



STATE OF DELAWARE  
**THE JUSTICE OF THE PEACE COURT**

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**POLICY DIRECTIVE 81-50 (REVISED)**

**TO: ALL JUSTICES OF THE PEACE COURT EMPLOYEES**

**FROM: ALAN G. DAVIS**  
**CHIEF MAGISTRATE** *AGD*

**DATE: AUGUST 8, 2017**

**RE: CONTINUANCE POLICY**

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**SCOPE:**

This Policy Directive establishes the policy and procedures for continuance requests from any party in a criminal or civil case before the court.

**JUSTICE OF THE PEACE COURT POLICY:**

It is the policy of the Justice of the Peace Court that cases must be scheduled in accordance with speedy trial criteria for criminal and traffic cases. Likewise, civil cases shall be scheduled as expeditiously as the docket will allow or as required by statute or Court Rule. Timely continuance requests should be granted upon good cause or if the interest of justice requires. Continuance requests made within 24 hours of trial or made at the time of trial may be granted only in cases of emergencies or upon a showing of manifest injustice.

**POLICY DIRECTIVES AFFECTED:**

The following policy directives are rescinded, but may be retained for historical purposes:

- \*Policy Directive 81-50 "Continuance Dates", dated November 3, 1981;
- \*Policy Directive 81-50 (1<sup>st</sup> SUPPLEMENT) "Continuances", dated February 13, 1995;

\*Policy Directive 80-008 (SUPPLEMENT) "Rescheduling a Criminal or Traffic Case to an Earlier Date", dated March 23, 1982;

\*Policy Directive 80-008 (REVISED) "Dismissals for Failure to Appear", dated October 4, 1982<sup>1</sup>.

### **EFFECTIVE DATE:**

This policy shall take effect immediately upon publication.

### **DISCUSSION:**

#### Speedy Trial Guidelines

Several Justice of the Peace Court documents provide guidance regarding the speed at which cases should come before the Court to ensure that timely justice is dispensed. For instance, former Chief Justice Christie of the Delaware Supreme Court stated, that 1) "[l]itigation delay causes criminal litigants expense and anxiety and undermines the objectives of the criminal justice system"; 2) "no criminal litigation should take longer than is reasonably necessary in moving through the system"; and 3) "[t]rial continuances should be few, good cause should be required, and all requests for postponements should be heard and resolved by a judge."<sup>2</sup> He also stated, however, that the "ultimate judicial goal should be justice and not merely speed in the disposition of cases, and therefore, litigants must be afforded a reasonable time to prepare and present their cases."<sup>3</sup>

Likewise, Judge Barron stated that, "A continuance request should never be granted as a matter of course. A continuance request made prior to trial is addressed to the Court's discretion."<sup>4</sup> Finally, Judge Griffin stated that "Although the Chief Justice's Directive [No. 82] does not specifically address Justice of the Peace Court cases, the principles enumerated by the Chief Justice to support the speedy trial goals would also apply in cases heard by Justices of the Peace. The 90 day goal which I recommend for Justice of the Peace Court is the time frame implemented with respect to the Court of Common Pleas and the Municipal Court of Wilmington. Please note that the Directive contains a specific exception to the 90 day requirement for *capiases*, which excludes, for the purpose of computing compliance, the time between the date a *capias* is issued and the date the *capias* is executed."<sup>5</sup>

Based upon the above guidance, the following represents the policies of the Justice of the Peace Court regarding scheduling of trials, other events and consideration of continuances:

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<sup>1</sup> New PD 80-008 (REVISED) is being simultaneously published with this policy directive.

<sup>2</sup> Delaware Supreme Court Administrative Directive No. 82, "Implementation of the Recommendations of the Speedy Trial Goal Committee" (April 18, 1990), at 1-3.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> Justice of the Peace Court Policy Directive 81-50, "Continuance Dates" (November 3, 1981).

<sup>5</sup> Justice of the Peace Court Policy Directive 81-50, "Continuance Dates" (1<sup>st</sup> Supplement) (February 13, 1995).

## Scheduling of Trial Dates

### Initial Trial Dates

- 1) Justice of the Peace Court cases should be scheduled for trial as soon as possible after arrest and arraignment with or without a police prosecutor's review when defendants choose to waive their right to transfer to the Court of Common Pleas (in criminal and traffic cases) or a filing of the compliant (in Landlord/Tenant summary proceedings for possession) or a filing of the answer requesting a trial (in all other civil actions). Initial scheduling should allow for a reasonable time for the parties to prepare and present their cases.<sup>6</sup>
- 2) The speedy trial goal for Justice of the Peace Court criminal and traffic cases should be a disposition within ninety days from the date of arrest. Justice of the Peace courts shall attempt to accommodate the schedules of parties and attorneys in setting trial dates even though this practice, at times, creates difficulties in meeting speedy trial goals and causes unnecessary delay.

### Requirements for Continuance Requests:

- 1) "Continuances should be requested as soon as the requesting party/counsel recognizes that a conflict exists."<sup>7</sup>
- 2) Parties shall submit continuance requests in writing. In criminal and traffic cases, continuance requests from the prosecution are to be submitted on the "Continuance Request", Criminal Form No. 35, provided by the court. (A copy is attached to this Policy Directive.) The court will provide this "Continuance Request" form via e-mail or fax to all unrepresented defendants who call the court requesting a continuance and will give the form to all unrepresented defendants who appear in person at the court verbally requesting a continuance.

In civil cases, a "Continuance Request For Civil Cases", Civil Form No. CF08CR, is available for all unrepresented parties and may be provided to the party via e-mail, fax, in person or staff may provide information about how to obtain the form on the Court website. (A copy is attached to this Policy Directive.)

Attorneys may continue to submit a continuance request on letterhead. Continuance requests otherwise submitted in writing by unrepresented defendants will be accepted in the same manner as a request in writing from an attorney.

- 3) A continuance request shall include the specific reason for the request.<sup>8</sup>

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<sup>6</sup> *Supra* note 2, at 2.

<sup>7</sup> Justice of the Peace Court Criminal Rule 19(a).

<sup>8</sup> J.P. Ct. Cr. Rule 19(b)(1).

- 4) A continuance request shall include the position of the opposing counsel or party on the requested continuance, unless it is not possible to obtain.<sup>9</sup> If the position of the opposing party is not possible to obtain, the requestor shall articulate in writing what efforts were made to contact the opposing party and the result of those efforts, or why contact is not possible, such as when a “No Contact Order” is in place and the parties are unrepresented by counsel.
- 5) A continuance request submitted because of counsel’s or a party’s scheduled appearance in another court shall include the date and time of scheduled appearance in Justice of the Peace Court, and specific information concerning the other court case, such as the name of the case, the court, and the date and time of scheduled appearance in the other court.<sup>10</sup>
- 6) A telephonic continuance request on the day of trial shall be brought to the judge’s attention at the earliest possible convenience.
- 7) Exceptions to one or more of these requirements may be made due to emergency requests. Such a request may occur due to the dispatch of an officer (witness or prosecutor) to an accident or crime scene, an unexpected or emergency health concern, or unexpected rescheduling of an attorney’s case in another court.

#### Decisions on Continuance Requests

- 1) The Court generally has the discretion to grant or deny a continuance if the interest of justice requires it. Common sense and fairness should govern a Court’s decision whether to grant or deny a continuance, no matter the type of proceeding scheduled. The Court shall memorialize its decision in writing for all cases. The court clerk shall notify all parties in writing or by telephone when the Court grants a continuance.
- 2) The Court may grant a continuance even if the request is opposed by the other party.
- 3) The Court should grant a continuance request if the other party has agreed to the request and it meets the above requirements.
- 4) The Court should carefully scrutinize for good cause any subsequent continuance requests. “The more continuances there are, the greater is the inconvenience to witnesses and to Court personnel. The phrase, ‘justice delayed is justice denied’ seems particularly appropriate with regard to those cases which have been rescheduled several times.”<sup>11</sup>
- 5) The Court should, in general, give deference to a continuance request presented by a party because of a case conflict with another court. However, the Court has a duty to

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<sup>9</sup> J.P. Ct. Cr. Rule 19(b)(2).

<sup>10</sup> J.P. Ct. Cr. Rule 19(b)(3).

<sup>11</sup> *Supra* note 4, at 2.

consider the dates the cases were scheduled, the respective ages of the cases, and the timeliness of the request. Parties have a duty to promptly inform the Court of the upcoming conflict. If the other party opposes the continuance request and articulates a showing of manifest injustice, the Court should consider denying the continuance request.

- 6) The Court should also, in general, give deference to a continuance request presented because of a case conflict with another Justice of the Peace Court case. Only if the other party articulates a showing of manifest injustice should the Court consider denying the continuance request. However, if the case conflict arises simply from two different Justice of the Peace court locations scheduling the party at or near the same time, creating a situation in which the party would most likely be unsuccessful in timely appearance at both courts, the Court shall give deference to the proceeding and the court location in which the case was first scheduled.
- 7) The Court should deny a continuance request presented on the day of trial except when the requesting party presents good cause and the interest of justice requires it, such as last minute dispatching elsewhere of a police officer scheduled to prosecute a case or act as a witness, an unexpected or emergency health concern of a party, or a proffer that the parties are actively working on a settlement.
- 8) The Court should deny timely continuance requests presented to the court with no statement articulating the other party's position on the request, with the exception of requests made for arraignments.<sup>12</sup> In order to minimize *ex-parte* communications between the judge and the party or counsel, a court clerk shall contact the requesting party via e-mail or telephone, explaining that the request was denied and why the request was denied. If the requesting party submits a subsequent continuance request with the required information, the previously denied request shall not be held against that party. If the position of the opposing party is not possible to obtain, the requestor shall articulate in writing what efforts were made to contact the opposing party and the result of those efforts, or why contact is not possible, such as when a "No Contact Order" is in place and the parties are unrepresented by counsel.
- 9) The Court shall attribute all continuances granted as a result of a Bill of Particulars, counterclaim, or other court order to the court, not a party.

Subsequent Scheduling Dates:

- 1) The court shall not reschedule a case to an earlier date than was originally set, **unless** the party requesting the continuance first obtains the personal agreement by all parties to have the trial at the earlier date, and then never so quickly that an injustice could be created.

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<sup>12</sup> The Court will not require a Defendant to obtain the State's position on a continuance request for Traffic Call of the Calendar or Criminal Arraignments.

- 2) The Court should make attempts to accommodate the schedules of parties, counsel and police witnesses when scheduling a new date for any proceeding after a continuance has been granted. When scheduling, the court shall consider whether such accommodation will unnecessarily and unreasonably delay the disposition of the case beyond the speedy trial goals or will unjustly prejudice any party.
- 3) Police agencies should ensure that the Justice of the Peace Court has current assignment and vacation schedules for their officers in order for court clerks to efficiently schedule proceedings. This is especially important at the time of rescheduling a case, since the continuance granted will be attributed to the prosecution if the officer is unavailable. Such continuance requests are a result of the courts' lack of accurate knowledge of officers' schedules when the court clerk initially scheduled the proceeding. While the Court does not expect individual police officers to notify the courts of their schedules, each agency should have a designee to do so. Several police agencies have schedules for their troopers and officers available for clerks to reference on the computer. And with the advent of the Police Prosecution Project, a liaison with the court is inherently in place who could supply the needed information. Failure by an agency to provide updated officers' schedules may result in a denial of a request for a continuance.

If the court clerk mistakenly schedules a proceeding which does not coincide with current assignment and vacation information in the court's possession, then a continuance request from a police officer or other state or county prosecutor should be granted due to the court's error and the continuance will be attributed to the court.

- 4) The Court should grant a continuance request in civil cases when the continuance is for settlement discussions. The court clerk will schedule the case for "file review" to preclude unnecessary wasting of docket slots. The Court should require the parties to submit to the Court a judgment by admission, a stipulated judgment, a dismissal, or a request for a trial date within the continuance period.
- 5) The Court shall grant one continuance request to the defendant in debt actions, as a matter of course. The Court shall grant any continuance requests from the Plaintiff and any further requests from the defendant as long as the Court is satisfied that the party is not prepared for trial and the party has acted with due diligence. The Court shall also be satisfied that the requesting party has not purposefully delayed preparing their case in order to postpone the trial.<sup>13</sup>

### **CONCLUSION:**

While every defendant's case is unique, when the court consistently follows speedy trial guidelines in scheduling proceedings and makes rational, practical, equitable and just decisions on continuance requests, cases are disposed of in a reasonable time frame.

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<sup>13</sup> 10 Del. C. 9527(c)

This Policy Directive provides direction on what elements are required for a continuance request and on the considerations the Court should take into account when making its decision.

Attached is a Justice of the Peace Court Continuance Policy sheet for public distribution. Courts should make a two-sided document with a copy of this policy on one side and a copy of the criminal or civil "Continuance Request" form on the other. It is intended that these documents be kept in the lobby at all times for the public to pick up if desired. It will also be available on the Justice of the Peace Court website.

cc: Honorable Leo E. Strine, Jr.  
Honorable Andre Bouchard  
Honorable Jan Jurden  
Honorable Alex J. Smalls  
Honorable Michael K. Newell  
Amy Quinlan, SCA  
Marianne Kennedy  
Jody Huber, Esquire  
Mark Hitch  
Jill Malloy  
Law Libraries: New Castle County, Kent County, Sussex County,  
Widener University School of Law

JUSTICE OF THE PEACE COURT CONTINUANCE POLICY  
(UPDATED August 2017)

GENERAL POLICY

Continuances may be granted upon good cause (if the interest of justice requires it), except that requests made on the day of trial may be granted only in cases of emergency.

CONTINUANCE PROCEDURES

- As soon as you learn that you need to change the date or time of your Justice of the Peace Court hearing, you need to request a continuance from the Justice of the Peace Court immediately. You must contact the court to find out if your request has been granted or denied by the judge. Do not assume that your request will be granted.
- All requests for a continuance must be in writing and include the specific reason for the request. A “Continuance Request” form is on the other side of this document.
- You need to specify the position of the opposing party for all hearings except arraignments. (Prior to requesting a continuance from the court, you will need to attempt to contact the opposing party, attorney or police officer so that you can tell the court if they agree to the continuance.) If the position of the opposing party is impossible to obtain, you need to state what efforts you made to contact the opposing party and the results of those efforts, or why contact is not possible, such as when a “No Contact Order” is in place and the opposing party is unrepresented by an attorney.
- If you are requesting a continuance because you must appear in another court, you need to provide a copy of the other court’s scheduling notice, or if a copy is not available, you need to provide the following information: the name of the other case, the court in which the other case is to be heard, the date and the time the other case is scheduled to be heard, and the date and time you are scheduled in this court.
- If you are requesting a continuance in a civil case so that you can discuss the case with the other party in order to settle the case without a trial, you may request a continuance for up to 30 days “for purposes of settlement”. If the court has not received notice that the case has been settled after that time, the Court may dismiss your case.
- Requests for more than one continuance by a party will be carefully considered by the Court and may not be granted, unless the Court believes that you have explained good cause for the new request.
- To ensure the Justice of the Peace Court complies with speedy trial goals as closely as possible, the court may not be able to accommodate the schedules of parties and counsel in setting hearing dates.



**STATE OF DELAWARE**  
**Justice of the Peace Court**  
**Continuance Request Form for Civil Cases**

Today's Date: \_\_\_\_\_

Scheduled Date: \_\_\_\_\_

Case# JP \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

NAME OF PLAINTIFF: \_\_\_\_\_

NAME OF DEFENDANT: \_\_\_\_\_

Requested by:     Plaintiff                       Defendant

State reason(s) why request is needed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If continuance request is due to scheduling conflict due to work, medical, or other appointments you may need to provide written proof with this request form.

**Provide current contact information:**

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: ( \_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_

\_\_\_\_\_  
**Signature and Date**

**FOR COURT USE ONLY:**

How many prior continuance requests has this party submitted to the court? \_\_\_\_\_

- Approved    \_\_\_ Both parties agree                      \_\_\_ Timely    \_\_\_ Bill of Particulars/Counterclaim issue  
 Denied        \_\_\_ Lacks specific reason/vague    \_\_\_ Untimely    \_\_\_ Prejudice to other party  
 Conditional    \_\_\_ Requestor is to notify other party. If other party agrees in writing, continuance is granted. If other party opposes continuance request, case will go forward as scheduled.

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Justice of the Peace

NOTE Plaintiff/Defendant's new address

New Court Date: \_\_\_\_\_

**STATE OF DELAWARE**  
**Justice of the Peace Court**  
**Continuance Request Form for Criminal Cases**

State v. \_\_\_\_\_ Date: \_\_\_\_\_

Case or Ticket No. \_\_\_\_\_ Scheduled Date: \_\_\_\_\_

**Requested by:**       **Arresting Officer**       **Defendant/Counsel**       **DAG**

Continuance request for (check one):    \_\_\_ Traffic Arraignment/Call of the Calendar    \_\_\_ Criminal Arraignment  
   \_\_\_ Trial     \_\_\_ Sentencing     \_\_\_ Other

State opposing party's position<sup>1</sup> (not required for arraignment continuance requests):

     \_\_\_ Agree    \_\_\_ Disagree    \_\_\_ I did not obtain position

If you did not obtain the opposing party's position, describe what efforts were made and the results of those efforts or why contact was not possible: \_\_\_\_\_

\_\_\_\_\_

State reason(s) why request is needed: \_\_\_\_\_

\_\_\_\_\_

(If continuance request is due to scheduling conflict due to work, medical, or other appointments you will need to provide written proof with this request form.)

**Current address:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Telephone:** \_\_\_\_\_

\_\_\_\_\_ **Signature and Date**

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**FOR COURT USE ONLY:**

How many prior continuance request has this party submitted to the court? \_\_\_\_\_

**Approve**     **Deny**     **Conditional**

Comments/Conditions: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Justice of the Peace**

<sup>1</sup> J.P. Court Criminal Rule 19(b)(2)