APPENDIX A

RULES GOVERNING PRACTICE IN THE MUNICIPAL COURTS

RULE 7:1. SCOPE

The rules in Part VII govern the practice and procedure in the municipal courts in all matters within their statutory jurisdiction, including disorderly and petty disorderly persons offenses; other non-indictable offenses not within the exclusive jurisdiction of the Superior Court; violations of motor vehicle and traffic, fish and game, and boating laws; proceedings to collect penalties where jurisdiction is granted by statute; violations of county and municipal ordinances; and all other proceedings in which jurisdiction is granted by statute. The rules in Part III govern the practice and procedure in indictable actions, and Rule 5:7A governs the practice and procedure in the issuance of temporary restraining orders pursuant to the Prevention of Domestic Violence Act of 1990.

Note: Source-R. (1969) 7:1. Adopted October 6, 1997 to be effective February 1, 1998.

RULE 7:2. PROCESS

7:2-1. Contents of Complaint, Complaint-Warrant (CDR-2) and Summons

(a) Complaint: General. The complaint shall be a written statement of the essential facts constituting the offense charged made on a form approved by the Administrative Director of the Courts. Except as otherwise provided by paragraphs (f) (Traffic Offenses), (g) (Special Form of Complaint and Summons), and (h) (Use of Special Form of Complaint and Summons in Penalty Enforcement Proceedings), the complaining witness shall attest to the facts contained in the complaint by signing a certification or signing an oath before a judge or other person so authorized by N.J.S.A. 2B:12-21.

If the complaining witness is a law enforcement officer, the complaint may be signed by an electronic entry secured by a Personal Identification Number (hereinafter referred to as an electronic signature) on the certification, which shall be equivalent to and have the same force and effect as an original signature.

(b) Acceptance of Complaint. The municipal court administrator or deputy court administrator shall accept for filing every complaint made by any person. Acceptance of the complaint does not mean that a finding of probable cause has been made in accordance with R. 7:2-2 or that the Complaint-Warrant (CDR-2) or summons has been issued.

(c) Summons: General. The summons shall be on a Complaint-Summons form (CDR-1) or other form prescribed by the Administrative Director of the Courts and shall be signed by the

officer issuing it. An electronic signature of any law enforcement officer or any other person authorized by law to issue a Complaint-Summons shall be equivalent to and have the same force and effect as an original signature. The summons shall be directed to the defendant named in the complaint, shall require defendant's appearance at a stated time and place before the court in which the complaint is made, and shall inform defendant that a bench warrant may be issued for a failure to appear.

(d) Complaint-Warrant (CDR-2).

(1) Complaint-Warrant (CDR-2): General. The arrest warrant for an initial charge shall be made on a Complaint-Warrant form (CDR-2) or other form prescribed by the Administrative Director of the Courts and shall be signed by a judicial officer after a determination of probable cause that an offense was committed and that the defendant committed it. A judicial officer, for purposes of the Part VII rules, is defined as a judge, authorized municipal court administrator, or authorized deputy court administrator. An electronic signature by the judicial officer shall be equivalent to and have the same force and effect as an original signature. The warrant shall contain the defendant's name or, if unknown, any name or description that identifies the defendant with reasonable certainty. It shall be directed to any officer authorized to execute it. A Complaint-Warrant (CDR-2) shall order that the defendant be arrested and remanded to the county jail pending a determination of conditions of pretrial release.

(2) Complaint-Warrant (CDR-2) - Disorderly Persons Offenses. When a Complaint-Warrant (CDR-2) is issued and the most serious charge is a disorderly persons offense, the court shall order that the defendant be arrested and remanded to the county jail pending a determination of conditions of pretrial release. Complaints in which the most serious charge is an indictable offense are governed by R. 3:2-1.

(3) Complaint-Warrant (CDR-2) - Petty Disorderly Persons Offense or Any Other Matters within the Jurisdiction of the Municipal Court. When a Complaint-Warrant (CDR-2) is issued and the most serious charge is a petty disorderly persons offense or any other matter within the jurisdiction of the Municipal Court, as set forth in N.J.S.A. 2B:12-17 and R. 7:1, the court shall order that the defendant be arrested and brought before the court issuing the warrant. The judicial officer issuing a warrant may specify therein the amount and conditions of bail or release on personal recognizance, consistent with R. 7:4, required for defendant's release.

(e) Issuance of a Compaint-Warrant (CDR-2) When Law Enforcement Applicant is Not Physically Before a Judicial Officer. A

judicial officer may issue a Complaint-Warrant (CDR-2) upon sworn oral testimony of a law enforcement applicant who is not physically present. Such sworn oral testimony may be communicated by the applicant to the judicial officer by telephone, radio, or other means of electronic communication.

The judicial officer shall administer the oath to the applicant. After taking the oath, the applicant must identify himself or herself and read verbatim the Complaint-Warrant (CDR-2) and any supplemental affidavit that establishes probable cause for the issuance of a Complaint-Warrant (CDR-2). If the facts necessary to establish probable cause are contained entirely on the Complaint-Warrant (CDR-2) and/or supplemental affidavit, the judicial officer need not make a contemporaneous written or electronic recordation of the facts in support of probable cause. If the law enforcement applicant provides additional sworn oral testimony in support of probable cause, the judicial officer shall contemporaneously record such sworn oral testimony by means of a recording device if available; otherwise, adequate notes summarizing the contents of the law enforcement applicant's testimony shall be made by the judicial officer. This sworn testimony shall be deemed to be an affidavit or a supplemental affidavit for the purposes of issuance of a Complaint-Warrant (CDR-2).

A Complaint-Warrant (CDR-2) may issue if the judicial officer finds that probable cause exists and that there is also justification for the issuance of a Complaint-Warrant (CDR-2) pursuant to the factors identified in R. 7:2-2(c). If the judicial officer does not find justification for a warrant under R. 7:2-2(c), the judicial officer shall issue a summons.

If the judicial officer has determined that a warrant shall issue and has the ability to promptly access the Judiciary's computerized system used to generate complaints, the judicial officer shall electronically issue the Complaint-Warrant (CDR-2) in that computer system. If the judicial officer has determined that a warrant shall issue and does not have the ability to promptly access the Judiciary's computerized system used to generate complaints, the judicial officer shall direct the applicant to complete the required certification and activate the complaint pursuant to procedures prescribed by the Administrative Director of the Courts.

Upon approval of a Complaint-Warrant (CDR-2), the judicial officer shall memorialize the date, time, defendant's name, complaint number, the basis for the probable cause determination, and any other specific terms of the authorization. That memorialization shall be either by means of a recording device or by adequate notes.

A judicial officer authorized for that court shall verify, as soon as practicable, any warrant authorized under this subsection and

activated by law enforcement. Remand to the county jail for defendants charged with a disorderly persons offense and a pretrial release decision are not contingent upon completion of this verification.

Procedures authorizing issuance of restraining orders pursuant to N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") and N.J.S.A. 2C:14-12 ("Nicole's Law") by electronic communications are governed by R. 7:4-1(d).

(f) Traffic Offenses.

(1) Form of Complaint and Process. The Administrative Director of the Courts shall prescribe the form of Uniform Traffic Ticket to serve as the complaint, summons or other process to be used for all parking and other traffic offenses. On a complaint and summons for a parking or other non-moving traffic offense, the defendant need not be named. It shall be sufficient to set forth the license plate number of the vehicle, and its owner or operator shall be charged with the violation.

(2) Issuance. The complaint may be made and signed by any person, but the summons shall be signed and issued only by a law enforcement officer or other person authorized by law to issue a Complaint-Summons, the municipal court judge, municipal court administrator or deputy court administrator of the court having territorial jurisdiction. An electronic signature of any law enforcement officer or other person authorized by law to issue a Complaint-Summons shall be equivalent to and have the same force and effect as an original signature.

(3) Records and Reports. Each court shall be responsible for all Uniform Traffic Tickets printed and distributed to law enforcement officers or others in its territorial jurisdiction, for the proper disposition of Uniform Traffic Tickets, and for the preparation of such records and reports as the Administrative Director of the Courts prescribes. The provisions of this subparagraph shall apply to the Chief Administrator of the Motor Vehicle Commission, the Superintendent of State Police in the Department of Law and Public Safety, and to the responsible official of any other agency authorized by the Administrative Director of the Courts to print and distribute the Uniform Traffic Ticket to its law enforcement personnel.

(g) Special Form of Complaint and Summons. A special form of complaint and summons for any action, as prescribed by the Administrative Director of the Courts, shall be used in the manner prescribed in place of any other form of complaint and process.

(h) Use of Special Form of Complaint and Summons in Penalty Enforcement Proceedings. The Special Form of Complaint and

Summons, as prescribed by the Administrative Director of the Courts, shall be used for all penalty enforcement proceedings in the municipal court, including those that may involve the confiscation and/or forfeiture of chattels. If the Special Form of Complaint and Summons is made by a governmental body or officer, it may be certified or verified on information and belief by any person duly authorized to act on its or the State's behalf.

Note: Source-Paragraph (a): R. (1969) 7:2, 7:3-1, 3:2-1; paragraph (b): R. (1969) 7:2, 7:3-1, 7:6-1, 3:2-2; paragraph (c): R. (1969) 7:2, 7:3-1, 7:6-1, 3:2-3; paragraph (d): R. (1969) 7:6-1; paragraph (e): R. (1969) 4:70-3(a); paragraph (f): new. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) caption added, former paragraph (a) amended and redesignated as paragraph (a)(1), former paragraph (b) amended and redesignated as paragraph (a)(2), former paragraph (c) redesignated as paragraph (a)(3), former paragraph (d) redesignated as paragraph (b), former paragraph (e) caption and text amended and redesignated as paragraph (c), and former paragraph (f) redesignated as paragraph (d) July 12, 2002 to be effective September 3, 2002; caption for paragraph (a) deleted, former paragraphs (a)(1) and (a)(2) amended and redesignated as paragraphs (a) and (b), former paragraph (a)(3) redesignated as paragraph (c), new paragraph (d) adopted, former paragraph (b) amended and redesignated as paragraph (e), former paragraph (c) deleted, former paragraph (d) amended and redesignated as paragraph (f), and new paragraph (g) adopted July 28, 2004 to be effective September 1, 2004; paragraph (a) amended, new paragraph (b) adopted, former paragraphs (b), (c), (d), and (e) amended and redesignated as paragraphs (c), (d), (e), and (f), former paragraphs (f) and (g) redesignated as paragraphs (g) and (h) July 16, 2009 to be effective September 1, 2009; paragraph (e) caption and text amended July 9, 2013 to be effective September 1, 2013; caption amended, paragraphs (d) and (e) caption and text amended August 30, 2016 to be effective January 1, 2017; paragraph (d) reallocated as paragraphs (d)(1) and (d)(2), new paragraph (d)(3) added, new paragraph (d) caption added, and paragraph (e) amended November 14, 2016 to be effective January 1, 2017; paragraph (b) amended, subparagraph (d)(3) caption and text amended, and (e) amended August 2, 2019 to be effective October 1, 2019; effective date of the August 2, 2019 amendments changed to January 1, 2020 by order dated September 25, 2019.

7:2-2. Issuance of Complaint-Warrant (CDR-2) or Summons

(a) Probable Cause.

(1) Finding of Probable Cause. A finding of probable cause by a judicial officer that an offense was committed and that the defendant committed it must be made before issuance of a Complaint-Warrant (CDR-2) or a summons except as provided in paragraphs (a)(3) and (a)(4). The Complaint-Warrant (CDR-2) or summons may be issued only if it appears to the judicial officer from the complaint, affidavit, certification or testimony that there is probable cause to believe that an offense was committed and the defendant committed it. The judicial officer's finding of probable cause shall be noted on the face of the Complaint-Warrant (CDR-2) or summons and shall be confirmed by the judicial officer's signature issuing the Complaint-Warrant (CDR-2) or summons.

(2) Finding of No Probable Cause. If the municipal court administrator or deputy court administrator finds that no probable cause exists to issue a Complaint-Warrant (CDR-2) or summons, or that the applicable statutory time limitation to issue the Complaint-Warrant (CDR-2) or summons has expired, that finding shall be reviewed by the judge. A judge finding no probable cause to believe that an offense occurred or that the statutory time limitation to issue a Complaint-Warrant (CDR-2) or a summons has expired shall not issue the Complaint-Warrant (CDR-2) or summons.

(3) Complaint by Law Enforcement Officer or Other Statutorily Authorized Person. A summons on a complaint made by a law enforcement

officer charging any offense may be issued by a law enforcement officer or by any person authorized to do so by statute without a finding by a judicial officer of probable cause for issuance. A law enforcement officer may personally serve the summons on the defendant without making a custodial arrest.

(4) Complaint by Code Enforcement Officer. A summons on a complaint made by a Code Enforcement Officer charging any offense within the scope of the Code Enforcement Officer's authority and territorial jurisdiction may be issued without a finding by a judicial officer of probable cause for issuance. A Code Enforcement Officer may personally serve the summons on the defendant. Otherwise, service shall be in accordance with these rules. For purposes of this rule, a "Code Enforcement Officer" is a public employee who is responsible for enforcing the provisions of any state, county or municipal law, ordinance or regulation which the public employee is empowered to enforce.

(b) Authorization for Process of Citizen Complaints.

(1) Issuance of a Citizen Complaint Charging Disorderly Persons Offense, Petty Disorderly Persons Offense, or Any Other Matter within the Jurisdiction of the Municipal Court. A Complaint-Warrant (CDR-2) or a summons charging a disorderly persons offense, petty disorderly persons offense or any other matter within the jurisdiction of the municipal court, as set forth in N.J.S.A. 2B:12-17 and R. 7:1, made by a private citizen may be issued only by a judge or, if authorized by the judge, by a municipal court administrator or deputy court administrator of a court with jurisdiction in the municipality where the offense is alleged to have been committed within the statutory time limitation.

(2) County Prosecutor Review of Citizen Complaints Charging Disorderly Persons Offenses. Prior to a finding of probable cause and issuance of a Complaint-Warrant (CDR-2) or a summons charging a disorderly persons offense made by a private citizen against a candidate or nominee for public office or a person holding public office as defined in N.J.S.A. 19:1-1, the Complaint-Warrant (CDR-2) or summons shall be reviewed by a county prosecutor for approval or denial. Prior to approval, the prosecutor has the authority to modify the charge. If the prosecutor approves the citizen complaint charging a disorderly persons offense, the prosecutor shall indicate this decision on the complaint and submit it to a judicial officer who will determine if probable cause exists and whether to issue a Complaint-Warrant (CDR-2) or summons in the Judiciary's computerized system used to generate complaints. If the prosecutor denies the citizen complaint charging a disorderly persons offense, the prosecutor shall report the denial and the basis therefor to the Assignment Judge on the record or in writing and shall notify the citizen complainant and the defendant. The absence of approval or denial within the timeframe set forth in R. 7:2-2(b)(6) shall be deemed as not objecting to the citizen complaint. The citizen complaint charging a disorderly persons offense shall be reviewed by the judicial officer for a probable cause finding.

(3) Issuance of a Citizen Complaint Charging Indictable Offenses. A Complaint-Warrant (CDR-2) or a Complaint-Summons (CDR-1) charging any indictable offense made by a private citizen may be issued only by a judge.

(4) County Prosecutor Review of Citizen Complaints Charging Indictable Offenses. Prior to a finding of probable cause and issuance of a Complaint-Warrant (CDR-2) or a Complaint-Summons (CDR-1) charging any indictable offense made by a private citizen against any individual, the Complaint-Warrant (CDR-2) or Complaint-Summons (CDR-1) shall be reviewed by a county prosecutor for approval or denial. Prior to approval, the prosecutor has the authority to modify the charge. If the prosecutor approves the citizen complaint charging an indictable offense, the prosecutor shall indicate this decision on the complaint and submit it to a judge who will determine if probable cause exists and whether to issue a Complaint-Warrant (CDR-2) or a Complaint-Summons (CDR-1) in the Judiciary's computerized system used to generate complaints. If the prosecutor denies the citizen complaint charging an indictable offense, the prosecutor shall report the denial and the basis therefor to the Assignment Judge on the record or in writing and shall notify the citizen complainant and the defendant. The absence of approval or denial within the timeframe set forth in R. 7:2-2(b)(6) shall be deemed as not objecting to the citizen complaint. The citizen complaint charging an indictable offense shall be reviewed by the judge for a probable cause finding.

(5) Probable Cause Findings - Citizen Complaints. The Complaint-Warrant (CDR-2) or summons charging: (i) a disorderly persons offense, petty disorderly persons offense or any other matter within the jurisdiction of the municipal court, as set forth in N.J.S.A. 2B:12-17 and R. 7:1, made by a private citizen may be issued by a judicial officer pursuant to (b)(1) of this rule, or (ii) any indictable offense made by a private citizen may be issued by a judge pursuant to (b)(3) of this rule, only if it appears from the complaint, affidavit, certification or testimony that there is probable cause to believe that an offense was committed and the defendant committed it. The judicial officer's finding of probable cause shall be noted on the face of the Complaint-Warrant (CDR-2) or summons and shall be confirmed by the judicial officer's signature issuing the Complaint-Warrant (CDR-2) or summons.

(6) Period of Time for County Prosecutor Review of Citizen Complaints Charging Disorderly Persons and Indictable Offenses. The county prosecutor shall review citizen complaints pursuant to R. 7:2-2(b)(2), 7:2-2(b)(4), and R. 3:2-1(a)(2) within a period of no more than forty-five calendar days following receipt of the citizen complaint in the Judiciary's computerized system used to generate complaints. The prosecutor may apply to the court to extend the period of review upon a showing of good cause for additional periods of time no greater than ten calendar days each.

(c) Issuance of a Complaint-Warrant (CDR-2) or Summons

(1) Issuance of a Summons. A summons may be issued on a complaint only if:

(i) a judge, authorized municipal court administrator or authorized deputy municipal court administrator (judicial officer) finds from the complaint or an accompanying affidavit or deposition, that there is probable cause to believe that an offense was committed and that the defendant committed it and notes that finding on the summons; or

(ii) the law enforcement officer or code enforcement officer who made the complaint, issues the summons.

(2) Issuance of a Complaint-Warrant (CDR-2). A Complaint-Warrant (CDR-2) may be issued only if:

(i) a judicial officer finds from the complaint or an accompanying affidavit or deposition, that there is probable cause to believe that an offense was committed and that the defendant committed it and notes that finding on the Complaint-Warrant (CDR-2); and

(ii) a judicial officer finds that subsection (f) of this rule allows a Complaint-Warrant (CDR-2) rather than a summons to be issued.

(d) Indictable Offenses. Complaints involving indictable offenses are governed by the Part III Rules, which address mandatory and presumed warrants for certain indictable offenses in Rule 3:3-1(e), (f).

(e) Offenses Where Issuance of a Summons is Presumed. A summons rather than a Complaint-Warrant (CDR-2) shall be issued unless issuance of a Complaint-Warrant (CDR-2) is authorized pursuant to paragraph (f) of this rule.

(f) Grounds for Overcoming the Presumption of Issuance of Summons. Regarding a defendant charged on matters in which a summons is presumed, when a law enforcement officer does not issue a summons, but requests, in accordance with guidelines issued by the Attorney General pursuant to N.J.S.A. 2A:162-16, the issuance of a Complaint-Warrant (CDR-2), the judicial officer may issue a Complaint-Warrant (CDR-2) when the judicial officer finds that there is probable cause to believe that the defendant committed the offense, and the judicial officer has reason to believe, based on one or more of the following factors, that a Complaint-Warrant (CDR-2) is needed to reasonably assure a defendant's appearance in court when required, to protect the safety of any other person or the community, or to assure that the defendant will not obstruct or attempt to obstruct the criminal justice process:

(1) the defendant has been served with a summons for any prior indictable offense and has failed to appear;

(2) there is reason to believe that the defendant is dangerous to self or will pose a danger to the safety of any other person or the community if released on a summons;

(3) there is one or more outstanding warrants for the defendant;

(4) the defendant's identity or address is not known and a warrant is necessary to subject the defendant to the jurisdiction of the court;

(5) there is reason to believe that the defendant will obstruct or attempt to obstruct the criminal justice process if released on a summons;

(6) there is reason to believe that the defendant will not appear in response to a summons;

(7) there is reason to believe that the monitoring of pretrial release conditions by the pretrial services program established pursuant to N.J.S.A. 2A:162-25 is necessary to protect any victim, witness, other specified person, or the community.

The judicial officer shall consider the results of any available preliminary public safety assessment using a risk assessment instrument approved by the Administrative Director of the Courts pursuant to N.J.S.A. 2A:162-25, and

shall also consider, when such information is available, whether within the preceding ten years the defendant as a juvenile was adjudicated delinquent for a crime involving a firearm, or a crime that if committed by an adult would be subject to the No Early Release Act (N.J.S.A. 2C:43-7.2), or an attempt to commit any of the foregoing offenses. The judicial officer shall also consider any additional relevant information provided by the law enforcement officer or prosecutor applying for a Complaint-Warrant (CDR-2).

(g) Charges Against Corporations, Partnerships, Unincorporated Associations. A summons rather than a Complaint-Warrant (CDR-2) shall issue if the defendant is a corporation, partnership, or unincorporated association.

(h) Failure to Appear After Summons. If a defendant who has been served with a summons fails to appear on the return date, a bench warrant may issue pursuant to law and Rule 7:8-9 (Procedures on Failure to Appear). If a corporation, partnership or unincorporated association has been served with a summons and has failed to appear on the return date, the court shall proceed as if the entity had appeared and entered a plea of not guilty.

(i) Additional Complaint-Warrant (CDR-2)s or Summonses. More than one Complaint-Warrant (CDR-2) or summons may issue on the same complaint.

(j) Identification Procedures. If a summons has been issued or a Complaint-Warrant (CDR-2) executed on a complaint charging either the offense of shoplifting or prostitution or on a complaint charging any non-indictable offense where the identity of the person charged is in question, the defendant shall submit to the identification procedures prescribed by N.J.S.A. 53:1-15. Upon the defendant's refusal to submit to any required identification procedures, the court may issue a Complaint-Warrant (CDR-2).

Note: Source-R. (1969) 7:2, 7:3-1, 3:3-1. Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (b) and (c) amended July 10, 1998 to be effective September 1, 1998; paragraph (a)(1) amended July 5, 2000 to be effective September 5, 2000; paragraph (a)(1) amended, new paragraph (b)(5) added, and former paragraph (b)(5) redesignated as paragraph (b)(6) July 12, 2002 to be effective September 3, 2002; paragraph (a)(1) amended, and paragraph (a)(2) caption and text amended July 28, 2004 to be effective September 1, 2004; paragraph (a)(1) amended and new paragraph (a)(3) adopted July 16, 2009 to be effective September 1, 2009; caption amended, paragraph (a)(1) amended, former paragraph (b) deleted, new paragraphs (b), (c), (d), (e), (f) adopted, former paragraph (c) amended and redesignated as paragraph (g), former paragraph (d) caption and text amended and redesignated as paragraph (h), and former paragraph (e) amended and redesignated as paragraph (i) August 30, 2016 to be effective January 1, 2017; new paragraph (a) caption adopted, new subparagraphs (a)(1) and (a)(2) adopted, former paragraph (a) redesignated as paragraph (b) and caption amended, former subparagraph (a)(1) redesignated as subparagraph (b)(1) and caption and text amended, former subparagraphs (a)(2) and (a)(3) redesignated as subparagraphs (a)(3) and (a)(4), new subparagraphs (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) adopted, former paragraph (b) redesignated as paragraph (c) and amended, former paragraph (c) redesignated as paragraph (d), former paragraphs (d) and (e) redesignated as paragraphs (e) and (f) and amended, former paragraphs (f) and (g) redesignated as paragraphs (g) and (h), former paragraph (h) redesignated as paragraph (i) and caption amended, former paragraph (i) redesignated as paragraph (j) August 2, 2019 to be effective October 1, 2019; effective date of the August 2, 2019 amendments changed to January 1, 2020 by order dated September 25, 2019.

7:2-3. Warrants; Execution and Service: Return

(a) By Whom Executed; Territorial Limits. A warrant shall be executed by any officer authorized by law. The warrant may be executed at any place within this State. This applies to all warrants issued by the municipal court, including Complaint-Warrants (CDR-2) and bench warrants that may be issued after the initial filing of the complaint. A bench warrant is any warrant, other than a Complaint-Warrant (CDR-2), that is issued by the court that orders a law enforcement officer to take the defendant into custody.

(b) How Executed. The warrant shall be executed by the arrest of the defendant. The law enforcement officer need not possess the warrant at the time of the arrest, but upon request, the officer shall show the warrant or a copy of an Automated Traffic System/ Automated Complaint System (ATS/ACS) electronic record evidencing its issuance to the defendant as soon as possible. If the law enforcement officer does not have the actual warrant to show or does not have access to an ATS/ACS printer to produce a copy of the electronic record at the time of the arrest, the officer shall inform the defendant of the offense charged and that a warrant has been issued. Defendants arrested on an initial charge on a Complaint-Warrant (CDR-2) charging an indictable or disorderly persons offense shall be remanded to the county jail pending a determination regarding conditions of pretrial release. Defendants arrested on a Complaint-Warrant (CDR-2) charging any other matter shall be brought before the court issuing the warrant, pursuant to Rule 7:2-1(d)(3).

(c) Return. The law enforcement officer executing a warrant shall make prompt return of the [arrest] warrant to the court that issued the warrant. The arresting officer shall promptly notify the court issuing the warrant by electronic communication through the appropriate Judiciary computer system of the date and time of the arrest. If the defendant is incarcerated, the law enforcement officer shall promptly notify the court of the place of the defendant's incarceration.

Note: Source- Paragraph (a): R. (1969) 7:2; 7:3-1, 3:3-3(a),(b),(c),(e); paragraphs (b)(1), (2), (3): R. (1969) 7:3-1; paragraph (b)(4): R. (1969) 7:2, 7:3-1, 3:3-3(e). Adopted October 6, 1997 to be effective February 1, 1998; caption amended, caption of former paragraph (a) deleted, caption and text of former paragraph (b) deleted and relocated to new Rule 7:2-4, former paragraphs (a)(1), (a)(2), and (a)(3) redesignated as paragraphs (a), (b), and (c) July 28, 2004 to be effective September 1, 2004; caption amended, paragraphs (a), (b), (c) amended August 30, 2016 to be effective January 1, 2017; paragraph (b) amended November 14, 2016 to be effective January 1, 2017.

7:2-4. Summons: Execution and Service; Return

(a) Summons; Personal Service Under R. 4:4-4 or By Ordinary Mail.

(1) The Complaint-Summons shall be served personally in accordance with R. 4:4-4(a), by ordinary mail or by simultaneous

mailing in accordance with paragraph (b) of this rule. Service of the Complaint-Summons by ordinary mail may be attempted by the court, by the law enforcement agency that prepared the complaint or by an agency or individual authorized by law to serve process.

(2) Service by ordinary mail shall have the same effect as personal service if the defendant contacts the court orally or in writing in response to or in acknowledgment of the service of the Complaint-Summons. Service by ordinary mail shall not be attempted until a court date for the first appearance has been set by the municipal court administrator, deputy court administrator, or other authorized court employee.

(3) If the court is provided with a different, updated address for the defendant, along with a postal verification or other proof satisfactory to the court that the defendant receives mail at that address, service of the Complaint-Summons may be re-attempted.

(b) Simultaneous Service by Mail.

(1) If service is attempted by ordinary mail and the defendant does not appear in court on the first appearance date or does not contact the court orally or in writing by that date, the court subsequently shall send the Complaint-Summons simultaneously by ordinary mail and certified mail with return receipt requested to the defendant's last known mailing address. Service by simultaneous mailing shall not be attempted until a new court date for the first appearance has been set by the municipal court administrator, deputy court administrator, or other authorized court employee.

(2) When the Complaint-Summons is addressed and mailed to the defendant at a place of business or employment with postal instructions to deliver to addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the defendant to whom the Complaint-Summons was mailed.

(3) Consistent with due process of law, service by simultaneous mailing, as provided in Section (b)(1) of this rule, shall constitute effective service unless the mail is returned to the court by the postal service marked "Moved, Left No Address", "Attempted - Not Known", "No Such Number", "No Such Street", "Insufficient Address", "Not Deliverable as Addressed--Unable to Forward" or the court has other reason to believe that service was not effected. However, if the certified mail is returned to the court marked "Refused" or "Unclaimed," service is effective providing that the ordinary mail has not been returned.

(4) Process served by ordinary or certified mail with return receipt requested may be addressed to a post office box.

(c) Notice to Prosecuting Attorney and Complaining Witness; Dismissal of Complaint.

(1) If the court has not obtained effective service over the defendant after attempting service by simultaneous mailing under section (b)(1)

of this rule, the court shall provide written notice of that fact to the prosecuting attorney and the complaining witness.

(2) The case shall be eligible for dismissal unless within 45 days of the receipt of the written notice, the prosecuting attorney or the complaining witness provides the court with a different, updated address for the defendant, along with a postal verification or other proof satisfactory to the court that the defendant receives mail at that address.

(3) Notwithstanding the provisions of this rule, nothing shall preclude the prosecuting attorney or other authorized person from attempting service in any lawful manner.

(4) If the prosecuting attorney and complaining witness do not respond to the court's written notice within 45 days or if the defendant is not otherwise served, the court may dismiss the case pursuant to R. 7:8-5.

(d) Parking Offenses. A copy of the Uniform Traffic Ticket prepared and issued out of the presence of the defendant charging a parking offense may be served by affixing it to the vehicle involved in the violation.

(e) Corporations, Partnerships and Unincorporated Associations. A copy of the Uniform Traffic Ticket charging a corporation, partnership or unincorporated association with a violation of a statute or ordinance relating to motor vehicles may be served on the operator of the vehicle.

(f) Return. The law enforcement officer serving a summons shall make return of the summons on or before the return date to the court before whom the summons is returnable.

Note: Former Rule 7:2-4 redesignated as Rule 7:2-5 and new Rule 7:2-4 (incorporating portions of former Rule 7:2-3) adopted July 28, 2004 to be effective September 1, 2004.

7:2-5. Defective Warrant or Summons; Amendment

No person arrested under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any technical insufficiency or irregularity in the warrant or summons, but the warrant or summons may be amended to remedy any such technical defect.

Note: Source-R. (1969) 7:2, 7:3-1, 3:3-4(a). Adopted October 6, 1997 as Rule 7:2-4 to be effective February 1, 1998; redesignated as Rule 7:2-5 July 28, 2004 to be effective September 1, 2004.

7:2-6. [Deleted]

Note: Adopted July 28, 2004 to be effective September 1, 2004; rule deleted August 30, 2016 to be effective January 1, 2017.

RULE 7:3. PROCEEDINGS BEFORE THE COMMITTING JUDGE; PRETRIAL RELEASE

7:3-1. Procedure After Arrest

(a) First Appearance; Time; Defendants Not in Custody. Following the filing of a complaint and service of process upon the defendant, the defendant shall be brought, without unnecessary delay, before the court for a first appearance.

(b) First Appearance; Time; Defendants Committed to Jail. All defendants who are in custody shall have the first appearance conducted within 48 hours of their commitment to jail, except as provided in R. 3:4-2(a)(1). For defendants incarcerated on an initial charge on a Complaint-Warrant (CDR-2) for an indictable or disorderly persons offense, the first appearance shall be conducted at a centralized location and by a judge designated by the Chief Justice, as provided in Rule 3:26. For all other incarcerated defendants within the jurisdiction of the municipal court who require a first appearance, the first appearance shall be conducted by a judge authorized to set bail or other conditions of release; this includes those charged on an initial Complaint-Warrant (CDR-2) for a petty disorderly persons offense.

(c) Custodial Arrest Without Warrant.

(1) Preparation of a Complaint and Summons or Warrant. A law enforcement officer making a custodial arrest without a Complaint-Warrant (CDR-2) shall take the defendant to the police station where a complaint shall be immediately prepared. The complaint shall be prepared on a Complaint-Summons form (CDR-1 or Special Form of Complaint and Summons), unless the law enforcement officer determines that one or more of the factors in R. 7:2-2(f) applies. Upon such determination, the law enforcement officer may prepare a Complaint-Warrant (CDR-2) rather than a Complaint-Summons.

(2) Probable Cause; Issuance of Process. If a Complaint-Warrant (CDR-2) is prepared, the law enforcement officer shall, without unnecessary delay, but in no event later than 12 hours after arrest, present the matter to a judge, or in the absence of a judge, to a municipal court administrator or deputy court administrator who has been granted authority to determine whether a Complaint-Warrant (CDR-2) or summons will issue. The judicial officer shall determine whether there is probable cause to believe that an offense was committed and that the defendant committed it. If probable cause is found, a summons or Complaint-Warrant (CDR-2) may issue. If the judicial officer determines that the defendant will appear in response to a summons, a summons shall be issued consistent with the standard prescribed by R. 7:2-2. If the judicial officer determines that a warrant should issue consistent with the standards prescribed by R. 7:2-2 after the Complaint-Warrant (CDR-2) is issued, the defendant charged with a disorderly persons offense shall be remanded to the county jail pending a determination of conditions of pretrial release. If the defendant is charged on a Complaint-Warrant (CDR-2) with a petty disorderly persons offense or any other matter within the jurisdiction of the municipal court, as set forth in N.J.S.A. 2B:12-17 and R. 7:1, bail shall be set without unnecessary delay, but in no event later than 12 hours after arrest. The finding of probable cause shall be noted on the face of the summons or Complaint-Warrant (CDR-2). If no probable cause is found, the judge shall not issue the summons or Complaint-Warrant (CDR-2).

(3) Summons. If a Complaint-Summons form (CDR-1 or Special Form of Complaint and Summons) has been prepared, or if a judicial officer has determined that a summons shall issue, the summons shall be served and the defendant shall be released after completion of post-arrest identification procedures required by law and pursuant to R. 7:2-2(j).

(d) Non-Custodial Arrest. A law enforcement officer charging any offense may personally serve a Complaint-Summons (Special Form of Complaint and Summons) at the scene of the arrest without taking the defendant into custody.

(e) Arrest Following Bench Warrant. If a defendant is arrested on a bench warrant on an initial summons and monetary bail was not set at warrant issuance, a bail determination or release on personal recognizance must occur without unnecessary delay and no later than 12 hours after arrest. If the defendant is unable to post bail, the court shall review that bail promptly. The defendant may file an application with the court seeking a bail reduction; such bail reduction motion shall be heard in an expedited manner.

Note: Source-R. (1969) 7:2, 7:3-1, 3:4-1. Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (b)(1) and (b)(2) amended July 12, 2002 to be effective September 3, 2002; paragraph (b) caption amended, paragraphs (b)(1) and (b)(2) amended, and new paragraph (c) adopted July 28, 2004 to be effective September 1, 2004; paragraph (a) caption and text amended, new paragraph (b) adopted, former paragraph (b) amended and redesignated as paragraph (c) and text amended, former paragraph (c) redesignated as paragraph (d), and new paragraph (e) adopted August 30, 2016 to be effective January 1, 2017; paragraphs (b), (c)(2) and (c)(3) amended November 14, 2016 to be effective January 1, 2017; paragraph (b) amended July 29, 2019 to be effective September 1, 2019; subparagraphs (c)(1), (c)(2), and (c)(3) amended, and paragraph (d) amended August 2, 2019 to be effective October 1, 2019; effective date of the August 2, 2019 amendments changed to January 1, 2020 by order dated September 25, 2019.

7:3-2. Hearing on First Appearance; Right to Counsel

(a) Hearing on First Appearance. At the defendant's first appearance, the judge shall inform the defendant of the charges and shall furnish the defendant with a copy of the complaint or copy of the electronic ATS/ACS record of the complaint, if not previously provided to the defendant. The judge shall also inform the defendant of the range of penal consequences for each offense charged, the right to remain silent and that any statement made may be used against the defendant. The judge shall inform the defendant of the right to retain counsel or, if indigent, to have counsel assigned pursuant to paragraph (b) of this rule. The defendant shall be specifically asked whether legal representation is desired and defendant's response shall be recorded on the complaint. If the defendant is represented at the first appearance or then affirmatively states the intention to proceed without counsel, the court may, in its discretion, immediately arraign the defendant pursuant to R. 7:6-1.

(b) Assignment of Counsel. If the defendant asserts indigency but does not affirmatively state an intention to proceed without counsel, the court shall order defendant to complete an appropriate application and other forms prescribed by the Administrative Director of the Courts. Pursuant to law, the judge shall either order defendant to pay any application fee or shall waive its payment. If the court is satisfied that the defendant is indigent and that the defendant faces a consequence of magnitude or is otherwise constitutionally or by law entitled to counsel, the court shall assign the municipal public

defender to represent the defendant. The "Guidelines for Determining a Consequence of Magnitude" are contained in the Appendix to Part VII of the Rules of Court. The court may, however, excuse the municipal public defender for cause and assign counsel to represent the defendant, without cost to the defendant from, insofar as practicable, a list of attorneys maintained by the Assignment Judge. Assigned counsel shall promptly file an appearance pursuant to R. 7:7-9. The court shall allow the defendant a reasonable time and opportunity to consult trial defense counsel before proceeding further. Assigned counsel shall represent the defendant through trial and, in the event of a conviction, through sentencing, including advising the defendant of the right to appeal. If the defendant elects to appeal, assigned counsel or the municipal public defender shall prepare and file the notice of appeal and an application for the assignment of appellate counsel, but neither assigned counsel nor the municipal public defender shall act as appellate counsel or represent defendant on any subsequent application for post-conviction relief unless specifically so assigned by the court. Assigned counsel shall, however, be responsible for the representation of the defendant on the appeal upon failure to file either the notice of appeal or the application for the assignment of counsel on appeal.

Note: Source-R. (1969) 7:2, 7:3-1, 3:4-2(b). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (b) amended July 10, 1998, to be effective September 1, 1998; paragraph (b) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) amended July 16, 2009 to be effective September 1, 2009.

RULE 7:4. BAIL

7:4-1. Right to Pretrial Release

(a) Defendants Charged on Complaint-Warrant (CDR-2) with Disorderly Persons Offenses. Except as otherwise provided by R. 3:4A (pertaining to preventative detention), defendants charged with disorderly persons offenses on an initial Complaint-Warrant (CDR-2) shall be released before conviction on the least restrictive non-monetary conditions that, in the judgment of the court, will reasonably ensure their presence in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, pursuant to R. 3:26-1(a)(1). In accordance with Part III, monetary bail may be set for a defendant arrested on a disorderly persons offense on an initial Complaint-Warrant (CDR-2) only when it is determined that no other conditions of release will reasonably assure the eligible defendant's appearance in court when required. For these defendants, the court shall make a pretrial release determination no later than 48 hours after a defendant's commitment to the county jail; the court shall consider the Pretrial Services Program's risk assessment and recommendations on conditions of release before making a release decision.

(b) All Other Defendants. All defendants other than those set forth in paragraph (a) shall have a right to bail before conviction on such terms as, in the judgment of court, will insure the defendant's presence when required, having regard for the defendant's background, residence, employment and family status and, particularly, the general policy against unnecessary sureties and detention; in its discretion, the court may order defendant's release on defendant's own recognizance and may impose terms or conditions appropriate to such release. Additionally, law enforcement officers who encounter defendants on outstanding municipal court bench warrants are authorized to effectuate the immediate release of defendants on defendant's own recognizance pursuant to procedures promulgated by the Administrative Director of the Courts. All other defendants include: (i) those charged on an initial Complaint-Warrant (CDR-2) with a petty disorderly persons offense or other non-disorderly persons offense within the jurisdiction of the municipal court, and (ii) all defendants brought before the court on a bench warrant for failure to appear or other violation, including defendants initially charged on a Complaint-Warrant (CDR-2) and those initially charged on a summons. Defendants issued a bench warrant who were charged with a disorderly persons offense on an initial Complaint-Warrant (CDR-2) may also be subject to reconsideration of conditions of release pursuant to Rule 7:4-9.

(c) Domestic Violence; Conditions of Release. When a defendant is charged with a crime or offense involving domestic violence, the court authorizing the release may, as a condition of release, prohibit the defendant from having any contact with the victim. The court may impose any additional limitations upon contact as otherwise authorized by N.J.S.A. 2C:25-26.

(d) Issuance of Restraining Orders By Electronic Communication.

(1) Temporary Domestic Violence Restraining Orders. Procedures authorizing the issuance of temporary domestic violence restraining orders by electronic communication are governed by R. 5:7A(d).

(2) N.J.S.A. 2C:35-5.7 and N.J.S.A. 2C:14-12 Restraining Orders. A judge may as a condition of release issue a restraining order pursuant to N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") or N.J.S.A. 2C:14-12 ("Nicole's Law") upon sworn oral testimony of a law enforcement officer or prosecuting attorney who is not physically present. Such sworn oral testimony may be communicated to the judge by telephone, radio, or other means of electronic communication. The judge shall contemporaneously record such sworn oral testimony by means of a tape-recording device or stenographic machine if such are available; otherwise the judge shall make adequate longhand notes summarizing what is said. Subsequent

to taking the oath, the law enforcement officer or prosecuting attorney must identify himself or herself, specify the purpose of the request, and disclose the basis of the application. This sworn testimony shall be deemed to be an affidavit for the purposes of issuance of a restraining order. Upon issuance of the restraining order, the judge shall memorialize the specific terms of the order. That memorialization shall be either by means of a tape-recording device, stenographic machine, or by adequate longhand notes. Thereafter, the judge shall direct the law enforcement officer or prosecuting attorney to memorialize the specific terms authorized by the judge on a form, or other appropriate paper, designated as the restraining order. This order shall be deemed a restraining order for the purpose of N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") and N.J.S.A. 2C:14-12 ("Nicole's Law"). The judge shall direct the law enforcement officer or prosecuting attorney to print the judge's name on the restraining order. A copy of the restraining order shall be served on the defendant by any officer authorized by law. Within 48 hours, the law enforcement officer or prosecuting attorney shall deliver to the judge, either in person, by facsimile transmission, or by other means of electronic communication, the signed restraining order along with a certification of service on the defendant. The certification of service shall be in a form approved by the Administrative Director of the Courts and shall include the date and time that service on the defendant was made or attempted to be made. The judge shall verify the accuracy of these documents by affixing his or her signature to the restraining order.

(3) Certification of Offense Location for Drug Offender Restraining Orders. When a restraining order is issued by electronic communication pursuant to N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") where the law enforcement officer or prosecuting attorney is not physically present at the same location as the court, the law enforcement officer or prosecuting attorney must provide an oral statement describing the location of the offense. Within 48 hours thereafter the law enforcement officer or prosecuting attorney shall deliver to the judge, either in person, by facsimile transmission, or by other means of electronic communication, a certification describing the location of the offense.

Note: Source-R. (1969) 7:5-1, 3:26-1(a). Adopted October 6, 1997 to be effective February 1, 1998; text designated as paragraph (a), paragraph (a) caption adopted, new paragraphs (b) and (c) adopted July 9, 2013 to be effective September 1, 2013; caption amended, new paragraph (a) adopted, former paragraph (a) redesignated as paragraph (b) and caption and text amended, and former paragraphs (b) and (c) redesignated as paragraphs (c) and (d) August 30, 2016 to be effective January 1, 2017; paragraphs (a) and (b) caption and text amended November 14, 2016 to be effective January 1, 2017; subparagraph (d)(1) amended July 29, 2019 to be effective September 1, 2019; paragraph (b) amended August 4, 2023 to be effective September 1, 2023.

7:4-2. Authority to Set Bail or Conditions of Pretrial Release

(a) Authority to Set Initial Conditions of Pretrial Release on Complaint-Warrants (CDR-2) - Disorderly Persons Offenses. Initial conditions of pretrial release on an initial disorderly persons charge on a Complaint-Warrant (CDR-2) may be set by a judge designated by the Chief Justice, pursuant to R. 3:26 as part of a first appearance at a centralized location, pursuant to R. 3:4-2.

(b) Authority to Set Bail for Bench Warrants and All Other Matters within the Jurisdiction of the Municipal Court. Setting bail for bench warrants or for a Complaint-Warrant (CDR-2) in which the most serious charge is a petty disorderly persons offense or other non-disorderly persons offense within the jurisdiction of the Municipal Court may be done by a judge sitting regularly in or as acting or temporary judge of the jurisdiction in which the offense was committed, or by a vicinage Presiding Judge of the Municipal Courts, or as authorized by any other rule of court. In the absence of the judge, and to the extent consistent with N.J.S.A. 2B:12-21 and R. 1:41-3(f), a duly authorized municipal court administrator or deputy court administrator may set bail on defendants issued a bench warrant or a Complaint-Warrant (CDR-2) in which the most serious charge is a petty disorderly persons offense or other non-disorderly persons offense within the jurisdiction of the Municipal Court. The authority of the municipal court administrator, deputy court administrator or other authorized persons shall, however, be exercised only in accordance with bail schedules promulgated by the Administrative Office of the Courts or the municipal court judge.

(c) Authority to Take a Recognizance. Any judge who has set bail and/or conditions of pretrial release may designate the taking of the recognizance by the municipal court administrator or any other person authorized by law to take recognizances, other than the law enforcement arresting officer.

(d) Revisions of Bail or Conditions of Pretrial Release. A municipal court judge may modify bail or any other condition of pretrial release on any non-indictable offense at any time during the course of the municipal court proceedings, consistent with R. 7:4-9, except as provided by law.

Note: Source-Paragraph (a): R. (1969) 7:5-3; paragraph (b): R. (1969) 7:5-1, 3:26-2(c). Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (a) and (b) amended July 10, 1998, to be effective September 1, 1998; caption amended, new paragraph (a) adopted, former paragraph (a) redesignated as paragraph (b) and caption and text amended, new paragraph (c) adopted, and former paragraph (b) redesignated as paragraph (d) and caption and text amended August 30, 2016 to be effective January 1, 2017; paragraphs (a) and (b) captions and text amended November 14, 2016 effective January 1, 2017.

7:4-3. Form and Place of Deposit; Location of Real Estate; Record of Recognizances, Discharge and Forfeiture

(a) Deposit of Bail; Execution of Recognizance. A defendant admitted to bail shall, together with the sureties, if any, sign and execute a recognizance before the person authorized to take bail or, if the defendant is in custody, the person in charge of the place of confinement. The recognizance shall contain the terms set forth in R. 1:13-3(b) and shall be conditioned upon the defendant's appearance at all stages of the proceedings until the final determination of the matter, unless otherwise ordered by the court. The total recognizance may be satisfied by more than one surety, if necessary. Cash may be accepted, and in proper cases, within the court's discretion, the posting of security may be waived. A corporate surety shall be one approved by the Commissioner of Insurance. A corporate surety shall execute the recognizance under its duly acknowledged corporate seal, and shall attach to its bond written proof of the corporate authority and qualifications of the officers or agents executing the recognizance. Real estate offered as security for bail for non-indictable offenses shall be approved by and deposited with the clerk of the county in which the offense occurred and not with the municipal court administrator.

A defendant charged on an initial Complaint-Warrant (CDR-2) with a disorderly persons offense and released on non-monetary conditions shall be released pursuant to the release order prepared by the judge and need not complete a recognizance form.

(b) Limitation on Individual Surety. Unless the court for good cause otherwise permits, no surety, other than an approved corporate surety, shall enter into a recognizance if there remains any previous undischarged recognizance or bail that was undertaken by that surety.

(c) Real Estate in Other Counties. Real estate owned by a surety located in a county other than the one in which the bail is taken may be accepted, in which case the municipal court administrator of the court in which the bail is taken shall certify and transmit a copy of the recognizance to the clerk of the county in which the real estate is situated, and it shall be there recorded in the same manner as if taken in that county.

(d) Record of Recognizance. In municipal court proceedings, the record of the recognizance shall be entered by the municipal court administrator or designee in the manner required by the Administrative Director of the Courts to be maintained for that purpose.

(e) Record of Discharge; Forfeiture. When any recognizance shall be discharged by court order on proof of compliance with the conditions thereof or by reason of the judgment in any matter, the municipal court administrator or deputy court administrator shall

enter the word "discharged" and the date of discharge at the end of the record of such recognizance. When any recognizance is forfeited, the municipal court administrator or deputy court administrator shall enter the word "forfeited" and the date of forfeiture at the end of the record of such recognizance and shall give notice of such forfeiture by ordinary mail to the municipal attorney, the defendant and any surety or insurer, bail agent or agency whose names appear in the bail recognizance. Notice to any insurer, bail agent or agency shall be sent to the address recorded in the Bail Registry maintained by the Clerk of the Superior Court pursuant to R. 1:13-3. When real estate of the surety located in a county other than the one in which the bail was taken is affected, the municipal court administrator or deputy court administrator in which such recognizance is given shall immediately send notice of the discharge or forfeiture and the date thereof to the clerk of the county where such real estate is situated, who shall make the appropriate entry at the end of the record of such recognizance.

(f) Cash Deposit. When a person other than the defendant deposits cash in lieu of bond, the person making the deposit shall file an affidavit or certification explaining the lawful ownership thereof, and on discharge, such cash shall be returned to the owner named in the affidavit or certification, unless otherwise ordered by the court.

(g) Ten Percent Cash Bail. Unless otherwise specified in the order setting the bail, bail may be satisfied by the deposit in court of cash in the amount of ten percent of the amount of bail fixed together with defendant's executed recognizance for the remaining ninety percent. No surety shall be required, unless specifically ordered by the court. If a ten percent bail is made by cash owned by one other than the defendant, the owner shall charge no fee for the cash deposited, other than lawful interest, and shall submit an affidavit or certification with the deposit detailing the rate of interest, confirming that no other fee is being charged, and listing the names of any other persons for whom the owner has deposited bail. A person making the ten percent deposit who is not the owner, shall file an affidavit or certification identifying the lawful owner of the cash, and, on discharge, the cash deposit shall be returned to the owner named in the affidavit or certification, unless otherwise ordered by the court.

Note: Source-R. (1969) 7:5-1, 3:26-4. Adopted October 6, 1997 to be effective February 1, 1998; subsection (e) amended December 8, 1998 to be effective January 15, 1999; caption amended, and paragraphs (e), (f), and (g) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) caption and text amended August 30, 2016 to be effective January 1, 2017; paragraph (a) amended November 14, 2016 effective January 1, 2017.

7:4-4. Justification of Sureties

Every surety, except an approved corporate surety, shall justify the proposed property by affidavit, which shall include a description of the property, any encumbrances, the number and amount of other recognizances and undertakings for bail entered into by the surety and remaining undischarged, if any, and all of the surety's other liabilities.

No recognizance shall be approved unless the surety thereon shall be qualified.

Note: Source-R. (1969) 7:5-1, 3:26-5. Adopted October 6, 1997 to be effective February 1, 1998.

7:4-5. Forfeiture

(a) Declaration; Notice. On breach of a condition of a recognizance, the court may forfeit the bail on its own or on the prosecuting attorney's motion. If the court orders bail to be forfeited, the municipal court administrator or deputy court administrator shall immediately forfeit the bail pursuant to R. 7:4-3(e) and shall send notice of the forfeiture by ordinary mail to the municipal attorney, the defendant, and any non-corporate surety or insurer, bail agent, or bail agency whose names appear on the bail recognizance. Notice to any insurer, bail agent, or bail agency shall be sent to the address recorded in the Bail Registry maintained by the Clerk of the Superior Court pursuant to R. 1:13-3. The notice shall direct that judgment will be entered as to any outstanding bail absent a written objection seeking to set aside the forfeiture, which must be filed within 75 days of the date of the notice. The notice shall also advise the insurer that if it fails to satisfy a judgment entered pursuant to paragraph (c) of this rule, and until satisfaction is made, it shall be removed from the Bail Registry and its bail agents and agencies, guarantors, and other persons or entities authorized to administer or manage its bail bond business in this State will have no further authority to act for it, and their names, as acting for the insurer, will be removed from the Bail Registry. In addition, the bail agent or agency, guarantor, or other person or entity authorized by the insurer to administer or manage its bail bond business in this State who acted in such capacity with respect to the forfeited bond will be precluded, by removal from the Bail Registry, from so acting for any other insurer until the judgment has been satisfied. The court shall not enter judgment until the merits of any objection are determined either on the papers filed or, if the court so orders, for good cause, at a hearing. In the absence of a written objection, judgment shall be entered as provided in paragraph (c) of this rule, but the court may thereafter remit it, in whole or in part, pursuant to the court rules and/or administrative directives, including but not limited to the Revised Remission Guidelines.

(b) Setting Aside. The court may, upon such conditions as it imposes, direct that an order of forfeiture or judgment be set aside in whole or in part, pursuant to the court rules and/or administrative directives, including but not limited to the Revised Remission Guidelines.

(c) Enforcement; Remission. If a forfeiture is not set aside or satisfied, the court shall, on motion, enter a judgment of default for any outstanding bail, and execution may issue on the judgment.

The time period of 75 days provided for in paragraph (a) of this rule may be extended by the court to permit one stay by consent order of no more than 30 days. Entry of judgment shall follow, unless upon motion to the court a longer period is permitted based upon a finding of exceptional circumstances.

After entry of the judgment, the court may remit the forfeiture in whole or in part, pursuant to the court rules and/or administrative directives, including but not limited to the Revised Remission Guidelines.

If, following the court's decision on an objection pursuant to paragraph (a) of this rule, the forfeiture is not set aside or satisfied in whole or in part, the court shall enter judgment for any outstanding bail and, in the absence of satisfaction thereof, execution may issue thereon.

Judgments entered pursuant to this rule shall also advise the insurer that if it fails to satisfy a judgment, and until satisfaction is made, it shall be removed from the Bail Registry and its bail agents and agencies, guarantors, and other persons or entities authorized to administer or manage its bail bond business in this State will have no further authority to act for it, and their names, as acting for the insurer, will be removed from the Bail Registry as provided in paragraph (a) of this rule. A copy of the judgment entered pursuant to this rule is to be served by ordinary mail on the municipal attorney, and on any surety or any insurer, bail agent, or bail agency named in the judgment. Notice to any surety or insurer, bail agent, or bail agency shall be sent to the address recorded in the Bail Registry. In any contested proceeding, the municipal attorney shall appear on behalf of the government. The municipal attorney shall be responsible for the collection of forfeited amounts.

Note: Source-R. (1969) 7:5-1, 3:26-6. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) caption and text amended, and paragraphs (b) and (c) amended July 28, 2004 to be effective September 1, 2004; paragraphs (a), (b) and (c) amended July 28, 2017 to be effective September 1, 2017.

7:4-6. Exoneration

When the condition of the recognizance has been satisfied or its forfeiture has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the recognizance or by a timely surrender of the defendant into custody.

Note: Source-R. (1969) 7:5-1, 3:26-7. Adopted October 6, 1997 to be effective February 1, 1998.

7:4-7. Place of Deposit

Bail in nonindictable matters given in the municipal court shall be deposited with the municipal court administrator or deputy court administrator. At the surety's discretion, bail may also be deposited with the person in charge of the place of confinement where the defendant is in custody, and that person shall then transmit the bail to

the appropriate municipal court administrator or deputy court administrator for deposit in accordance with this rule.

Note: Source-R. (1969) 7:5-2. Adopted October 6, 1997 to be effective February 1, 1998.

7:4-8. Bail after Conviction

When a sentence has been imposed and an appeal from the judgment of conviction has been taken, the trial judge may admit the appellant to bail within 20 days from the date of conviction or sentence, whichever occurs later. Bail after conviction may be imposed only if the trial judge has significant reservations about the appellant's willingness to appear before the appellate court. The bail or other recognizance shall be of sufficient surety to guarantee the appellant's appearance before the appellate court and compliance with the court's judgment. Once the appellant has placed bail or filed a recognizance, if the appellant is in custody, the trial court shall immediately discharge the appellant from custody. The court shall transmit to the vicinage Criminal Division Manager any cash deposit and any recognizance submitted.

Note: Source-R. (1969) 7:5-4. Adopted October 6, 1997 to be effective February 1, 1998; amended July 5, 2000 to be effective September 5, 2000.

7:4-9. Changes in Conditions of Release for Defendants Charged on an Initial Complaint-Warrant (CDR-2) on Disorderly Persons Offenses

(a) Monetary Bail Reductions. If a defendant is unable to post monetary bail, the defendant shall have the monetary bail reviewed promptly and may file an application with the court seeking a monetary bail reduction which shall be heard in an expedited manner by a court with jurisdiction over the matter.

(b) Review of Conditions of Release. For defendants charged with a disorderly persons offense on an initial Complaint-Warrant (CDR-2) and released pretrial, a judge with jurisdiction over the matter may review the conditions of release on his or her own motion, or upon motion by the prosecutor or the defendant, alleging that there has been a material change in circumstance that necessitates a change in conditions. Upon a finding that there has been a material change in circumstance that necessitates a change in conditions, the judge may set new conditions of release.

(c) Violations of Conditions of Release. A judge may impose new conditions of release, including monetary bail, when a defendant charged with a disorderly persons offense and released on an initial Complaint-Warrant (CDR-2) violates a restraining order or condition of release. These conditions should be the least restrictive condition or combination of conditions that the court determines will reasonably assure the eligible defendant's appearance in court when required, protect the safety of any other person or the community, or reasonably

assure that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process.

(d) Motions for Pretrial Detention. All prosecutor motions for pretrial detention must be made in Superior Court, in accordance with Rule 3:4A.

Note: Adopted August 30, 2016 to be effective January 1, 2017; caption amended and paragraphs (b) and (c) amended November 14, 2016 effective January 1, 2017.

RULE 7:5. SEARCH WARRANTS; SUPPRESSION

7:5-1. Filing

(a) By Whom; Documents to be Filed. The judge issuing a search warrant shall attach to it the return, inventory, and all other papers related to the warrant, including affidavits and a transcript or summary of any oral testimony and, if applicable, a duplicate original search warrant. The judge shall promptly deliver these documents to the municipal court administrator, who shall file them with the vicinage Criminal Division Manager of the county in which the property was seized. The municipal court administrator shall retain in a confidential file copies of all papers filed with the Criminal Division Manager. If a tape or transmitted recording has been made, the municipal court administrator shall also send them to the Criminal Division Manager, but shall not retain a copy.

(b) Providing to Defendant; Inspection. All completely executed warrants, together with the supporting papers and recordings described in paragraph (a) of this rule, shall be provided to the defendant in discovery pursuant to R. 7:7-7 and, upon notice to the county prosecutor and for good cause shown, available for inspection and copying by any other person claiming to be aggrieved by the search and seizure.

Note: Source-R. (1969) 3:5-6(a),(c). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (b) caption and text amended December 4, 2012 to be effective January 1, 2013.

7:5-2. Motion to Suppress Evidence

(a) Jurisdiction. The municipal court shall entertain motions to suppress evidence seized with a warrant issued by a municipal court judge or without a warrant in matters within its trial jurisdiction on notice to the prosecuting attorney and, if the county prosecutor is not the prosecuting attorney, also to the county prosecutor. In matters beyond the trial jurisdiction of the municipal court, and in matters where a search warrant was issued by a Superior Court judge, a motion to suppress evidence shall be made and heard in the Superior Court.

(b) Procedure. If the search was made with a warrant, a brief stating the facts and arguments in support of the motion shall be submitted with the notice of motion. The State shall submit a brief

stating the facts and arguments in support of the search, within a time as determined by the judge, but no less than 10 days after submission of the motion. If the search was made without a warrant, written briefs in support of and in opposition to the motion to suppress shall be filed either voluntarily or in the discretion of the judge, who shall determine the briefing schedule. All motions to suppress shall be heard before the start of the trial. If the municipal court having jurisdiction over the motion to suppress evidence seized with a warrant has more than one municipal court judge, the motion shall be heard by a judge other than the judge who issued the warrant, such judge to be designated by the chief judge for that municipal court. If the municipal court having jurisdiction of the motion to suppress evidence seized with a warrant has only one judge, who issued the warrant, the motion to suppress shall be heard by the Municipal Court Presiding Judge for the vicinage, or such municipal court judge in the vicinage that the Assignment Judge shall designate.

(c) Order; Stay.

(1) Order Granting Suppression. An order granting a motion to suppress evidence shall be entered immediately upon decision of the motion. Within ten days after its entry, the municipal court administrator shall provide a copy of the order to all parties and, if the county prosecutor is not the prosecuting attorney, also to the county prosecutor. All further proceedings in the municipal court shall be stayed pending a timely appeal by the State, pursuant to R. 3:24. The property that is the subject of the suppression order shall, if not otherwise subject to lawful detention, be returned to the person entitled to it only after exhaustion by the State of its right to appeal.

(2) Order Denying Suppression. An order denying suppression may be reviewed on appeal from an ensuing judgment of conviction pursuant to R. 3:23 whether the judgment was entered on a guilty plea or on a finding of guilt following trial.

(d) Waiver. Unless otherwise ordered by the court for good cause, defendant's failure to make a pretrial motion to the municipal court pursuant to this rule shall constitute a waiver of any objection during trial to the admission of the evidence on the ground that the evidence was unlawfully obtained.

(e) Effect of Irregularity in Warrant. In the absence of bad faith, no search or seizure made with a search warrant shall be deemed unlawful because of technical insufficiencies or irregularities in the warrant or in the papers or proceedings to obtain it, or in its execution.

Note: Source-Paragraphs (a),(b),(c): R. (1969) 7:4-2(f); paragraph (d): R. (1969) 3:5-7(f). Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (a) and (b) amended, new paragraph (e) caption and text adopted July 27, 2015 to be effective September 1, 2015.

7:5-3. Search and Seizure Without a Warrant

R. 7:5 shall not be construed to make illegal a lawful search and seizure executed without a warrant.

Note: Source-R. (1969) 3:5-8. Adopted October 6, 1997 to be effective February 1, 1998.

7:5-4. Motion to Suppress Medical Records Obtained Pursuant to Rule 7:7-8(d)

The procedures set forth in Rule 7:5-2 shall apply to a motion to suppress records obtained pursuant to a subpoena issued under Rule 7:7-8(d) to produce medical records related to the presence of alcohol, narcotics, hallucinogens, habit-producing drugs or chemical inhalants in the body of an operator of a vehicle or vessel, in matters within the trial jurisdiction of the municipal court. In matters beyond the jurisdiction of the municipal court, the motion shall be made and heard in the Superior Court.

Note: Adopted July 27, 2015 to be effective September 1, 2015.

RULE 7:6. ARRAIGNMENT, PLEAS

7:6-1. Arraignment

(a) Conduct of Arraignment. Except as otherwise provided by paragraph (b) of this rule, the arraignment shall be conducted in open court and shall consist of reading the complaint to the defendant or stating to the defendant the substance of the charge and calling upon the defendant, after being given a copy of the complaint, to plead thereto. The defendant may waive the reading of the complaint.

(b) Written Statement. A defendant who is represented by an attorney and desires to plead not guilty may do so, unless the court otherwise orders, by the filing, at or before the time fixed for arraignment, of a written statement, signed by the attorney, certifying that the defendant has received a copy of the complaint and has read it or the attorney has read it and explained it to the defendant, that the defendant understands the substance of the charge, and that the defendant pleads not guilty to the charge.

Note: Source-R. (1969) 7:4-2(a). Adopted October 6, 1997 to be effective February 1, 1998.

7:6-2. Pleas, Plea Agreements

(a) Pleas Allowed, Guilty Plea.

(1) Generally. A defendant may plead not guilty or guilty, but the court may, in its discretion, refuse to accept a guilty plea. Except as otherwise provided by Rules 7:6-2, 7:6-3, and 7:12-3, the court shall not, however, accept a guilty plea without first addressing the defendant personally and determining by inquiry of the defendant and, in the court's discretion, of others, that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea and that there is a factual basis for the plea.

Prior to accepting a guilty plea when an unrepresented defendant faces a consequence of magnitude, the judge shall make a finding on the record that the court is satisfied that the defendant's waiver of the right to counsel is knowing and intelligent. On the request of the defendant, the court may, at the time of the acceptance of a guilty plea, order that the plea shall not be evidential in any civil proceeding. If a defendant refuses to plead or stands mute or if the court refuses to accept a guilty plea, the court shall enter a plea of not guilty. If a guilty plea is entered, the court may hear the witnesses in support of the complaint prior to judgment and sentence and after such hearing may, in its discretion, refuse to accept the plea.

(2) Corporate Defendants. A defendant that is a corporation, partnership or unincorporated association may enter a plea by an authorized officer or agent and may appear by an officer or agent provided the appearance is consented to by the named party defendant and the court finds that the interest of justice does not require the appearance of counsel. If a defendant that is a corporation, partnership, or unincorporated association fails to appear or answer, the court, if satisfied that service was duly made, shall enter an appearance and a plea of not guilty for the defendant and thereupon proceed to hear the complaint.

(b) Withdrawal of Plea. A motion to withdraw a plea of guilty shall be made before sentencing, but the court may permit it to be made thereafter to correct a manifest injustice.

(c) Conditional Pleas. With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty, reserving on the record the right to appeal from the adverse determination of any specified pretrial motion. A defendant who prevails on appeal shall be afforded the opportunity to withdraw the guilty plea. Nothing in this rule shall be construed as limiting the right to appeal provided by R. 7:5-2(c)(2).

(d) Plea Agreements. Plea agreements may be entered into only pursuant to the Guidelines and accompanying Comment issued by the Supreme Court, both of which are annexed as an Appendix to Part VII, provided, however, that:

(1) the complaint is prosecuted by the municipal prosecutor, the county prosecutor, or the Attorney General; and

(2) the defendant is either represented by counsel or knowingly waives the right to counsel on the record; and

(3) the prosecuting attorney represents to the court that the victim, if the victim is present at the hearing, has been consulted about the agreement; and

(4) the plea agreement involves a matter within the jurisdiction of the municipal court and does not result in the downgrade or

disposition of indictable offenses without the consent of the county prosecutor, which consent shall be noted on the record; and

(5) the sentence recommendations, if any, do not circumvent minimum sentences required by law for the offense.

Pursuant to paragraph (a)(1) of this rule, when a plea agreement is reached, its terms and the factual basis that supports the charge(s) shall be fully set forth on the record personally by the prosecutor, except as provided in Guideline 3 for Operation of Plea Agreements. If the judge determines that the interests of justice would not be served by accepting the agreement, the judge shall so state, and the defendant shall be informed of the right to withdraw the plea if already entered.

Note: Source-Paragraph (a): R. (1969) 7:4-2(b); paragraph (b): R. (1969) 3:21-1; paragraph (c): R. (1969) 3:9-3(f); paragraph (d): R. (1969) 7:4-8. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (d) amended July 12, 2002 to be effective September 3, 2002; paragraph (d) amended July 28, 2004 to be effective September 1, 2004; paragraph (a)(1) amended June 15, 2007 to be effective September 1, 2007; paragraph (d)(3) amended July 16, 2009 to be effective September 1, 2009.

7:6-3. Guilty Plea by Mail or in an Electronic System in Non-Traffic Offenses

(a) Entry of Guilty Plea by Mail or in an Electronic System. In all non-traffic and non-parking offenses, except as limited below, on consideration of a written or electronically submitted application, supported by certification, with notice to the complaining witness and prosecutor, and at the time and place scheduled for trial, the judge may permit the defendant to enter a guilty plea by mail or in an electronic system approved by the Admisistrative Director of the Courts. The guilty plea by mail form or electronic application may also include a statement for the court to consider when determining the appropriate sentence. Entry of a guilty plea by mail or submitted in the electronic system shall not be available for the following:

(1) cases involving the imposition of a mandatory term of incarceration on conviction, unless defendant is currently incarcerated and the mandatory term of incarceration would be served concurrently and would not extend the period of incarceration;

(2) cases involving an issue of the identity of the defendant;

(3) cases involving acts of domestic violence;

(4) cases where the prosecution intends to seek the imposition of a custodial term in the event of a conviction, unless defendant is currently incarcerated and the proposed term of incarceration would not extend the period of incarceration and would be served concurrently; and

(5) any other case where excusing the defendant's appearance in municipal court would not be in the interest of justice.

(b) Plea Form Submitted by Mail or in the Electronic System - Certification. The guilty plea shall be submitted on a form by mail or

in an electronic system approved by the Administrative Director of the Courts.

(c) Plea of Guilty by Mail or in the Electronic System - Acknowledgements, Waiver and Certification. 1) In those cases in which a defendant may enter a plea of guilty to a non-traffic offense by mail or in the electronic system, the plea shall include: (A) an acknowledgment that the defendant committed the non-traffic offense to which the defendant is pleading guilty and a factual basis for the plea; (B) a waiver of the defendant's right to contest the case at a trial, the right to appear personally in court, and, if not represented by an attorney, a waiver of the right to be represented by an attorney; and (C) an acknowledgment by the defendant that the plea of guilty is being entered voluntarily with understanding of the nature of the charge and the consequences of the plea. (2) In those cases in which an attorney submits a plea of guilty on behalf of the defendant through the electronic system, the plea shall include a certification signed by the defendant that recites the terms of the plea; specifies that the defendant has reviewed such terms; establishes a factual basis for the plea; and establishes that the plea of guilty is being entered voluntarily with understanding of the nature of the charge and the consequences of the plea.

(d) Scheduling and Judgment. (1) For guilty pleas submitted in the electronic system in matters that require review by the municipal prosecutor, the court shall enter the disposition in the electronic system. The matter may be scheduled for disposition on the record in open court at the discretion of the municipal court judge. (2) For guilty pleas submitted on a manual plea by mail form or in the electronic system that do not involve the municipal prosecutor's review, the court shall schedule the matter to be heard on the record in open court. (3) The court shall send a copy of its decision by ordinary mail or through the electronic system to the defendant, the complaining witness, and attorneys who have entered an appearance.

Note: Adopted June 15, 2007 to be effective September 1, 2007; caption amended, paragraph (a) caption and text amended, paragraph (b) caption and text amended, former paragraph (c) deleted, and new paragraphs (c) and (d) adopted July 30, 2021 to be effective September 1, 2021.

RULE 7:7. PRETRIAL PROCEDURES

7:7-1. Pleadings; Objections

Pleadings in municipal court actions shall consist only of the complaint. A defense or objection capable of determination without trial of the general issue shall be raised before trial by motion to dismiss or for other appropriate relief, except that a motion to dismiss based upon lack of jurisdiction or the unconstitutionality of a municipal ordinance may be made at any time.

Note: Source-R. (1969) 7:4-2(e), 3:10-1. Adopted October 6, 1997 to be effective February 1, 1998.

7:7-2. Motions

(a) How Made. Except as otherwise provided by R. 7:5-2 (motion to suppress), motions in the municipal court and answers to motions, if any, shall be made orally, unless the court directs that the motion and answer be in writing. Oral testimony or affidavits in support of or in opposition to the motion may be required by the court in its discretion.

(b) Hearings. A motion made before trial shall be determined before trial unless the court, in the interest of justice, directs that it be heard during or after trial.

(c) Effect of Determination of Motion. Except as otherwise provided by R. 7:6-2(c) (conditional pleas), if a motion is determined adversely to the defendant, the defendant shall be permitted to plead, if a plea has not already been entered. If a plea has been entered, the defendant may be permitted to stand trial as soon as the adverse determination on the motion is made. If an objection or defense specified in R. 7:7-1 is sustained and is not otherwise remediable, the court shall order the complaint dismissed. If the court dismisses the complaint and the defendant is held in custody on that complaint, the court shall order the defendant released.

(d) Relief Requested by Certain Incarcerated Persons. An incarcerated, unrepresented defendant who seeks relief from the municipal court either before or after the entry of a guilty plea or a trial on a matter within the court's jurisdiction must set forth the relief requested in writing on a form approved by the Administrative Director of the Courts and submit the form to the municipal court and send a copy to the municipal prosecutor. The court must respond to the request on the record within 45 days of receipt of the form. If the court does not respond to the request on the record within 45 days, the inmate may seek immediate relief from the vicinage Presiding Judge.

Note: Source-Paragraph (a): R. (1969) 7:4-2(e); paragraph (b): R. (1969) 7:4-2(e), 3:10-2(b); paragraph (c): R. (1969) 3:10-7. Adopted October 6, 1997 to be effective February 1, 1998; new paragraph (d) caption and text adopted July 27, 2015 to be effective September 1, 2015.

7:7-3. Notice of Alibi; Failure to Furnish

(a) Alibi. A defendant who intends to rely on an alibi shall, within 10 days after a written demand by the prosecuting attorney, furnish the prosecuting attorney with a signed statement of alibi, specifying the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the defendant intends to rely to establish the alibi. Within 10 days after receipt of the statement of alibi, the prosecuting attorney shall, on written demand, furnish the defendant or defendant's attorney with the names and addresses of the witnesses upon whom the State intends to rely to establish defendant's presence at the scene of the alleged offense. The court may order any

amendment to or amplification of the alibi statement as required in the interest of justice.

(b) Failure to Furnish. If the information required by paragraph (a) of this rule is not furnished, the court may refuse to permit the party in default to present witnesses at trial as to defendant's presence at or absence from the scene of the alleged offense or may make any other order or grant any adjournment or continuance as may be required in the interest of justice.

Note: Source-R. (1969) 3:12-2. Adopted October 6, 1997 to be effective February 1, 1998.

7:7-4. Notice of Defense of Insanity; Evidence of Mental Disease or Defect

(a) Insanity as a Defense. A defendant who intends to claim insanity as a defense, pursuant to N.J.S.A. 2C:4-1, or a lack of the requisite state of mind, pursuant to N.J.S.A. 2C:4-2, shall serve a written notice of that intention upon the prosecuting attorney prior to trial. For good cause shown, the court may extend the time for service of the notice or make such other order as the interest of justice requires. If the defendant fails to comply with this rule, the court may take such action as the interest of justice requires.

(b) Acquittal by Reason of Insanity. If a defendant interposes the defense of insanity and is acquitted after trial on that ground, the decision and judgment shall include a statement of those facts and the procedure for referral of the defendant as provided by N.J.S.A. 2C:4-8 and 2C:4-9 and R. 4:74-7 shall apply.

(c) Involuntary Civil Commitments. Rule 4:74-7 shall govern the practice and procedure in the municipal court for the disposition of involuntary civil commitment matters, pursuant to N.J.S.A. 30:4-27.1 et seq.

Note: Source-Paragraph (a): R. (1969) 3:12-1; paragraph (b): R. (1969) 3:19-2; paragraph (c): new. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (b) amended July 5, 2000 to be effective September 5, 2000.

7:7-5. Pretrial Procedure

(a) Pretrial Conference. At any time after the filing of the complaint, the court may order one or more conferences with the parties to consider the results of negotiations between them relating to a proposed plea, discovery, or to other matters that will promote a fair and expeditious disposition or trial. With the consent of the parties or counsel for the parties, the court may permit any pretrial conference to be conducted by means of telephone or video link.

(b) Pretrial Hearings. The court may conduct hearings to resolve issues relating to the admissibility of statements by defendant, pretrial identifications of defendant, and sound recordings at any time prior to

trial. Upon a showing of good cause, hearings as to the admissibility of other evidence may also be conducted at any time prior to trial.

Note: Source-Paragraph (a): new; paragraph (b): R. (1969) 7:4-2(d), 3:9-1(d). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) amended July 16, 2009 to be effective September 1, 2009; paragraph (a) amended December 4, 2012 to be effective January 1, 2013.

7:7-6. Depositions

(a) When Authorized. If it appears to the judge of the court in which a complaint is pending that a witness is likely to be unable to testify at trial because of impending death or physical or mental incapacity, the court, upon motion and notice to the parties, and after a showing that such action is necessary to prevent manifest injustice, may order that a deposition of the testimony of that witness be taken and that any designated books, papers, documents or tangible objects that are not privileged, including, but not limited to, writings, drawings, graphs, charts, photographs, sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form, be produced at the same time and place.

(b) Procedure. The deposition shall be videotaped, unless the court otherwise orders. The deposition shall be taken before the judge at a location convenient to all parties. If the judge is unable to preside because the deposition is to be taken outside of the State, the deposition shall be taken before a person designated by the judge. All parties and counsel shall have a right to be present at the deposition. Examination, cross- examination, and determination of admissibility of evidence shall proceed in the same manner as at trial. Videotaping shall be done by a person chosen by the judge who is independent of both prosecution and defense.

(c) Use. Depositions taken pursuant to paragraph (a) of this rule may be used at trial instead of the testimony of the witness if the witness is unable to testify in court because of impending death or physical or mental incapacity, or if the judge finds that the party offering the deposition has been unable to procure the attendance of the witness by subpoena or otherwise, the deposition shall be admissible pursuant to the Rules of Evidence applied as though the witness were then present and testifying. The deposition shall not be admissible, however, unless the court finds that the circumstances surrounding its taking allowed adequate preparation and cross-examination by all parties. A record of the videotaped testimony, which shall be part of the official record of the court proceedings, shall be made in the same manner as if the witness were present and testifying. On conclusion of the trial, the videotape shall be retained by the court.

Note: Source-R. (1969) 7:4-2(h), 3:13-2(a),(b),(c). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) amended December 4, 2012 to be effective January 1, 2013.

7:7-7. Discovery and Inspection

(a) Scope. If the government is represented by the municipal prosecutor or a private prosecutor in a cross complaint case, discovery shall be available to the parties only as provided by this rule, unless the court otherwise orders. All discovery requests by defendant shall be served on the municipal prosecutor, who shall be responsible for making government discovery available to the defendant. If the matter is, however, not being prosecuted by the municipal prosecutor, the municipal prosecutor shall transmit defendant's discovery requests to the private prosecutor in a cross complaint case, pursuant to R. 7:8-7(b).

(b) Discovery by Defendant. Unless the defendant agrees to more limited discovery, in all cases the defendant, on written notice to the municipal prosecutor or private prosecutor in a cross complaint case, shall be provided with copies of all relevant material, including, but not limited to, the following:

(1) books, tangible objects, papers or documents obtained from or belonging to the defendant, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(2) records of statements or confessions, signed or unsigned, by the defendant or copies thereof, and a summary of any admissions or declarations against penal interest made by the defendant that are known to the prosecution but not recorded;

(3) grand jury proceedings recorded pursuant to R. 3:6-6;

(4) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies of these results or reports, that are within the possession, custody or control of the prosecuting attorney;

(5) reports or records of defendant's prior convictions;

(6) books, originals or copies of papers and documents, or tangible objects, buildings or places that are within the possession, custody or control of the government, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(7) names, addresses, and birthdates of any persons whom the prosecuting attorney knows to have relevant evidence or information, including a designation by the prosecuting attorney as to which of those persons the prosecuting attorney may call as witnesses;

(8) record of statements, signed or unsigned, by the persons described by subsection (7) of this rule or by co-defendants within the

possession, custody or control of the prosecuting attorney, and any relevant record of prior conviction of those persons;

(9) police reports that are within the possession, custody or control of the prosecuting attorney;

(10) warrants, that have been completely executed, and any papers accompanying them, as described by R. 7:5-1(a).

(11) the names and addresses of each person whom the prosecuting attorney expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, a copy of the report, if any, of the expert witness, or if no report was prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is requested and not furnished, the expert witness may, upon application by the defendant, be barred from testifying at trial.

(c) Discovery by the State. In all cases the municipal prosecutor or the private prosecutor in a cross complaint case, on written notice to the defendant, shall be provided with copies of all relevant material, including, but not limited to, the following:

(1) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies of these results or reports within the possession, custody or control of the defendant or defense counsel;

(2) any relevant books, originals or copies of papers and other documents or tangible objects, buildings or places within the possession, custody or control of the defendant or defense counsel, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(3) the names, addresses and birthdates of those persons known to defendant who may be called as witnesses at trial and their written statements, if any, including memoranda reporting or summarizing their oral statements;

(4) written statements, if any, including any memoranda reporting or summarizing the oral statements, made by any witnesses whom the government may call as a witness at trial; and

(5) the names and addresses of each person whom the defense expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, and a copy of the report, if any, of such expert witness, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is requested and not furnished, the expert may, upon

application by the prosecuting attorney, be barred from testifying at trial.

(d) Documents Not Subject to Discovery. This rule does not require discovery of a party's work product, consisting of internal reports, memoranda or documents made by that party or by that party's attorney or agents, in connection with the investigation, prosecution or defense of the matter. Nor does it require discovery by the government of records or statements, signed or unsigned, by defendant made to defendant's attorney or agents.

(e) Reasonableness of Cost. Upon motion of any party, the court may consider the reasonableness of the cost of discovery ordered by the court to be disseminated to the parties. If the court finds that the cost charged for discovery is unreasonable, the court may order the cost reduced or make such other order as is appropriate.

(f) Protective Orders.

(1) Grounds. Upon motion and for good cause shown, the court may at any time order that the discovery sought pursuant to this rule be denied, restricted, or deferred or make such other order as is appropriate. In determining the motion, the court may consider the following: protection of witnesses and others from physical harm, threats of harm, bribes, economic reprisals and other intimidation; maintenance of such secrecy regarding informants as is required for effective investigation of criminal activity; confidential information recognized by law, including protection of confidential relationships and privileges recognized by law; and any other relevant considerations.

(2) Procedures. The court may permit the showing of good cause to be made, in whole or in part, in the form of a written statement to be inspected by the court alone. If the court enters a protective order, the entire text of the statement shall be sealed and preserved in the court's records, to be made available only to the appellate court in the event of an appeal.

(g) Time and Procedure. A defense request for discovery shall be made contemporaneously with the entry of appearance by the defendant's attorney, who shall submit a copy of the appearance and demand for discovery directly to the municipal prosecutor. If the defendant is not represented, any requests for discovery shall be made in writing and submitted by the defendant directly to the municipal prosecutor. The municipal prosecutor shall respond to the discovery request in accordance with paragraph (b) of this rule within 10 days after receiving the request. Unless otherwise ordered by the judge, the defendant shall provide the prosecutor with discovery, as provided by paragraph (c) of this rule within 20 days of the prosecuting attorney's compliance with the defendant's discovery request. If any discoverable materials known to a party have not been supplied, the

party obligated with providing that discovery shall also provide the opposing party with a listing of the materials that are missing and explain why they have not been supplied. Unless otherwise ordered by the judge, the parties may provide discovery pursuant to paragraphs (a), (b), (c), and (h) of this rule through the use of CD, DVD, e-mail, internet or other electronic means. Documents provided through electronic means shall be in PDF format. All other discovery shall be provided in an open, publicly available (non-proprietary) format that is compatible with any standard operating computer. If discovery is not provided in a PDF or open, publicly available format, the transmitting party shall include a self-extracting computer program that will enable the recipient to access and view the files that have been provided. Upon motion of the recipient, and for good cause shown, the court shall order that discovery be provided in the format in which the transmitting party originally received it. In all cases in which an Alcotest device is used, any Alcotest data shall, upon request, be provided for any Alcotest 7110 relevant to a particular defendant's case in a readable digital database format generally available to consumers in the open market. In all cases in which discovery is provided through electronic means, the transmitting party shall also include a list of the materials that were provided and, in the case of multiple disks, the specific disk on which they can be located.

(h) Motions for Discovery. No motion for discovery shall be made unless the prosecutor and defendant have conferred and attempted to reach agreement on any discovery issues, including any issues pertaining to discovery provided through the use of CD, DVD, e-mail, internet or other electronic means.

(i) Discovery Fees.

(1) Standard Fees. The municipal prosecutor, or a private prosecutor in a cross-complaint case, may charge a fee for a copy or copies of discovery. The fee assessed for discovery embodied in the form of printed matter shall be $0.05 per letter size page or smaller, and $0.07 per legal size page or larger. From time to time, as necessary, these rates may be revised pursuant to a schedule promulgated by the Administrative Director of the Courts. If the prosecutor can demonstrate that the actual costs for copying discovery exceed the foregoing rates, the prosecutor shall be permitted to charge a reasonable amount equal to the actual costs of copying. The actual copying costs shall be the costs of materials and supplies used to copy the discovery, but shall not include the costs of labor or other overhead expenses associated with making the copies, except as provided for in paragraph (i)(2) of this rule. Electronic records and non-printed materials shall be provided free of charge, but the prosecutor may charge for the actual costs of any needed supplies such as computer discs.

(2) Special Service Charge for Printed Copies. Whenever the nature, format, manner of collation, or volume of discovery embodied in the form of printed matter to be copied is such that the discovery cannot be reproduced by ordinary document copying equipment in ordinary business size, or is such that it would involve an extraordinary expenditure of time and effort to copy, the prosecutor may charge, in addition to the actual copying costs, a special service charge that shall be reasonable and shall be based upon the actual direct costs of providing the copy or copies. Pursuant to R. 7:7-1, the defendant shall have the opportunity to review and object to the charge prior to it being incurred.

(3) Special Service Charge for Electronic Records. If the defendant requests an electronic record: (1) in a medium or format not routinely used by the prosecutor; (2) not routinely developed or maintained by the prosecutor; or (3) requiring a substantial amount of manipulation or programming of information technology, the prosecutor may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on (1) the cost for any extensive use of information technology, or (2) the labor cost of personnel providing the service that is actually incurred by the prosecutor or attributable to the prosecutor for the programming, clerical, and supervisory assistance required, or (3) both. Pursuant to R. 7:7-1, the defendant shall have the opportunity to review and object to the charge prior to it being incurred.

(j) Continuing Duty to Disclose; Failure to Comply. There shall be a continuing duty to provide discovery pursuant to this rule. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order that party to provide the discovery of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed or enter such other order as it deems appropriate.

Note: Source-Paragraph (a): new; paragraph (b): R. (1969) 7:4-2(h), 3:13-3(c); paragraph (c): R. (1969) 7:4-2(h), 3:13-3(d); paragraph (d): R. (1969) 7:4-2(h), 3:13-3(e); paragraph (e): R. (1969) 7:4-2(h), 3:13-3(f); paragraph (f) new; paragraph (g): R. (1969) 7:4-2(h), 3:13-3(g). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (c) amended July 5, 2000 to be effective September 5, 2000; paragraph (f) amended July 16, 2009 to be effective September 1, 2009; paragraphs (a), (b), and (c) amended, new paragraph (e) caption and text adopted, former paragraphs (e), (f), and (g) redesignated as paragraphs (f), (g), and (h) July 21, 2011 to be effective September 1, 2011; paragraphs (b), (c), (f), and (g) amended, new paragraphs (h) and (i) adopted, paragraph (h) redesignated as paragraph (j) and amended December 4, 2012 to be effective January 1, 2013; subparagraphs (b)(7), (c)(3) and (f)(1) amended July 9, 2013 to be effective September 1, 2013.

7:7-8. Subpoenas

(a) Issuance. Except as otherwise provided in paragraph (d), upon the issuance of process on a complaint within the trial jurisdiction of the municipal court, a subpoena may be issued by a judicial officer, by an attorney in the name of the court administrator, or, in cases

involving a non-indictable offense, by a law enforcement officer or other authorized person. The subpoena shall be in the form approved by the Administrative Director of the Courts. In cases involving non-indictable offenses, the law enforcement officer may issue subpoenas to testify in the form prescribed by the Administrative Director of the Courts. Courts having jurisdiction over such offenses, the Division of State Police, the Motor Vehicle Commission, and any other agency so authorized by the Administrative Director of the Courts may supply subpoena forms to law enforcement officers.

(b) Subpoena to Testify. A subpoena to testify shall state the name of the municipal court and the title of the action. It shall contain the appropriate case docket number and shall command each natural person or authorized agent of an entity to whom it is directed to attend and give testimony at a specific time and date when the court will be in session. The subpoena may also specify that the specific time and date to attend court will be established at a later time by the court. If the witness is to testify in an action for the State or for an indigent defendant, the subpoena shall so note and shall contain an order to appear without the prepayment of any witness fee as otherwise required under N.J.S.A. 22A:1-4.

(c) Subpoena to Produce Documents or Electronically Stored Information. A subpoena may require the production of books, papers, documents, electronically stored information or other items on the date of the scheduled court appearance. The court may enter a supplemental order directing that the items designated in the subpoena be produced in court at a time prior to the scheduled court appearance or at another location. The order of the court may also specify that the designated items may, upon their production, be inspected by the parties and their attorneys.

(d) Investigative Subpoenas in Operating While Under the Influence Cases. When the State demonstrates to the court through sworn testimony and/or supporting documentation that there is a reasonable basis to believe that a person has operated a motor vehicle in violation of N.J.S.A. 39:4-50 or N.J.S.A. 39:3-10.13, a vessel in violation of N.J.S.A. 12:7-46, or an aircraft in violation of N.J.S.A. 6:1-18, a municipal court judge with jurisdiction over the municipality where the alleged offense occurred may issue an investigative subpoena directing an authorized agent of a medical facility located in New Jersey to produce medical records related to the presence of alcohol, narcotics, hallucinogens, habit-producing drugs or chemical inhalants in the operator's body. If no case is pending, the subpoena may be captioned "In the Matter" under investigation.

(e) Personal Service. A subpoena may be served at any place within the State of New Jersey by any person 18 or more years of age. Service

of a subpoena shall be made by personally delivering a copy to the person named, together with the fee allowed by law, except that if the person is a witness in an action for the State or an indigent defendant, the fee shall be paid before leaving the court at the conclusion of the trial by the municipal court administrator as otherwise required by N.J.S.A. 22A:1-4. After service of a subpoena, the person serving the subpoena shall promptly file a copy of the subpoena and proof of service with the court.

(f) Continuing Duty to Appear. A witness who has been personally served with a subpoena shall remain under a continuing obligation to appear until released by the court.

(g) Failure to Appear. In the absence of an adequate excuse, any person who fails to obey a personally served subpoena, as evidenced by an executed return of service, is subject to punishment for contempt of court. The court may issue a warrant for the arrest of the person subject to contempt as authorized by N.J.S.A. 2A:10-8.

(h) Motion to Quash. The court, on motion made prior to the scheduled court date, may quash or modify a subpoena to testify or a subpoena to produce writings or electronically stored information if compliance would be unreasonable, oppressive or not in compliance with the procedures required under this rule.

Note: Source-R. (1969) 7:3-3. Adopted October 6, 1997 to be effective February 1, 1998; caption amended, former text deleted, captions and text for new paragraphs (a) through (h) adopted July 16, 2009 to be effective September 1, 2009.

7:7-9. Filing Appearance; Withdrawal from Representation and Substitution of Attorney

(a) Filing Appearance. The attorney for the defendant in an action before the municipal court shall immediately file an appearance with the municipal court administrator of the court having jurisdiction over the matter and shall serve a copy on the appropriate prosecuting attorney or other involved party, as identified by the municipal court administrator.

(b) Withdrawal, Substitution Prior to Receipt of Discovery.<text> Prior to the receipt of any discovery, an attorney may withdraw as counsel without leave of court with the client's consent provided a substitution of attorney is filed naming the substituted attorney or indicating that the client will appear pro se.

(c) Withdrawal, Sustitution Prior to Completion of Discovery and Prior to the Setting of a Trial Date. Prior to the completion of discovery and the setting of a trial date, an attorney may withdraw as counsel without leave of court upon the filing of the client's written consent and a substitution of attorney executed by both the withdrawing attorney and the substituted attorney indicating that the withdrawal and substitution will not cause or result in delay. In the

substitution of attorney, the withdrawing attorney shall certify that all discovery received from the State has been or will be provided to the substituting attorney within five business days after the filing of the fully executed substitution of attorney with the court.

(d) Withdrawal, Substitution After Completion of Discovery and After the Setting of a Trial Date. After completion of discovery and the setting of a trial date, an attorney may not withdraw or substitute as counsel without leave of court.

(e) Motion at Any Stage of Proceedings. Nothing in this rule prohibits an attorney from filing a motion at any stage of the proceedings to be relieved from representing the defendant or be substituted as counsel.

(f) Requesting Discovery at Any Stage of Proceedings. Nothing in this rule prohibits a pro se defendant or substituting attorney from requesting discovery at any stage of the proceedings.

Note: Source-R. (1969) 3:8-1. Adopted October 6, 1997 to be effective February 1, 1998; caption amended, text designated as paragraph (a) and caption added, and new paragraphs (b) through (f) adopted July 30, 2021 to be effective September l, 2021.

7:7-10. Joint Representation

No attorney or law firm shall enter an appearance for or represent more than one defendant in a multi-defendant trial or enter a plea for any defendant without first securing the court's permission by motion made in the presence of the defendants who seek joint representation. The motion shall be made as early as practicable in the proceedings in order to avoid delay of the trial. For good cause shown, the court may allow the motion to be brought at any time.

Note: Source-R. (1969) 3:8-2. Adopted October 6, 1997 to be effective February 1, 1998.

7:7-11. Use of Acting Judges Pursuant to Standing Assignment Judge Order

(a) As to any pretrial application made when court is not in session for the issuance of a Complaint-Warrant (CDR-2), R. 7:2-1; for the issuance of a Temporary Restraining Order (TRO), R. 5:7A; for the issuance of a search warrant, R. 3:5-3(b) or R. 7:5-1(a); or for the setting of bail, R. 7:4-2(b), if no judge of that court is able to hear the application, an acting judge may be contacted pursuant to a standing order entered by the Assignment Judge that prescribes the sequence in which resort is made to any such acting judges.

(b) An acting judge handling an application pursuant to paragraph (a) of this rule should make a record of the reason the application is not being handled by the court to which the application was first submitted.

Note: Adopted July 21, 2011 to be effective September 1, 2011; paragraph (a) amended July 29, 2019 to be effective September 1, 2019; paragraph (a) amended July 30, 2021 to be effective September 1, 2021.

RULE 7:8. TRIAL

7:8-1. Mediation of Minor Disputes in Municipal Court Actions

If a person seeks to file or has filed a complaint charging an offense that may constitute a minor dispute, the court may issue a notice to the person making the charge and the person charged, requiring their appearance before the court or before a person or program designated by the court and approved by the Assignment Judge pursuant to R. 1:40-8 (Mediation of Minor Disputes in Municipal Court Actions). If on the return date of a summons, it appears to the court that the offense charged may constitute a minor dispute, the court may order the persons involved to participate in mediation in accordance with R. 1:40-8. No referral to mediation shall be made, however, if the complaint involves (1) serious injury, (2) repeated acts of violence between the parties, (3) clearly demonstrated psychological or emotional disability of a party, (4) incidents involving the same persons who are already parties to a Superior Court action between them, (5) matters arising under the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.), (6) a violation of the New Jersey Motor Vehicle Code (Title 39), or (7) matters involving penalty enforcement actions.

Note: Source-R. (1969) 7:3-2. Adopted October 6, 1997 to be effective February 1, 1998; amended July 5, 2000 to be effective September 5, 2000; caption and text amended June 15, 2007 to be effective September 1, 2007.

7:8-2. Place of Trial; Disqualification

(a) Generally. Except as otherwise provided by law, the prosecution for an offense shall take place in the jurisdiction in which the offense was committed.

(b) Disqualification of Judge. In the event of the judge's disqualification or inability for any reason to hear a pending matter, the judge, in addition to the provisions of R. 1:12- 3(a), may either refer the matter to the Assignment Judge for designation of an acting judge pursuant to N.J.S.A. 2B:12-6 or transfer the matter to a judge sitting in another municipality within the vicinage. The transferee judge may, however, accept the transfer only if:

(1) the transferee judge has been designated as an acting judge of the court of origin by the Assignment Judge of the vicinage, pursuant to N.J.S.A. 2B:12-6 and R. 1:12-3(a); and

(2) the transferring judge has found that transfer of the matter will not substantially inconvenience any party.

Upon completion of the trial, the transferee court shall immediately advise the court of origin of the disposition made and shall remit to it the complaint, judgment, all records, and any fines and costs collected. The court of origin shall retain jurisdiction and shall maintain all necessary records as though the matter had been tried in the court of

origin, which shall be responsible for effecting final disposition of the matter. The municipality of the court of origin shall bear the costs of prosecution of the matter.

Note: Source-R. (1969) 7:4-3. Adopted October 6, 1997 to be effective February 1, 1998.

7:8-3. Adjournment

On or before the first scheduled trial date, the court may adjourn the trial for not more than fourteen days, except that an adjournment for a longer period or additional adjournments may be granted if the court deems postponement of the trial to be reasonably necessary in the interest of justice. In contested matters, the court shall specify the new trial date in granting the adjournment and shall cause the complaining witness, all defendants, and all other known witnesses to be notified of the adjournment and of the new trial date.

Note: Source-R. (1969)) 7:4-2(c). Adopted October 6, 1997 to be effective February 1, 1998.

7:8-4. Trial of Complaints Together

The court may order two or more complaints to be tried together if the offenses arose out of the same facts and circumstances, regardless of the number of defendants. In all other matters, the court may consolidate complaints for trial with the consent of the persons charged. Complaints originating in two or more municipalities may be consolidated for trial only with the approval of the appropriate Assignment Judge, who shall designate the municipal court in which trial is to proceed. A party seeking consolidation of complaints originating in different municipalities shall file a written motion for that relief directly with the Assignment Judge.

Note: Source-R. (1969) 7:4-2(g) Adopted October 6, 1997 to be effective February 1, 1998.

7:8-5. Dismissal

If the complaint is not moved on the day for trial, the court may direct that it be heard on a specified return date and a notice thereof be served on the complaining witness, all defendants and all other known witnesses. If the complaint is not moved on that date, the court may order the complaint dismissed. A complaint may also be dismissed by the court for good cause at any time on its own motion, on the motion of the State, county or municipality or on defendant's motion. On dismissal, any warrant issued shall be recalled, and the matter shall not be reopened on the same complaint except to correct a manifest injustice.

Note: Source-R. (1969) 7:4-2(i). Adopted October 6, 1997 to be effective February 1, 1998; amended July 28, 2004 to be effective September 1, 2004.

7:8-6. Transfer to the Chancery Division, Family Part

An action pending in a municipal court may be transferred to the Superior Court, Chancery Division, Family Part pursuant to R. 5:1-2(c)(3) and R. 5:1-3(b)(2).

Note: Source-R. (1969) 7:4-2(j). Adopted October 5, 1998 to be effective February 1, 1998.

7:8-7. Appearances; Exclusion of the Public

(a) Presence of Defendant. Except as otherwise provided by Rules 7:6-1(b), 7:6-3, or 7:12-3, the defendant shall be present, either in person, or by means of a video link as approved by the Administrative Office of the Courts, at every stage of the proceeding and at the imposition of sentence. If, however, defendant is voluntarily absent after the proceeding has begun in the defendant's presence or the defendant fails to appear at the proceeding after having been informed in open court of the time and place of the proceeding, the proceeding may continue to and including entry of judgment. A corporation, partnership or unincorporated association shall appear by its attorney unless an appearance on its behalf by an officer or agent has been permitted pursuant to R. 7:6-2(a)(2). The defendant's presence is not, however, required at a hearing on a motion for reduction of sentence.

(b) Appearance for the Prosecution. The municipal prosecutor, municipal attorney, Attorney General, county prosecutor, or county counsel, as the case may be, may appear in any municipal court in any action on behalf of the State and conduct the prosecution either on the court's request or on the request of the respective public official. The court may also, in its discretion and in the interest of justice, direct the municipal prosecutor to represent the State. The court may permit an attorney to appear as a private prosecutor to represent the State in cases involving cross-complaints. Such private prosecutors may be permitted to appear on behalf of the State only if the court has first reviewed the private prosecutor's motion to so appear and an accompanying certification submitted on a form approved by the Administrative Director of the Courts. The court may grant the private prosecutor's application to appear if it is satisfied that a potential for conflict exists for the municipal prosecutor due to the nature of the charges set forth in the cross-complaints. The court shall place such a finding on the record.

(c) Exclusion of the Public. In matters involving domestic relations, sex offenses, school truancy, parental neglect, and as may be otherwise provided by law, the court, in its discretion and with defendant's consent, may exclude from the courtroom any person not directly interested in the matter during the conduct of the trial or hearing.

Note: Source-R. (1969) 7:4-4(a),(b),(c). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended June 15, 2007 to be effective September 1, 2007.

7:8-8. Record of Proceedings; Transcripts

(a) Record. If required by order of the Supreme Court, the municipal court shall cause all proceedings to be recorded by sound recording equipment approved by the Administrative Office of the

Courts. If not so required, the court may, at its own expense, cause proceedings to be recorded either by sound recording equipment or by a court reporter. If sound recording equipment is used, or if the proceedings are not otherwise recorded, the court shall permit a record of the proceedings to be made by a certified shorthand reporter at the request and expense of any party. Every sound recording and stenographic record of proceedings made pursuant to this rule shall be retained by the municipal court administrator or by the reporter, as the case may be, for 5 years.

(b) Transcript. If the proceedings have been sound recorded, any person may order a transcript from the municipal court administrator, and if the proceedings have been recorded stenographically, any person may order a transcript from the court reporter. The charge shall not exceed the rates as provided by law. The person preparing the transcript shall certify to its accuracy.

(c) Supervision. The recording of proceedings and the preparation of transcripts thereof, whether by sound recording or reporters, shall be subject to the supervision and control of the Administrative Director of the Courts.

Note: Source-R. (1969) 7:4-5. Adopted October 6, 1997 to be effective February 1, 1998.

7:8-9. Non-Monetary Procedures on Failure to Appear

(a) Warrant or Notice.

(1) Non-Parking Cases.

(i) Except as set forth in subparagraph (ii), if a defendant in any non-parking case before the court fails to appear or answer a complaint, the court shall issue a notice advising the defendant of the rescheduled appearance and that a failure to appear at that rescheduled appearance may result in the issuance of a bench warrant on a form approved by the Administrative Director of the Courts. If the defendant fails to appear for that rescheduled appearance, a bench warrant may be issued in accordance with R. 7:2-2(h). When issuing a bench warrant, the court shall simultaneously schedule the defendant to appear at a future court event.

(ii) In the most serious matters involving public safety, including but not limited to driving while intoxicated, domestic violence, defendants being monitored by pre-trial services, or other matters where upon conviction there is a reasonable likelihood of a jail sentence or loss or suspension of license, if a defendant in any non-parking case before the court fails to appear or answer a complaint, the court may issue a bench warrant for the defendant's arrest in accordance with R. 7:2-2(h), while simultaneously scheduling the defendant to appear at a future event.

(2) Parking Cases. If a defendant in any parking case before the court fails to appear or answer a complaint, the court shall mail a failure to appear notice to the defendant on a form approved by the Administrative Director of the Courts. Where a defendant has not appeared or otherwise responded to failure to appear notices associated with two or more pending parking tickets within the court's jurisdiction, the court may issue a bench warrant in accordance with R. 7:2-2(h), while simultaneously scheduling the defendant to appear at a future court event. Such a bench warrant shall not issue when the pending tickets have been issued on the same day or otherwise within the same 24-hour period.

(b) Driving Privileges; Report to Motor Vehicle Commission.

(1) Non-Parking Motor Vehicle Cases. If the court has not issued a bench warrant upon the failure of the defendant to comply with the court's failure to appear notice, the court shall report the failure to appear or answer to the Chief Administrator of the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts within 30 days of the defendant's failure to appear or answer. The court shall then mark the case as closed on its records, subject to being reopened pursuant to subparagraph (e) of this rule. If the court elects, however, to issue a bench warrant, it may simultaneously report the failure to appear or answer to the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts. If the court does not simultaneously notify the Motor Vehicle Commission and the warrant has not been executed within 30 days, the court shall report the failure to appear or answer to the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts. Upon the notification to the Motor Vehicle Commission, the court shall then mark the case as closed on its records subject to being reopened pursuant to subparagraph (e) of this rule.

(2) Parking Cases. In all parking cases, whether or not a bench warrant is issued, the court may order the suspension of the defendant's driving privileges or of defendant's nonresident reciprocity privileges or prohibit the person from receiving or obtaining driving privileges until the pending matter is adjudicated or otherwise disposed of. The court shall then mark the case as suspended on its records, subject to being reopened pursuant to paragraph (e) of this rule. The court shall forward the order to suspend to the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts.

(c) Unexecuted Bench Warrant or Bail Posted after Bench Warrant Executed. If a bench warrant is not executed, it shall remain open and active until the court either recalls, withdraws or discharges it. If bail has been posted after the issuance of the bench warrant and the defendant fails to appear or answer, the court may declare a forfeiture

of the bail, report a motor vehicle bail forfeiture to the Motor Vehicle Commission and mark the case as suspended on its records subject to being reopened pursuant to paragraph (e) of this rule. The court may set aside any bail forfeiture in the interest of justice.

(d) Parking Cases; Unserved Notice. In parking cases, no bench warrant may be issued if the initial failure to appear notice is returned to the court by the Postal Service marked to indicate that the defendant cannot be located. The court then may order a suspension of the registration of the motor vehicle or of the defendant's driving privileges or defendant's nonresident reciprocity privileges or prohibit the person from receiving or obtaining driving privileges until the pending matter is adjudicated or otherwise disposed of. The court shall then mark the case as suspended on its records, subject to being reopened pursuant to paragraph (e) of this rule. The court shall forward the order to suspend to the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts.

(e) Reopening. A case marked closed shall be reopened upon the request of the defendant, the prosecuting attorney or on the court's own motion.

(f) Dismissal of Parking Tickets. In any parking case, if the municipal court fails, within three years of the date of the violation, to either issue a bench warrant for the defendant's arrest or to order a suspension of the registration of the motor vehicle or the defendant's driving privileges or the defendant's non-resident reciprocity privileges or prohibit the person from receiving or obtaining driving privileges, the matter shall be dismissed and shall not be reopened.

(g) Monetary Sanctions for Failure to Appear. Monetary sanctions on defendants for failure to appear are addressed in R. 7:8-9A.

Note: Source-Paragraphs (a),(b),(c),(d),(e): R. (1969) 7:6-3; paragraph (f): new. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) text deleted and new paragraphs (a)(1) and (a)(2) adopted July 28, 2004 to be effective September 1, 2004; paragraph (b) caption amended, paragraphs (b)(1), (c), (d) and (f) amended July 16, 2009 to be effective September 1, 2009; paragraphs (a)(1), (a) (2), (b)(1), (b)(2) amended, paragraph (c) caption and text amended, and paragraphs (d) and (f) amended August 30, 2016 to be effective January 1, 2017; caption amended and new paragraph (g) adopted July 17, 2018 to be effective September 1, 2018; paragraph (a)(l) caption and text amended, paragraph (a)(2) amended, paragraph (b)(2) caption and text amended, paragraph (c) caption and text amended, and paragraph (d) amended July 30, 2021 to be effective September 1, 2021.

7:8-9A. Monetary Sanctions for Defendant's Failure to Appear

(a) In General. If without just cause or excuse, a defendant who is required to appear at a trial, hearing or other scheduled municipal court proceeding fails to appear, the municipal court judge may order that defendant to pay a monetary sanction based on the following factors: (1) defendant's history of failure to appear; (2) defendant's criminal and offense history; (3) the seriousness of the offense; and (4) the resulting inconvenience to the defendant's adversary and to

witnesses called by the parties. The judge shall state the reasons for the sanction on the record.

(b) Maximum Sanction. For consequence of magnitude cases, the aggregate sanction per case shall not exceed $100. For other than consequence of magnitude cases, the aggregate sanction per case shall not exceed $25 for parking offenses and $50 for all other matters.

(c) Contempt of Court. A judge may impose a higher sanction on a defendant for failure to appear only in accordance with the provisions of R. 1:10.

(d) Calculation of Sanction. When a case includes multiple offenses, the maximum sanction shall be calculated solely on the most serious offense charged. Only one sanction may be imposed per case.

(e) Payment of Sanction. The defendant shall pay the assessed sanction to the municipal court to be disbursed to the municipality where the offense occurred.

(f) Non-Monetary Procedures on Failure to Appear. Non-monetary procedures on failure to appear are addressed in R. 7:8-9.

Note: Adopted July 17, 2018 to be effective September 1, 2018.

7:8-10. Waiver of Right to Counsel at Trial

In all cases other than parking cases, a request by a defendant to proceed to trial without an attorney shall not be granted until the judge is satisfied from an inquiry on the record that the defendant has knowingly and voluntarily waived the right to counsel following an explanation by the judge of the range of penal consequences and an advisement that the defendant may have defenses and that there are dangers and disadvantages inherent in defending oneself.

Note: Adopted July 16, 2009 to be effective September 1, 2009.

7:8-11. Limitations on Pretrial Incarceration

(a) Defendants Subject to Limitations on Pretrial Incarceration. This rule applies to a defendant for whom a Complaint-Warrant (CDR-2) has been issued and who: (1) has been charged with a disorderly persons offense involving domestic violence and is detained pursuant to R. 3:4A, or (2) is detained in jail due to an inability to post monetary bail on the initial disorderly persons offense charged on a Complaint-Warrant (CDR-2). This rule only applies to a defendant who is arrested on or after January 1, 2017, regardless of when the offense giving rise to the arrest was allegedly committed.

(b) Limitation on Pretrial Incarceration. A defendant as described in subsection (a) above may not be incarcerated for a time period longer than the maximum period of incarceration for which the defendant could be sentenced for the initial offense charged on the Complaint-Warrant (CDR-2).

(c) Time Period of Pretrial Incarceration. This time period of incarceration starts on the day the defendant was initially taken into custody.

(d) Release. If a defendant is detained pursuant to subsection (a) of this rule and the maximum period of incarceration is reached pursuant to subsection (b) of this rule, the court shall establish conditions of pretrial release pursuant to R. 3:26 and release the defendant. For matters in which the defendant was issued a Complaint-Warrant (CDR-2), was charged with any offense involving domestic violence, and was detained pursuant to R. 3:4A, a judge of the Superior Court shall conduct a release hearing and make the release decision. In matters in which the defendant has been issued a Complaint-Warrant (CDR-2) and detained in jail due to an inability to post monetary bail on the initial offense charged, a judge with authority to modify the conditions of release shall make the release decision.

Note: Adopted August 30, 2016 to be effective January 1, 2017; paragraph (a) amended November 14, 2016 to be effctive January 1, 2017.

RULE 7:9. SENTENCE AND JUDGMENT

7:9-1. Sentence

(a) Imposition of Sentence; Bail; Conditions of Release. If the defendant has been convicted of or pleaded guilty to a non-indictable offense, sentence shall be imposed immediately, unless the court postpones sentencing in order to obtain a presentence report or for other good cause. Pending sentence, the court may commit the defendant, or establish, continue, or modify monetary bail, or continue or modify conditions of release as appropriate. Before imposing sentence the court shall afford the defendant and defense counsel an opportunity to make a statement on defendant's behalf and to present any information in mitigation of punishment. Where a sentence has been opened and vacated, the defendant shall be resentenced immediately, except where a new trial is granted.

(b) Statement of Reasons - Criminal Code Cases. In disorderly and petty disorderly cases and indictable fourth degree cases within the jurisdiction of the municipal court, at the time sentence is imposed the court shall state its reasons for imposing the sentence, including its findings respecting the criteria prescribed by N.J.S.A. 2C:44-1 to 2C:44-3 for withholding or imposing imprisonment, fines or restitution and pursuant to N.J.S.A. 2C:51-2 for ordering or denying forfeiture of public office, position, or employment. The court shall also state its factual basis for its finding of particular aggravating or mitigating factors affecting sentence.

(c) Statement of Reasons - Non-Criminal Code Cases. In non-criminal code cases involving a consequence of magnitude, at the time the sentence is imposed the court shall state its reasons for imposing

sentence, including the findings for withholding or imposing imprisonment, driver's license suspension, fines, or restitution.

(d) Probation. The court, at the time of sentencing, shall inform a defendant sentenced to probation of the penalties that may be imposed upon revocation of probation for failure to adhere to the conditions of probation.

(e) Probation and Suspended Sentence. After conviction, unless otherwise provided by law, the court may suspend the imposition of a sentence or place the defendant on probation. The order shall require the defendant to comply with standard conditions of probation adopted by the court and filed with the municipal court administrator, as well as such special conditions, including a term of imprisonment pursuant to N.J.S.A. 2C:45-1(c), as the court imposes. As a condition of probation the court may also impose a term of community-related service to be performed by the defendant under such terms and conditions as the court may determine. A copy of the order, together with the standard and special conditions, shall be furnished to the defendant and read and explained to the defendant by the probation officer. The defendant and the probation officer shall sign a joint statement, to be filed with the municipal court administrator, as to the officer's compliance with the reading and explanation requirements of this rule. If the defendant refuses to sign the statement, the defendant shall be resentenced. At any time before termination of the period of suspension or probation, the court may revoke a suspension or probation pursuant to N.J.S.A. 2C:45-3.

Note: Source-Paragraph (a): R. (1969) 7:4-6(a); paragraph (b): R. (1969) 7:4-6(c); paragraph (c): R. (1969) 3:21-4(c); paragraph (d): R. (1969) 7:4-6(e) and R. (1969) 3:21-7. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (b) caption and text amended, new paragraph (c) adopted, former paragraphs (c) and (d) redesignated as paragraphs (d) and (e) July 21, 2011 to be effective September 1, 2011; paragraph (a) caption and text amended August 30, 2016 to be effective January 1, 2017.

7:9-2. Judgment

(a) Generally. A judgment of conviction shall set forth the complaint, the plea, the findings, the adjudication and the sentence. It shall cite with specificity the statute or ordinance section to which the conviction relates or a short description of the statute or ordinance, the names and addresses of the witnesses sworn, and a list of exhibits produced at the trial. If the defendant is found not guilty or for any other reason is entitled to be discharged, a judgment shall be entered accordingly. The judgment shall be signed by the court and entered by the municipal court administrator. If at the time of hearing, judgment was reserved, the court upon the entry of judgment of acquittal shall immediately mail a copy of the judgment to the defendant by ordinary mail; if convicted, however, the defendant shall be notified to appear in court for entry of judgment and sentencing.

(b) Conviction of a Corporation. If a corporation is convicted of an offense, the court shall give judgment on the conviction and shall cause the judgment to be enforced in the same manner as a judgment in a civil action.

Note: Source-Paragraph (a): R. (1969) 7:4-6(b); paragraph (b): R. (1969) 7:4-6(d), 3:21-6. Adopted October 6, 1997 to be effective February 1, 1998.

7:9-3. Credit for Confinement Pending Sentence

The defendant shall receive credit on the term of custodial sentence for any time served in custody, either in jail or in a state hospital, between the arrest and the imposition of a sentence.

Note: Source-R. (1969) 7:4-6(f), 3:21-8. Adopted October 6, 1997 to be effective February 1, 1998.

7:9-4. Reduction or Change of Sentence

(a) Time. The court, in its discretion, may reduce or change a sentence, either on its own motion or on the motion of defendant, which may be either oral or written, at any time during which the court retains jurisdiction over the matter.

(b) Procedure. All changes of sentence shall be made in open court upon notice to the defendant and the prosecuting attorney. An appropriate order setting forth the revised sentence and specifying the change made and the reasons for the change shall be entered on the record.

Note: Source-R. (1969) 7:4-6(g), 3:21-10(a),(c). Adopted October 6, 1997 to be effective February 1, 1998.

7:9-5. Failure to Pay

If without just cause or excuse, a defendant defaults on payment of a municipal court imposed financial obligation, the judge, on the record, may order the defendant to pay an aggregate monetary sanction for each order setting forth time payments not to exceed $50. The defendant shall pay the assessed sanction to the municipal court to be disbursed to the municipality where the offense occurred. This sanction shall be in addition to any other penalty imposed by statute or rule for failure to pay. A defendant's inability to pay constitutes just cause for purposes of this rule.

Note: Adopted July 17, 2018 to be effective September 1, 2018.

7:9-6. Expungement of Municipal Court Records

(a) Expedited Expungements. Municipal court records relating to an arrest or charge under the laws of this State or of any governmental entity thereof, for a crime, disorderly persons offense, petty disorderly persons offense, or a municipal ordinance violation, statutorily authorized for an expungement where that charge has been adjudicated by way of a dismissal, acquittal, or was discharged without a conviction or finding of guilt, shall be expunged in accordance with the procedures set forth in R. 3:30-1 and R. 3:30-2.

(b) Expungement Orders Issued by the Superior Court. The municipal court shall expunge all municipal court records pursuant to an expungement order issued by the Superior Court in accordance with the procedures set forth in R. 3:30-1 and R. 3:30-2.

Note: Adopted August 4, 2023 to be effective September 1, 2023.

RULE 7:10. POST-TRIAL PROCEEDINGS

7:10-1. New Trial

On defendant's motion, the court may, pursuant to the time limitations of this rule, grant the defendant a new trial if required in the interest of justice. The court may vacate the judgment if already entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial, based on the ground of newly discovered evidence, shall be made within two years after entry of a final judgment. A motion for a new trial on the grounds of fraud or lack of jurisdiction may be made at any time. A motion for a new trial, based on any other grounds, shall be made within twenty days after the entry of judgment of conviction or within such further time as the court fixes during the twenty-day period.

Note: Source-R. (1969) 7:4-7. Adopted October 6, 1997 to be effective February 1, 1998; amended June 15, 2007 to be effective September 1, 2007.

7:10-2. Post-Conviction Relief

(a) Petition for Relief. A person convicted of an offense may, pursuant to this rule, file with the municipal court administrator of the municipality in which the conviction took place, a petition for post-conviction relief captioned in the action in which the conviction was entered.

(b) Limitations and Exclusiveness.

(1) A petition to correct an illegal sentence may be filed at any time.

(2) A petition based on any other grounds shall not be accepted for filing more than five years after entry of the judgment of conviction or imposition of the sentence sought to be attacked, unless it alleges facts showing that the delay in filing was due to defendant's excusable neglect.

(3) A petition for post-conviction relief shall be the exclusive means of challenging a judgment of conviction, except as otherwise required by the Constitution of New Jersey, but it is not a substitute for appeal from a conviction or for a motion incident to the proceedings in the trial court, and may not be filed while appellate review or the filing of a motion in the municipal court is available.

(c) Grounds. A petition for post-conviction relief is cognizable if based on any of the following grounds:

(1) substantial denial in the conviction proceedings of defendant's rights under the Constitution of the United States or the Constitution or laws of New Jersey;

(2) lack of jurisdiction of the court to impose the judgment rendered on defendant's conviction;

(3) imposition of sentence in excess of or otherwise not in accordance with the sentence authorized by law; or

(4) any ground previously available as a basis for collateral attack on a conviction by habeas corpus or any other common law or statutory remedy.

(d) Bar of Grounds Not Raised in Prior Proceedings; Exceptions.

(1) The defendant is barred from asserting in a proceeding under this rule any grounds for relief not raised in a prior proceeding under this rule, or in the proceedings resulting in the conviction, or in a post-conviction proceeding brought and decided prior to the adoption of R. 3:22-4, or in any appeal taken in any of those proceedings, unless the court on motion or at the hearing finds that:

(A) the grounds for relief not previously asserted could not reasonably have been raised in any prior proceeding;

(B) enforcement of the bar would result in fundamental injustice; or

(C) denial of relief would be contrary to the Constitution of the United States or of New Jersey.

(2) A prior adjudication on the merits of any grounds for relief asserted in the petition is conclusive, whether made in the proceedings resulting in the conviction or any prior post-conviction proceeding, or in any appeal taken from those proceedings.

(e) Assignment of Counsel. A defendant may annex to the petition a sworn statement asserting indigency in the form (Form 5A) prescribed by the Administrative Director of the Courts, which form shall be furnished by the municipal court administrator. If the court finds that the defendant is indigent as herein provided, and that the original conviction involved a consequence of magnitude, it shall order counsel assigned to represent defendant and shall further order a transcript of testimony of any proceeding shown to be necessary in establishing the grounds of relief asserted. Absent a showing of good cause, which shall not include lack of merit of the petition, the court shall not substitute new assigned counsel. If counsel is assigned, the court shall not thereafter substitute new assigned counsel absent a showing of good cause, which shall not, however, include lack of merit of the petition.

(f) Procedure.

(1) The municipal court administrator shall make an entry of the filing of the petition in the proceedings in which the conviction took place, and if it is filed pro se, shall forthwith transmit a copy to the municipal prosecutor. An attorney filing the petition shall serve a copy on the municipal prosecutor before filing.

(2) The petition shall be verified by defendant and shall set forth with specificity the facts upon which the claim for relief is based, the

legal grounds of the complaint asserted and the particular relief sought. The petition shall include the following information:

(A) the date, docket number and contents of the complaint upon which the conviction is based and the municipality where filed;

(B) the sentence or judgment complained of, the date it was imposed or entered, and the name of the municipal court judge then presiding;

(C) any appellate proceedings brought from the conviction, with copies of the appellate opinions attached;

(D) any prior post-conviction relief proceedings relating to the same conviction, including the date and nature of the claim and the date and nature of disposition, and whether an appeal was taken from those proceedings and, if so, the judgment on appeal;

(E) the name of counsel, if any, representing defendant in any prior proceeding relating to the conviction, and whether counsel was retained or assigned; and

(F) whether and where defendant is presently confined. A separate memorandum of law may be submitted.

(G) In addition, the moving papers in support of such an application shall include, if available, records related to the underlying conviction, including, but not limited to, copies of all complaints, applications for assignment of counsel, waiver forms and transcripts of the defendant's first appearance, entry of guilty plea and all other municipal court proceedings related to the conviction sought to be challenged. The petitioner shall account for any unavailable records by way of written documentation from the municipal court administrator or the custodian of records, as the case may be.

(3) Amendments of the petitions shall be liberally allowed. Assigned counsel may, as a matter of course, serve and file an amended petition within 25 days after assignment. Within 30 days after service of a copy of the petition or amended petition, the municipal prosecutor shall serve and file an answer to the petition or move on ten days' notice for dismissal. If the motion for dismissal is denied, the government's answer shall be filed within fifteen days after entry of the order denying the dismissal.

(4) A defendant in custody shall be present in court if oral testimony is adduced on a material issue of fact within the defendant's personal knowledge. A defendant in custody may otherwise be present in court only in the judge's discretion.

(5) In making a final determination on a petition, either on motion for dismissal or after hearing, the court shall state separately its findings of fact and conclusions of law and shall enter judgment or sentence in the conviction proceedings and any appropriate provisions as to rearraignment, retrial, custody, bail, discharge, correction of sentence or as may otherwise be required.

(g) Petition to Obtain Relief from an Enhanced Custodial Term Based on a Prior Uncounselled Conviction

(1) Venue. A post-conviction petition to obtain relief from an enhanced custodial term based on a prior conviction in which a defendant was not represented by counsel and not advised of the right to counsel or, if indigent, of the right to have counsel assigned shall be brought in the court where the prior conviction was entered.

(2) Time for Filing. A petition seeking relief under this paragraph may be filed at any time.

(3) Procedure. A petition for post-conviction relief sought under this paragraph shall be in writing and shall conform to the requirements of R. 7:10-2(f). In addition, the moving papers in support of such an application shall include, if available, records related to the underlying conviction, including, but not limited to, copies of all complaints, applications for assignment of counsel, waiver forms and transcripts of the defendant's first appearance, entry of guilty plea and all other municipal court proceedings related to the conviction sought to be challenged. The petitioner shall account for any unavailable records by way of written documentation from the municipal court administrator or the custodian of records, as the case may be.

(4) Grounds. A post-conviction petition to obtain relief from an enhanced custodial term based on a prior conviction is cognizable only where a defendant was not represented by counsel and was not advised of the right to counsel or, if indigent, of the right to have counsel assigned.

(5) Appeal. Appeals from a denial of post-conviction relief from the effect of a prior conviction shall be combined with any appeal from proceedings involving the repeat offense. Appeals by the State may be taken under R. 3:23-2(a).

Note: Source-Paragraph (a): R. (1969) 3:22-1; paragraph (b)(1),(2): R. (1969) 3:22-12; paragraph (b)(3): R (1969) 3:22-3; paragraph (c): R. (1969) 7:8-1, 3:22-2; paragraph (d)(1): R. (1969) 3:22-4; paragraph (d)(2): R. (1969) 3:22-5; paragraph (e): R. (1969) 3:22-6(a),(c),(d); paragraph (f)(1): R. (1969) 3:22-7; paragraph (f)(2): R. (1969) 3:22-8; paragraph (f)(3): R. (1969) 3:22-9; paragraph (f)(4): R. (1969) 3:22-10; paragraph (f)(5): R. (1969) 3:22-11. Adopted October 6, 1997 to be effective February 1, 1998; new subparagraph (f)(2)(G) and new paragraph (g) adopted June 15, 2007 to be effective September 1, 2007; paragraph (g)(2) amended July 16, 2009 to be effective September 1, 2009; paragraph (g)(2) caption and text amended August 7, 2019 to be effective immediately; paragraph (g) caption amended, subparagraph (g)(1) and (g)(3) amended, new subparagraph (g)(4) added, and former subparagraph (g)(4) redesignated as subparagraph (g)(5) August 4, 2023 to be effective September 1, 2023.

RULE 7:11. SUMMARY PROCEEDINGS FOR COLLECTION OF STATUTORY PENALTIES [DELETED]

7:11-1. [Deleted]

Note: Source-R. (1969) 7:9, 4:70-1(a). Adopted October 6, 1997 to be effective February 1, 1998; rule deleted July 28, 2004 to be effective September 1, 2004.

7:11-2. [Deleted]

Note: Source-R. (1969) 7:9, 4:70-2. Adopted October 6, 1997 to be effective February 1, 1998; rule deleted July 28, 2004 to be effective September 1, 2004.

7:11-3. [Deleted]

Note: Source-R. (1969) 7:9, 4:70-3. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; rule deleted July 28, 2004 to be effective September 1, 2004.

7:11-4. [Deleted]

Note: Source-R. (1969) 7:9, 4:70-4. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; rule deleted July 28, 2004 to be effective September 1, 2004.

7:11-5. [Deleted]

Note: Source-R. (1969) 7:9, 4:70-5. Adopted October 6, 1997 to be effective February 1, 1998; rule deleted July 28, 2004 to be effective September 1, 2004.

RULE 7:12. TRIAL OF TRAFFIC OFFENSES

7:12-1. Trial Date; Adjournment

The date fixed for the trial of any traffic offense shall be not less than five days from the date of its commission unless the defendant, having been informed of the right to such trial date, waives it and the court in its discretion fixes an earlier date. If a hearing is adjourned, the court shall inform the defendant of the adjourned date and of the consequences of failure to appear on that adjourned date.

Note: Source-R. (1969) 7:6-4. Adopted October 6, 1997 to be effective February 1, 1998; amended July 29, 2019 to be effective September 1, 2019.

7:12-2. Calendar Parts; Sessions

Insofar as practicable, traffic offenses shall be tried separate and apart from other offenses. Except for good cause shown, if a court sits in parts and one part sits in daily session and has been designated as a traffic court, traffic offenses shall be tried in that part only, or if a court has designated a particular session, which may be an evening session, as the traffic session, traffic offenses shall be tried in that session. If there is neither a special part nor a special session, the court shall designate the time for a trial of traffic offenses. The Administrative Director of the Courts may, where necessary, direct a court to hold more frequent traffic sessions or to coordinate the sessions held by the court with those regularly scheduled by any other municipal court judges in the county.

Note: Source-R. (1969) 7:6-5. Adopted October 6, 1997 to be effective February 1, 1998.

7:12-3. Pleas of Not Guilty and Pleas of Guilty by Mail or in an Electronic System in Certain Traffic or Parking Offenses

(a) Entry of Pleas by Mail or in an Electronic System; Limitations. In all traffic or parking offenses, except as limited below, the judge may permit the defendant to enter a guilty or not guilty plea and submit a defense for use at trial by mail or in an electronic system

approved by the Administrative Director of the Courts. This procedure shall not be available in the following types of cases:

(1) traffic offenses or parking offenses that require the imposition of a mandatory loss of driving privileges on conviction;

(2) traffic offenses or parking offenses involving an accident that resulted in personal injury to anyone other than the defendant;

(3) traffic offenses or parking offenses that are related to non-traffic matters that are not resolved;

(4) any other traffic offense or parking offense when excusing the defendant's appearance in municipal court would not be in the interest of justice.

(b) Plea of Guilty by Mail or in the Electronic System - Acknowledgments, Waiver and Certification.

(1) In those cases in which a defendant may enter a plea of guilty to a traffic offense or parking offense by mail or in the electronic system, the plea shall include:

(A) an acknowledgment that defendant committed the traffic violation or parking offense to which the defendant is pleading guilty and a factual basis for the plea;

(B) a waiver of the defendant's right to contest the case at a trial, the right to appear personally in court and, if unrepresented by an attorney, the right to be represented by an attorney;

(C) an acknowledgment by the defendant that the plea of guilty is being entered voluntarily with understanding of the nature of the charge and the consequences of the plea;

(2) In those cases in which an attorney submits a plea of guilty on behalf of the defendant through the electronic system, the plea shall include a certification signed by the defendant that recites the terms of the plea; specifies that the defendant has reviewed those terms; establishes a factual basis for the plea; and establishes that the plea of guilty is being entered voluntarily with understanding of the nature of the charge and the consequences of the plea.

(3) A plea of guilty to a traffic offense or parking offense by mail or in the electronic system may also include a statement for the court to consider when determining the appropriate sentence.

(c) Plea of Not Guilty by Mail or in the Electronic System

(1) In those cases in which a defendant may enter a plea of not guilty to a traffic offense or parking offense and submit any defense to the charge(s) by mail or in the electronic system, the not guilty plea and defense shall include the following:

(A) A waiver of the defendant's right to appear personally in court to contest the charge(s) and, if unrepresented by an attorney, a waiver of the right to be represented by an attorney;

(B) Any factual or legal defenses that the defendant would like the court to consider;

(2) A defense to a traffic offense or parking offense submitted by mail or in the electronic system may also include a statement for the court to consider when deciding on the appropriate sentence in the event of a finding of guilty.

(d) Forms. Any forms necessary to implement the provisions of this rule shall be approved by the Administrative Director of the Courts.

(e) Scheduling and Judgment. (1) For guilty pleas submitted in the electronic system in matters that require review by the municipal prosecutor, the court shall enter the disposition in the electronic system. The matter may be scheduled for disposition on the record in open court at the discretion of the municipal court judge. (2) For not guilty pleas submitted in the electronic system in matters that require review by the municipal prosecutor, the court shall schedule the matter to be heard on the record in open court. (3) For not guilty and guilty pleas submitted on a manual plea by mail form or in the electronic system that do not involve the municipal prosecutor's review, the court shall schedule the matter to be heard on the record in open court. (4) The court shall send a copy of its decision by ordinary mail or through the electronic system to the defendant, the complaining witness, and attorneys who have entered an appearance.

Note: Source-R. (1969) 7:6-6. Adopted October 6, 1997 to be effective February 1, 1998; caption amended, paragraph (a) caption and text amended, former paragraph (b) amended and redesignated as paragraph (c), and new paragraph (b) adopted July 28, 2004 to be effective September 1, 2004; caption of rule amended, captions and text of former paragraphs (a) and (b) deleted, former paragraph (c) redesignated as paragraph (e) and amended, and new paragraphs (a), (b), (c), and (d) adopted June 15, 2007 to be effective September 1, 2007; paragraph (a) amended July 16, 2009 to be effective September 1, 2009; paragraph (a) amended July 9, 2013 to be effective September 1, 2013; caption amended, caption and text of paragraph (a) amended, paragraphs (a) (b) (c) caption and text amended, paragraph (e) caption amended and text replaced July 30, 2021 to be effective September 1, 2021.

7:12-4. Violations Bureau; Designation; Functions

(a) Establishment. If the court determines that the efficient disposition of its business and the convenience of defendants so requires, it may establish a violations bureau and designate the violations clerk. The violations clerk may be the municipal court administrator, the deputy court administrator, other employee of the court, or, with the prior approval of the Supreme Court, any other appropriate official or employee of the municipality, except any elected official or any officer or employee of a police department in the municipality in which the court is held. If no municipal official or employee of the municipality is available, any other suitable and responsible person may be appointed subject to the prior approval of the Supreme Court. The judge designated to preside over a joint or central municipal court may establish a violations bureau. The violations clerk may be the municipal court administrator, the deputy court administrator, other employee of the joint or central municipal court, or, with the prior approval of the Supreme Court, any other

appropriate official or employee of the municipality in the instance of a central municipal court or of any of the municipalities comprising the joint municipal court, except any elected official or any officer or employee of a police department in the municipality in which the court is held. If no such municipal official or employee is available, any other suitable and responsible person may be appointed subject to the prior approval of the Supreme Court. The violations clerk shall accept appearances, waiver of trial, pleas of guilty and payments of fines and costs in non-indictable offenses, subject to the limitations as provided by law or Part VII of the Rules of Court or the Statewide Violations Bureau Schedule approved by the Administrative Director of the Courts. The violations clerk shall serve under the direction and control of the designating court.

(b) Location. Whenever practical, the violations bureau shall be in a public building. The location shall be designated by the court subject to the approval of the Administrative Director of the Courts, and the violations clerk shall take pleas and accept payment of fines and costs only at such location. An appropriate sign reading "Violations Bureau,_____ Municipal Court" shall be posted at the entrance to the violations bureau.

(c) Designated Offenses; Schedule of Penalties. The court shall establish by order a "Local Supplemental Violations Bureau Schedule", which may from time to time be amended, supplemented or repealed, designating the non-indictable offenses within the authority of the violations clerk, provided that such offenses shall not include:

(1) non-parking traffic offenses requiring an increased penalty for a subsequent violation;

(2) offenses involving traffic accidents resulting in personal injury;

(3) operation of a motor vehicle while under the influence of intoxicating liquor or a narcotic or habit-producing drug or permitting another person who is under such influence to operate a motor vehicle owned by the defendant or in his or her custody or control;

(4) reckless driving;

(5) careless driving where there has been an accident resulting in personal injury;

(6) leaving the scene of an accident;

(7) driving while on the revoked list; or

(8) driving without a valid driver's license.

The Local Supplemental Violations Bureau Schedule shall be submitted to and approved by the Assignment Judge of the county in which the court is located. It shall specify the amount of fines, costs and statutory penalties to be imposed for each offense within the authority of the violations clerk, including, in the discretion of the court, higher fines, costs and penalties for second and subsequent offenses, provided such fines, costs and penalties are within the limits declared by statute or ordinance. The Statewide Violations Bureau Schedule and the Local Supplemental Violations Bureau Schedule shall be posted for public view at the violations bureau.

(d) Plea and Payment of Fines, Costs and Penalties. A person charged with an offense within the authority of the violations clerk, may, upon ascertaining the fines, costs and penalties established by the Statewide Violations Bureau Schedule or Local Supplemental Violations Bureau Schedule for the offense charged, pay the same, either by mail or in person, to the violations clerk on or before the return date of the summons, provided that when the summons is marked to indicate that a court appearance is required, payment may not be made to the violations clerk even though the offense is on the Statewide Violation Bureau Schedule or Local Supplemental Violations Bureau Schedule. The tender of payment for an offense to the Violations Bureau, without a signed guilty plea and waiver, may be accepted by the clerk, and shall have the effect of a guilty plea. The court may process the payment and enter a guilty finding to the offense on its records. That finding shall be subject to being reopened subject to R. 7:10-1, in the court's discretion, on motion by either the court or the defendant. If the defendant is a corporation, partnership, or unincorporated association, the plea and waiver may be signed or payment may be made on its behalf by any of its agents or employees. The court in its discretion may authorize the violations clerk to accept such plea and payment after the return date of the summons.

Note: Source-Paragraph (a): R. (1969) 7:7-1; paragraph (b): R. (1969) 7:7-2; paragraph (c): R. (1969) 7:7-3; paragraph (d): R. (1969) 7:7-4. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (d) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended June 15, 2007 to be effective September 1, 2007; paragraph (a) amended July 16, 2019 to be effective immediately.

RULE 7:13. APPEALS

7:13-1. Appeals

Appeals shall be taken in accordance with R. 3:23, 3:24, and 4:74-3, and in extraordinary cases and in the interest of justice, in accordance with R. 2:2-3(c).

Note: Source-R. (1969) 7:8-1. Adopted October 6, 1997 to be effective February 1, 1998; amended July 28, 2004 to be effective September 1, 2004; amended July 19, 2012 to be effective September 4, 2012; amended August 5, 2022 to be effective September 1, 2022.

7:13-2. Stay

Notwithstanding R. 3:23-5, a sentence or a portion of a sentence may be stayed by the court in which the conviction was had or to which the appeal is taken on such terms as the court deems appropriate.

Note: Source-R. (1969) 7:8-2. Adopted October 6, 1997 to be effective February 1, 1998; amended June 15, 2007 to be effective September 1, 2007.

7:13-3. Reversal; Remission of Fine and Costs

A fine or a fine and costs paid pursuant to a judgment of conviction and disbursed by the court in accordance with R. 7:14-4(a) shall be remitted by the recipient of that money to the defendant or

defendant's attorney upon service on the recipient of a copy of the order reversing the judgment.

Note: Source-R. (1969) 7:8-3. Adopted October 6, 1997 to be effective February 1, 1998.

RULE 7:14. GENERAL PROVISIONS; ADMINISTRATION

7:14-1. Opening Statement

(a) Required Opening Statement. The judge shall give an opening statement prior to the commencement of the court session concerning court procedures and rights of defendants. This statement shall not, however, be a substitute for the judge advising individual defendants of their rights prior to their respective hearings.

(b) Notice to Defendant on Guilty Plea. Before accepting a plea of guilty to a traffic offense, other than a parking offense, and as part of the opening statement, the court shall inform the defendant that a record of the conviction will be sent to the Director of the Division of Motor Vehicles of this State or the Commissioner of Motor Vehicles of the state issuing defendant's license to drive, to become a part of the defendant's driving record.

(c) Notification of Right to Appeal. Regardless of whether the defendant pleads guilty or is found guilty after a trial, the court, as part of the opening statement, shall advise each defendant of the right to appeal and, if indigent, of the right to appeal as an indigent.

Note: Source-Paragraph (a): R. (1969) 7:4-4(d); paragraph (b): R. (1969) 7:6-7; paragraph (c): R. (1969) 3:21-4(g). Adopted October 6, 1997 to be effective February 1, 1998.

7:14-2. Amendment of Process or Pleading

The court may amend any process or pleading for any omission or defect therein or for any variance between the complaint and the evidence adduced at the trial, but no such amendment shall be permitted which charges a different substantive offense, other than a lesser included offense. If the defendant is surprised as a result of such amendment, the court shall adjourn the hearing to a future date, upon such terms as the court deems appropriate.

Note: Source-R. (1969) 7:10-2. Adopted October 6, 1997 to be effective February 1, 1998.

7:14-3. Court Calendar

(a) Court Calendar. At each court session, to the extent possible the court shall give priority to attorney matters that are summary in nature. Other cases should be called in the following order, subject to the court's discretion:

(1) requests for adjournments;
(2) guilty pleas and first appearances;
(3) pretrial conferences;
(4) uncontested motions;
(5) contested matters with attorneys;
(6) noncompliance with time payment issues;

(7) contested matters without attorneys;

(8) matters to be placed on the record.

(b) Scheduling of Cases. Courts shall stagger the scheduling of cases, where necessary, in order to limit inconvenience to all parties.

Note: Source-R. (1969) 7:10-3. Adopted October 6, 1997 to be effective February 1, 1998; caption amended, paragraph (a) amended, former paragraph (b) deleted, and new paragraph (b) adopted July 21, 2011 to be effective September 1, 2011.

7:14-4. Financial Control

(a) Fines and Forfeitures. Moneys received by a court as fines or forfeitures, together with the financial reports covering such funds, shall be forwarded by the court on or before the fifteenth day of each month as follows:

(1) To the custodian of the funds of the municipality where such moneys were received in the course of enforcing municipal ordinances or local regulations, if assessed and collected by the municipal court or to the custodian of the funds of the municipality in which the violation occurred, if assessed and collected by the Special Civil Part of the Superior Court.

(2) To the custodian of the funds of the municipality or of the county, or to such state agency or officer, as the case may be, where the money was collected in the course of enforcing state laws and regulations, as provided by law.

(b) Receipts and Disbursements. The court shall keep an accurate account of all fees, costs and moneys received, as well as of any money disbursed and to whom disbursed. Receipts shall be turned over to the appropriate municipal, county or state finance officer, or deposited as soon after receipt as practical, in a bank or banks authorized to do business in this State. No disbursement shall be made except by check drawn on such bank. The court shall issue or cause to be issued and shall obtain a receipt in the form and manner prescribed by the Administrative Director of the Courts in every instance where money is received or disbursed.

(c) Electronic Payments of Court Fees and Financial Obligations. The various municipal, central and joint municipal courts may accept electronic payments for fees, costs, fines, penalties, service charges or other judicially imposed financial obligations pursuant to conditions and administrative procedures established by the Administrative Director of the Courts.

(d) Payment of Moneys Due. No moneys due the court, its employees, or any persons attending upon it, for salaries, fees, costs or other charges shall be deducted from receipts, but shall be paid only on a voucher submitted by the court to the appropriate finance officer.

(e) Docket; Fiscal Forms and Procedures; Record-Keeping. The court shall maintain such separate dockets in such form as the Administrative Director of the Courts prescribes. All fiscal forms, procedures and record-keeping shall conform to the requirements of the Administrative Director of the Courts.

Note: Source-R. (1969) 7:10-4. Adopted October 6, 1997 to be effective February 1, 1998.

7:14-5. Oath of Municipal Court Judge

Before entering upon the duties of the office, the oath of office of a municipal court judge shall be taken before a judge of the Superior Court. The original shall be filed with the municipal court administrator and a copy of the original filed with the Administrative Director of the Courts.

Note: Source-R. (1969) 7:10-5. Adopted October 6, 1997 to be effective February 1, 1998.

APPENDIX TO PART VII

APPENDIX TO PART VII

GUIDELINES FOR OPERATION OF PLEA AGREEMENTS IN THE MUNICIPAL COURTS OF NEW JERSEY

GUIDELINE 1. Purpose. The purpose of these Guidelines is to allow for flexibility in the definitions and exclusions relating to the plea agreement process as that process evolves and certain offenses come to demand lesser or greater scrutiny.

GUIDELINE 2. Definitions. For the purpose of these Guidelines, a plea agreement occurs in a Municipal Court matter whenever the prosecutor and the defense agree as to the offense or offenses to which a defendant will plead guilty on condition that any or all of the following occur:

(a) the prosecutor will recommend to the court that another offense or offenses be dismissed,

(b) the prosecutor will recommend to the court that it accept a plea to a lesser or other offense (whether included or not) than that originally charged,

(c) the prosecutor will recommend a sentence(s), not to exceed the maximum permitted, to the court or remain silent at sentencing,

GUIDELINE 3. Prosecutor's Responsibilities. Nothing in these Guidelines should be construed to affect in any way the prosecutor's discretion in any case to move unilaterally for an amendment to the original charge or a dismissal of the charges pending against a defendant if the prosecutor determines and personally represents on the record the reasons in support of the motion. The prosecutor shall also appear in person to set forth any proposed plea agreement on the record. However, with the approval of the municipal court judge, in lieu of appearing on the record, the prosecutor may submit to the court a Request to Approve Plea Agreement, on a form approved by the Administrative Director of the Courts, signed by the prosecutor and by the defendant. When a plea agreement has been reached between the defendant and prosecutor in the Judiciary's electronic system, the prosecutor shall submit any proposed amended or dismissed charge and plea agreement electronically in that system. Nothing in this Guideline shall be construed to limit the court's ability to order the prosecutor to appear at any time during the proceedings

GUIDELINE 4. PUB. NOTE: All of Guideline 4 was withdrawn by Order dated February 23, 2024.

Note further the relaxation of the Appendix by Order dated December 18, 2019 and reconfirmed by Order dated June 27, 2023 permitting plea agreements in post-conviction relief cases affected by State v. Cassidy, 235 N.J. 482 (2018).

COMMENT

Over the years, various unique practices and procedures have evolved in connection with the disposition of Municipal Court cases. Thus, it is the intent of these Guidelines to define regulated plea agreements as including every common practice that has evolved as a subterfuge for plea agreements. Therefore, for the purpose of these Guidelines, a plea agreement shall include all of those traditional practices, utilized by prosecutors and defense counsel, including "merger", "dismissal", "downgrade" or "amendment." Generally, "mergers" involve the dismissal of lesser-included or related offenses when a defendant pleads to the most serious offense. "Dismissals" involve motions to dismiss a pending charge

or plea agreement when the municipal prosecutor determines, for cause (usually for insufficient evidence), that the charge should be dismissed. "Downgrades" or "amendments" involve the taking of a plea to a lesser or included offense to that originally charged.

Plea agreements are to be distinguished from the discretion of a prosecutor to charge or unilaterally move to dismiss, amend or otherwise dispose of a matter. It is recognized that it is not the municipal prosecutor's function merely to seek convictions in all cases. The prosecutor is not an ordinary advocate. Rather, the prosecutor has an obligation to defendants, the State and the public to see that justice is done and truth is revealed in each individual case. The goal should be to achieve individual justice in individual cases.

In discharging the diverse responsibilities of that office, a prosecutor must have some latitude to exercise the prosecutorial discretion demanded of that position. It is well established, for example, that a prosecutor should not prosecute when the evidence does not support the State's charges. Further, the prosecutor should have the ability to amend the charges to conform to the proofs.

Note: Guidelines and Comment adopted June 29, 1990, simultaneously with former Rule 7:4-8 ("Plea Agreements") to be effective immediately; as part of 1997 recodification of Part VII rules, re-adopted without change as Appendix to Part VII and referenced by Rule 7:6-2 ("Pleas, Plea Agreements"), October 6, 1997 to be effective February 1, 1998; Guideline 4 amended July 5, 2000 to be effective September 5, 2000; Guidelines 3 and 4 amended July 28, 2004 to be effective September 1, 2004; Guideline 4 amended June 7, 2005 to be effective July 1, 2005; Guideline 4 amended June 15, 2007 to be effective September 1, 2007; Guideline 3 amended July 16, 2009 to be effective September 1, 2009; Guideline 3 amended July 30, 2021 to be effective September 1, 2021; Guideline 4 amended August 4, 2023 to be effective September 1, 2023.

APPENDIX TO PART VII

GUIDELINES FOR DETERMINATION OF CONSEQUENCE OF MAGNITUDE (SEE RULE 7:3-2)

On October 6, 1997, the Supreme Court adopted the Comprehensive Revision of Part VII of the Rules of Court to be effective on February 1, 1998. R. 7:3-2 of that Comprehensive Revision provides for the assignment of counsel "if the court is satisfied that the defendant is indigent and that the defendant faces a consequence of magnitude or is otherwise constitutionally or by law entitled to counsel...." The Supreme Court directed that guidelines for the determination of a consequence of magnitude be developed by the Supreme Court Municipal Court Practice Committee to assist municipal court judges in deciding what factors should be considered when determining a consequence of magnitude.

In response to this direction, the Supreme Court Municipal Court Practice Committee developed the following set of guidelines. The Supreme Court, as recommended by the Committee, has included the guidelines as an Appendix to the Part VII Rules.

In determining if an offense constitutes a consequence of magnitude in terms of municipal court sentencing, the judge should consider the following:

(1) Any sentence of imprisonment;

(2) Any period of (a) driver's license suspension, (b) suspension of the defendant's non-resident reciprocity privileges or (c) driver's license ineligibility; or

(3) Any monetary sanction imposed by the court of $800 or greater in the aggregate, except for any public defender application fee or any costs imposed by the court. A monetary sanction is defined as the aggregate of any type of court imposed financial obligation, including fines, restitution, penalties and/or assessments.

It should be noted that if a defendant is alleged to have a mental disease or defect, and the judge, after examination of the defendant on the record, agrees that the defendant may have a mental disease or defect, the judge shall appoint the municipal public defender to represent that defendant, if indigent, regardless of whether the defendant is facing a consequence of magnitude, if convicted.

Note: Guidelines adopted July 28, 2004 to be effective September 1, 2004; amended July 22, 2014 to be effective September 1, 2014.