Court Security Assessment Fund.”

(d) *Electronic transactions.* In addition to any other amounts assessed as fees and costs for any filings or transactions above, there shall be a technology surcharge of 50 cents (\$.50) for each voluntary assessment agreement paid via electronic payment and each document filed electronically with the Court.

History.

Amended, effective Oct. 15, 2007; July 1, 2009; July 10, 2012; Oct. 1, 2013.

Rule 59. Effective date.

These rules take effect on June 15, 1998. They govern all criminal proceedings thereafter commenced and so far as just and practicable all proceedings then pending.

Rule 60. Title.

These Rules may be known as the Justice of the Peace Court Rules of Criminal Procedure and a rule may be cited thus: J.P. Ct. Crim. R. .

Rule 61. Postconviction remedy.

Omitted.

Rule 62. Commissioners.

Omitted.

Rule 63. Admission pro hac vice.

Admission pro hac vice shall be governed by the applicable Civil Rule.

Rule 64. Facsimile transmission.

(a) *Documents issued by the Court.* The Court may use facsimile transmission for the sending of warrants, summonses, orders, and other documents, including documents ordering the release or detention of a defendant in custody for a criminal proceeding. All procedural and statutory requirements for the issuance of the warrant, summons, or orders shall be met. Unless otherwise provided by law, a facsimile order, warrant, or summons issued by the Court shall, for all procedural and statutory purposes, have the same force and effect as the original document. The Court shall retain the original of the document.

(b) *Documents transmitted in connection with the use of an audiovisual device.* The Court may accept the filing of documents by facsimile transmission in conjunction with an audiovisual appearance in accordance with Rules 4 and 10, or as otherwise permitted by Statute or Rule. Such facsimile documents shall be treated as originals by the Court and a facsimile signature shall be considered an original signature in the Justice of the Peace Court. Documents which may be transmitted by facsimile in

connection with the use of an audiovisual device shall include, but are not limited to: complaints, affidavits of probable cause, jurisdictional forms, arrest warrants, search warrants, bail bond and bail and disposition forms, commitment and release forms, and deferred payment agreements. A person who transmits a signed document by facsimile represents that the original physically signed document was in the person's possession or control at the time of transmission.

(c) *Filing by Facsimile Transmission not in connection with an audiovisual device.* Documents not submitted in connection with the use of an audiovisual device may be filed with the Court by facsimile transmission. The original of all such filings, other than motions, briefs, and requests for continuances, shall be filed with the Court within five business days. Any facsimile filed with the Court shall be accompanied by a cover sheet which states the title of the document, case number, number of pages, identity and voice telephone number of the transmitter and any instructions. Filing shall be deemed complete at the time that the facsimile is received by the Court, unless the filing is not received during the normal operating hours of the Court. In that case, the filing shall be deemed complete on the next day on which the Court is open. The filed facsimile shall have the same force and effect as the original.

(d) *Service by Facsimile Transmission.*

(1) When service by ordinary mail or personal delivery is provided by these Rules or otherwise by law, such service may be made by facsimile transmission of a copy to any attorney or party to be served who maintains a device for receipt of facsimile transmission.

(2) Publishing a facsimile phone line number by pleading, letterhead or listing in a telephone directory or otherwise, constitute a prima facie maintenance of a device for receipt of facsimile transmission.

(3) Risk of loss in transmission, receipt or illegibility of the document transmitted by facsimile is upon the sender.

(4) The document faxed is presumed delivered and served, unless otherwise indicated by the readout of the sender's device, to the phone number indicated by the sender's readout and at the date and time of the end of transmission. The sender shall maintain a printout of such readout and file the same if ordered by the Court.

(5) Proof of service by facsimile machine shall be made by the person causing the document to be transmitted. Such proof of service shall indicate the telephone number to which the document was transmitted and the method of confirmation that the transmission was received.

Index follows Rules.

INDEX TO RULES GOVERNING CRIMINAL PROCEDURES IN THE COURTS OF THE JUSTICES OF THE PEACE