

**ADMINISTRATIVE DIRECTIVE
OF THE
PRESIDENT JUDGE OF THE SUPERIOR COURT
OF THE STATE OF DELAWARE**

NO. 2005-1

**ADMINISTRATIVE PROCEDURES FOR CONSOLIDATION
OF CASES UNDER SENATE BILL 50**

This 7th day of January 2005, **IT IS HEREBY DIRECTED** that the following administrative procedures shall apply as interim procedures to consolidation of cases within the Superior Court and consolidation of cases from other Courts into the Superior Court under Senate Bill 50 of the 142 General Assembly; and

IT IS FURTHER DIRECTED that Judge Carpenter, Chairman, Judge Herlihy, Resident Judge Graves, and Judge Witham shall continue to serve as a S.B. 50 Committee (1) to solicit and receive comment concerning these procedures from other members of this Court and other Courts, Departments and Agencies, and thereafter (2) to formulate and recommend to the judges of this Court a Superior Court Criminal Rule, and, if appropriate, final administrative procedures, governing such consolidations:

**I
SB 50 CONSOLIDATION OF CASES
WITHIN THE SUPERIOR COURT**

Sentences may be consolidated by written or verbal motion of the Attorney General, defense counsel/defendant, or a probation officer, or upon the initiative of the sentencing judge. A motion to consolidate may be presented prior to the date of sentencing or at the time of sentencing. Investigative Services may also suggest consolidation of sentences.

No cross-county Fast-Track cases are to be consolidated. Any Judge hearing a Fast Track case in one county may consider consolidating pre-existing sentence orders from other counties.

FORM OF MOTION

When any **Motion to Consolidate** is presented, this motion must include all of the following:

- A. Copies of any/all sentence orders affected by the requested consolidation. All

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Superior Court sentence orders are electronically retrievable.

- B. Copies of the financial obligations from each case for which the movant is requesting consolidation.
- C. The case(s) numbers and each criminal action number pending or in the case with VOP charges.
- D. Whenever a Violation (of Probation) report is submitted in connection with a violation proceeding and the probation officer seeks consolidation, that report should include all three elements listed above.

PROCESS

This **Motion to Consolidate** may be written or verbal, and it does not have to be scheduled for a motion calendar, but it must be presented to the Judge on or before the day of the proceeding. If the motion is in writing, a copy must be given to the clerk in the Courtroom and to the other party if applicable. The written motion must be legible with proper information attached to the motion or the motion will be rejected.

- A. The ISO file stays put until/unless any Judge requests movement of the file.
- B. If a presentence investigation reveals that a defendant is presently under the jurisdiction of more than one sentence, the presentence officer shall attach copies of all active sentence orders and the presentence officer's report shall include a recommendation whether to consolidate. When such recommendation is made, the draft ASOP sentence shall reflect the proposed consolidation.
- C. If there is a capias outstanding for the defendant, the capias should be withdrawn immediately and the defendant should be scheduled for the next case event.
- D. The clerk in the County in which the case(s) are being consolidated will make the appropriate docket entry in all cases and in all counties; and the clerk should enter the charge dispositions in all charges applicable.
- E. After the sentence order has been approved by the Judge, the criminal case manager will send copies of this order to each/all accounting units applicable and to the criminal unit in the county from which that the consolidated case(s) came.
- F. The clerk will enter into the "Notes", section of the ASOP order exactly what the

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Judge just pronounced from each case/court and Court location. This information will also include (where possible) the financial data. Judges must say or allow automated sentence language which says that all financial obligations of any order consolidated with this sentence order shall now be collected as part of this order.(This language is generic to avoid doing modified orders.)

- G. These orders are to be processed as soon as possible, then sent to the other county. Fax or electronically transmit sentence order immediately (within one business day) to the other county with a notice specifying them to close the collection account and withdraw any capias as to that case. The other county shall immediately close the collection case and withdraw any capias as to that case.
- H. The consolidating court shall mail the approved sentence order copy via regular mail within three business days, to both the accounting department and the clerk's office of the other county. Other counties enter their own dispositions.
- I. If the Judge orders that OSCCE is to collect the financial obligation in the consolidated cases, then OSCCE is to receive a copy of the sentence order in a timely manner.
- J. The lower court accounting shall forward a copy of that court's outstanding financial obligations to the accounting staff of the Prothonotary's Office in the consolidating court. The Superior Court accounting department will then use that print-out from the lower court to verify the financial obligation of the consolidating court.
- K. Copies of any presentence report on a defendant whose sentence is / or sentences are consolidated into the new order shall be forwarded to the ISO office in the county of the consolidating order.
- L. The actual physical file will not move unless the assigned judge requests that the actual physical file be moved.
- M. All steps shall be undertaken to dispose of all cases and all open charges.

CONTACT PERSONS

Each County must have at least two contacts in the criminal sections of that county so that when these orders are hand delivered, faxed- the orders get taken care of immediately and do not languish.

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Each court needs to send to Mitzi Boddy or Gail Riblett (Rohm) a list of fax machine numbers in each county and also a list of contact persons. They will immediately compile all numbers, establish a list-serve for forwarding information to all contact persons, and also send a finalized copy of agreed upon procedures to all contacts on the list-serve. The list-serve will also include designated contacts with the offices of: Probation and Parole, DOJ, PD, Defense bar, and DOC. Whenever changes are made, copies will be sent via the list-serve to everyone.

II
SB 50 CONSOLIDATION OF CASES
FROM OTHER COURTS INTO THE SUPERIOR COURT

Sentences may be consolidated by written or verbal motion of the Attorney General, defense counsel/defendant, or a probation officer, or upon the initiative of the sentencing judge. A motion to consolidate may be presented prior to the date of sentencing or at the time of sentencing. Investigative Services may also suggest consolidation of sentences.

FORM OF MOTION

When any **Motion to Consolidate** is presented, this motion must include all of the following:

- A. Copies of any/all sentence orders affected by the requested consolidation. Many such sentence orders are retrievable through DELJIS or on the docket.
- B. Copies of the financial obligations from each case that movant is requesting be consolidated.
- C. The case(s) numbers and each criminal action number pending or in the case with VOP charges.
- D. Whenever a Violation (of Probation) report is submitted in connection with a violation proceeding and the probation officer seeks consolidation, that report should include all three elements listed above.

PROCESS

A written **Motion to Consolidate** does not have to be scheduled for a motion calendar, but must be presented to the Judge on or before the day of the sentencing. A copy must be given to the clerk in the Courtroom and to the other party if applicable. The written document must be legible with proper information attached to the motion or the motion will be rejected.

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If a presentence investigation reveals that a defendant is presently under the jurisdiction of more than one sentence, the presentence officer shall attach copies of all active sentence orders and the presentence officer's report shall include a recommendation whether to consolidate. When such a recommendation is made, the draft ASOP sentence shall reflect the proposed legislation.

If there is a capias outstanding for the defendant, the capias should be withdrawn immediately and the defendant should be scheduled for the next case event, if the capias came from Superior Court. If the capias came from another court, notice should be sent immediately to the lower court to withdraw the capias and to schedule the defendant for the next case event in that lower court.

FORM OF MOTION:

If the moving party fails to comply with any of the mandatory criteria prescribed in the procedure (i.e., copies of all sentencing orders, copies of financial records, case #'s etc), the motion should be rejected as insufficient and the motion should not go forward.

If the Judge grants the **Motion to Consolidate** the sentences of other court(s) with Superior Court sentence:

- A. The sentencing clerk will enter the Superior Court sentence order into ASOP.
- B. Upon completion of entering all data, the clerk will enter the codes- special conditions to indicate which codes pursuant to SB 50.
- C. The clerk will enter into the notes section of the ASOP order exactly what the Judge just pronounced from each case/court and court location. This information will also include the financial data from the court(s) below. Judges must say or allow automated sentence language which says that all financial obligations of any order consolidated with this sentence order shall now be collected as part of this order. (This language is generic to avoid doing modified orders).
- D. These orders are to be processed as soon as possible. The clerk shall fax the sentence order immediately (within one business day) to the other court with a notice specifying them to close the collection account and withdraw any capias as to that case. The other (lower) court shall immediately close the collection case and withdraw any capias as to that case.

The consolidating court shall mail the approved sentence order copy via regular mail within three business days, to both the accounting department and the clerk's office of the other court. Other courts enter their own dispositions.

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- E. If the Judge orders that OSCCE is to collect the financial obligation in the consolidated cases, then OSCCE is to receive a copy of the sentence order in a timely manner.
- F. The lower court accounting shall forward a copy of that court's outstanding financial obligations to the accounting staff of the Prothonotary's Office in the consolidating court. The Superior Court accounting department will then use that print-out from the lower court to verify the financial obligation of the consolidating court.
- G. If there is a discrepancy in the amount due to the lower court, the Superior Court accounting department shall rectify that discrepancy with the accounting department of the other court. No modified order shall be needed to reflect any changes in financial data. No modified order shall be needed to reflect any changes in financial data.
- H. Each affected other court shall make a docket entry and transfer all costs up to Superior Court if applicable. The actual physical file will not move unless the assigned judge requests that the actual physical file be moved.

CONTACTS

Each court in each county must have at least two contacts in the criminal section of each county/court so that when these orders are hand delivered, faxed - the orders get taken care of immediately and do not languish.

Each court needs to send to Mitzi Boddy or Gail Riblett (Rohm) a list of fax machine numbers in each county/court and also a list of contact persons. They will immediately compile all numbers, establish a list-serve for forwarding information to all contact persons, and also send a finalized copy of agreed upon procedures to all contacts on the list-serve. The list-serve will also include designated contacts with the offices of: Probation and Parole, DOJ, PD, Defense bar, and DOC. Whenever changes are made, copies will be sent via the list-serve to everyone. Each court shall be responsible for keeping current the contact names and fax numbers and other appropriate information.

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/s/ James T. Vaughn, Jr.

President Judge

dfm

oc: Prothonotaries
cc: Superior Court Judges
Chief Judge Smalls
Chief Judge Kuhn
Chief Magistrate Griffin
Hon. M. Jane Brady
Hon. Lawrence M. Sullivan
Clerk, Supreme Court of Delaware
Court Administrator
Margaret Derrickson (for web page)
DOC - Probation and Parole
Law Libraries
File