IN THE DELAWARE JUSTICE OF THE PEACE COURT

IN RE: PROCEDURES FOR
LANDLORD/TENANT MATTERS

ADMINISTRATIVE ORDER 2020-1

This 11th day of September, 2020.

WHEREAS, the Centers for Disease Control and Prevention has determined that a novel coronavirus (COVID-19) presents a serious public health threat;

WHEREAS, the President of the United States has issued Proclamations prohibiting travel to the United States by foreign nationals who recently visited areas acutely impacted by COVID-19; the Department of State has issued Level 3 and Level 4 Travel Advisories for certain affected countries; and domestic and foreign health authorities have issued guidance to citizens within their respective jurisdictions, both recommending and mandating precautionary measures to defend against the spread of COVID-19;

WHEREAS, the Delaware Department of Health and Social Services, Division of Public Health, has issued an advisement that individuals should follow the Center for Disease Control's recommendation to avoid crowds as much as possible;

WHEREAS, under his authority set forth in 20 *Del. C.* ch. 31, Governor John C. Carney, on March 12, 2020, declared a State of Emergency for the State of Delaware due to the public health threat caused by COVID-19, and extended the State of Emergency multiple times;

WHEREAS, under 10 *Del. C.* § 2004, the Chief Justice, in consultation with other members of the Supreme Court, declared a judicial emergency that went into effect on March 16, 2020 at 8:00 a.m., and extended the judicial emergency multiple times;

WHEREAS, on June 1, 2020, non-essential businesses were permitted, subject to certain limitations, to reopen in Delaware under the Nineteenth Modification to Governor Carney's order declaring a State of Emergency;

WHEREAS, in an order dated June 5, 2020, the Chief Justice extended the judicial emergency effective June 8, 2020, extended certain deadlines that expired between March 23, 2020 and June 30, 2020 through July 1, 2020, and accepted the recommendations of the Courts Reopening Committee and the Justice of the Peace Court for reopening;

WHEREAS, the Chief Justice, in consultation with the other members of the Supreme Court, has determined that extension of the judicial emergency is necessary and that the courts should continue to comply with the Reopening Plan set forth in the June 5, 2020 order;

WHEREAS, the Justice of the Peace Court serves in a continuous capacity during times of emergency in order to ensure that emergency and essential functions of the judicial system may continue;

WHEREAS, under his authority set forth in 20 *Del. C.* ch. 31, Governor John C. Carney, effective July 1st, issued the Twenty-Third Modification to the State of Emergency Declaration, which, in part, modified the Sixth Modification of the State of Emergency regarding evictions; and

WHEREAS the Centers for Disease Control ("CDC") issued an order which took effect on September 4th providing for potential relief from eviction under certain circumstances.

NOW, THEREFORE, this 11th day of September, IT IS ORDERED that the following procedures shall govern the processing and hearing of landlord tenant matters moving forward, until such time as this Administrative Order is amended or rescinded.

## A. Case Processing

### Generally

The Court is proceeding on a "oldest cases first" principle to be as fair as possible under the circumstances. Because of this principle and because of the exceedingly limited landlord-tenant case processing that was taking place between March 13, 2020 and July 1, 2020, many of the processes that would have been occurring concurrently have had to be re-initiated in a more methodical and time-intensive manner.

The Court has a backlog of cases that were filed but not yet served from prior to March 13, 2020. The bulk of this backlog is being addressed before we turn our attention to initiating newly filed cases. All cases filed (but not processed) before March 13, 2020 will be initiated on the path of case processing before cases filed after July 1 begin substantive case processing. Newer cases may be accepted from the e-filing system or in hard copy, but will not be prepared for service of process and directed to a constable, until the bulk of the backlog from prior to March 13, 2020 is addressed.

As newer cases are addressed, in the course of a particular case continuances, failures of service, or other limiting factors may mean that an older case may make it to trial after a more recently filed one, but in general, older cases should still be scheduled for the earliest available trial dates.

In addition to the commitment to address oldest cases first, the old processes of the Court for hearing dates cannot be followed due to COVID-19 precautions limiting the capacity of our facilities and the availability of our staff. Calls of the calendar are no longer an option for the Court due to the need for social distancing; every case will need to be individually scheduled for a discrete hearing time, whether it is held virtually or in person. While the Court is examining the expansion of available trial dates and times by expanding hours or days of service, resource restrictions limit the effectiveness of this planning.

The Court is also approaching this as a "whole Court" issue, meaning that we are assessing the availability of resources among the various civil locations to help locations that may have a greater burden. The Court is supplementing resources across county lines to assist in service of process, case processing and judicial availability for mediation and hearing purposes. We are also enlisting the assistance of the Bar and other civil justice partners to develop processes to meaningfully reduce the overall impact of the current caseload.

Finally, the Governor's 23rd modification order requires the Court to develop and implement mediation alternatives assessing each case for the potential effectiveness of mediation. The Court has had to build a mediation program from scratch; purchase, configure and deploy an online dispute resolution system; and develop all new policies and procedures to support these efforts.

With these things in mind, the Court has established processes for cases filed before the health emergency and those filed after July 1, 2020[1]. The Court will continue to work to make processes more efficient and fair as we move forward. In particular, this Administrative

[1] Cases efiled with the Court between March 13 and July 1 fall into this latter category, but are being treated as the earliest filed actions in the designation.

Directive will be modified to clarify processes involving cases filed on or after July 1, 2020 once the ODR system has been fully developed. In addition, while this order gives a limited process related to the implementation of the CDC order on evictions, the Court will supplement that section as more information becomes available and the effect of the order is fully assessed.

**For Residential Landlord Tenant Matters Filed Before March 13, 2020**

All cases will be set for a virtual pretrial conference and then a subsequent virtual trial. While in-person hearings are available where there are technological barriers or complications determined on a case-by-case basis, the default position will be for a virtual hearing. All notices for pretrial conferences and trials will provide information regarding accessing the hearing via Zoom as well as notice that if one or more parties cannot participate virtually, they must contact the court immediately to be scheduled for an alternate hearing venue.

Cases will be scheduled for all proceedings using the general "oldest first" principle. Trial dates for cases initiated before March 13, 2020 are being scheduled now. Trial dates that were scheduled, but continued due to the Public Health Emergency, will be rescheduled as pre-trial conferences, as outlined above, prior to being scheduled for a trial date. Cases that had been accepted, but not yet served prior to March 13, 2020 will be served and then set for a pretrial conference.

Virtual pretrial conferences will be scheduled as soon as is practicable. The purpose of these conferences is triage. Conferences will be scheduled at 30 minute increments for all cases unless the parties advise the Court in advance that additional time will be necessary. With the notice of the pretrial conference, to prepare them for the process, parties will receive a set of

questions likely to be asked by the judge conducting the conference. During the pretrial conference, the judge will assess the case for potential resolution, amenability to mediation, narrowing legal or factual issues in preparation for trial, determining technological availability for the next event and informing parties of how they will receive notice for their next event.

As such, at a pretrial conference, the following may occur: the case may come to resolution if the parties are in agreement; if the filings are clear on the face that the case does not invoke the jurisdiction of the Court or meet statutory requirements, the judge may dismiss the matter or schedule it for a hearing on that issue; the judge may determine that the case is appropriate for mediation and refer the matter to mediation; or the judge may determine that the case should proceed directly to trial and a trial date will be issued. The Court will docket the outcome of the pretrial conference, and if any narrowing of issues for trial are ordered, the judge will include an order documenting them.[2]

If the parties reach an agreement, the agreement will be documented by the Court, by counsel for the parties, or through limited referral to mediation resources. The agreement may resolve the matter completely, or require the Court to retain jurisdiction for purposes of enforcement.

Mediation shall be ordered where the parties agree to mediate their case. Rarely, invoking the inherent power of the Court, a judge may order parties to mediation where one or more party has demonstrated a lack of good faith in refusing to agree to mediate. Mediation should take

[2] That order will become the "law of the case" and modifications will be for good cause only. A trial judge, if not the same judge who heard the pretrial conference, will honor the limiting order of the pretrial judge.

place as soon as a mediator is available after the pretrial conference[3], with a trial date established with enough time for the mediation to take place. If a party fails to appear at mediation, the Court may, upon motion, enter a non-suit judgment or a default (under unusual, but individually appropriate circumstances), reschedule mediation, or reschedule an established trial date, as appropriate.

In accord with the "oldest cases first" principle, parties not agreeing to – or directed to - mediate shall have a trial date scheduled no sooner than if the case would have been sent to mediation; there will be no trial date benefit by avoiding mediation. Because of the limitation on trial dates, continuances shall not be liberally given once a trial date is established.

**For Residential Landlord-Tenant Matters Filed On or After July 1, 2020[4]**

All residential landlord tenant matters filed from the date of this order and forward must contain the best available contact information for both parties, which may include a telephone number, valid email address or other appropriate contacts. If a complaint fails to include contact information beyond an address for both parties, there may be a delay in the processing and scheduling of the case.

To meet the requirements of the Governor's 23rd modification order with regard to mediation, all cases initiated after July 1, 2020 will be referred directly to the Justice of the Peace Court online dispute resolution (ODR) system. If a case is unable to be resolved through the

[3] Mediation may take place immediately after the pre-trial conference if a mediator is available, but the judge conducting the pretrial conference should not conduct the mediation in order to eliminate any confusion of the roles of judicial officer and mediator.

[4] Again, cases efiled with the Court between March 13 and July 1 fall into this category, but are being treated as the earliest filed actions in the designation.

ODR system, the case will proceed to a previously established trial date and follow the process as outlined below. Cases will be scheduled based upon the order in which they were received. All notices for trials will provide information regarding accessing the hearing via Zoom as well as notice that if one or more parties cannot participate virtually, they must contact the court immediately to be scheduled for an alternative hearing. Trial dates for cases initiated after July 1, 2020 will not be scheduled prior to late October 2020, at the earliest.

This Administrative Order will be modified and re-issued with more specific information about how the ODR system and the process will work, as soon as that system is configured and ready for use by the public.

**B. Eviction Process**

**Generally**

The Governor's 23rd modification of the declaration of a state of emergency due to a public health threat, though opening the availability of filing of landlord-tenant cases, imposed an additional limitation on actual evictions proceeding. In order for an eviction to go forward, the Court must be satisfied that allowing an eviction is "in the interest of justice." While the Court cannot provide specific legal guidance on what constitutes the need for an eviction "in the interest of justice," the Court will require the moving party to show that something more than the normal legal right to possession granted under the Residential Landlord-Tenant Code is required. The Court has established processes below for cases in various procedural stages to determine who will have the burden with regard to proving whether an eviction meets such a standard.

**For Cases Where a Writ of Possession Had Been Applied for Prior to March 13, 2020**

Pursuant to the Governor's 23rd Modification of the Declared State of Emergency, in cases where a writ of possession had been issued and served, but eviction had not taken place, and in cases where a writ had been requested, but not served prior to March 13, 2020, the landlord must file a new request for a writ or a motion to revive the writ no later than September 30, 2020. The landlord will not be required to make an initial showing that the eviction is "in the interest of justice" as these writs had been previously approved. If the writ is issued, the Tenant will receive, with the posting of the writ a notice that they may file a request for a stay of the writ within 5 days of the posting. This request must demonstrate that the stay of the writ is in "the interest of justice". There is no charge for this request to be made. If no request for the writ to be stayed is filed with the Court, the eviction will go forward. The moving party must serve a copy of the motion upon the landlord along with its application to the Court, in accord with Justice of the Peace Court Civil Rule 5. Failure to do so will result in the motion not being considered by the Court. If there is a request filed, the Court will give the landlord 5 days to respond to the request to stay. Most actions will be considered solely on the pleadings, but the Court may order a hearing at its discretion.

**For Cases Where a Judgment Was Entered or Pending Prior to March 13, 2020**

**(No Writ of Possession Yet Requested)**

Pursuant to the Governor's 23rd Modification of the Declared State of Emergency, in all cases where a landlord will be filing a request for a writ of possession, the landlord must present a motion containing a rationale as to why it is "in the interest of justice" that the eviction go

forward. The landlord shall present this rationale as a motion to the Court in writing. The moving party must serve a copy of the motion upon the tenant along with its application to the Court, in accord with Justice of the Peace Court Civil Rule 5. Failure to do so will result in the motion not being considered by the Court. There is no charge for this beyond the normal fee for an application for a writ of possession. If there is a request filed, the Court will give the tenant 5 days to respond to the request to stay. Most actions will be considered solely on the pleadings, but the Court may order a hearing at its discretion.

**For Cases Not Heard at Trial Prior to March 13, 2020**

To comply with the Governor's 23rd Modification of the Declared State of Emergency, in all cases where trial has not yet taken place, the Court will bifurcate the proceedings. Trial will be held on the merits of the case. After trial is complete, and the Court has either ruled in favor of the landlord on the question of possession or reserved decision, the Court will give the landlord an opportunity to address, in open court and on the record, the issue of whether it is in the "interest of justice" for the Court to allow eviction to go forward. The tenant shall have an opportunity to respond. The Court may decide the issue at that time, reserve decision or require additional submissions. If, between the time of ruling on the question of eviction and the time of actual eviction, the factors that led the court to allow or disallow eviction change, a party may readdress the Court on the issue in the form of a written motion.

In the event of a trial date resulting in a default judgment against a tenant, the Court will require the landlord to place on the record the reasons eviction would be in the interest of justice. The Court may accept, reject, or require additional submissions on this issue. If additional

submissions are required, those shall be provided to the tenant in accord with Justice of the Peace Court Civil Rule 5, and the tenant shall be given 5 days to respond to the issue. If the Court accepts the interest of justice rationale at the default hearing, the Court will accept a motion to re-open of either the full action or the issue of interest of justice for the eviction. If the Court rejects the landlord's interest of justice rationale, a landlord may, at any time prior to the expiration of the 30-day period in which a writ of possession may normally be requested, submit additional information as to why eviction would be in the interest of justice. [5]

**Effect of CDC Order on Evictions**

The Court will supplement this order with additional processes and information related to the CDC Order on evictions as soon as possible. Until that time, the following comports with the Court's current understanding of that order:

- In any case currently pending before the Court, a tenant may provide a copy of the declaration required to invoke the protections of the order to a landlord at any time prior to actual eviction, unless the applicability of the order or effect of a prior declaration has been determined by the Court previously in the proceedings.
- In all currently pending cases in which a landlord receives a declaration, the landlord must provide the Court with notice of the receipt of the declaration as soon as practicable, even if the landlord believes that the declaration is inappropriate, inapplicable or ineffective.

[5] This process will be consistent for all circumstances in which a request for a writ is denied as being outside the interest of justice standard. The landlord shall have the life of the availability of the writ to prove interest of justice should apply, but such new applications should be based on additional information, circumstances, or qualifications.

- The protections of the order do not preclude a landlord from taking actions that preserve the landlord's rights to future possession, including but not limited to, providing statutory notices or filing an action in this Court for possession. [6]
- In new cases[7] where the declaration has been provided, the Court will stay the Court's proceedings, but make available mediation services for the parties.
- In all cases where the declaration has been provided, the landlord may challenge the appropriateness, applicability and effect of the declaration as part of an action brought before this Court.
- Any new action for possession must be accompanied by information indicating whether or not the tenant has invoked, or attempted to invoke, the protections of the order.
- The Governor's 23rd Modification of the Declared State of Emergency is neither more nor less expansive than the CDC order. The protections afforded by both orders are different and not mutually exclusive. In cases where the CDC order is effective, it shall take precedence. Nothing in the CDC order eliminates the requirement that an eviction moving forward must be "in the interest of justice".

Alan G. Davis
Chief Magistrate

[6] The Court is operating, at least initially, from an interpretation of the order's language that the landlord may not take "any action . . . to remove or cause the removal" to mean actual removal from the property. The Court ultimately has control over the removal of the tenant in all circumstances outside of illegal self-help. All proceedings short of a hearing in which the issue of possession would actually be adjudicated are therefore permissible. This interpretation is subject to change.

[7] Also in pending cases where the parties have not yet had the opportunity to engage in mediation.