

Civil Violations

Preface

Statutory violations which result in civil penalties present the Justice of the Peace Court with unique issues. Although the penalty imposed for a violation of these statutes is civil, the process by which the penalty is acquired and processed is similar to that of criminal matters. These unique circumstances are addressed by the following rules.

Rule 1. Scope of Rules.

These rules govern the proceedings in the Justice of the Peace Court of the State of Delaware regarding the enforcement of any statute or ordinance over which the Justice of the Peace Court of the State of Delaware has jurisdiction and the violation of which results in a civil penalty.

Rule 2. Purpose and Construction.

These rules are intended to provide for the just determination of every violation which results in a civil penalty. They shall be construed to secure simplicity and uniformity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

Rule 3. Commencement and Complaint.

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

(b) *Complaint and Charging Document.* Except where otherwise provided by the Constitution of the State, or by statute, a violation within the jurisdiction of the Justice of the Peace Court may be prosecuted by summons. Receipt of the summons shall constitute service. The summons shall be delivered forthwith to the voluntary assessment center or to the court to which the summons is returnable. All violations shall then be processed in the same manner as criminal actions in the Justice of the Peace Court.

Rule 4. Corporations.

(a) Corporations or artificial entities charged with a civil violation shall be subject to these rules. Notwithstanding the provisions of 11 Del.C. §1702, corporations shall be subject to the entry of a default judgment for failure to pay or appear.

(b) A corporation or artificial entity charged with a civil violation shall appear by attorney.

Rule 5. Payment by Voluntary Assessment or Hearing on the Charge.

(a) *Time for payment.* Civil penalties shall be payable within the time period as provided by the statute establishing the offense or, where not so provided, within 30 days of receipt of the summons.

(b) *Hearing request.* A person receiving a summons may request a hearing to contest the violation by notifying, in writing, the Voluntary Assessment Center or other Court or entity as designated on the summons, within the time period as provided by the statute establishing the violation or, where not so provided, within 20 days of receipt of the summons.

Rule 6. Discovery and Inspection.

Discovery and inspection shall be pursuant to the Justice of the Peace Court Rules of Criminal Procedure, where applicable.

Rule 7. Hearings

(a) *Timely Request.* Upon receipt of a timely request for a hearing, a civil hearing shall be scheduled and the defendant notified of the date and time by first class mail.

(b) *Applicable rules.* All hearings conducted at the Justice of the Peace Court shall be conducted pursuant to Justice of the Peace Court Criminal Rules or applicable policy directives. 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 Criminal Rules, or with any applicable statute.

(c) *Standard of Proof.* Violations resulting in civil penalties shall be established by a preponderance of the evidence. In instances where a civil violation and a criminal violation are joined for adjudication, the civil penalty shall be established by a preponderance of the evidence and the criminal penalty shall be established beyond a reasonable doubt.

Rule 8. Joinder.

Violations which result in civil penalties may be charged in the same charging document with criminal offenses where the offenses are based on the same act or transaction or constituting parts of a common scheme or plan. In the event that an offense which results in a civil penalty is charged with a criminal offense arising out of the same incident, the offenses shall remain joined for adjudication. If the Justice of the Peace Court has jurisdiction over both the civil and criminal charges, the defendant may elect to have both charges tried in the Justice of the Peace Court. If the Justice of the Peace Court does not have jurisdiction over any of the joined offenses, all offenses shall be transferred to the Court of Common Pleas or, if designated by statute, the Superior Court. If the Justice of the Peace Court and the Court of Common Pleas have concurrent jurisdiction over joined violations, the defendant may elect to transfer all violations to the Court of Common Pleas.

Rule 9. Failure to Pay or Appear for Hearing.

(a) *Failure to pay or appear.* Upon the defendant's failure to timely pay a civil penalty or upon the defendant's failure to appear at a requested hearing, the Court may take any action provided by statute and may order that a default judgment be entered by the clerk. The default judgment shall include the civil penalty assessment and any related court costs. Such judgment may be transferred by the Court to the civil docket and may be executed and enforced or transferred in the same manner as other judgments of the Court.

(b) *Deferred payment agreement.* Upon failure to make a timely payment pursuant to a deferred payment agreement, the entire amount shall become due and the Court may order that a default judgment be entered by the clerk as provided in subsection (a) of this Rule.

Rule 10. Collection.

Prior to transfer to the civil judgment docket any judgment resulting from an adjudication of responsibility for a civil penalty, the Justice of the Peace Court may, but is not obligated to, attempt collection efforts using the processes available through the Office of State Court Collections Enforcement (OSCCE). If collection efforts are initiated by the Court through

OSCCE, transfer of the judgment to the civil docket shall be delayed for a period of time not to exceed 2 years from the date of the finding of responsibility.

Rule 11. Transfer to civil docket.

Upon motion from any governmental agency to whom civil penalties or costs are payable pursuant to any provision of law, the Court shall order that a civil judgment be entered against defendant, the clerk shall cause the judgment to be transferred to the civil judgment docket where it may be executed and enforced or transferred in the same manner as other civil judgments of the court. Immediately upon the entry, the Court shall serve notice of the entry and the time and manner of appeal upon every party affected thereby.

Rule 12. Execution.

- (a) *Form.* All executions shall issue from the Justice of the Peace Court on forms prescribed by the Court.
- (b) *Methods for collection.* The methods for collecting a civil penalty are: 1) attachment; 2) garnishment of property; and 3) garnishment of wages.
- (c) *Collection Procedure.* Once a judgment is transferred to the civil docket, the procedure of collection shall be pursuant to Justice of the Peace Court Civil Rule 69.
- (d) *Motion required for execution.* Upon motion, any governmental entity to whom civil penalties or costs are payable pursuant to any provision of law may pursue execution on such judgment.

Rule 13. 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 civil violation 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 civil violation proceedings.

- (c) *Publication; effective date.* Copies of rules, amendments and administrative orders shall be published in a 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 civil violation 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 or Criminal Rules, or with any applicable statute.