

THE DELAWARE MUNICIPAL COURT PRO SE LITIGANT INFORMATION SHEET

Judge David P. Sunderman
Judge David M. Gormley

If you are appearing in court without the aid of an attorney, you are what the court refers to as a *pro se* [pro'say] litigant—that is you are “appearing for yourself”. You may be a little apprehensive due to your lack of familiarity with courtroom procedure and formalities. This information sheet is designed to give you some basic information about the procedures that will be followed in the courtroom. **The information provided here is very general and may not apply the same in each individual case.**

CRIMINAL/TRAFFIC CASES

- **Your rights.** Criminal and traffic cases are called “prosecutions.” The parties involved are always a state or city prosecutor and yourself. Due process in a criminal or traffic case offers you certain protections: (1) you have a right to be represented by an attorney [including an appointed attorney if you are indigent and are being tried for a crime for which you could be jailed], (2) you have the right to a trial, (3) you have the right to require the prosecutor to prove your guilt “beyond a reasonable doubt”—you do not have to prove your innocence, (4) you have the right to be present during the trial and cross-examine, or question, the witnesses called against you, (5) you have the right to subpoena your own witnesses into court, and (6) you enjoy a privilege against self incrimination; no one can make you testify, but if you choose to do so you will be treated as any other witness. Generally speaking, the trial is divided into five stages: (1) opening statements, (2) the prosecutor’s case-in-chief, (3) your case-in-chief, (4) the prosecutor’s rebuttal case, and (5) closing arguments.
- **Opening Statements.** Opening statements are not evidence and are simply statements given by the opposing sides to give the court a roadmap of the evidence that the parties anticipate will be presented at trial.
- **Prosecutor’s Case-in-Chief.** The prosecutor’s case-in-chief begins the presentation of the evidence in a case. The prosecutor calls witnesses one at a time. The witnesses are sworn and give “testimony” in response to questions from the prosecutor. The prosecutor may also introduce “exhibits” through the witnesses. This initial questioning of the witnesses is called “direct examination”. Following direct examination of the witness, you have the opportunity to “cross examine” the witness. Cross-examination is a time for you to ask questions of the witness, not a time to make statements or argue with the witness. You may introduce exhibits through cross-examination of the prosecutor’s witnesses if you wish. When you are finished with cross-examination, the prosecutor has the opportunity to conduct “redirect examination” of the witness—this is to ask follow-up questions to your cross-examination of the witness. This process repeats itself for each witness until the prosecutor is finished presenting his/her case. When that happens, the prosecutor “rests” or ends its case.
- **Your Case-in-Chief.** You have a decision to make after the prosecutor rests. You have no obligation to testify or present a case. If you choose, however, to present a case, you would present your case-in-chief in the same manner as the prosecutor. That is, you would call witnesses, examine them, have them subjected to cross-examination, and then re-direct examination. You would introduce exhibits, if any, through your witnesses. If you choose to testify, you lose your privilege against self-incrimination and will be subject to cross-examination as any other witness. This process would continue, one witness at a time, until you were finished presenting your case. Then, you would “rest” your case.
- **Prosecutor’s Rebuttal Case.** Following your case-in-chief, the prosecutor has the opportunity to present a “rebuttal case”. That is to call more witnesses to rebut anything you may have raised in your case-in-chief. The process works the same as the prosecutor’s case-in-chief. The prosecutor gets the opportunity to present a rebuttal case because the prosecutor bears the burden of proof and must actually prove your guilt, whereas you need not prove anything.
- **Closing Arguments.** At the conclusion of the prosecutor’s rebuttal case, both parties are given the opportunity to present “closing arguments”. Closing arguments are not evidence. They are simply arguments designed to help the Court make a decision. In closing argument, you would argue the facts and law as to why you should be found not guilty. The prosecutor argues first, then you argue, then the prosecutor has the opportunity to make a final rebuttal argument. The case is then submitted to the Court for decision.

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CIVIL CASES

A civil case is a case between the “plaintiff” and the “defendant”. The plaintiff is the person who is suing; the defendant is the person being sued. At trial, the plaintiff bears the burden of proof by a preponderance of the evidence—that is, is it more likely than not that the plaintiff is entitled to judgment as a matter of law (or 51% likely)? Generally speaking, the trial is divided into five stages: (1) opening statements, (2) the plaintiff's case-in-chief, (3) the defendant's case-in-chief, (4) the plaintiff's rebuttal case, and (5) closing arguments.

- **Opening Statements.** Opening statements are not evidence and are simply statements given by the opposing sides to give the court a roadmap of the evidence that the parties anticipate will be presented at trial.
- **Plaintiff's Case-in-Chief.** The plaintiff's case-in-chief begins the presentation of the evidence in a case. The plaintiff calls witnesses one at a time. The plaintiff may even call the defendant as a witness. The witnesses are sworn and give “testimony” in response to questions from the plaintiff. The plaintiff may also introduce “exhibits” through the witnesses. This initial questioning of the witnesses is called “direct examination”. Following direct examination of the witness, the defendant has the opportunity to “cross-examine” the witness. Cross-examination is a time for the defendant to ask questions of the witness, not a time to make statements or argue with the witness. The defendant may introduce exhibits through cross-examination of the plaintiff's witnesses. When the defendant is finished with cross-examination, the plaintiff has the opportunity to conduct “redirect examination” of the witness—that is to ask follow-up questions to the defendant's cross-examination of the witness. This process repeats itself for each witness until the plaintiff is finished presenting his/her case. When that happens, the plaintiff “rests” or ends its case.
- **Defendant's Case-in-Chief.** If the defendant chooses to present a case, it would be presented in the same manner as the plaintiff's case-in-chief. That is, the defendant would call witnesses, including the plaintiff, if desired, examine them, have them subjected to cross-examination, and then re-direct examination. The defendant would introduce exhibits, if any, through his/her witnesses. This process would continue, one witness at a time, until the defendant was finished presenting his/her case, at which time the defendant would “rest”.
- **Plaintiff's Rebuttal Case.** Following the defendant's case-in-chief, the plaintiff has the opportunity to present a “rebuttal case”. That is to call more witnesses to rebut anything the defendant may have raised in his/her case-in-chief. The process works the same as the plaintiff's case-in-chief. The plaintiff gets the opportunity to present a rebuttal case because the plaintiff bears the burden of proof and must actually prove the defendant's liability.
- **Closing Arguments.** At the conclusion of the plaintiff's rebuttal case, both parties are given the opportunity to present “closing arguments”. Closing arguments are not evidence. They are simply arguments designed to help the Court make a decision. In closing argument, you would argue the facts and law as to why you should win. The plaintiff goes first, then the defendant, then the plaintiff has the opportunity to make a final rebuttal argument. The case is then submitted to the Court for decision.