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To: Assignment Judges
Criminal Presiding Judges **Directive # 29-21**
(Supersedes Directive # 30-17)

From: Glenn A. Grant, J.A.D. 

Subj: Waiver of First Appearance for Indictable Offenses Charged on a
Complaint-Summons (Rule 3:4-2(g)) – Revised Protocol and Form

Date: December 28, 2021

This directive promulgates a revised Waiver of First Appearance protocol and form for use in those situations in which a defendant charged on a complaint-summons for an indictable charge elects to waive the first appearance otherwise required by court rule to be held no more than 60 days after the defendant's arrest or issuance of the complaint-summons. Rule 3:4-2(a)(2). The revisions effected by this directive, which supersedes Directive #30-17 and the form promulgated by that directive, require the attorney to advise the defendant of the Veterans Diversion Program. The appended revised protocol and form are effective immediately.

Background

Prior to Criminal Justice Reform, non-incarcerated defendants represented by counsel could elect to waive the first appearance regardless of whether they were charged on a complaint-warrant or a complaint-summons. However, under Criminal Justice Reform, only defendants charged on a complaint-summons with an indictable offense can waive the first appearance, since only those defendants are released prior to the first appearance. Rule 3:4-2(g).¹ Defendants charged on a complaint-warrant for an indictable offense (i.e., "eligible defendants") are remanded to the county jail pending the first appearance, which is conducted within 48 hours of the defendant's commitment to the county jail.

In 2017, Directive #30-17 revised the protocol and the form to waive the first appearance accordingly. Specifically, the protocol was revised to require the attorney: (1) to contact the Criminal Division Office to obtain the date of the pre-indictment disposition conference, which date is to be specifically noted on the form; and (2) to electronically file the

¹ Designated as paragraph (f) at the time of issuance Directive #30-17, but redesignated as paragraph (g) in 2018.

form in eCourts and provide notification to the prosecuting attorney. Additionally, the form was renamed “Waiver of First Appearance for Indictable Offenses on a Complaint-Summons”; and the attorney certification portion of the form was revised to require the attorney to inform their client of the scheduled date of the pre-indictment conference, of the existence of the drug court program, and how to make an application to that program.

Modifications

The Veterans Diversion Program, enacted by L. 2017, c. 42, and codified at N.J.S.A. 2C:43-23 to -31, was effective December 1, 2017. It is a prosecutorial program designed to divert eligible military service members into appropriate case management and mental health treatment services. See [Directive #5-18](#) (“Veterans Diversion Program”). As such, an attorney requesting a waiver of their client’s first appearance must also advise the client of the availability of the Veterans Diversion Program. The protocol and form have been modified to reflect this change.

Additionally, effective January 1, 2022, the Supreme Court has authorized transitioning the name of the Drug Court Program to the Recovery Court Program, to more clearly reflect the program’s purpose. The program’s mission, protocols, and procedures remain unaltered. The first appearance waiver protocol and form have been revised to reflect this new terminology.

Questions or comments regarding this Directive or the waiver of first appearance process may be directed to Sue Callaghan, Assistant Director for Criminal Practice, by email at sue.callaghan@njcourts.gov or by phone at 609-815-2900 extension 55300.

Attachments (protocol and form)

cc: Chief Justice Stuart Rabner
Acting Attorney General Andrew Bruck
Public Defender Joseph E. Krakora
Criminal Division Judges
Lyndsay V. Ruotolo, Director, DCJ
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Trial Court Administrators
Special Assistants to the Administrative Director
Criminal Division Managers and Assistants
Justin Moles, Chief, Court Services, Criminal Practice
Nicholas Salamon, Chief, Pretrial Services, Criminal Practice

**PROTOCOL FOR WAIVER OF FIRST APPEARANCE
FOR INDICTABLE OFFENSES – RULE 3:4-2(g)**

(Revised, As Promulgated by Directive #29-21)

Procedures to File a Waiver of First Appearance

1. The attorney for a defendant who is not incarcerated and who is charged with an indictable offense on a complaint-summons may waive the first appearance on behalf of his or her client by completing the “Waiver of First Appearance for Indictable Offenses on a Complaint-Summons” form.
2. The attorney must contact the Criminal Division Office to obtain the date of the pre-indictment disposition conference, which date must be specifically noted on the form.
3. The attorney must certify that the defendant has been advised of the information as set forth in Rule 3:4-2(f) and as contained on the form.
4. The attorney must file the form electronically in e-Courts, either at or before the time fixed for the first appearance, and must provide notification to the prosecuting attorney.
5. Upon the completion of the above requirements, the waiver is accepted by the court as filed and the attorney and defendant need not appear at the first appearance, unless otherwise ordered by the court.

* * *

**Required Elements of the Attorney Certification in Support of
Defendant’s Waiver of the First Appearance**

Rule 3:4-2(g) provides that to waive the first appearance for a non-incarcerated defendant charged on a complaint-summons for an indictable offense, the attorney must certify that:

1. The defendant has received and read a copy of the complaint or the attorney has read it to the defendant;

2. The defendant understands the substance of the change(s);
3. The defendant has been informed of the right to remain silent and that any statement may be used against the defendant;
4. The defendant has been informed that there is a pretrial intervention program and where and how an application to that program may be made;
5. The defendant has been informed of the right to have a hearing as to probable cause, the right to indictment by the grand jury and trial by jury;
6. The defendant has been informed that, if applicable, the offense charged may be tried by the court upon waiver of indictment and trial by jury, if in writing and signed by the defendant;
7. The defendant has been informed of the date of the pre-indictment disposition conference held pursuant to R. 3:4-6, which is required to occur no later than 45 days after the date of the first appearance;
8. The defendant has been informed that there is a recovery court program¹, including where and how to make an application to that program; and
9. The defendant has been informed of the availability of the Veterans Diversion Program for eligible service members which was enacted by L. 2017, c. 42, and codified at N.J.S.A. 2C:43-23 to -31.

¹ Effective January 1, 2022, the Supreme Court transitioned the name of the Drug Court Program to the Recovery Court Program to more closely reflect the program's purpose.

**Waiver of First Appearance for Indictable Offenses
on a Complaint-Summons
For Attorney Use Only**

In accordance with *R. 3:4-2(g)*, I am requesting a waiver of the first appearance scheduled for my client, _____, on _____
(client's name) (date of first appearance)
at _____.
(location)

I certify that as of this date _____, my client is not incarcerated and that I have:

- 1) Provided my client with a copy of the complaint and have read and explained it to my client;
- 2) Confirmed that my client understands the substance of the charge(s);
- 3) Informed my client of the right to remain silent and any statement may be used against him/her;
- 4) Informed my client of the pretrial intervention program and where and how an application may be made;
- 5) Informed my client of the right to a probable cause hearing, the right to an indictment and right to a jury trial;
- 6) Informed my client that, if applicable, the charge may be tried by the court upon waiver of indictment and trial by jury, if in writing and signed by the defendant.
- 7) Informed my client of the date of the pre-indictment disposition conference held pursuant to *R. 3:4-6*, which is on _____.
- 8) Informed my client that there is a recovery court program (formerly called the drug court program) and where and how to make an application to that program.
- 9) Informed my client of the availability of the Veterans Diversion Program for eligible service members which was enacted by L. 2017, c. 42, and codified at N.J.S.A. 2C:43-23 to -31.

I understand that my client must appear at the Intake unit of the Criminal Division for an intake interview if required by the court.

I understand that my client must appear at the first appearance unless these requirements are established to the satisfaction of the court.

Attorney Name _____ Complaint # _____

Attorney Address _____ Phone Number _____

_____ Fax Number _____

Client's current address _____

Attorney's Signature

Date

Original: Court **Copies:** County Prosecutor/Attorney General, Criminal Division Manager