

RELEASE DATE: Wednesday P.M.
April 9, 1958

*Reported on by
Dickey, 5/9/58
Chairman*

REPORT OF THE

NEW JERSEY SUPREME COURT'S

//

MUNICIPAL COURT COMMITTEE.

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TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE
JUSTICES OF THE SUPREME COURT OF NEW JERSEY:

The members of the Municipal Court Committee appointed by the Supreme Court by order dated December 9, 1957 herewith submit this report in accordance with Rule 1:23-1(d).

Once again the Committee has considered problems and suggestions from private citizens, members of the Bar, magistrates and municipal court personnel and various governmental agencies and officers. The Committee has also considered matters raised at the Judicial Conference of Magistrates held on November 15, 1957 and at the Mid-winter Meeting of the State Bar Association on November 22, 1957, as well as matters which have come to the attention of the Administrative Office of the Courts.

In the preparation of this report the Committee has reviewed the report submitted by the Committee last year and has concluded that matters of major importance contained therein should be briefly mentioned in this report under the heading Prior Recommendations. Accordingly, this report is divided as follows: I. New Recommendations; and II. Prior Recommendations. It should be noted that both sections are equally important.

I. NEW RECOMMENDATIONS

A. COURT RULES

Rule 8:3-1(a). Complaint; Notice in Lieu of Complaint (refer also to Rule 8:10-1(a) on the Uniform Traffic Ticket and Local Criminal Court Form 12)

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Recognition must be given to the fact that the jurats on many traffic complaints are never completed or improperly completed. This is particularly true in parking cases. With a current volume of over 350,000 moving traffic cases and over 900,000 parking cases a year

the necessity of a sworn complaint in traffic cases presents a time consuming burden on enforcement officers and court personnel alike and additionally presents a technicality on which complaints may be dismissed without regard to the merits of the case.

Recommendation: Eliminate the necessity of a complaint in traffic cases being sworn to. This rule and Local Criminal Court Form 12 the "Uniform Traffic Ticket" should be amended accordingly. The Committee on Rules has considered an amendment to this rule in its Report.

Rule 8:3-2. Warrant or Summons

The rules do not require that defendants be served with a copy of the complaint with the result that defendants are not always fully aware of the charge against them until they appear in court. Yes

Recommendation: The rules should be amended to provide that in non-traffic matters a copy of the complaint be initially served with the summons and that when a person is arrested either with or without a warrant that a copy of the complaint be given to him when he is brought before the magistrate for a preliminary hearing. (See Appendix for proposed amendments to Rules 3:2-1, 3:2-3, 8:3-1 and 8:3-3)

Rule 8:3-3(b). Proceedings Before Magistrate
(b) Preliminary Hearing

Chapter 55, Laws of 1957, approved May 24, 1957, provides in part that attorney magistrates must try certain offenses when defendants waive indictment and trial by jury. The present rule provides that any magistrate may bind over any defendant even though the matter is within the jurisdiction of the magistrate and the defendant has waived indictment and trial by jury.

Recommendation: The rule should be amended to reflect this statutory change. The Committee on Rules has considered an amend-

ment to this rule in its Report.

Rule 8:7-4. Evidence -- The Committee has considered the propriety and desirability of traffic enforcement officers recommending to magistrates that drivers' licenses be suspended or revoked by the magistrate.

Recommendation: It is improper for any person, before or during a trial, to make any recommendation to the court with respect to the imposition of any penalty. When an enforcement officer feels that the penalty imposed is inadequate and that further action should be taken to suspend or revoke the defendant's driving privilege, the person may so notify the Director of Motor Vehicles who may then decide what further action to take with respect to the defendant's driving privilege under provisions of Title 39.

Rule 8:10. Traffic Cases (refer to Rule 8:10-1 Complaint and Summons; Form (Traffic Cases) and Rule 8:4-9 Subpoena) 61 <

In many instances enforcement officers issue traffic summonses to witnesses to ensure their appearance in court. This is especially true in multiple car accidents where it is clear that not all the drivers committed a violation. Witnesses should, of course, be served with subpoenas not traffic summonses.

Recommendation: The rules should provide that every court hearing traffic cases have available subpoenas in a special form suitable for issuance to local, county and state enforcement officers in the area. (See Appendix for proposed Rule 8:10-1A and proposed Local Criminal Court Form 13)

Rule 8:10-8. Defense by Deposition; Judgment 71°

The present method of permitting presentation of a defense or mitigating facts by deposition in the less serious traffic offenses

is impractical because a deposition in the regular usage of the word deposition is not wholly possible and because the expense of same is not warranted.

Recommendation: The rule should be amended to provide that in any traffic case the court may permit the filing of an affidavit by the defendant or any witness for the purpose of presenting his defense to the charge or mitigating facts. (See Appendix for proposed amendment to Rule 8:10-8)

Rule 8:10-10. Violations Clerk

A number of courts encounter what might be termed routine ordinance violations such as ordinances regarding "beach badges", dog licenses, etc., which, of course, require a court appearance. *Perhaps*

Recommendation: The rules should provide that routine ordinance violations may be processed in the violations bureau provided they are included in the violations bureau schedules approved by the Superior Court Assignment Judges. (See Appendix for proposed Rule 8:10-2A)

B. STATUTES

Violations Clerks. Violations clerks and deputy violations clerks presently do not have express authority to take complaints, hold to bail and in traffic matters do not have the general powers of a court clerk or deputy court clerk.

Recommendation: In traffic matters violations clerks and deputy violations clerks should have the powers of a court clerk or deputy court clerk. N.J.S. 2A:8-15, -27 and R.S. 39:5-6 and the applicable court rules should be amended accordingly.

N.J.S. 2A:8-7. Qualifications of magistrate

The Committee feels that no member of the judiciary should be deemed qualified to administer justice unless he has received formal

training in the law. Our current system of justice demands judges learned in the law and court procedure.

Recommendation: The Legislature should amend N.J.S. 2A:8-7 to provide that non-attorney magistrates shall be ineligible upon the expiration of their present terms and that newly appointed magistrates must be attorneys of this state.

R.S. 39:3-40. This section now provides for a fine of not less than \$100 nor more than \$500 or imprisonment for not more than 90 days, or both, for a conviction of driving when a driver's license has been refused, revoked or suspended.

Recommendation: In order to forcefully deal with repeat offenders of this statute an amendment providing for a mandatory 90 days jail term for a repeat violation within 10 years is recommended.

R.S. 39:4-50. The present penalty for a repeat conviction of "drunken driving" is imprisonment for three months and license forfeiture for 10 years. This penalty is mandatory for any subsequent conviction and without consideration of the time elapsed between the original and subsequent violation.

Recommendation: To limit the hardship invoked for a repeat violation when the first violation may have happened many years prior (in some instances over 20 years), it is recommended that the mandatory penalty be made applicable only to repeat violations within 10 years. Under such an amendment the magistrate for a repeat violation not within 10 years would still have authority, in his discretion, to impose a jail term of up to 3 months in addition to a fine of not more than \$500 since this penalty is now authorized for a first violation.

II. PRIOR RECOMMENDATIONS

Summarized below are recommendations which appeared in the Report of the New Jersey Supreme Court's Municipal Court Committee dated March 6, 1957 and the Supplemental Report of that Committee dated May 11, 1957, the latter dealing exclusively with the scofflaw problem. Listed below are only those matters which the Committee wishes to stress as warranting renewed attention. Most of the recommendations require legislation.

(a) Need for a Prosecuting Attorney.

Every "serious case" heard in the municipal courts should be presented on behalf of the state or the municipality by a prosecuting attorney. Enforcement of the law may be meaningless if proper prosecution of a case is lacking. Magistrates should not be called upon to act in the dual capacity of judge and prosecutor and be expected to render justice to both the state and the defendant.

Recommendation: The municipalities, the counties and the state should have prosecuting attorneys who are available upon request of the magistrates to prosecute every "serious case".

(b) Abolition of Jury Trials.

Most municipal courts have no facilities for juries. Jury trials in the municipal courts also present problems with respect to the transportation and selection of juries. In addition it is also possible for a defendant to have a second trial by jury on an appeal de novo to the county court.

Recommendation: Jury trials in the municipal courts should be abolished. All cases wherein a defendant is entitled to and demands a trial by jury in a municipal court should be transferred to the county court.

(c) Death by Automobile.

Causing death by operating a vehicle carelessly and heedlessly, in willful or wanton disregard of the rights or safety of others is a misdemeanor triable upon indictment before a jury in the county court (N.J.S. 2A:113-9).

Recommendation: Causing death by the careless and heedless operation of a vehicle should be triable in the municipal courts as a disorderly persons violation. The elements of wilfulness and wantonness only should be retained in N.J.S. 2A:113-9.

(d) Juvenile Traffic Offenders.

Numerous juveniles aged 17 and younger are apprehended for driving without being licensed and must be tried in the Juvenile and Domestic Relations Court under N.J.S. 2A:4-14.

Recommendation: The municipal courts should have jurisdiction of all juveniles aged 16 and over in all traffic matters.

(e) Probation in Disorderly Conduct Cases.

N.J.S. 2A:169-6 now provides for probation of not more than one year in disorderly conduct cases.

Recommendation: This period of probation should be changed to not less than one year nor more than five years since probation officers generally agree that little can be accomplished when a defendant is placed on probation for just a few months. Such a change would also make the probation period similar to that contained in N.J.S. 2A:168-1 which is applicable when a crime or offense is involved.

(f) Chemical Tests for Intoxication.

R.S. 39:4-50.1 now provides that no chemical analysis or specimen may be taken for the purpose of determining the amount of alcohol in the blood of a defendant charged with drunken driving unless expressly consented to or requested by the defendant.

Recommendation: The Legislature should provide that whenever a driver refuses to submit to a chemical test at the request of an enforcement officer the Director of the Division of Motor Vehicles shall have authority to revoke the driver's license or privilege of operating a motor vehicle in this state provided the driver is afforded an opportunity to have a hearing before the Director.

(g) Costs in Bail Forfeitures.

In many instances non-resident traffic violators post bail with no intention of ever returning for a hearing and forfeit the bail believing that same will be applied to any fine or costs imposed by the court. Actually bail is neither a fine nor costs and under the provisions of this section bail forfeitures in traffic cases are payable to the state or the county without the allowance of any court

costs. In those courts where the volume of such cases is considerable, the court has an administrative burden which would normally be compensated for in part by taxed court costs.

Recommendation: R.S. 39:5-9 should be amended to provide that in bail forfeitures the court may deduct from the bail an amount not to exceed authorized costs.

(h) Tenure and Term of Office.

Magistrates should be removed to the fullest extent possible from local politics by providing for a longer term of office and by granting tenure after a prescribed period of service.

Recommendation: The term of office should be increased from 3 to 5 years and tenure granted to attorney magistrates after ten years' service. A mandatory retirement age of 70 should be specified.

(i) Bonding of Court Personnel.

N.J.S. 2A:8-14 provides for the bonding of magistrates and court clerks but no mention is made of violations bureau clerks and deputy court clerks.

Recommendation: The statute should be amended to provide for the bonding of all court personnel.

(j) Appeals in Contempt Proceedings.

An appeal from a summary contempt conviction in the municipal court is now taken to the Appellate Division of the Superior Court where a trial de novo is had since in most instances no stenographic record was made in the municipal court. However, the Appellate Division is basically a court which hears appeals on oral argument based on the record made in the trial court.

Recommendation: Appeals from a summary contempt conviction should be to the County Court in the same manner as appeals from

other convictions in the municipal court.

(k) Disposition of Funds.

Statutes frequently **provide for** the imposition of a fine or penalty and declare that same **shall** be disposed of as provided by law. Unfortunately there are a number of instances wherein no provision has been made for any disposition.

Recommendation: A general provision should be enacted whereby fines and penalties collected by a municipal court shall be paid to the municipal treasurer if there is no specific provision for the distribution of the funds collected.

(l) Scofflaw Problems.

One of the most vexatious problems for the municipal courts is the scofflaw, the person who fails to respond to a traffic ticket. The scofflaw problem is a fundamental concern because of the defendant's disrespect for the law and because the follow-up procedure which is necessary to deal with the scofflaw adds innumerable hours to the work of court personnel, enforcement officers, and personnel of the Division of Motor Vehicles.

Recommendations:

i. Additional penalties for failing to respond on time should be included in violations bureau schedules. This is essential so that violations clerks may know precisely what additional penalties are applicable on tardy payments which may be payable in the violations bureau.

ii. In order to deal effectively with the scofflaw who ignores parking tickets and who cannot be located by mail or apprehended on a warrant, enforcement officers should be authorized to impound the vehicle or, in the officer's discretion, remove the license plates and leave a notice stating where and under what conditions the plates

may be recovered.

iii. Warrants should be issued promptly in accordance with the court rules and a periodic check made by the court on all unexecuted warrants. Any indication of neglect by enforcement officers in executing warrants or in making returns thereof should be called to the attention of the appropriate enforcement official and if necessary the matter should be taken up with the local governing body by the magistrate.

iv. Since many motorists fail to notify the Division of Motor Vehicles of a change of address, as required by R.S. 39:3-36, thereby adding greatly to the time expended by both the courts and the Division of Motor Vehicles in their attempts to contact motorists, the penalty for such a violation should be changed from a maximum of \$10.00 to a minimum of \$10.00.

v. Since there is presently no effective means of dealing with the non-resident scofflaw, appropriate officers of the executive branch should seek agreements with other states whereby the chronic non-resident scofflaw may be dealt with by his own state when he ignores parking tickets in other states.

Respectfully submitted:

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RELEASE DATE: April 9, 1958.

Rule 3:2-1. Complaint

Proposal: That this rule be amended to read as follows:

(a) (Same as present rule)

(b) Whenever practical a copy of the complaint shall be served on the defendant at the time of service of the summons or execution of the warrant.

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Rule 3:2-3. Proceedings Before the Magistrate

Proposal: That paragraph (b) of this rule be amended to read as follows:

(b) Preliminary Hearing. The magistrate shall inform the defendant of the complaint against him [,] and if a copy of the complaint has not previously been furnished to the defendant, he shall be supplied with a copy thereof. The magistrate shall inform the defendant of his right to retain counsel or, if indigent, of the privilege of having counsel assigned, and of his right to have a preliminary examination. The magistrate shall allow the defendant reasonable time and opportunity to consult counsel. He shall also inform the defendant of his right to make a statement not under oath as to the charge against him, that he is not required to make such a statement and that any statement made by him may be used against him. If the offense charged may be tried by the magistrate upon waiver of indictment and trial by jury, the magistrate shall so inform the defendant. All waivers of indictment and trial by jury shall be in writing, signed by the defendant, and shall be filed and entered on the docket.

OK

Rule 8:3-1. Complaint; Notice in Lieu of Complaint

Proposal: That paragraph (a) of this rule be amended to read as follows:

(a) Form of Complaint. The complaint is a written statement of the essential facts constituting the offense charged. It may be made upon information and belief and shall be made upon oath before any magistrate, the person in charge of any police station who is authorized to administer oaths, the clerk of any court, or any person empowered by law to take complaints. Whenever practical a copy of the complaint shall be served on the defendant at the time of service of the summons or execution of the warrant. In non-traffic cases the complaint shall be in the form set out in Local Criminal Forms 1 or 2, printed in the Appendix of Forms and in traffic cases the complaint shall be in the form set out in Local Criminal Court Form 12, printed in the Appendix of Forms.

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Rule 8:3-3. Proceedings Before Magistrate

Proposal: That paragraph (b) of this rule be amended to read as follows:

(b) Preliminary Hearing. The magistrate shall inform the defendant of the complaint against him [,] and if a copy of the complaint has not previously been furnished to the defendant, he shall be supplied with a copy thereof. The magistrate shall inform the defendant of his right to retain counsel or, if indigent, of the privilege of having counsel assigned. The magistrate shall allow the defendant reasonable time in which to consult counsel and prepare his defense. He shall also inform the defendant of his right to make a statement not under oath as to the charge against him, that he is not required to make such a statement, and that any statement made by him may be used against him. Where an indictable offense is charged in the complaint, the magistrate shall also inform the defendant of his right to have a preliminary examination, and also of his further right to indictment by the grand jury and trial by jury. If the offense charged may by law be tried by the magistrate upon waiver of indictment and trial by jury, the magistrate shall so inform the defendant. All waivers of indictment and trial by jury shall be in writing, shall be signed by the defendant, and shall be filed and entered on the docket. Notwithstanding that the defendant waive indictment and trial by jury, the magistrate may bind him over to await final determination of the cause, if in his opinion such procedure seems advisable.

OK

Rule 8:10-1A. Subpoenas; Traffic Cases

Proposal: That a new rule captioned as above be adopted to read as follows:

In cases involving traffic offenses enforcement officers may serve subpoenas which shall be in the form set out in Local Criminal Court Form 13. The subpoena shall consist of two parts, separated by carbon paper: (1) the witness' copy and (2) the court copy. Courts hearing traffic cases shall issue the subpoena form, signed and sealed, but otherwise in blank, to enforcement officers requesting it, who shall fill in the blanks before it is served and after service the enforcement officer shall attach the court copy of the subpoena to the appropriate traffic ticket complaint and promptly file them with the court.

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Local Criminal Court Form 13

Proposal: That Local Criminal Court Form 13 be adopted as follows:

Form 13

SUBPOENA TO TESTIFY - TRAFFIC CASES

Witness' Copy

(Title of Court)

State of New Jersey)
County of _____) ss.

TO:

Name _____ Home Telephone _____
Address _____ Business Telephone _____

You are commanded to appear in the _____

Court at _____, in the _____
(Address)
_____, County of _____
(name of municipality)

and State of New Jersey, on the _____ day of _____, 19____,

at _____^{A.M.}/_{P.M.}, to testify in the traffic case of State v. _____

_____ (Ticket # _____) on behalf of the State,

and State v. _____ (Ticket # _____),

and you are ordered to appear without prepayment of witness fee.

(Court Seal)

Magistrate - Clerk

I served the within subpoena by delivering a copy thereof to the above named witness.

Signature and identification of officer serving subpoena.

Notice to Witness -- Rule 8:8-1 provides that for failure to obey a subpoena you may be held in criminal contempt. If you fail to obey this subpoena, a warrant may be issued for your arrest.

Form 13

SUBPOENA TO TESTIFY - TRAFFIC CASES

Court Copy

(Title of Court)

State of New Jersey }
County of _____ } ss.

TO:

Name _____ Home Telephone _____
Address _____ Business Telephone _____

You are commanded to appear in the _____
Court at _____, in the _____
(Address)
_____, County of _____
(name of municipality)

and State of New Jersey, on the _____ day of _____, 19____,
at _____
A.M., to testify in the traffic case of State v. _____
P.M. _____ (Ticket # _____) on behalf of the State,
and State v. _____ (Ticket # _____),
and you are ordered to appear without prepayment of witness fee.

(Court Seal)

Magistrate - Clerk

I served the within subpoena by delivering a copy thereof to the above named witness.

Signature and identification of officer serving subpoena.

Attach this copy (Court Copy) of the Subpoena to the Traffic Complaints involved in the violation and file them promptly with the court.
(Note: This copy may be printed in any color desired to distinguish it from other forms.)

Rule 8:10-8. Defense by [Deposition] Affidavit; Judgment

Proposal: That this rule be amended to read as follows:

(a) [~~Deposition in Certain Cases~~] Defense by Affidavit.

In [all] any traffic case [s except those involving indictable offenses, accidents resulting in personal injury, 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 custody or control, reckless driving, or leaving the scene of an accident,] the court may permit the defendant to present his defense by [deposition] affidavit where:

(1) The court determines that it would be an undue hardship on the defendant to require him to appear in person at the time and place set for trial; and

(2) The defendant, having been fully informed of his right to a reasonable postponement of the trial, waives in writing his right to be present at the trial. Such [deposition] affidavit may also present matter in mitigation of the offense charged.

Paragraph (b) is deleted.

[(c)] (b) Mailing Copy of Judgment. Where a defendant presents his defense by [deposition] affidavit, the court shall mail him a copy of the judgment in the case by registered or certified mail forthwith.

Rule 8:10-2A. Ordinance Violations; Payment to Violations Clerk

Proposal: That a new rule captioned as above be adopted to read as follows:

The court may designate local ordinance violations within the authority of the violations clerk after approval, by the Assignment Judge of the county in which the court is located, of a schedule of fines and costs for specified ordinance violations. The defendant at any time before the hearing date, upon signing a plea of guilty and waiver of trial which shall be endorsed on or attached to the summons or complaint, may pay the fine and costs by appearing before the court or violations clerk or by mailing the same to the court or violations clerk. Rule 8:10-10 shall, in so far as applicable, apply to all ordinance violations within the authority of the violations clerk who shall be subject to the limitations therein prescribed.

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OK