ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

PHILIP S. CARCHMAN, P.J.A.D.
ACTING ADMINISTRATIVE DIRECTOR OF THE COURTS

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[Questions or comments may be directed to 609-984-8241]

DIRECTIVE #02-08

[Supersedes Directive #21-79 in Part]

TO: Assignment Judges
Presiding Judges – Municipal Courts
Municipal Court Judges
Trial Court Administrators
Municipal Division Managers
Municipal Court Directors and Court Administrators

FROM: Philip S. Carchman, PJ.A.D.

SUBJ: Procedures for the Dismissal of Municipal Court Complaints and Voiding Uniform Traffic Tickets and Special Forms of Complaints

DATE: February 25, 2008

This directive restates and consolidates existing procedures for dismissal and voiding of municipal court complaints. These procedures are drawn from a number of sources, including the Rules of Court, case law, several editions of the Municipal Court Procedures Manual (1979, 1983, 1985), various Municipal Court Bulletin Letters, as well as Directive #21-79, which this directive thus supersedes in part. This directive also sets forth the procedures to be followed by a municipal court when a complaint is issued to a judge or employee of that court or an immediate family member of a judge or employee of that court.

Dismissal of Complaints

All dismissals of complaints heard in the municipal courts shall be made on the record in open court, just as all other dispositions are made on the record in open court. In dismissing any matter, including parking tickets, the municipal court judge shall state on the record the complaint number, the charge, the defendant's name, if known, and the reasons for the dismissal. Further, the prosecutor must be given notice of all dismissals, with an opportunity to be heard. Dismissals shall be entered into the ATS/ACS system using the appropriate finding and method of disposition codes.

Occasionally, a law enforcement officer requests that a complaint be dismissed that he or she has written and signed. For example, an officer may have completed and signed a ticket for failure to produce a driver's license, but then the driver finds the license at the scene and the officer does not want to proceed with prosecution of the complaint. In such circumstance, the officer shall give a certification to the municipal prosecutor explaining the reasons for the request to dismiss. The certification must be approved and signed by the officer's superior officer. When requesting that a complaint be dismissed, the officer shall use the attached certification form, "Request to Dismiss or Void Complaint." All copies of the original complaint (except the defendant's copy) should be submitted to the municipal court, along with a copy of the officer's certification. The municipal court judge shall review the ticket and the certification. The prosecutor shall place his or her position regarding the dismissal on the record in person or, if the judge permits, the prosecutor may record his or her position on the officer's certification form. If the judge grants the dismissal request, the judge shall dismiss the ticket by placing on the record in open court the complaint number, the charge, the defendant's name (if known), the reasons for the dismissal, including either reading or summarizing the officer's certification. Defendant need not appear in court when the dismissal is put on the record.

When dismissing large numbers of parking tickets, such as under R. 7:8-9(f) (dismissal of parking tickets over three years old), rather than reading all the information on each ticket into the record, the judge may place into the record a report containing that information, referencing the name and date of the report.

In addition to the above requirements, a judge must continue to follow the specialized dismissal procedures found in R. 7:2-4(c) for dismissal of complaints for failure of service of process and those procedures set forth in the Administrative Director's December 2, 2004 memorandum on dismissal of drunk driving cases (attached).

Voided Tickets or Special Forms of Complaint

There has been some confusion recently as to the difference between "dismissed tickets" and "voided tickets." In general, a traffic ticket or special form of complaint and summons (collectively referred to in this directive as "a ticket") that has been signed by a law enforcement officer cannot be voided. It may only be dismissed for an appropriate reason. An incomplete ticket — that is, a ticket that has not been signed by the officer — may be voided using the procedure described below. When asking that a ticket be voided (except for superseded tickets), the officer shall use the attached certification form, "Request to Dismiss or Void Complaint."

Ticket control is a vital function of the municipal courts and all blank tickets distributed to law enforcement officers must always be accounted for. **Tickets may be**

voided only in the following limited circumstances (see below for the voiding process as to each):

1. Incomplete tickets -- that is, tickets that have been partially completed and not signed. For example, a ticket on which an officer entered an incorrect license plate number, did not sign that ticket, and then issued a replacement ticket for the same offense. A replacement ticket is not always necessary, however. For example, a parking ticket that an officer begins to write and then realizes that parking is allowed at that location on Sundays; the officer does not complete the ticket and does not write a replacement ticket.

2. Lost tickets.

3. Spoiled, unusable tickets. For example, tickets that are pocket-worn, stained, or otherwise ruined.

4. Superseded tickets due to changes in the Uniform Traffic Ticket or the Special Form of Complaint. For example, traffic tickets that cannot be used because there has been a change in the preprinted payable amount.

1. Incomplete Tickets

For incomplete tickets, the officer shall file with the municipal court all copies of the incomplete ticket and the replacement ticket, if any, accompanied by the certification form ("Request to Dismiss or Void Complaint)", signed by the officer and approved and signed by a superior officer, explaining the circumstances of the incomplete ticket. The municipal court judge shall review the incomplete ticket, the replacement ticket, if any, and the certification. If the judge decides to grant the application, the judge shall void the ticket in open court, placing on the record the ticket number, the charge, the defendant's name (if known), the number of the replacement ticket, if any, and the reason for voiding. The judge then shall date and sign the incomplete ticket with a notation of his or her approval of the requests and mark the ticket "void." The judge then shall proceed to adjudicate the replacement ticket, if any. The court administrator or court staff shall enter the void information into the ATS system and shall file the voided incomplete ticket with the judge's signature and notations in the master file with the officer's certification attached.

A judge shall not void an incomplete ticket if the ticket has been signed, if defendant has been served with the ticket, or if the officer's explanation involves matters of defense, interpretation of the law or mitigating circumstances. In these instances, the case must be adjudicated, either through a dismissal or otherwise.

2. Lost Tickets

For lost tickets, the officer shall present to the municipal court a certification form ("Request to Dismiss or Void Complaint") signed by the officer and approved and signed by a superior officer, explaining how the tickets were lost. The municipal court judge shall review the certification and, if satisfied, shall void the lost tickets on the record in open court. The judge shall also sign and date the officer's certification. The court administrator or court staff shall enter the void information into the ATS system and shall file the officer's certification in the master file, in the position where the lost tickets would have been placed.

3. Spoiled Tickets

For spoiled, unusable tickets, the officer shall return to the court all copies of the tickets, accompanied by the completed certification form ("Request to Dismiss or Void Complaint"), signed by the officer and approved and signed by a superior officer, explaining what happened to make the tickets unusable. The judge shall void the spoiled, unusable tickets by placing on the record the ticket numbers of the spoiled tickets and the reasons they are spoiled. The court administrator or court staff shall enter the void information into the ATS system and file those voided spoiled tickets in the master file along with the officer's certification.

4. Superseded Tickets

For tickets returned due to changes in the approved ticket form, no certification is needed from the officer. The court administrator or court staff shall enter the void information into the ATS system and place the superseded tickets in a separate, clearly identified file. The superseded tickets shall be destroyed according to the Judiciary record retention schedule, Directive #3-01. There is no need to void superseded tickets on the record.

Disposition of Complaints Issued to Municipal Court Judges or Court Employees

A municipal court shall not dispose of a complaint issued to a judge or an employee of that municipal court or to an immediate family member of a judge or employee of that municipal court, except if the matter is disposed of without any court appearance through the violations bureau. When the Assignment Judge receives notification of any such complaint – pursuant to Directives #4-81 (as to municipal court judges), #3-08 (as to municipal court employees and their immediate family members), or #4-08 (as to the immediate family members of municipal court judges) – the Assignment Judge will take appropriate action to reassign or transfer the case to a Superior Court Judge, to the Presiding Municipal Court Judge of that vicinage, or to

such other judge as designated by the Assignment Judge. If a municipal court judge or municipal court staff learns that, notwithstanding this transfer requirement, a municipal court is hearing or otherwise processing a complaint issued to a judge or an employee of that municipal court or to an immediate family member of a judge or employee of that municipal court (whether because the judge or employee failed to notify the Assignment Judge as required or for any other reason), then the municipal court shall stop such hearing or processing of the complaint and shall notify the Assignment Judge of the complaint immediately. The Assignment Judge need not be notified if the judge or employee paid through the violations bureau without any court appearance.

Any questions regarding this directive should be directed to Assistant Director Robert Smith (Municipal Court Services Division) at 609-984-8241.

P.S.C.

Attachments

cc: Chief Justice Stuart Rabner
Attorney General Anne M. Milgram
Theodore J. Fetter, Deputy Administrative Director
AOC Directors and Assistant Directors
John Podeszwa, Municipal Court Services
John J. Wieck, Criminal Practice Division
Carol A. Welsch, Municipal Court Services
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant

REQUEST TO DISMISS OR VOID COMPLAINT

ALL DISMISSALS AND VOIDS TO BE PLACED ON THE RECORD IN OPEN COURT, PER DIRECTIVE #02-08

Municipal Court of _____

FORM TO BE DISMISSED OR VOIDED:

☐ **Uniform Traffic Ticket #**_____

☐ **Special Form of Complaint #**_____

☐ **CDR #**_____

CHECK <u>ONE</u> BOX ONLY:

☐ **DISMISSAL REQUEST: The undersigned has issued the above referenced ticket or complaint and requests that the ticket or complaint be DISMISSED because:**

_____
_____
_____

☐ **VOID REQUEST: The undersigned states that the above ticket or complaint was spoiled, not completed or lost and requests that it be VOIDED because:**

_____
_____
_____

Replacement ticket/complaint number(s), if any:

CERTIFICATION:

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

_____ _____

Date of Request Signature & Badge # of Officer/Requestor

OFFICER SUPERVISOR REVIEW:

I have reviewed and approved the above request to **dismiss** or **void** the above complaint.

_____ _____

Date of Review Signature of Police Chief (or Supervisor)

REVIEW REQUEST TO DISMISS BY MUNICIPAL PROSECUTOR:

☐ **DISMISSAL RECOMMENDED**

_____ _____

Date Municipal Court Prosecutor

(1) All copies of the Uniform Traffic Ticket/Special Form of Complaint/CDR to be VOIDED MUST be attached to this request.
(2) All copies (EXCEPT defendant copy) of the Uniform Traffic Ticket/Special Form of Complaint/CDR MUST be attached to the DISMISSAL request.
(3) Officer may retain photocopy of request for police records.
(4) Municipal Prosecutor may retain copy for prosecutor records.

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MEMORANDUM

TO: **Municipal Court Judges**

FROM: **Philip S. Carchman, J.A.D.**

SUBJ: **Sample Questions for Use in Drunk Driving Cases**

DATE: **December 2, 2004**

Attached is a series of sample questions that a judge should ask on the record when a prosecutor has moved to dismiss or amend a drunk driving charge (N.J.S.A. 39:4-50, driving while intoxicated). The Conference of Presiding Judges-Municipal Courts developed these questions, which are designed to establish a record and thereby prevent an improper dismissal or amendment of a N.J.S.A. 39:4-50 charge. These questions are intended as a guide, so you need not ask the prosecutor the questions exactly as written. You are expected, however, to ask these or similar questions and any additional questions necessary to establish, on the record, the prosecutor's detailed reasons for requesting a dismissal or amendment.

If you have any questions about this memorandum, please contact your Vicinage Municipal Court Presiding Judge or Municipal Division Manager.

Attachment

cc: Deborah T. Poritz, Chief Justice
Peter C. Harvey, Attorney General
Assignment Judges
Criminal Presiding Judges
Presiding Judges-Municipal Courts
Theodore J. Fetter, Deputy Administrative Director
AOC Directors and Assistant Directors
Trial Court Administrators
Criminal Division Managers
Municipal Division Managers
Municipal Court Directors and Administrators
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant
Carol A. Welsch, Esq., Municipal Court Services

SAMPLE QUESTIONS
ON MOTIONS BY PROSECUTOR
TO DISMISS OR AMEND A DRUNK DRIVING CASE

The following are sample questions that Municipal Court Judges should consider in questioning the municipal prosecutor when the prosecutor seeks to dismiss or amend a drunk driving offense.

1. **Why do you wish to dismiss or amend the charges?**

   A general statement by the prosecutor that asserts only a conclusion that the State cannot prove the charge beyond a reasonable doubt is insufficient. The prosecutor must state on the record the specific reasons why the case cannot be proven beyond a reasonable doubt. The prosecutor should provide the court with a detailed explanation of the reasons the case cannot be proven. For example, the prosecutor saying, "I cannot prove operation," is insufficient. The prosecutor needs to set forth, on the record, specific reasons why operation cannot be proven. The court should be prepared to question the prosecutor in detail on any assertion made by the prosecutor.

2. **Did you review the police reports and any videotape and discuss the case with the arresting police officer?**

   If the prosecutor indicates that the police reports were not reviewed or that the police officer had not been consulted, the court should refuse to entertain the motion to dismiss or amend, until the prosecutor has indicated, on the record, that the police report was reviewed and the arresting officer was consulted.

3. **The court should be provided with specific facts to support the prosecutor's position that the charges cannot be established beyond a reasonable doubt. In exploring these facts, the court should consider asking the following questions:**

   a. If the operation cannot be proven, why not? Did the officer observe operation? Are there any witnesses who observed operation? Did the defendant make any admissions as to operation? Can the State seek to prove operation through any circumstantial evidence?

   b. Is there a blood alcohol reading? If yes, why does the prosecutor believe it cannot be introduced in evidence? The prosecutor should place on the record the specific facts as to why the reading cannot be introduced into evidence. For

example, a conclusion by the prosecutor that the machine is defective or there was a problem with the before or after test is insufficient. The prosecutor must state specific facts as to why the test is defective.

c. If the prosecutor indicates that the reading is defective, then the court should closely examine the prosecutor as to whether the charges can be proven without a blood alcohol reading. In examining the prosecutor in this regard, the court should ask about the facts of the stop (i.e. the observations of operation observed by the officer, the defendant's conduct on the stop, [i.e. physical appearance and demeanor], the defendant's ability to perform psychophysical tests at the scene and at the police department, the defendant's admissions as to consumption of alcohol).

4. **If the prosecutor seeks to dismiss or amend based on a defense expert's report, the court should closely question the prosecutor as to whether the State will be able to produce an expert to counter the defense expert. The court should also be informed of the conclusions reached in the defense expert's report.**

5. **Is the application to dismiss or amend the case the result of a plea bargain where the defendant has agreed to plea to some other charge in return for the prosecutor dismissing or amending the charges?**

Pursuant to Rule 7:6-2, any plea agreement must be in accordance with Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey. These Guidelines specifically prohibit a plea agreement in cases under N.J.S.A. 39:4-50.