

NOTICE TO THE BAR

SECOND SUPPLEMENTAL REPORT FROM THE 2015-2017 SUPREME COURT MUNICIPAL COURT PRACTICE COMMITTEE – PUBLICATION FOR COMMENT

This publishes for comment a Second Supplemental Report from the 2015-2017 Supreme Court **Municipal Court Practice Committee**. This report, dated August 30, 2017, focuses on sanctions for failure to appear or failure to pay municipal court-ordered obligations. The Committee proposes the adoption of two new rules.

This additional supplemental report is also available on the Judiciary's Internet web site at <https://www.judiciary.state.nj.us/courts/supreme/reports.html>.

Please send any comments on the Committees' proposed rule amendments or other recommendations in writing by **Friday, October 6, 2017** to:

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Comments on the Committee's report and recommendations may also be submitted via Internet e-mail to the following address: Comments.Mailbox@njcourts.gov.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address (and those submitting comments by e-mail should include their name and e-mail address). Comments are subject to public disclosure upon receipt.



Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: September 13, 2017

**SUPPLEMENTAL REPORT OF THE
SUPREME COURT COMMITTEE ON
MUNICIPAL COURT PRACTICE
2015 - 2017 TERM**



August 30, 2017

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I. **INTRODUCTION**

The Municipal Court Practice Committee ("Committee") recommends that the Supreme Court adopt the proposed new rules contained in this supplemental report.

II. REVISED RULES RECOMMENDED FOR ADOPTION

This report submits for the Court's consideration two proposed Court Rules which provide limits on the monetary sanctions municipal courts may impose on defendants who fail to appear in court or fail to pay their obligations – Rule 7:8-12 (Sanctions: Failure to Appear) and Rule 7:9-5 (Failure to Pay).

These proposed rules were previously presented to the Court by the Committee in its report dated February 1, 2017. At the June 27, 2017 Supreme Court Administrative Conference, the Court took no action on these two rules; it was indicated that the rules may benefit from minor modifications to achieve greater clarity.¹

A. Background

As set forth in the February 1, 2017 report, these issues were initially brought before the Committee when the members were asked to consider a report (Contempt Report) drafted by the Contempt of Court Working Group. The Contempt of Court Working Group was comprised of members of the Conference of Presiding Judges – Municipal Courts, the Conference of Municipal Division Managers and representatives from the AOC. The Contempt Report addressed the practice in many municipal courts of judges imposing monetary sanctions on defendants who fail to appear in court for a hearing or fail to pay penalties imposed after conviction. An evaluation of the practice in municipal courts by the members of the Contempt of Court Working Group indicated that municipal court judges who impose monetary sanctions for failure to appear or pay oftentimes do not follow

¹ It was determined that the proposed conforming amendment to Rule 1:2-4 (Sanctions: Failure to Appear; Motions and Briefs) as set forth in the Committee's February 1, 2017 report will be submitted to the Civil Practice Committee, which considers amendments to the Part I rules.

the procedures outlined in Court Rules 1:10-1 and -2 and therefore, these rules do not provide a legal basis for the practice.

Additionally, the Contempt Report stated that while Rule 1:2-4 permits a court to impose a monetary sanction on an attorney or party who, without just excuse, fails to appear for a court proceeding, that rule provides that the amount should be paid to the "Treasurer, State of New Jersey." However, in practice, amounts collected for 'contempt of court' in the municipal courts are distributed to the municipality. The Contempt Report also noted that Rule 1:2-4 provides inadequate direction to the municipal courts in imposing monetary sanctions on defendants, in that it provides no standards by which a judge should determine the amount of the sanction, nor any limit on that sanction.

The Contempt Report acknowledged that municipal courts have an interest in ensuring that defendants appear for their court dates and satisfy their monetary obligations in a timely manner. The report noted that the majority of defendants attend their court hearings and pay their fines as ordered; however, the municipal courts spend considerable time and money tracking defendants who fail to appear or fail to pay. It was deemed appropriate that municipal courts impose modest sanctions to encourage defendants to appear when ordered and pay their fines and assessments when due, as part of the orderly administration of the municipal courts. The Contempt Report asserted, however, that excessive and unregulated sanctions disadvantage low-income defendants and can create a cycle of court debt, from which low-income defendants may find it difficult to extricate themselves. Such sanctions can also discourage defendants from appearing in court, fearing the imposition of heavy penalties.

To rectify these concerns, the Contempt Report included recommendations for the adoption of two new Part VII Court Rules: Rule 7:8-X (Sanctions; Failure to Appear); and

Rule 7:8-Y (Failure to Pay). These draft rules authorized sanctions for failure to appear and to pay, but regulated the amount that may be assessed. The maximum sanctions recommended for failure to appear were: \$25 for parking matters and \$50 for all other matters, except for consequence of magnitude cases, where the aggregate sanction cannot exceed \$100. The maximum sanction for failure to pay would be capped at \$50. The Contempt Report also included a recommended conforming amendment to Rule 1:2-4 (Sanctions: Failure to Appear; Motions and Briefs) which cross-referenced the proposed new Part VII rules.

The Committee members engaged in an extensive discussion of the Contempt Report and the draft rules proposed therein. The members acknowledged that statewide variability in the application of contempt sanctions, conducted without proper procedural protections for defendants, was a matter of significant concern and should be addressed. However, several members advocated that the draft rule language in the Contempt Report be modified to permit judges to retain discretion to impose higher contempt amounts for failure to appear in serious cases such as DWI, rather than set a monetary limit. In response, others explained that the overuse of contempt sanctions and the variability in the amount of such sanctions imposed on defendants for failure to appear and failure to pay were engendered by the use of unfettered discretion by municipal court judges in this area. Consequently, clear limits were required.

After a thorough discussion, the Committee proposed two new rules to provide limitations on the monetary sanctions which courts may impose on defendants who fail to appear in court or fail to pay their obligations – Rule 7:8-12 (Sanctions: Failure to Appear) and Rule 7:9-5 (Failure to Pay), and a conforming amendment to Rule 1:2-4 (Sanctions: Failure to Appear; Motions and Briefs). To great degree, these proposed rules tracked

those set forth in the Contempt Report. After the Court reviewed the rules at the June 27, 2017 Supreme Court Administrative Conference and chose to take no action, the Committee was directed to undertake further review with the goal of providing greater clarity.

B. Revisions

Several minor modifications have been included in the revised Rule 7:8-12, Failure to Appear. These include the addition of indented, numbered subsections in Rule 7:8-12(b). These highlight for the reader more clearly the factors a court should consider in evaluating the amount of monetary sanction for failure to appear that a court may impose upon a defendant (within the monetary limits set forth in the proposed rule). Additionally, Rule 7:8-12(b)(3) was slightly revised to further emphasize that a judge may only impose a sanction for contempt in an amount higher than that the limits set forth in the rule if the procedures and legal standards of Rule 1:10 are met. Finally, Rule 7:8-12(a) and (b)(5) were slightly modified to clarify that a payment made to a court for a sanction for failure to appear by an attorney or a defendant “shall be submitted to the municipal court to be disbursed to the municipality where the offense occurred” rather than (as originally drafted) “submitted to the municipal court administrator made payable to the municipality in which the offense occurred.” This minor change more accurately reflects the established procedure for payment of all other municipal penalties in that the person paying money conveys it to the court, not directly to the ultimate recipient of the payment.

These two new, proposed rules are provided below.

Rule 7:8-12 Sanctions; Failure to Appear (new rule)

(a) Failure to Appear--Attorneys. If without just cause or excuse or because of failure to give reasonable attention to the matter, an attorney fails to appear on behalf of a party at a trial, hearing or other scheduled municipal court proceeding, or if the attorney fails to make a timely application for adjournment, the municipal court judge may order any one or more of the following:

- (1) the attorney to pay a monetary sanction in such an amount as the court shall fix, submitted to the municipal court to be disbursed to the municipality where the offense occurred;
- (2) the attorney to pay the reasonable expenses, including attorney's fees, to the aggrieved party;
- (3) the dismissal of the complaint, cross-claim, counter-claim or motion or the granting of the motion; or
- (4) such other action as it deems appropriate.

(b) Failure to Appear --Defendants.

(1) 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 defendant to pay a monetary sanction based on the following factors:

- (A) defendant's history of failure to appear
- (B) defendant's criminal and offense history
- (C) the seriousness of the offense
- (D) the 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.

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

(3) Contempt of Court. The only means by which a judge may impose a higher sanction on a defendant for failure to appear is by complying with the procedures and legal standards set forth in R. 1:10.

(4) 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.

(5) Payment of Sanction. The sanction shall be submitted to the municipal court to be disbursed to the municipality where the offense occurred.

Adopted _____ to be effective _____.

Rule 7:9-5, Failure to Pay (new rule)

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 per time payment order not to exceed \$50. The sanction shall be submitted to the municipal court administrator made payable to the municipal court. This sanction shall be in addition to any other penalty imposed by statute or rule for failure to pay.

Adopted _____ to be effective _____.

III. CONCLUSION

The members of the Municipal Court Practice Committee appreciate the opportunity to serve the Supreme Court in this capacity.

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