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Directive # 30-17
(Supersedes Directive # 01-13)

**To: Assignment Judges
Criminal Presiding Judges**

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

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

Date: November 13, 2017

This Directive promulgates a revised Waiver of First Appearance form and protocol for those situations in which a defendant charged on a complaint-summons for an indictable charge elects to waive the first appearance, which by court rule is 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 appended form and protocol are effective immediately and supersede the prior version promulgated by Directive # 01-13.

Under the prior, now superseded, directive, non-incarcerated defendants represented by counsel could elect to waive the first appearance regardless of whether they were charged on a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. Now, 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(f) (as amended effective September 1, 2017). 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 held within 48 hours of the defendant's commitment to the county jail.

The protocol and the form to waive the first appearance have been revised accordingly. The protocol has been revised to now require the attorney: (1) to contact the Criminal Division Office to obtain the date of the pre-indictment disposition conference, which must be specifically noted on the form; and (2) to electronically file the form in eCourts and provide notification to the prosecuting attorney.

The form has been renamed "Waiver of First Appearance for Indictable Offenses on a Complaint-Summons"; and the attorney certification portion of the form has been revised to require the attorney to inform his or her client of the scheduled date of the pre-indictment

conference and of the existence of the drug court program and how to make an application to that program.

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

cc: Chief Justice Stuart Rabner
Attorney General Christopher S. Porrino
Public Defender Joseph E. Krakora
Criminal Division Judges
Elie Honig, Director, DCJ
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Trial Court Administrators
Melaney S Payne, Special Assistant
Ann Marie Fleury, Special Assistant
Criminal Division Managers and Assistants
Vance Hagins, Chief, Criminal Practice
Maria Pogue, Assistant Chief, Criminal Practice

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

(As Promulgated by Directive #30-17)

Procedures to File a Waiver of the 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 eCourts, either at or before the time fixed for the first appearance, and 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(f) 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 a copy of the complaint and has read it or the attorney has read it and explained it to the defendant;
2. The defendant understands the substance of the charge(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, and, if applicable, that 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;
6. 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; and
7. The defendant has been informed that there is a drug court program, including where and how to make an application to that program.

Waiver of First Appearance for Indictable Offenses on a Complaint-Summons

For Attorney Use Only

In accordance with R. 3:4-2(f), 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 drug court program and where and how to make an application to that program.

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