

**REPORT OF THE SUPREME COURT  
COMMITTEE ON MUNICIPAL COURTS  
1992 -1994 TERM**

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**TABLE OF CONTENTS**

<b>Introduction .....</b>	<b>1</b>
<b>A. Revision to Rule VII Recommended for Adoption .....</b>	<b>2</b>
<b>Rule VII .....</b>	<b>5</b>
<b>B. Matters Previously Sent to The Supreme Court .....</b>	<b>130</b>
<b>1. Revisions to the Statewide Violations Bureau Schedule .</b>	<b>130</b>
<b>2. Faxing of Complaints .....</b>	<b>131</b>
<b>C. Recommendations for Legislative Changes .....</b>	<b>133</b>
<b>D. Rule Recommendations Held for Future Consideration .....</b>	<b>134</b>
<b>List of Committee Members .....</b>	<b>135</b>

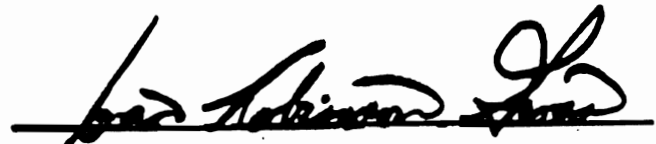
## INTRODUCTION

What follows is the Biennial Report to the Supreme Court for the 1992 -1994 Term. This report includes recommendations of this Committee for the Supreme Court's consideration.

The portion of the Report recommending a complete revision of Part VII of the Rules is the culmination of a four year effort that was initiated by the 1990-1992 Committee, Chaired by the Hon. Evan William Jahos, J.M.C. The Committee wishes to thank those members and staff who dedicated their skills and generously gave their time, including past members of Subcommittee on the Revision of Rule VII: Hon. Linda R. Feinberg, J.S.C., Hon. Samuel Serata, J.M.C., Hon. Fred J. Levin, J.M.C., and Mr. Francis X. Moore, Esq. Special thanks go to the Hon. H. Robert Switzer, J.M.C. who shepherded the developmental process during the entire four years with skill and dedication. The Committee also wishes to express its appreciation to the excellent staff support received from the Administrative Office of the Courts during the past four years, especially to Mr. Ira Scheff, Esq. who staffed the Committee during the 1990-1992 term and Mr. Lawrence E. Walton, Esq. who served as staff from 1992 to the present.

The Committee makes special mention of the late Mr. Alan Sant'Angelo, Esq. who generously contributed his considerable skills and expertise to the work of the Committee up until his untimely death last year.

Respectfully submitted,



**Hon. Joan Robinson Gross, P.J.M.C., Chair**

## A. REVISIONS TO RULE VII RECOMMENDED FOR ADOPTION

### Introduction

In State v. Gonzalez, 114 N.J. 592 (1989), the Supreme Court found that an independent probable cause determination for complaints charging the commission of traffic offenses was not required. The Court specifically limited its holding to traffic offenses but noted that two Appellate Division decisions required a probable cause determination in non-traffic offenses. (See State v. Ross, 189 N.J. Super. 67 (App. Div. 1983) which held that a summons may not issue where a private citizen files a complaint unless there is a finding of probable cause by an independent judicial official, and State v. Salzman, 228 N.J. Super. 109 (App. Div. 1987) which held that a probable cause determination is required on a complaint signed by a police officer after the issuance of a summons).

In Gonzalez, supra, the Court held that Rule VII of the Court Rules applied to Municipal Court traffic cases, but noted that in certain non-traffic cases, Rule VII requires a probable cause determination before process is issued. Rule VII references Rule III and makes it applicable to non-indictable offenses (non-traffic) in Municipal Court. The Court suggested that the cross reference in Rule VII to Rule III could be subject to interpretation and stated that, "[f]aced with a disparate interpretation of the Rules . . . we must conclude that despite our confidence in our reading of them, they are in need of clarification. Accordingly, we ask the Committee on Criminal Practice and the Committee on Municipal Courts jointly to inform us of any revisions in the Rules necessary in light of this decision. We leave

it to those Committees to determine whether any further advantage may be achieved through the clarification of the Rules on related issues. . . .".

Based upon the Court's mandate in Gonzalez, the Criminal Practice Committee and the Municipal Court Practice Committee formed a joint subcommittee to review Rules III and VII. That subcommittee's report provided the basis for the recommendations made by this Committee.

The Municipal Practice Committee viewed the Court's mandate broadly; the entire part VII was reviewed. Necessary revisions were identified and made. The proposed revision of Part VII is in keeping with the goal of the Supreme Court set out in the 1985 Task Force on Municipal Courts to improve the quality of municipal courts.

One problem identified dealt with reliance in the rules with cross references. Part VII's reference to part III leads to different interpretations such as discussed in Gonzalez, supra. While it is true that the Municipal Court must be viewed as an integral part of the court system with the Superior Court, especially in the criminal area, many of the Part III rules make little or no sense when used in Municipal Court practice. The Committee's revision of Part VII reflects the efficacy of an independent set of rules without reference, with a few minor exceptions, to any other part of the court rules.

It should be noted that subsequent to the Committee's approval of the revision to Part VII new legislation was adopted affecting the Municipal Courts See L. 1993, c. 293 effective February 15, 1994. The legislation may require some technical

changes to the Rules presented in this section of the Report. The Committee will submit technical revisions to the Court if it is required after review of the statute.

What follows is the Committee's recommended complete revision of Part VII of the Rules of Court made after extensive deliberation and some consultation with the Criminal Practice Committee. Some of the changes are technical, others are substantive, all of them have been made to achieve clarity in the rules. The comment to each of the rules explain the changes in that rule. Some rules have been repeated verbatim from Part III of the Rules because they are equally applicable to Superior as well as Municipal Court practice. As a whole the package is designed to simplify and clarify the procedures and to tailor them to the practical aspects of Municipal Court practice.

**RULE 7:1 SCOPE**

The rules in Part VII [together with the rules in Part III, insofar as applicable and unless otherwise expressly provided by law or these rules] shall govern the practice and procedure in all criminal, quasi-criminal, [and] penal and civil penalty actions in the [municipal courts] Municipal Courts and [all] any such actions transferred from a [municipal court] Municipal Court to the Superior Court [, Chancery Division, Family Part pursuant to R. 5:1-2(c) and R. 5:1-3(b)(2). Whenever approval is given for the exercise of such jurisdiction by the Special Civil Part in a particular county, the court may be divided by the Chief Justice into sections for separate hearings of civil and criminal matters] for trial as Municipal Court actions. In addition those sections of Part I, R. 3:23, R. 3:24, R. 5:7A, and any other rule relevant to Municipal Court practice shall be applicable.

[Note: Source -- R.R. 8:1-1, 8:12-1. Amended June 29, 1973 to be effective September 10, 1973; amended July 21, 1978 to be effective immediately; amended December 20, 1983 to be effective December 31, 1983; amended November 7, 1988 to be effective January 2, 1989.]

**COMMENTARY**

The 1994 Revision to the Rules in Part VII is the most comprehensive revision to Part VII yet promulgated by the Supreme Court. This revision was engendered by the Superior Court and Supreme Court decisions in State v. Gonzalez, 114 N.J. 592 (1989) and a perception among veterans of the Municipal Court bench and bar that the constant cross-referencing between Part III and Part VII was causing, at

the very least, a fair degree of confusion in the interpretation of Part VII as the Rules applied to Municipal Court practice. Intended to eliminate this cross-referencing of both Part III and Part IV to Part VII, the Part VII Rules, with a few minor exceptions, can now stand alone in providing procedural guidance for municipal court practice to the Municipal Court bench, bar and pro se litigants.

The latest revision has been written in a style that will be equally understood by the practitioner and pro se litigant. In addition to eliminating all cross-references to other parts of the Rules, the revision makes several other changes to the existing Rules, designed to make the Municipal Courts even more responsive to the people they serve.

**[RULE 7:2. INDICTABLE OFFENSES; PROCEEDINGS UNDER UNIFORM FRESH PURSUIT LAW**

The provisions of R. 3:2 (complaint), R. 3:3 (warrant or summons upon complaint) and R. 3:4-1, 3:4-2, 3:4-3 and 3:4-5 (proceedings before the committing judge) are applicable to the municipal courts in respect of indictable offenses; the provision of R. 3:4-4 are applicable to such courts in proceedings under the Uniform Fresh Pursuit Law.

Note: Source -- R.R. 8:3-1(a) (first four sentences), 8:3-2(a)(1), 8:3-2(a)(2) (first, second, fifth sixth sentences), 8:3-2(b)(1) (first, second, third sentences), 8:3-2(b)(2) (first, second sentences), 8:3-2(c)(1), 8:3-2(c)(2), 8:3-2(c)(3)(i)(ii)(iii) (first sentence, first clause), 8:3-2(c)(4), 8:3-2(d)(1)(2), 8:3-3; amended July 26, 1984 to be effective September 10, 1984.]

**RULE 7:2. COMPLAINT: CONTENTS, FORM, OATH OR CERTIFICATION, FILING, SERVICE**

**7:2-1 Contents of Complaint [;], Arrest Warrant [or] and Summons; [Preliminary Hearing]**

**(a) Complaint.** The complaint shall be a written statement of the essential facts constituting the offense charged made on a form approved by the Administrative Director of the Courts. All complaints except complaints for traffic offenses, as defined in subsection (d) and (e) of this rule where made on Uniform Traffic Tickets and complaints for non-indictable offenses made on the Special Form of Complaint and Summons, shall be on oath or by certification before a judge or other person authorized by N.J.S.A. 2A:8-27 to take complaints. The municipal court administrator or deputy court administrator shall accept for filing any complaint made by any person.

**(b) Summons.** A summons shall be made on a Complaint-Summons form, a Uniform Traffic Ticket, or a Special Form of Complaint and Summons. The summons shall be directed to the person named in the complaint, requiring that person to appear before the court in which the complaint is made at a stated time and place and shall inform the person that an arrest warrant will be issued for failure to appear. The summons shall be signed by the judicial or law enforcement officer issuing it.

**(c) Arrest warrant.** An arrest warrant shall be made on a Complaint-Warrant form. The warrant shall contain the defendant's name or if that is unknown, any name or description which identifies the defendant with reasonable certainty, and shall be directed to any officer authorized to execute it, ordering that the defendant be arrested and brought before the court that issued the warrant. The warrant

shall be signed by the judge, municipal court administrator, or deputy court administrator.

(d) (1) Traffic Offenses. The Administrative Director of the Courts shall prescribe the form of a complaint with summons to be used for all traffic offenses. On a complaint and summons for a non-moving traffic offense, in lieu of the name of the defendant, it shall be sufficient to set forth the license number of the vehicle involved, and it shall be presumed that the owner of the vehicle is the defendant charged with the violation.

(2) Issuance. The complaint may be made and signed by a law enforcement officer, or by any other person, but the summons shall be signed and issued only by such officer, or the judge, administrator or deputy administrator of the court in which the complaint is, or is to be filed.

(3) Records and Reports. Each court shall be responsible for all uniform traffic tickets printed and distributed to law enforcement officers or others in his municipality, and for their proper disposition, and shall prepare or cause to be prepared such records and reports relating to such uniform traffic tickets as the Administrative Director of the Courts prescribes. The provisions of this paragraph shall also apply to the Director of the Division of Motor Vehicles and the Superintendent of State Police, in the Department of Law and Public Safety and to the responsible official of any other agency authorized by the Administrative Director of the Courts to print and distribute the uniform traffic ticket to its law enforcement personnel.

(e) Penalty Proceedings. The Administrative Director of the Courts shall prescribe the form of a complaint with summons to be used for all penalty proceedings or, if such forms are unavailable, a complaint in a penalty proceeding may be prepared using the form for complaint with summons.

#### COMMENTARY <sup>1</sup>

A number of amendments are being recommended to this rule. The first change to this Rule is that it be combined with R. 3:3-2. This is being done to avoid overlap. This Rule, as amended, will govern the contents of complaints but not the service thereof. Service is governed by Rules 3:3-1 and 3:4-1. In that regard the title has been changed and a sentence has been deleted from the text of the rule. What was contained in R. 3:3-2 is now contained in new paragraphs (b) and (c).

The rule has also been amended to make it clear that, except for traffic offenses which includes parking offenses, for which the Uniform Traffic Ticket is being used, and offenses where the Special Form of Complaint and Summons is used, complaints must be made upon oath before a judge or other person empowered by law to take complaints pursuant to N.J.S.A. 2A:8-27. The Rule would also, for the first time, permit complaints to be made by a certification also. This recommendation is similar to the one made by the Committee in its 1977 Report. See Supreme Court Committee on Criminal Practice 1977 Report, 100 N.J.L.J. 441, 442 (May 19, 1977). However, while the amendment is silent on the issue it is our intent not to disturb present practice on when oaths, or under the proposal affirmations, must be taken. As we understand it on non-indictables, in many cases, oaths are taken after the summons

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<sup>1</sup> The first three paragraphs of the Commentary are being taken from the Criminal Practice Committee Revision recommendation. The last paragraph is added as additional comment to explain the inclusion of subsection (d) and (e) because of the difference in Superior Court Criminal Practice and Municipal Court Practice.

is issued. This is desirable as it assures defendants are not delayed unnecessarily by being brought back to the station house to have the oath administered only to be subsequently released. On indictables the oath is administered prior to issuance of a summons or warrant. The Committee believes that is the better practice. New paragraph (b), which was largely derived from R. 3:3-2, directs on what form the summons must be made; specifies what must be included in the summons and includes a requirement that it be signed by the judicial, or law enforcement officer, issuing it. The provision allowing a law enforcement officer to sign the summons is new. It is necessary in light of a revision being proposed to R. 3:3-1a which would allow law enforcement officers to issue a summons for non-indictable offenses. See Commentary to R. 3:3-1a at pages 13-15. This change recognizes present practice and acknowledges that, on non-indictable complaints, it is preferable to allow the law enforcement officer to issue the summons rather than having to possibly delay a defendant's release by bringing him or her back to the station house.

New paragraph (c), which was largely derived from R. 3:3-2, directs that an arrest warrant be on the complaint-warrant form; specifies what must be on the warrant, and includes a requirement that the warrant be signed by the judge, municipal court administrator or deputy court administrator.

The new rule, R. 3:2, is being carried over in its entirety, as R. 7:2-1, because of its cross-application to both Superior and Municipal Court practice. Municipal Court practice, however, goes further as to the form of complaint and therefore subsection (d) and (e) have been added to cover the form of the complaints with regard to traffic offenses and penalty proceedings. The source rule for R. 7:2-1 (d)(1), (2) and (3) is R. 7:6-3 with certain minor language changes to reflect the elimination of cross-referencing.

**7:2-2 Execution or Service: Return**

**(a) By Whom.** A warrant shall be executed by any officer authorized by law.

**(b) Territorial Limits.** The warrant may be executed and the summons served at any place within this State. An officer arresting a defendant in a county other than the one in which the warrant was issued shall take him, without unnecessary delay, before the nearest committing judge authorized to admit to bail in accordance with R. 3:26-2, who may admit to bail conditioned on the defendant's appearance before the court issuing the warrant. Nothing in this rule shall affect the provisions of N.J.S.A. 2A:156-1 to 4 (Uniform Act on Intrastate Fresh Pursuit).

**(c) Execution of Warrant.** The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall inform the defendant of the offense charged and of the fact that a warrant has been issued.

**(d) Service of Summons.** The summons shall be served in accordance with R. 4:4-4. Service of the complaint by mail in, accordance with R. 4:4-4 may be attempted either by the court or the law enforcement department which prepared the complaint. If the law enforcement department attempts to serve the defendant not in custody by mail, the mailing shall not be posted until an initial court date for first appearance is obtained from the court administrator or the administrator's designee.

**(1) Parking Offenses.** A copy of the complaint with summons prepared and issued out of the presence of the defendant charging a parking offense may be served by affixing it to the vehicle involved in the violation.

(2) Corporations, Partnerships, and Unincorporated Associations. A copy of the complaint with summons charging a corporation, partnership or unincorporated association with a violation of a statute or ordinance relating to motor vehicles may be served upon the operator of the motor vehicle.

(e) Return. The officer executing a warrant shall make prompt return thereof to the court which issued the warrant. The officer serving a summons shall make return thereof to the court before whom the summons is returnable on or before the return day. If the arrested defendant is not admitted to bail, the arresting officer shall notify the court issuing the warrant by telephone or other electronic means of communication of the date and time of the arrest and the place of incarceration of defendant.

#### COMMENTARY

The source rule for R. 7:2-2 is R. 3:3-3. The rule makes only minor language changes to reflect in paragraph (d) that an attempt to serve a complaint by mail by a law enforcement officer shall not be posted until an initial court date has been obtained from the Municipal Court and paragraph (e) to reflect the arresting officer shall notify the court by telephone or facsimile of the date and time of arrest and the place of incarceration of the defendant. Subsection 7:2-3 (d)(1) and (2) have been added to cover the service of parking summons and traffic summons where a legal entity other than a person is involved.

#### [RULE 7:3. NON-INDICTABLE OFFENSES; COMPLAINT, SUMMONS, WARRANT, NOTICE IN LIEU OF COMPLAINT

7:3-1. Complaint; Warrant or Summons; Preliminary Hearing

The provisions of R. 3:2 (complaint), R. 3:3 (warrant or summons upon complaint), R. 3:4-1 (appearance before committing judge) and R. 3:4-2 (procedure after filing of complaint) are applicable to municipal courts in respect of all non-indictable offenses, except as follows:

- (a) A summons issued upon a complaint charging a non-indictable offense may be served either in accordance with R. 4:4-4 or by mailing it to the defendant's last known address.
- (b) If the Administrative Director of the Courts has, pursuant to R. 1:32-3, prescribed the form of complaint and summons for non-indictable offenses, a law enforcement officer may make, sign and issue such complaint and summons, serving the summons upon the defendant and thereafter, without unnecessary delay, filing the complaint with the court named therein; except that in lieu of service on the defendant, the summons may, in cases involving non-moving traffic offenses, be served by affixing it to the vehicle involved in the violation and, in cases involving any violation of a statute or ordinance relating to motor vehicles, if the defendant is a corporation, partnership or unincorporated association, the summons may be served upon the operator of the vehicle.
- (c) If a summons directed to a defendant, which is a corporation, partnership or unincorporated association, is returned "not served" and the court is satisfied that the summons could not be served, he shall order the defendant to cause its appearance and plea to be entered by a day certain. A copy of such order, together with a copy of the summons, shall, within five days after the entry thereof, be served upon the defendant by mailing the same by registered or certified mail, return receipt requested, to the address where the defendant usually

receives its mail, unless it appears by affidavit that such place is unknown and cannot be ascertained after inquiry.

- (d) A summons may issue in lieu of a warrant if the person taking the complaint has reason to believe that the defendant will appear.

Note: Source -- R.R. 8:3-1(a) (fifth and sixth sentences), 8:3-2(a)(2) (third and fourth sentences), 8:3-2(b)(1) (fourth and fifth sentences), 8:3-2(c)(3)(iii) (first sentence, second clause) (iv); amended July 26, 1984 to be effective September 10, 1984.]

**RULE 7:3      SUMMONS OR WARRANT UPON A COMPLAINT; PROBABLE CAUSE, SERVICE**

**7:3-1      Issuance of an Arrest Warrant or Summons**

(a) Authorization of Process. An arrest warrant on any complaint and a summons on a complaint charging a crime or on a complaint charging any offense made by a private citizen may be issued only by a judge, municipal court administrator or deputy court administrator of a court with jurisdiction in the municipality where the offense is alleged to have been committed. The arrest warrant or summons may be issued only if it appears to the judge, municipal court administrator or deputy court administrator from the complaint or an affidavit or deposition that there is probable cause to believe that an offense was committed and that the defendant has committed it. The judge, municipal court administrator or deputy court administrator who finds probable cause shall note that finding on the face of the summons or warrant. A summons on a complaint charging (any) offense may be issued by a law enforcement officer without a finding of probable cause by a judicial officer of probable cause for issuance.

(b) Determination Whether to Issue a Summons or Warrant. A summons rather than an arrest warrant shall issue unless the judge, municipal court administrator, or deputy court administrator finds: (1) The defendant is charged with murder,

kidnapping, aggravated manslaughter, manslaughter, robbery, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, violations of Chapter 35 of Title 2C that constitute first or second degree crimes, any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes; (2) The defendant has failed to respond to a summons; (3) The judge, municipal court administrator or deputy court administrator has reason to believe that the defendant is dangerous to himself, others or property; (4) There is an outstanding arrest warrant for the defendant; (5) The address of the defendant is not known and an arrest warrant is necessary to subject the defendant to the jurisdiction of the court; or (6) The judge, municipal court administrator or deputy court administrator has reason to believe that the defendant will not appear in response to a summons. A summons rather than an arrest warrant shall issue if the defendant is a corporation.

(c) **Failure to Appear After Summons.** If a defendant has been served with a summons and has failed to appear or there is reason to believe that the defendant will fail to appear, an arrest warrant may be issued. If a corporation has been served with a summons and has failed to appear the court shall proceed as if the corporation appeared and entered a plea of not guilty.

(1) Whenever a summons has issued and defendant has failed to appear, an arrest warrant shall issue only if it appears to the municipal court judge, administrator or deputy administrator from the completed complaint or from an affidavit or deposition taken under oath, that there is probable cause an offense has been committed and that defendant committed it, if that determination has not already been made.

(d) **Additional Warrants or Summonses.** More than one warrant or summons may issue on the same complaint.

(e) Identification Procedures if Summons Issued. If a summons has been issued on a complaint charging a crime or the offense of shoplifting, the defendant shall undergo the identification procedures required after arrest by N.J.S.A. 53:1-15 on the return date of the summons. If the defendant refuses to submit to the identification procedures required by law, the court shall issue an arrest warrant.

(f) Review of Initial Probable Cause Finding; Dismissal. If a municipal court administrator or deputy court administrator finds that no probable cause exists to issue an arrest warrant or summons, that finding shall be reviewed by the judge after notice to the complainant, defendant, and appropriate prosecuting agency. If the judge finds no probable cause, the judge shall dismiss the complaint.

(g) First Appearance. Following the filing of a complaint and the service of process a first appearance shall be conducted pursuant to Rule 7:4-2 without unnecessary delay. If a defendant remains in custody, the first appearance shall be conducted within 72 hours after arrest by a judge with authority to set bail for the charges in the complaint.

Source - Rule 3:3

## COMMENTARY <sup>2</sup>

### Paragraph (a)

The first suggested change to this rule involves probable cause determinations in non-arrest situations. There is no federal constitutional requirement that a judicial officer determine probable cause when a citizen is not subject to arrest or detention. A determination of probable cause is required when a warrant is issued for a person's arrest, Giordenello v. United States, 357 U.S. 480, 78 S.Ct. 1245, 2 L.Ed.2d 1503 (1958), or after an arrest without a warrant. Gerstein v. Pugh, 420

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<sup>2</sup> The Commentary from R. 3:3-1 is being repeated verbatim with the addition of the last two paragraphs of the Comment to explain the minor differences between R. 3:31 and R. 7:3-1.

U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975). Absent a risk of detention, as in the case of a summons, there is no constitutional requirement that a judicial officer determine probable cause. Gerstein, supra, 420 U.S. at 119, 125 n. 26, 95 S.Ct. at 865, 869 n. 26, 43 L.Ed.2d at 68, 72 n. 26.

In interpreting constitutional requirements in New Jersey our Supreme Court held in State v. Gonzalez, 114 N.J. 592 (1989) that there was no constitutional requirement for a judicial officer to make an independent probable cause determination for a complaint charging the commission of a traffic offense. The Court limited its decision, however, to traffic offenses and did not address whether an independent determination of probable cause is required for violations of other municipal ordinances. Two Appellate Division cases that have addressed the issue of when a probable cause determination is required found that under our rules governing practice, a probable cause determination is required before a summons is issued after a complaint from a private citizen, State v. Ross, 189 N.J. Super. 67 (App. Div. 1983) and where a complaint was signed by a police officer after the issuance of a summons. State v. Salzman, 228 N.J. Super. 109 (App. Div. 1987).

Given that probable cause is not a constitutional pre-requisite to the issuance of a summons the Committee proposes an amendment to allow the issuance of a summons pursuant to a complaint made by a law enforcement officer without a prior determination of probable cause by a judicial officer where the complaint alleges a non-indictable offense. In a recent decision the Appellate Division held that the practice of police officers issuing summonses is permissible, at least in the context of an arrest without a warrant on a disorderly persons offense followed by the issuance of a complaint-summons by the police officer in charge of the station-house. See State v. Kenison, 248 N.J. Super. 189 (App. Div. 1990). The Committee believes there should be no difference between the arrest without a warrant situation and the issuance of a summons on the spot situation. This amendment seeks to assure that defendants get released as soon as possible after the stop. Allowing

police officers to issue a summons on a non-indictable will assure defendants are not brought to the station-house and made to wait while a judicial officer determines probable cause. For both policy and practical reasons it is being proposed that the line be drawn between indictable and non-indictable offenses. The consequences of a complaint-summons charging an indictable offense are such that, while also not constitutionally compelled, the requirement of judicial determinations of probable cause should be continued. However, with regard to non-indictable offenses, including disorderly persons offenses, petty disorderly persons offenses, municipal violations and traffic violations, in the absence of both legal necessity and viable policy reasons, it is not desirable to require a finding of probable cause for the issuance of a summons charging these lesser offenses. Adoption of this change would result in a "bright line" distinction which could be easily implemented and understood by all in the criminal justice system and would hopefully put to rest some of the confusion in this area resulting from the various rule amendments and court decisions interpreting these amendments over the last ten years.

Another amendment would distinguish between citizen and police complaints. Process on citizen complaints could not be issued without a prior judicial determination of probable cause. While there was much discussion as to whether it was proper to distinguish how police complaints versus citizen complaints are handled, the Committee believes there are sound reasons for doing so. Police officers receive special training and are expected to perform their duty according to the dictates of law. There are penalties if they abuse their discretion. See N.J.S.A. 2C:30-2. Indeed the Court, in State v. Gonzalez, 114 N.J. 592 (1989) has acknowledged the duty of police in regard to making complaints saying:

Citizens are not without protection in the absence of a formal probable cause hearing. We assume that most police officers perform their duties honestly, conscientiously, and well. [Id. at 601]

The second change to the rule recommends that the finding of probable cause, where required, must be noted on the face of the summons or warrant. This will provide a "track record" to assure that these determinations are being made and will facilitate review, if appropriate.

In addition to these changes a number of clauses or sentences have been deleted or moved:

(1) The first sentence of paragraph (a) authorizes the judge, court administrator or deputy court administrator in the municipality where the offense occurs to issue a summons or warrant. An additional clause provides jurisdiction to these judicial officers in the jurisdiction "... in which the defendant may be found..." . This language is viewed as unnecessary. Presumably the language deals with a chase situation or a situation where a defendant is found in another municipality. In the former situation the police can arrest without a warrant. In the latter a summons or arrest warrant should be issued from the jurisdiction requesting the defendant's presence.

(1) The language requiring that an affidavit or deposition be "taken under oath" is unnecessary. Affidavits and depositions are always taken under oath.

(2) The language contained regarding corporations is being moved to paragraph (b) for clarity sake.

(3) The last two sentences of paragraph (a) are being dropped. Both sentences merely state the obvious and thus are deemed surplus verbiage.

#### Paragraph (b)

To simplify the rule, a large portion of the first sentence of this paragraph has been eliminated. The sentence is intended to convey that a summons is the preferred way of issuing process. As rewritten, the rule conveys this message but does so without vaguely referencing other rules or including unnecessary surplusage.

Another change to this paragraph is the substitution of the words "municipal court administrator" for the word "clerk" wherever it appears. This change is being made to bring the title of court administrator in line with recent statutory changes. See N.J.S.A. 2A:8-13a. The deputy court administrator is also being added to the list of persons authorized to issue a summons under this rule. This change makes the list of persons authorized the same as those listed under Rule 3:4-1 (R. 7:4-1).

1. The Committee sees no reason to differentiate between the two Rules. The category of aggravated assault has been limited. As proposed, warrants would be presumptive only for the more serious assaults, i.e. second degree aggravated assaults. In addition to these changes a number of other minor changes are being made to simplify how the Rule reads or to change terms, e.g. accused changed to defendant, to make them consistent throughout.

Paragraph (c)

The Committee is proposing revisions to this paragraph to make the issuance of an arrest warrant on a failure to appear permissible rather than mandatory. This provision would apply to both indictable and non-indictable offenses. In this regard the proposal goes further than suggested by the Court In the Matter of Dominick C. Santini, 126 N.J. 291 (1991). In Santini the Court asked the Committee to consider the requirement that a warrant issue on a failure to appear in response to a summons on a non-indictable.

The Committee does not believe the Rule should tie the hands of the judge and require him or her to automatically issue a warrant. The decision should be discretionary with the judge based on the facts surrounding the failure to appear.

Another change to this Rule is in regard to how corporate defendants are treated. The language has been simplified. The clause, presently contained in the Rule, concerning proceeding to trial is viewed by the Committee as unnecessary as this action is included in the concept of proceeding as if the corporation appeared.

In the case of a corporate defendant, the court is empowered to enter a not guilty plea and proceed to trial.

Paragraph (e)

The amendments to this paragraph are intended to make it clear that identification procedures upon the issuance of a summons only occur with respect to crimes or charges of shoplifting where they are required by law and not in cases involving non-indictable offenses. The previously undefined term post arrest identification procedures has been tied to the fingerprinting requirements contained in N.J.S.A. 53:1-15.

Paragraph (f)

This paragraph has been reworded so it reads in plain English. As rewritten this paragraph requires judges to review decisions of municipal court administrators and court administrators where the administrator or administrator made the initial determination that probable cause did not exist. The review is after notice to the defendant, the complainant and the prosecuting attorney. While unstated in this paragraph there is no intent to require that the judge hold a hearing on these complaints before dismissing them. A judge would be permitted to dismiss the complaint on the papers as submitted.

Paragraph (g)

A new paragraph has been added to create a link with R. 3:4-2. R. 3:4-2 presently sets forth what must occur at a defendant's first appearance before a court after the filing of a complaint. However, neither that Rule nor the preceding paragraphs of this Rule delineate when the hearing must occur. The Committee recommends that the hearing occur within 72 hours after arrest where the defendant remains in custody.

The Rules do not require that an arrested person see a judge anytime before arraignment on indictment. While it is true that probable cause determinations and bail decisions are normally made within days of indictment, these decisions are not

necessarily made with the defendant present. The Committee was concerned, and was told of instances where defendants sat in jail for weeks, without ever having seen a judge. The Committee is recommending that the Rules require that all defendants held in custody see a judge within days of being arrested. If the defendant is not in custody this appearance could occur at some future time.

In light of the importance of the issue of probable cause and the need for uniformity on this issue, R. 3:3-1 has been carried over in its entirety to become R. 7:3-1.

There has been one minor addition. R. 7:3-1(c)(1) has been added to reflect that if a police officer issues a summons without the preliminary finding of probable cause by a judicial official, that no bench warrant for failure to appear can issue until that determination is made, albeit after the fact of issuance.

#### **[7:3-2. Mediation of Minor Disputes, Notice in Lieu of Complaint**

If a person seeks to file a complaint or a complaint is filed charging an offense that may constitute a minor dispute, a notice may issue to the person making the charge and the person or persons charged, requesting their appearance before the court, or such person or program designated by the court and approved by the Assignment Judge to provide mediation under R. 1:40-7. If on the return date of a summons, it appears to the court that the offense charged may constitute a minor dispute, the court may order the persons involved to mediation in accordance with R. 1:40-7.

Note: Source -- R.R. 8:3-1(b), amended July 29, 1977 to be effective September 6, 1977; amended November 1, 1985 to be effective January 2, 1986; amended July 14, 1992 to be effective September 1, 1992.]

#### **RULE 7:3-2 DEFECTIVE WARRANT OR SUMMONS**

Amendment. No person arrested under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any technical insufficiency or irregularity in the warrant or summons, but the warrant or summons may be amended to remedy any such technical defect.

Source: R. 3:3-4(a)

### **[7:3-3. Form of Subpoena**

In cases involving non-indictable offenses, law enforcement officers may issue and serve subpoenas to testify in the form prescribed by the Administrative Director of the Courts. Courts having jurisdiction over such offenses, the Division of State Police, the Division of Motor Vehicles and any other agency so authorized by the Administrative Director of the Courts may supply subpoena forms to their law enforcement officers. After service of a subpoena, the officer shall attach a copy of the subpoena to the appropriate complaint and promptly file them with the court.

Note: Source -- R.R. 8:10-1A.]

## **[RULE 7:4. TRIAL OF OFFENSES BY THE MUNICIPAL COURT JUDGE]**

### **R. 7:4      PROCEEDINGS BEFORE THE COMMITTING JUDGE; PRETRIAL RELEASE**

#### **[7:4-1. Applicability**

Except as otherwise provided by R. 7:6 (Traffic Offenses) and 7:7 (Violations Bureau), the provisions of R. 7:4 apply to the trial by the court of all complaints charging offenses within its trial jurisdiction and all indictable offenses triable by it upon the defendant's waiver of indictment and trial by jury.

Note: Source -- 1969 revision.]

#### **7:4-1   Procedure After Arrest**

(a) Arrest On Warrant. If bail was not set when an arrest warrant on a complaint was issued, a person who is arrested on that warrant shall have bail set without unnecessary delay but in no event later than 12 hours after arrest.

(b) Arrest Without Warrant

(1) Preparation of a Complaint and Summons or Warrant. When a law enforcement officer has made an arrest without a warrant, the person arrested shall be taken to the police station where a complaint shall be prepared forthwith. If the complaint charges murder, kidnapping, aggravated manslaughter, manslaughter, robbery, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, violations of Chapter 35 of Title 2C that constitute first or second degree crimes, any crime involving the possession or use of a firearm or conspiracies or attempts to commit such crimes, the complaint shall be prepared on a complaint-warrant form. If the complaint charges an offense other than those listed, the complaint shall be prepared on a complaint-summons form unless the law enforcement officer determines that one of the following conditions exists and a warrant is necessary:

- (a) The person has previously failed to respond to a summons;
- (b) The officer has reason to believe that the person is dangerous to himself, to others or to property;
- (c) There is one or more outstanding arrest warrants for the person;
- (d) The prosecution of the offense or offenses for which the person is arrested or prosecution of any other offense or offenses would be jeopardized by immediate release of the person;
- (e) The person cannot be satisfactorily identified; or
- (f) The officer has reason to believe the person will not appear in response to a summons.

**(2) Probable Cause; Issuance of Process; Bail**

If a complaint-warrant form has been prepared, the law enforcement officer shall present the matter to a judge, or in the absence of a judge, a municipal court administrator or deputy court administrator who has authority to set bail for the offense charged without unnecessary delay but in no event later than 12 hours after arrest. That judicial officer shall determine whether there is probable cause to believe that the defendant has committed an offense. If the judicial officer finds probable cause to believe that the defendant has committed one of the crimes listed in R. 7:4-1(b)(1), a warrant shall be issued and bail set without unnecessary delay but in no event later than 12 hours after arrest. If probable cause for an offense other than one listed is found, a summons or warrant may issue, but if the judicial officer determines that the defendant will appear in response to a summons, a summons shall be issued. If a warrant is issued, bail shall be set without unnecessary delay but in no event later than 12 hours after arrest. The judicial officer who finds probable cause shall note that finding on the face of the summons or warrant. If no probable cause is found, no process shall issue.

**(3) Summons.** If a complaint-summons form has been prepared, or if a judicial officer has determined that a summons issue, after completion of post-arrest identification procedures required by law, the summons shall be served and the defendant released.

**(c) First Appearance.** Following the filing of a complaint the defendant shall be brought, without unnecessary delay, before the court for a first appearance pursuant to Rule 7:4-2. If the defendant remains in custody, the first appearance shall be conducted within 72 hours after arrest by a judge with authority to set bail for the charges in the complaint.

## COMMENTARY <sup>3</sup>

### Introduction

This rule has been widely criticized as incomprehensible. Over the last twelve years it has been amended five times and several other recommendations have not been adopted by the Court. The result is that current post-arrest procedures, "... have resulted from a number of piecemeal changes over the years rather than having occurred as a result of a comprehensive review." Report of the Supreme Court Committee on Criminal Practice, 122 N.J.L.J. 97, 114 (1988). This present effort stems partially from the commitment made in that Report to review all the procedures occurring after arrest to develop comprehensive and clear post-arrest procedures. 122 N.J.L.J. at 114.

The Committee has reviewed the current statewide practice and has drafted the rule with this review in mind. We understand the ramifications of any rule change on resources.

### Arrests Pursuant to a Warrant

In reviewing procedure post-arrest a distinction must be drawn between arrests pursuant to a warrant or arrests without a warrant, and so we have separated the rule into two parts.

This distinction is logical since warrants involve a judicial determination of probable cause prior to an arrest while arrests without a warrant involve no such determination before the arrest.

The rule presently requires a defendant arrested without a warrant to be taken before a judge without unnecessary delay if he demands to be taken before a judge. It is not clear whether this demand relates to an immediate transport to a judge,

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<sup>3</sup> R. 3:4-1 has been carried over with one minor exception in its entirety to become R. 7:4-1, because the source rule, in all reality, is a rule which deals almost exclusively with municipal court practice and its inter relationship between the court system and the police immediately following an arrest of a defendant. Therefore, the Criminal Practice Committee's entire Commentary has been repeated.

prior to being taken to a police station, or whether it dealt with the necessity for an immediate court appearance where bail and Gerstein issues are pursued. In any event, it seems unfair to put this burden on defendants.

A major change is suggested for post-arrest procedures in the warrant situation as they relate to bail. In some instances where a person is arrested pursuant to a warrant, bail is set contemporaneously with the issuance of an arrest warrant. This assures that an initial probable cause determination and the conditions of his release are set prior to arrest. Where arrest is pursuant to a warrant and bail has not been set, such as in the case where a John Doe warrant is issued, an amendment to the rule is proposed to require that bail be set no later than twelve hours after arrest. It makes no sense to make a probable cause determination, which might result in a defendant being detained but not at the same time, set bail. The former language required the defendant to be brought before the court named in the warrant without unnecessary delay. Presumably, although it is not explicitly stated in the rule, the purpose was to set bail and conduct the Rule 3:4-2 hearing. As redrafted, the rule would require that, where a defendant is being detained on an arrest warrant, as a matter of fundamental fairness, that bail be set as quickly as possible after arrest. The time limit established, twelve hours, is not required by case law but is the Committee's sense of what is fair and doable. The Rule would not require that a defendant be taken before the Court. There is no reason why probable cause cannot be determined, and bail set, telephonically given proper safeguards. The Rule 3:4-2 hearing, before the court, could then be held sometime later.

The twelve hour time limit is intended as an outside limit. In many municipalities bail is set immediately or very shortly after arrest. This change is not intended to affect that laudable practice. In fact, that is the preferred practice.

#### Arrest Without a Warrant

The first portion of paragraph b as revised deals with when a complaint-warrant, as opposed to a complaint-summons, must be used. The Committee has redrafted this

section in an effort to clarify it. In that vein a number of changes are being suggested. The first change is to the list of crimes for which a warrant must presumptively be issued. The Committee is recommending that not all aggravated assaults require a warrant. The Committee is recommending that only second degree aggravated assaults presumptively require a warrant. This change is consistent with the change being proposed to R. 3:3-1(b)(1). See also commentary to R. 3:3-1b at page 17. R. 3:3-1d also contains a list of circumstances which, if present, would allow a police officer to prepare a complaint-warrant, as opposed to a complaint-summons. The Committee is recommending that the language presently contained in R. 3:3-1d be included in this paragraph. Numerous complaints have been registered regarding the complexity of this section of the former Rule. Formerly paragraph (c) set out that an officer must issue a summons for offenses other than those listed in former paragraph (b). It gave the officer the discretion not to issue a summons if certain conditions set forth in paragraph (d) existed. As restructured all the reasons why a complaint-warrant will issue will be in the same portion of the Rule. The Committee is also recommending that one of the conditions which, if present, would allow for the issuance of complaint-warrant presently listed in R. 3:4-1(d)(5) be reworded. As it is presently structured, the burden is placed on a defendant being held in custody to satisfactorily identify himself or herself. Since this may not always be possible, e.g. if a defendant doesn't have a purse or wallet to prove his or her identity, the Committee is proposing that the wording in R. 3:4-1(b)(1)(e) be changed to put the burden on both the defendant and the State.

It is at this point that the complaint portion of the complaint-warrant form is to be filled out. There are differing opinions as to whether the complaint must be filled out by a police officer or by the municipal court administrator. In this regard, despite changes in language, the intent was not to change the current practice, although it is generally recognized that the charging function is an executive branch

responsibility. Indeed the Automated Complaint System (ACS) is placing the burden of preparing complaints almost entirely on the police (executive branch).

After the complaint has been prepared, the next step is to determine that there is probable cause to believe the defendant has committed the crime. In Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed. 2d 54 (1975) the Supreme Court held that a person arrested without a warrant and charged by information with a state offense was entitled to a timely judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest. The Court found no constitutional requirement that a procedure adopted by a state for determining probable cause for detention include the full panoply of adversarial safeguards such as right to counsel, confrontation, cross-examination, and compulsory process for witness. The Court instead said:

Whatever procedure a state may adopt, it must provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest.  
[420 U.S. at 425]

The Court did allow the defendant to be detained only for as long as needed to complete "the administrative steps incident to arrest." Gerstein, supra, 420 U.S. 103, 114, 95 S.Ct. 854, 863, 43 L.Ed.2d 54 (1975). In Riverside v. McLaughlin, 111 S. Ct. 1661, 114 L.Ed. 2d49 (1991) the Supreme Court, addressing the wide disparity in how the various District Courts and Circuit Court of Appeals were interpreting Gerstein, set the outside parameter for a probable cause determination. The Court held that:

A jurisdiction that provides judicial determinations of probable cause with 48 hours of arrest will, as a general matter, comply with the promptness requirement of Gerstein. [111 S. Ct. at 1670]

However, the Court did say that holding probable cause determinations within 48 hours will not automatically pass constitutional muster. Rather, the Court said

that 48 hours was the outside limit for jurisdictions holding combined hearings, e. g. probable cause and arraignment at same time. The Court said that:

A jurisdiction that chooses to offer combined proceedings must do so as soon as is reasonably feasible, but in no event later than 48 hours after arrest. [Ibid.]

The New Jersey Supreme Court has not defined what the outside limits are for a probable cause determination where persons are arrested without a warrant.

There have been previous proposals by the Criminal Practice Committee which would have, if adopted, set a limit for such determinations, although both addressed the issue in a more general review of pretrial release conditions. A 1976 proposal would have required arrested persons to be taken before a judge "... without unnecessary delay, but in no event later than 48 hours." Report of the Supreme Court Committee on Criminal Practice, 99 N.J.L.J. 396 (1976). In 1979 the proposal was to provide for a hearing within 72 hours to determine pretrial release conditions. Report of the Supreme Court Committee on Criminal Practice, 103 N.J.L.J. 418 (1979). The amendments being proposed at this time go much further. The proposed amendments recognize: (1) that probable cause must be set quickly after arrest and (2) that a determination of conditions of pretrial release conditions (bail) are as important as the determination of probable cause itself. It is simply not fair, nor efficient, for a defendant to have a judicial officer determine probable cause but still require him or her to sit in jail and wait for a separate determination of bail. Thus, the rule as amended would require the court to determine if probable cause exists and to set bail. This would have to occur without unnecessary delay but in no event later than 12 hours after arrest if the defendant is being detained. The rule would also allow that in the absence of a judge, bail could be set by a municipal court administrator or deputy court administrator. While this is a major change from the current rule which would allow only a judge to set bail, statutorily municipal court administrators and deputy court administrators are allowed to set bail. See N.J.S.A. 2A:8-27. Additionally, the practice is such that in many municipalities bail

is set by municipal court administrators, sometimes from bail schedules developed by the municipal court judge. The Committee believes this amendment, while controversial, comports to practice in many municipalities. Also, since a municipal court administrator and deputy court administrator can under our rules determine probable cause, which in effect is the decision to detain, they should be able to set conditions of release in the judge's absence. The intent is not to make the practice of court administrators setting bail more prevalent -- for the Committee believes a judge should set bail. However, the Committee believes it is desirable to have the bail determination made contemporaneously with the probable cause decision as quickly as possible after arrest. This change will assure that occurs where a judge cannot be reached quickly. A companion amendment will require that a judge will review, the next day which is neither a Saturday, Sunday or holiday, all bail set on defendants remaining in custody. Another change to this rule is an amendment which would require that the finding of probable cause be noted on the face of the warrant. This is consistent with the amendment being proposed to Rule 3:3-1. See discussion at page 16 supra. The final line in paragraph (b)(2) makes it clear that if no probable cause is found no process is to issue.

A new paragraph ((b)(3)) has been added to the Rule. This paragraph delineates what must occur in the situation where there is an arrest without a warrant and a summons is being issued. In that situation the defendant is to be released as soon as possible.

A new paragraph has been added to create a link with R. 3:4-2. R. 3:4-2 presently sets forth what must occur at a defendant's first appearance before a court after the filing of a complaint. However, neither that Rule nor the preceding paragraphs of this Rule delineate when the hearing must occur. The Committee recommends that the hearing occur, on persons held in custody, within 72 hours of arrest. This change is the same as is being recommended for R. 3:3-1. The reasons for the change are the same. See discussion at page 19 supra.

The source rule for R. 7:4-1 is R. 3:4-1, as amended. There is one minor deletion from the source rule. The first sentence of R. 3:4-1(c) has been deleted because any review of bail would be by a Superior Court judge and thus has no applicability to municipal court practice.

#### **[7:4-2. Proceedings Before Trial**

##### **(a) Arraignment.**

(1) Except as otherwise provided by paragraph (2) of this rule, arraignment shall be conducted in open court and shall consist of reading the complaint to the defendant or stating to him the substance of the charge, and calling on him, after he is given a copy of the complaint, to plead thereto. The defendant may waive the reading of the complaint.

(2) When a defendant is represented by an attorney and desires to plead not guilty, unless the court otherwise orders, such plea shall be entered by the filing, at or before the time fixed for arraignment, of a written statement, signed by the attorney, certifying that the defendant has received a copy of the complaint, has read it or the attorney has read it or explained it to him, understands the substance of the charge, and pleads not guilty to the charge.

**(b) Pleas.** A defendant may plead not guilty or guilty, but the court may in its discretion refuse to accept a plea of guilty, and shall not accept such plea without first addressing the defendant personally and determining by inquiry of the defendant and of others in the court's discretion that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea and that there is a factual basis for the plea. Upon the request of the defendant, the court may, at the time of the acceptance of a plea of guilty, order that such plea shall not be evidential in any civil proceeding. If a defendant refuses to plead or stands mute or if the court refuses to accept a plea of guilty, the court shall enter a plea of not guilty.

If a plea of guilty is entered, the court may hear the witnesses in support of the complaint prior to judgment and sentence, and after such hearing may, in its discretion, refuse to accept the plea. A defendant, corporation, partnership or unincorporated association may enter a plea by an agent pursuant to R. 7:7-4 and may appear by an officer or agent provided the appearance is consented to in writing by the named party defendant and the court finds that the interest of justice would not require the appearance of counsel. If the defendant is a corporation, partnership or unincorporated association and fails to respond to an order entered pursuant to R. 7:3-1(c), the court, if satisfied that service was duly made, shall enter an appearance and a plea of not guilty for the defendant and thereupon proceed to hear the complaint.

**(c) Adjournment.** On or before the return day of a warrant or summons, the court may adjourn the hearing for a period not exceeding 14 days, except that an adjournment for a longer period or additional adjournments may be granted if the court deems postponement of the hearing to be reasonably necessary. In contested matters, the court, on granting an adjournment, shall specify a trial date. The court shall cause the complaining witness, all defendants and all other known witnesses to be notified of any adjournment, which, together with the reasons therefor, shall be noted in the record.

**(d) Pretrial Procedure.** The pretrial procedure provided by R. 3:13-1 may be employed in the court's discretion upon its own or a party's motion.

**(e) Motions.** R. 3:10-1 (defenses and objections which may be raised), R. 3:10-2 (defenses and objections which must be raised before trial), R. 3:10-3 (defenses and objections which may be raised only before or after trial) and R. 3:10-4 (defense of lack of jurisdiction) are applicable to actions in the municipal court except that for purposes of this rule, the reference in R. 3:10-2, to indictment or accusation shall be deemed to mean the complaint and

R. 3:10-3 shall be deemed also to include the defense that an ordinance under which a complaint is made is unconstitutional. The court shall upon request provide an opportunity for the presentation of such motions before proceeding to trial. Motions may be made orally and informally, but affidavits or oral testimony may be presented thereon when required. A motion shall include all such defenses and objections then available to the defendant. The court or clerk shall briefly note in the record all defenses or objections raised by motion and the disposition thereof. Appeals from orders dismissing or refusing to dismiss a complaint may be taken to the Superior Court, Law Division pursuant to R. 3:24.

**(f) Motions to Suppress.** Except for cases involving a search pursuant to warrant, motions to suppress evidence in matters subject to trial within the municipal court may be filed and heard therein in any case in which the Attorney General, county prosecutor or municipal prosecutor is prosecuting attorney on behalf of the State and on notice to said prosecutor. Briefs, if ordered by the court, shall be served and filed prior to the date fixed for hearing as directed by the court. When a motion to suppress evidence is granted, the order shall be entered forthwith and the clerk shall within ten days thereafter dispatch a copy thereof to all parties and to the county prosecutor. All further proceedings in the municipal court shall be stayed pending a timely appeal by the State pursuant to R. 3:24. Property the use of which is suppressed pursuant to an order entered under this rule, and which is not otherwise subject to lawful detention, shall be delivered to the person entitled thereto only after a decision on any appeal by the State. Denial of a motion to suppress heard in the municipal court may be reviewed on appeal from a judgment of conviction pursuant to R. 3:23, notwithstanding that such judgment is entered following a guilty plea.

**(g) Trial of Complaints Together.** The court may order that two or more complaints be tried together if the offenses arose out of the same facts and circumstances, regardless of the number of defendants. In all other matters, with the consent of the persons charged, the court, for convenience, may consolidate complaints for trial.

**(h) Depositions and Discovery.** Depositions and discovery in any case in which the defendant may be subject to imprisonment or other consequence of magnitude if convicted shall be as provided by R. 3:13-2 and R. 3:13-3 provided that the municipality in which the case is to be tried has a municipal prosecutor. In all other cases, the court may order depositions to be taken and discovery made in criminal actions as provided by R. 3:13-2 and R. 3:13-3.

**(i) Dismissal.** If the complaint is not moved on the return day, the court may direct that it be heard on a specified date and a notice thereof be served on the complaining witness, all defendants and all other known witnesses by subpoena. Upon failure of trial to be held on the day set, the court, after first notifying the County Prosecutor if the offense charged is indictable, may order the complaint dismissed. A complaint may be dismissed by the court for good cause at any time on the motion of the State or municipality or on the motion of the defendant. Upon dismissal, the warrant shall be recalled.

A complaint on file for more than six months may at the discretion of the court be transferred to an inactive list. A matter on the inactive list for more than one year may be dismissed by the court on its own motion upon notice to the prosecuting attorney. Upon dismissal, a warrant, if issued, shall be recalled.

**(j) Transfer to the Chancery Division, Family Part.** An action pending in a municipal court may be transferred to the Superior Court, Chancery Division, Family Part pursuant to R. 5:1-2(c)(3) and R. 5:1-3(b)(2).

Note: Source -- R.R. 8:3-2(c)(3)(iii) (second, third and sixth sentences), 8:4-2, 8:4-3, 8:4-4, 8:4-5, 8:4-6, 8:4-7, 8:4-8, 8:4-10, 8:10-4, 8:10-6(h). Paragraph (a) amended July 7, 1971 to be effective September 13, 1971; paragraph (e) amended July 14, 1972 to be effective September 5, 1972; paragraph (b) amended July 29, 1977 to be effective September 6, 1977; paragraph (g) amended July 24, 1978 to be effective September 11, 1978; paragraph (e) amended July 16, 1979 to be effective September 10, 1979; paragraph (i) adopted December 20, 1983 to be effective December 31, 1983; paragraph (h) amended November 2, 1987 to be effective January 1, 1988; new paragraph (f) added, former paragraphs (f), (g), (h), (i) redesignated as paragraphs (g), (h), (i), (j) respectively June 9, 1989 to be effective June 19, 1989.]

#### **RULE 7:4-2 PROCEDURE AFTER FILING OF COMPLAINT**

At a defendant's first appearance before the court following the filing of a complaint, the judge thereof shall inform the defendant of the charge made against him/her and if a copy of the complaint has not previously been furnished to the defendant, shall furnish him/her with a copy thereof. The judge shall also inform the defendant of his/her right not to make a statement as to the charge against him/her and that any statement made by the defendant may be used against him/her. In counties where a pretrial intervention program is approved by the Supreme Court for operation under R. 3:28, the judge shall also inform the defendant of the existence of such program, the name of the program director and the location at which application may be made for enrollment in such program. The judge shall also inform the defendant of his/her right to retain counsel or, if indigent and constitutionally or otherwise entitled by law to counsel, of the defendant's right to have counsel furnished without cost. If the defendant asserts he/she is indigent,

unless he/she affirmatively and with understanding of waiver of right states his/her intention to proceed without counsel, the judge shall have the defendant complete the appropriate form as prescribed by the Administrative Director of the Courts, if such form has not yet been completed. If the complaint charges the defendant with an indictable offense, the court shall refer the defendant to the office of the Public Defender. If the complaint charges the defendant with the non-indictable offense and the court is satisfied that the defendant is indigent and that he/she is constitutionally or otherwise entitled by law to have counsel furnished, the court shall assign counsel to represent the defendant in accordance with R. 7:7-12(b). The court shall allow the defendant a reasonable time and opportunity to consult counsel before proceeding further. If the complaint charges the defendant with an indictable offense, the court shall inform the defendant of the right to have a hearing as to probable cause and of the right to indictment by the grand jury and trial by jury, and if the offense charged may be tried by the court upon waiver of indictment and trial by jury, the court shall so inform the defendant. All such waivers shall be in writing, signed by the defendant, shall be filed and entered on the docket. If the complaint charges an indictable offense which cannot be tried by the court on waiver, it shall not ask for or accept a plea to the offense. The court shall admit the defendant to bail as provided in R. 7:5.

Source R.R. 3:4-2

### **[7:4-3. Venue; On Disqualification of Judge**

**(a) Generally.** Except as otherwise provided by law, the prosecution for an offense shall be had in the jurisdiction in which the offense was committed.

**(b) On Disqualification of Judge.** In the event of the disqualification or inability for any reason of a judge to hear any pending matter, and in addition to the provisions in R. 1:12-3(a), the judge may transfer the matter for trial to any municipality within the vicinage, provided that:

(1) the judge of the municipality has been designated as an acting judge of the court of origin by the Assignment Judge of the vicinage pursuant to R. 1:12-3(a); and

(2) the transferring judge has found that transfer of the matter will not substantially inconvenience any party and is with the consent of the defendant and the complainant; and

(3) upon completion of the trial the transferee court shall forthwith advise the original court of the disposition made and shall remit to it the complaint, judgment, and all records and any fines and costs collected; and

(4) upon any such transfer, the original court shall retain jurisdiction and shall maintain all necessary records as though the matter had been tried in the original court which shall be responsible for effecting final disposition of the matter.

(5) the municipality of the court of origin shall bear the costs of prosecution of the matter.

Note: Source -- R.R. 8:6; caption amended, paragraph (a) caption added and paragraph (b) adopted July 24, 1978 to be effective September 11, 1978; paragraph (b) amended November 1, 1985 to be effective January 2, 1986.]

#### **7:4-3 HEARING AS TO PROBABLE CAUSE ON INDICTABLE OFFENSES**

(a) If a defendant does not waive indictment and trial by jury but does waive a hearing as to probable cause, the court shall forthwith bind the defendant over to await final determination of the cause. If the defendant does not waive a hearing as to probable cause and if before the hearing an indictment has not been returned against the defendant with respect to the offense charged, after notice to the county prosecutor, the court shall hear the evidence offered by the State within a reasonable time and the defendant may cross-examine witnesses against him/her. If, from the evidence, it appears to the court that there is probable cause to believe

that an offense has been committed and the defendant has committed it, the court shall forthwith bind the defendant over to await final determination of the cause; otherwise, the court shall discharge the defendant from custody if he/she is detained. Notice to the county prosecutor and municipal prosecutor shall be in writing with the original and proof of service filed with the municipal court administrator. A probable cause hearing shall be prosecuted by the municipal prosecutor in the absence of a county prosecutor and/or attorney general.

(b) After concluding the proceeding the court shall transmit, forthwith, to the county prosecutor all papers in the cause. Whether or not the court finds probable cause, it shall continue in effect any bail previously posted in accordance with R. 7:5 or any other condition of pretrial release not involving restraints on liberty; and any bail taken by the court shall be transmitted to the county clerk only upon an indictment later being returned against the defendant on the charge for which the probable cause hearing was held. If the defendant is discharged for lack of probable cause and an indictment is not returned within 120 days, the bail shall thereafter be returned and conditions of pretrial release, if any, terminated.

(c) **Issuance of New Warrant or Summons.** If prior to or during the hearing as to probable cause, it appears that the warrant executed or summons issued does not properly name or describe the defendant, or the offense with which he is charged, or that although not guilty of the offense specified in the warrant or summons there is reasonable ground to believe that he is guilty of some other offense, the court shall not discharge or dismiss the defendant but shall forthwith cause a new complaint to be filed and thereupon issue a new warrant or summons.

#### COMMENTARY

The source rule for R. 7:4-3(a) and (b) is R. 3:4-3(a) and (b). The source rule for R. 7:4-3(c) is R. 3:3-4(b). There has been one minor change made to Rule 7:4-3(b) from the source rule to reflect that any bail monies collected by the

Municipal Court shall not be transferred to the county clerk until an indictment is returned against the defendant. That revision brings this rule into conformance with R. 7:5-7 and the changes made to the source rule, R. 7:5-2.

**[7:4-4. Appearances; Exclusion of Public; Opening Statement**

**(a) Presence of Defendant.** Except as otherwise provided by R. 7:4-2(b) and 7:6-6, the defendant shall be present at every stage of the trial and at the imposition of sentence, but his voluntary absence after the trial has commenced in his presence shall not prevent continuing the trial to and including the entry of judgment. A corporation, partnership or unincorporated association shall appear by its attorney, except where pro se appearance has been allowed pursuant to R. 7:4-2(b). The defendant's presence is not, however, required at a reduction of sentence.

**(b) Appearance of Prosecution.** Whenever in his judgment the interests of justice so require, or upon the request of the court, the Attorney General, county prosecutor, municipal court prosecutor, or municipal attorney, as the case may be, may appear in any court on behalf of the state, or of the municipality, and conduct the prosecution of any action, but if the Attorney General, county or municipal court prosecutor or municipal attorney does not appear, any attorney may appear on behalf of any complaining witness and prosecute the action for and on behalf of the state or the municipality.

**(c) Exclusion of Public.** The court, in its discretion and with the defendant's consent, may exclude from the courtroom during the trial or hearing of any matter involving domestic relations, bastardy cases, sex offenses, school truancy and parental neglect any person not directly interested in the matter being heard or tried.

**(d) Opening Statement.** An opening statement shall be given by the municipal court judge prior to the commencement of the court session concerning court

procedures and rights of defendants. This statement shall not be a substitute for the judge advising an individual defendant of his or her rights prior to hearing.

Note: Source -- R.R. 8:4-1, 8:5, 8:7-1 (first and second sentences); paragraph (a) amended July 29, 1977 to be effective September 6, 1977; paragraph (c) amended July 24, 1978 to be effective September 11, 1978; caption amended and paragraph (d) adopted November 5, 1986 to be effective January 1, 1987.]

**7:4-4 EFFECT OF TECHNICAL INSUFFICIENCY OR IRREGULARITY IN THE PROCEEDINGS**

A defendant held in custody under a commitment after a hearing as to probable cause shall not be discharged nor shall such hearing be deemed invalid because of any technical insufficiency or irregularity in the commitment or prior proceedings not prejudicial to the defendant, or because the offense for which the defendant is held to answer is other than that stated in the complaint or arrest warrant.

Source - R.R. 3:4-5

**[7:4-5. Record of Proceedings; Transcripts**

**(a) Record.** When required by order of the Supreme Court, a court shall cause all proceedings to be recorded by sound recording equipment approved by the Administrative Office of the Courts. When not so required a court may at its expense cause proceedings to be recorded either by sound recording equipment or by a reporter. When sound recording equipment is used, in addition thereto, or when the proceedings are not otherwise to be recorded, at the request and expense of any party the court shall permit a record of the proceedings to be made by a certified shorthand reporter. Every sound recording and stenographic record of proceedings made pursuant to this rule

shall be kept by the clerk of the court or by the reporter, as the case may be, for three years.

**(b) Transcript.** If the proceedings have been sound recorded, any person may order a transcript from the clerk of the court, and if proceedings have been recorded stenographically any person may order a transcript from the reporter. In either instance the charge therefor shall not exceed the transcript rates as provided by law. The person preparing a transcript shall certify to its accuracy.

**(c) Supervision.** The recording of proceedings and the preparation of transcripts thereof, whether by sound recording or stenographic reporters, shall be subject to the supervision and control of the Administrative Director of the Courts.

Note: Source -- R.R. 8:7-5(a)(b)(c), 8:10-7. Deleted and new rule adopted July 7, 1971 to be effective September 13, 1971; paragraph (a) amended July 24, 1978 to be effective September 11, 1978.]

#### **[7:4-6. Sentence and Judgment**

**(a) Sentence.** If the defendant has been convicted or pleaded guilty to an indictable offense, the court may postpone imposition of a sentence for a period not exceeding 30 days in order to obtain a presentence investigation from the chief probation officer of the county. If the defendant has been convicted or pleaded guilty to a non-indictable offense, sentence shall be imposed immediately unless the court postpones sentencing for a period not exceeding 30 days in order to obtain a presentence report or for other good cause. Pending sentence the court may commit the defendant or continue or alter the bail. Before imposing sentence, the court shall afford the defendant and his counsel an opportunity to make a statement on defendant's behalf and to present any information in mitigation or punishment. Where a sentence has

been opened and vacated, the defendant shall be re-sentenced forthwith, except where a new trial is granted.

**(b) Judgment.** A judgment of conviction shall set forth the complaint, the plea, the findings, the adjudication and sentence. It shall contain the number of the section and the title or a reasonably short description of the statute or ordinance under which conviction was had, the names and addresses of the witnesses sworn and a list of exhibits produced at the trial. If the defendant is found not guilty or for any other reason is entitled to be discharged, the judgment shall be entered accordingly. The judgment shall be signed by the court and entered by the clerk. If at the time of hearing judgment is reserved, the court upon the entry of judgment of acquittal shall forthwith mail a copy thereof to the defendant by ordinary mail; otherwise, the defendant shall be notified to appear for entry of judgment and sentencing.

**(c) Reasons for Sentence.** The provisions of R. 3:21-4(f) shall apply to the municipal courts.

**(d) Conviction of a Corporation.** R. 3:21-6 is applicable in the event of a conviction of a corporation.

**(e) Probation.** A convicted defendant may be placed on probation in accordance with R. 3:21-7. The order of the court shall refer to the standard conditions filed with the Superior Court.

**(f) Credit for Confinement Pending Sentence.** R. 3:21-8 is applicable in the event a defendant has been in custody prior to the imposition of a custodial sentence.

**(g) Correction or Reduction of Sentence.** The provisions of R. 3:21-10 (change or reduction of sentence) shall apply to the municipal courts.

**(h) Identification Following Conviction.** The court may order a person convicted of a non-indictable offense to submit to the taking of fingerprints when the identity of the person is in question.

Note: Source -- R.R. 8:7-8(a)(b)(c)(d), 8:7-11(a)(b). Paragraph (a) amended June 29, 1973 to be effective September 10, 1973. Paragraph (c) adopted and former paragraphs (c)(d)(e)(f) redesignated to (d)(e)(f)(g), respectively July 17, 1975 to be effective September 8, 1975; paragraph (h) adopted July 22, 1983 to be effective September 12, 1983; paragraph (e) amended July 26, 1984 to be effective September 10, 1984; paragraph (c) amended July 14, 1992 to be effective September 1, 1992.]

#### **[7:4-7. New Trial**

The court may, on defendant's motion, grant him a new trial if required in the interest of justice. The court may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only before, or within two years after, final judgment. A motion for a new trial based on other grounds shall be made within 10 days after the entry of judgment of conviction, or within such further time as the court fixes during the 10-day period. In no event shall this rule be construed to limit the right of a defendant to apply to the court for a new trial on the ground of fraud or lack of jurisdiction.

Note: Source -- R.R. 8:7-10.]

#### **[7:4-8. Plea Agreements**

(a) Plea agreements shall be permitted in the municipal courts under Guidelines established by the Supreme Court.

(b) Plea agreements will be allowed only in those municipal courts where there is a municipal prosecutor and only in those cases handled by the municipal

prosecutor; provided, however, that plea agreements will be allowed in any municipal court in cases handled by the Office of the Attorney General or the county prosecutor.

(c) No plea agreement will be allowed unless the defendant is either represented by counsel or makes a knowing waiver on the record of the right to be so represented.

(d) In all plea agreement matters before the plea is entered the prosecutor must represent to the court that the complainant and the victim, if the victim is present at the hearing, have been consulted about the agreement.

(e) Plea agreements will be allowed only in matters within the jurisdiction of the municipal court; in particular, plea agreements shall not be allowed to downgrade or dispose of indictable complaints without the consent of the County Prosecutor, which consent shall be noted on the record.

(f) When a plea agreement is reached, the terms and the factual basis that supports it shall be set forth fully on the record in open court.

(g) The court shall not accept a plea agreement involving sentence recommendations that circumvent minimum sentences imposed by law for the offense(s).

(h) If the judge determines that the interest of justice would not be served by accepting the agreement, the judge shall so state, and the defendant shall be informed of the right to withdraw the plea.

Note: Adopted June 29, 1990 to be effective immediately.

## **GUIDELINES FOR OPERATION OF PLEA AGREEMENTS IN THE MUNICIPAL COURTS OF NEW JERSEY**

**GUIDELINE 1. Purpose.** The purpose of these Guidelines is to allow for flexibility in the definitions and exclusions relating to the plea agreement process

as that process evolves and certain offenses come to demand lesser or greater scrutiny.

**GUIDELINE 2. Definitions.** For the purpose of these Guidelines, a plea agreement occurs in a municipal court matter whenever the prosecutor and the defense agree as to the offense or offenses to which a defendant will plead guilty on condition that any or all of the following occur:

- (a) the prosecutor will recommend to the court that another offense or offenses be dismissed,
- (b) the prosecutor will recommend to the court that it accept a plea to a lesser or other offense (whether included or not) than that originally charged,
- (c) the prosecutor will recommend a sentence(s), not to exceed the maximum permitted, to the court or remain silent at sentencing.

**GUIDELINE 3. Prosecutor's Responsibilities.** Nothing in these Guidelines should be construed to affect in any way the prosecutor's discretion in any case to move unilaterally for an amendment to the original charge or a dismissal of the charges pending against a defendant if the prosecutor determines and represents on the record the reasons in support of the motion.

**GUIDELINE 4. Limitation.** No plea agreements whatsoever will be allowed in drunken driving or certain drug offenses. Those offenses are:

- A. Driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50) and refusal to provide a breath sample (N.J.S.A. 39:4-50.2) and,
- B. Possession of marijuana or hashish (N.J.S.A. 2C:35-10a(4)); being under the influence of a controlled dangerous substance or its analog (N.J.S.A. 2C:35-10b); and use, possession or intent to use or possess drug paraphernalia, etc. (N.J.S.A. 2C:36-2).

The municipal court may, for certain other offenses subject to minimum mandatory penalties, refuse to accept a plea agreement unless the municipal

prosecutor represents that the possibility of conviction is so remote that the interests of justice require the acceptance of a plea to a lesser offense.

COMMENT

Over the years, various unique practices and procedures have evolved in connection with the disposition of municipal court cases. Thus, it is the intent of these Guidelines to define regulated plea agreements as including every common practice that has evolved as a subterfuge for plea agreements. Therefore, for the purpose of these Guidelines, a plea agreement shall include all of those traditional practices, utilized by prosecutors and defense counsel, including "merger", "dismissal", "downgrade" or "amendment". Generally, "mergers" involve the dismissal of lesser-included or related offenses when a defendant pleads to the most serious offense. "Dismissals" involve motions to dismiss a pending charge or plea agreement when the municipal prosecutor determines, for cause (usually for insufficient evidence), that the charge should be dismissed. "Downgrades" or "amendments" involve the taking of a plea to a lesser or included offense to that originally charged.

Plea agreements are to be distinguished from the discretion of a prosecutor to charge or unilaterally move to dismiss, amend or otherwise dispose of a matter. It is recognized that it is not the municipal prosecutor's function merely to seek convictions in all cases. The prosecutor is not an ordinary advocate. Rather, the prosecutor has an obligation to defendants, the State and the public to see that justice is done and truth is revealed in each individual case. The goal should be to achieve individual justice in individual cases.

In discharging the diverse responsibilities of that office, a prosecutor must have some latitude to exercise the prosecutorial discretion demanded of that position. It is well established, for example, that a prosecutor should not prosecute when the evidence does not support the State's charges. Further, the prosecutor

should have the ability to amend the charges to conform to the proofs.

**Note:** Guidelines and Comment adopted June 29, 1990 simultaneously with Rule 7:4-8 to be effective immediately.]

## **RULE 7:5 BAIL**

### **[7:5-1. Applicability of Superior Court Rules**

Except as otherwise provided by R. 7:5-2 and 7:5-3, the provisions of R. 3:26-1(a) (bail before conviction), 3:26-2 (authority to admit to bail), 3:26-3 (bail for witness), 3:26-4 (deposit of bail), 3:26-5 (justification of sureties), 3:26-6 (forfeiture) and 3:26-7 (exoneration) apply to the municipal courts.

Note: Source -- R.R. 8:9-1(a) (b), 8:9-3, 8:9-4 (first four sentences), 8:9-5, 8:9-6(a) (b) (c) (d), 8:9-7, 8:9-8; amended July 26, 1984 to be effective September 10, 1984.]

### **7:5-1 Right to Bail Before Conviction**

**Persons Entitled; Standards for Fixing.** All persons, except those charged with crimes punishable by death when the prosecutor presents proof that there is a likelihood of conviction and reasonable grounds to believe that the death penalty may be imposed, shall be bailable before conviction on such terms as, in the judgment of the court, will insure their presence in court when required, having regard for their background, residence, employment and family status and, particularly, the general policy against unnecessary sureties and detention. In its discretion the court may order the release of a person on his/her own recognizance and may impose terms or conditions appropriate to such release.

### **COMMENTARY**

This Rule, the source of which was R. 3:26-1, was specifically cross-referenced to Municipal Court practice in the old R. 7:5-1. However, Subsections

(b), (c) and (d) of the source rule have no applicability to Municipal Court practice and therefore have been deleted. Otherwise, the Rule remains unchanged.

**[7:5-2. Place of Deposit**

Bail given in the municipal court shall be deposited with the clerk of the court. If the defendant is subsequently held for the action of the grand jury or waives a probable cause hearing or the complaint is referred to the county prosecutor, the clerk of the municipal court shall forward the bail to the clerk of the county in which the offense was committed. If the offense is subsequently downgraded and remanded, the county prosecutor shall forthwith so advise the county clerk who shall thereupon return the bail to the municipal court where the offense will be tried. At the surety's discretion, bail may also be deposited with the person in charge of the place of confinement where the defendant is then in custody and such custodian shall then transmit the bail to the appropriate court clerk as is herein provided.

Note: Source -- R.R. 8:9-4 (fifth and sixth sentences); amended July 17, 1975 to be effective September 8, 1975; amended July 24, 1978 to be effective September 11, 1978.]

**7:5-2 AUTHORITY TO SET BAIL**

(a) Authority to Admit to Initial Bail. A Superior Court judge may set bail for a person charged with any offense. Bail for any offense, except murder, kidnapping, manslaughter, aggravated manslaughter, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, a person arrested in any extradition proceeding or a person arrested under N.J.S.A. 2C:29-9b for violating a restraining order rendered by a Superior Court judge, may be set by any other judge, or in the absence of a judge, by a court administrator or deputy court administrator.

(b) Initial Bail Set. Initial bail shall be set pursuant to R. 7:4-1(a) or (b) on indictable offenses or R. 7:5-8 on non-indictable offenses.

(c) (1) Except in those indictable cases in which a Superior Court Judge has set bail, a Municipal Court judge has the authority to make bail revisions up to and including the time of defendant's first appearance before the court in accordance with the provisions of R. 7:4.2.

(2) A municipal court judge has the authority to make bail revisions on any non-indictable offense at any time during the course of the proceedings.

#### COMMENTARY <sup>4</sup>

One of the most glaring deficiencies in the current Court Rules is the lack of unified procedure governing bail.<sup>5</sup> This deficiency has been decried in major reports issued over the years. (See, for example, the Report of the Task Force on Minority Concerns, 125 N.J.L.J. 109). The Committee recommends adoption of a specific rule which would govern: (1) who may set bail; (2) when it must be set and (3) what procedures govern bail reviews.

#### Who May Set Bail

The former text of the rule is now contained in paragraph (a) and defines who has the authority to set bail. The rule would be changed in one important respect: municipal court administrators and deputy court administrators would be allowed to set initial bail if the judge is unavailable. This amendment is consistent with

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<sup>4</sup> This is the final footnote to the Commentary of the entire proposed rule revision. Once again, because of the way the Superior Court and Municipal Court interact on the issue of initial bail sets, the entire Commentary to R. 3:26-2 has been carried over with the addition of the last two paragraphs to explain necessary additions and deletions in the rule.

<sup>5</sup> The term bail as used herein is broad. It is meant to be all inclusive and includes all conditions of pretrial release a judge may set.

amendments being proposed to Rule 3:4-1. While this is a major change from the current rule which would allow only a judge to set bail, statutorily court administrators and deputy court administrators are allowed to set bail. See N.J.S.A. 2A:8-27. Additionally, the practice is such that in many municipalities bail is set by municipal court administrators, sometimes from bail schedules developed by the municipal court judge. The Committee believes this amendment, while controversial, comports to practice in many municipalities. Also, since a municipal court administrator and deputy court clerk can under our rules determine probable cause, which in effect is the decision to detain, they should be able to set conditions of release in the judge's absence. The intent is not to make the practice of court administrators setting bail more prevalent -- for the Committee believes a judge should set bail. The intent is to assure that no person is held for more than a few hours without having bail determined by a judicial officer.

The Committee is also recommending that an additional class of cases be added to the list of cases for which only a Superior Court judge can set bail. It is recommended that where a Superior Court judge has signed a restraining order under the Prevention of Domestic Violence Act that only a Superior Court judge be allowed to set bail if a defendant under such an order is arrested pursuant to N.J.S.A. 2C:29-9b. Where the original restraining order was signed by a Municipal Court judge the amendment is not intended to prohibit a Municipal Court judge from thereafter setting bail if the defendant is arrested for violating the order.

Two other changes are proposed in paragraph (a). The first is to add the word "initial" before the word "bail" in the title to paragraph (a). This is to assure that there is no confusion that paragraph (a) deal only with the initial setting of bail not its review or reconsideration. The Committee is also proposing that language be dropped in the first sentence of the rule which requires that certain bails be set by Superior Court judges in the courts in which the offense was committed or the arrest made. The limitation to county is not meaningful any longer given the statewide

jurisdiction of all Superior Court judges and the division of the state administratively into vicinages.

#### When Must Initial Bail be Set

A paragraph (b) has been added to the rule. This paragraph states that initial bail sets shall be pursuant to Rules 3:4-1 or 7:5-3. Under Rule 3:4-1 bail will be set within twelve hours of an arrest if it has not been set contemporaneously with the issuance of an arrest pursuant to a warrant. (See also discussion under Commentary for Rule 3:4-1 at pages 28-29 and 33-34 supra.)

#### Review of Initial Bail Set

Under our present rules there is no procedure for reviewing initial bails except as provided under the normal motion practice. In most counties the initial set is reviewed shortly after the offender reaches the county jail via an informal procedure whereby a judge reviews the bail, usually in chambers, with a case supervisor who has interviewed the offender in jail. This procedure was started as a response to jail overcrowding and provides a quick method of reviewing initial bails. The Committee recommends this practice be formalized in the rules. It is not intended to change the current practices in the counties where these reviews are very often informal and are held in camera. Nor is it intended to replace the option of having bail reviewed under a more formal mechanism. Rather it is intended to assure that initial bail sets, which some reports have criticized as being too high, are reviewed quickly by a Superior Court judge. In that vein the rule calls for this informal review the next day, which is neither a Saturday, Sunday or holiday, after arrest. The proposal originally called for this review the next working day after the offender reached the county jail. The reference to county jail was deleted because the Committee is of the opinion that this review should take place whether the offender is in the county jail or in a local lock-up. The Committee recognizes it

would be difficult under the present setup to provide this review for persons held in local lock-ups as judges at the county level aren't aware when a person is being held in a local lock-up. However, the Committee believes that the person setting the original bail can be instructed to notify case management when a bail has been set and the offender is being held in a local lock-up. Then a bail interview can be held and a review scheduled. The review, of the initial bail set, is required whether the bail was originally set by a Municipal or Superior Court judge. See also discussion under Commentary to R. 3:4-1(c) at page 35 supra.

### Bail Reduction Motions

Bail motions are presently covered under the normal process governing all motions under R. 1:6-1. Under R. 1:6-3 motions are heard no later than 14 days after the motion is filed. In some counties the full 14 days is required before a motion to reduce bail is heard; in others these motions are scheduled for less than seven days; in some others no formal motion is needed. The Committee is endorsing an amendment which would reduce the time period of a bail motion to seven days. The Supreme Court Committee on Criminal Practice, in its Annual Report in 1988, first proposed that bail motions be less than 14 days. See 122 N.J.L.J. 97. It was thereafter cited in the Report of Task Force on Minority Concerns. In originally making the proposal the Criminal Practice Committee gave the following justification:

To wait 14 days before an initial bail reduction motion can be heard may be overly punitive to an incarcerated defendant since these motions do not require extensive legal research or argument similar to other criminal motions, and because a bail investigation is conducted very soon after arrest. Additionally, this delay may, if the defendant is incarcerated for the full 14 days, make a difference in an individual's ability to remain employed, which could have a devastating effect on his family. The Committee believes that bail reductions should not have to wait 14 days to be heard, given their nature. The Committee is recommending that the time period be reduced to no later than seven calendar days after the filing of the notice of the motion and service upon the prosecutor for the first formal review. 122 N.J.L.J.

The proposed amendment is not intended to make bail reduction motion practice necessarily formal. In some counties bail reduction motion practice is informal in nature with the prosecutor being notified by defense counsel by telephone of a motion. The amendment would allow this type of practice while not prohibiting more formal procedures where they are ingrained in the local county legal culture.

The source rule for R. 7:5-2 was R. 3:26-2. The first sentence of R. 3:26-2(c) has been deleted to bring the rule into accordance with deletions in R. 7:4-1 (See Comment to R. 7:4-1).

The language of R. 7:5-2(c) has been added to reflect that a Municipal Court judge has the authority to make bail revisions up to and including the time of the defendant's first appearance in municipal court. However, that authority is limited to cases where a Municipal Court judge, administrator or deputy court administrator has already set bail. In addition, R. 3:26-2(d) has been deleted as the subsection has no applicability to Municipal Court practice.

### **[7:5-3. Authority to Admit to Bail**

In any case in which the municipal court judge has fixed the amount of bail, he may designate the taking of the recognizances by the clerk or any other person authorized by law to take recognizances, other than the arresting officer. In the absence of the judge, a person arrested and charged with a non-indictable offense which may be tried by the judge, may, before his appearance before him, be admitted to bail by the clerk of the court; and in the absence of the judge and the clerk, may be admitted to bail by any other person authorized by law to admit persons to bail other than the arresting officer, designated for such purpose by the judge.

Note: Source -- R.R. 8:9-2(a) (b).]

**7:5-3 FORM AND PLACE OF DEPOSIT; LOCATION OF REAL ESTATE; RECORD OF RECOGNIZANCES, DISCHARGE AND FORFEITURE THEREOF**

**(a) Deposit of Bail.** A person admitted to bail shall, together with retained sureties, sign and execute a recognizance before a person authorized to take bail or, if the defendant is in custody, the person in charge of the place of confinement. The recognizance shall contain the terms set forth in R. 1:13-3(b) and shall be conditioned upon the defendant's appearance at all stages of the proceedings until final determination of the matter, unless otherwise ordered by the court. One or more sureties may be required. Cash may be accepted, and in proper cases no security need be required. A corporate surety shall be one approved by the Commissioner of Insurance and shall execute the recognizance under its corporate seal, cause the same to be duly acknowledged and shall annex thereto proof of authority of the officers or agents executing the same and of corporate authority and qualification. Real estate offered as bail for indictable and non-indictable offenses shall be approved by and deposited with the clerk of the county in which the offense occurred and not with the municipal court administrator. In any county, with the approval of the Assignment Judge, a program may be instituted for the deposit in court of cash in the amount of 10 percent of the amount of bail fixed.

**(b) Limitation on Individual Surety.** Unless the court for good cause otherwise permits, no surety, other than an approved corporate surety, shall enter into a recognizance or undertaking for bail if there remains undischarged any previous recognizance or bail undertaken by the surety.

**(c) Real Estate in Other Counties.** Real estate owned by a surety located in a county other than the one in which the bail is taken may be accepted, in which case the administrator of the court in which the bail is taken shall forthwith transmit a copy of the recognizance certified by court administrator to the clerk of the county in which the real estate is situated, who shall record it in the same manner as if the recognizance had been taken in the county where the clerk is situated.

(d) Record of Recognizance. In Municipal Court proceedings the record of the recognizance shall be entered in the docket book maintained by the court administrator.

(e) Record of Discharge; Forfeiture. When any recognizance shall be discharged by court order upon proof of compliance with the conditions thereof or by reason of the judgment in any matter, the administrator of the court shall enter the word "discharged" and the date of discharge at the end of the record of such recognizance. When any recognizance is forfeited, the administrator of the court shall enter the word "forfeited", and the date of forfeiture at the end of the record of such recognizance, and shall give notice of such forfeiture to the county counsel. When real estate of the surety located in a county other than the one in which the bail was taken is affected, the administrator of the court in which recognizance is given shall forthwith send notice of the discharge or forfeiture and the date thereof to the clerk of the county where such real estate is situated, who shall make the appropriate entry at the end of the record of such recognizance.

(f) Cash Deposit. When cash is deposited in lieu of bond by a person other than the defendant, the defendant shall file an affidavit as to the lawful ownership thereof and upon discharge, such cash may be returned to the owner named in the affidavit.

(g) Ten Percent Cash Bail. Whenever bail is set pursuant to R. 7:5-1, unless the order setting bail specified to the contrary, bail may be satisfied by the deposit in court of cash in the amount of ten percent of the amount of bail fixed and defendant's execution of a recognizance for the remaining ninety percent. No surety shall be required unless the court fixing bail specifically so orders. When cash equal to ten percent of the bail fixed is deposited pursuant to this/her rule, if the cash is owned by someone other than the defendant, the owner shall charge no fee for the deposit other than lawful interest and shall submit an affidavit with the deposit so

stating and also listing the names of any other persons for whom the owner has deposited bail.

Source - R.R. 3:26-4

**COMMENTARY TO EXPLAIN EXCLUSION OF R. 3:26-3 FROM PART VII.**

It should be noted that though R. 3:26-3 (Bail for Witness) was specifically cross referenced to municipal court practice by the source rule, R. 7:5-1, it has been eliminated altogether from this revision. The Committee on Municipal Courts unanimously believed that there was no need for bail to be set on material witnesses in Municipal Court. Furthermore, the Part III source rule has recently been extensively amended on recommendation from the Committee on Criminal Practice. Those recommendations, which place more safeguards on the application for bail for a material witness, have no applicability whatsoever to Municipal Court practice. It should be further noted that this discussion is not intended to curb the judge's authority to issue a bench warrant with bail for a witness who has failed to appear in court on a return date pursuant to a subpoena which has been properly issued and served upon the witness.

**[7:5-4. Bail After Conviction**

When a sentence has been imposed and an appeal from the judgment of conviction has been taken, the trial judge shall admit the appellant to bail for a period not exceeding 10 days during which time the appellant shall enter into a recognizance with sufficient surety conditioned for his appearance before the court to which the appeal has been taken and to abide the judgment thereof. Thereupon the trial court shall forthwith discharge him from custody. The recognizance shall be subject to the approval of the court to which the appeal is taken. If a recognizance is not submitted within the said 10 days or if submitted but is not approved, then in the court's discretion bail may be revoked. The judge or his

clerk shall transmit to the county clerk any cash deposit and any recognizance so taken.

Note: Source -- R.R. 8:9-9, 8:9-10.]

#### 7:5-4 JUSTIFICATION OF SURETIES

Every surety, except an approved corporate surety, shall justify by affidavit and be required to describe therein the property of which he/she proposes to justify and the encumbrances thereon, the number and amount of other recognizances and undertakings for bail entered into and remaining undischarged, if any, and all other liabilities. No recognizance shall be approved unless the surety thereon shall be qualified.

Source - R.R. 3:26-5

#### 7:5-5 FORFEITURE

(a) Declaration. Upon breach of a condition of a recognizance, the prosecuting attorney shall move the court for a declaration of forfeiture of the bail, and the administrator of the court shall forthwith send notice of the forfeiture to the county counsel or the municipal attorney, as appropriate, who shall forthwith proceed to collect the forfeited amount.

(b) Setting Aside. The court may direct that a forfeiture be set aside if its enforcement is not required in the interest of justice upon such conditions as it imposes.

(c) Enforcement; Remission. When a forfeiture is not set aside, the court shall on motion enter a judgment of default and execution may issue thereon. After entry of such judgment, the court may remit it in whole or in part in the interest of justice.

Source - R.R. 3:26-6

### 7:5-6 EXONERATION

When the condition of the recognizance has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligers and release any bail. A surety may be exonerated by a deposit of cash in the amount of the recognizance or by a timely surrender of the defendant into custody.

Source - R.R. 3:26-7

### 7:5-7 PLACE OF DEPOSIT

Bail given in the Municipal Court shall be deposited with the administrator of the court. If the defendant is subsequently indicted or an accusation is returned against the defendant, the administrator of the Municipal Court shall forward the bail to the clerk of the county in which the offense was committed. At the surety's discretion bail may also be deposited with the person in charge of the place of confinement where the defendant is then in custody and such custodian shall then transmit the bail to the appropriate municipal court administrator as herein provided.

### COMMENTARY

The source rule for this rule was R. 7:5-2. The language of the source rule has been amended to reflect that municipal court administrators only have to forward bail to the county clerk once the particular defendant has been indicted or an accusation has been returned against the defendant. If an indictment or an accusation is never returned, then the bail does not get forwarded. This revision was made in recognition that many initially charged indictable offenses, where bail has been set and deposited, do not result in indictments or accusations. Thus jurisdiction is never transferred in those cases in which the indictment or accusation is never returned. What happens in current practice throughout the state is that the case is then heard in municipal court and, once the case is disposed by the

court, invariably, there is an inordinate delay in the return of bail to the surety. That is because the bail has been transferred to the county clerk and there is almost always some delay in returning the bail back to the Municipal Court. In an effort to eliminate that delay and, thereby, better serve the public which the court system has been charged with serving, this rule revision has been made.

#### **7:5-8 AUTHORITY TO ADMIT TO BAIL**

In any case in which the Municipal Court judge has fixed the amount of bail, he/she may designate the taking of the recognizance by the administrator or any other person authorized by law to take recognizances, other than the arresting officer. In the absence of the judge, a person arrested and charged with a non-indictable offense which may be tried by the judge, may, before appearance before the judge, be admitted to bail by the administrator of the court; and in the absence of the judge and the administrator, may be admitted to bail by any other person authorized by law to admit persons to bail other than the arresting officer, designated for such purpose by the judge.

Source - R.R. 7:5-3

#### **7:5-9 BAIL AFTER CONVICTION**

When a sentence has been imposed and an appeal from the judgment of conviction has been taken, the trial judge shall admit the appellant to bail for a period not exceeding 10 days during which time the appellant shall enter into a recognizance with sufficient surety conditioned for the defendant's appearance before the court to which the appeal has been taken and to abide the judgment thereof. Thereupon the trial court shall forthwith discharge the defendant from custody. The recognizance shall be subject to the approval of the court to which the appeal is taken. If a recognizance is not submitted within the said 10 days or if submitted but is not approved, then in the court's discretion bail may be revoked.

The judge or court administrator shall transmit to the county clerk any cash deposit and any recognizance so taken.

Source - R.R. 7:5-4

**[RULE 7:6. TRAFFIC OFFENSES]**

**RULE 7:6    SEARCH WARRANTS**

**[7:6-1. Complaint and Summons**

**(a) Form.** In cases involving violations of statutes or ordinances relating to the operation or use of motor vehicles, hereinafter designated as "traffic offenses", the complaint and summons shall be a uniform traffic ticket in the form prescribed by the Administrative Director of the Courts. On a complaint and summons for a non-moving traffic offense, in lieu of the name of the defendant, it shall be sufficient to set forth the license number of the vehicle involved, and it shall be presumed that the owner of the vehicle is the defendant charged with the violation.

**(b) Issuance.** The complaint may be made and signed by a law enforcement officer, or by any other person, but the summons shall be signed and issued only by such officer, or the judge, clerk or deputy clerk of the court in which the complaint is, or is to be filed. R. 7:3 relating to warrants and summons in respect of non-indictable offenses generally, shall be applicable to cases involving a traffic offense, except as otherwise herein provided.

**(c) Records and Reports.** Each court shall be responsible for all uniform traffic tickets printed and distributed to law enforcement officers or others in his municipality, and for their proper disposition, and shall prepare or cause to be prepared such records and reports relating to such uniform traffic tickets as the Administrative Director of the Courts prescribes.

The provisions of this paragraph shall also apply to the Director of the Division of Motor Vehicles and the Superintendent of State Police, in the Department of Law and Public Safety and to the responsible official of any other agency authorized by the Administrative Director of the Courts to print and distribute the uniform traffic ticket to its law enforcement personnel.

Note: Source -- R.R. 8:10-(a)(b)(c). Paragraph (c) amended July 26, 1984 to be effective September 10, 1984.]

#### **RULE 7:6-1 AUTHORITY TO ISSUE**

A search warrant may be issued by a judge of a court having jurisdiction in the municipality where the property sought is located.

Source - R.R. 3:5-1

#### **[7:6-2. Improper Disposition of Traffic Ticket; Contempt of Court**

The aid by any person in the disposition of a traffic ticket or summons in any manner other than that authorized by the court may constitute a contempt.

Note: Source -- R.R. 8:10-2.]

#### **7:6-2 GROUNDS FOR ISSUANCE**

A search warrant may be issued to search for and seize any property, including documents, books, papers and any other tangible objects, obtained in violation of the penal laws of this State or any other state; or possessed, controlled, designed or intended for use or which has been used in connection with any such violation; or constituting evidence of or tending to show any such violation.

Source - R.R. 3:5-2

**[7:6-3. Procedure on Failure to Appear**

**(a) Residents -- Parking Cases.** If a defendant residing in this State fails to appear or answer a traffic summons for a parking offense, the court shall mail a notice to him on a form approved by the Administrative Director of the Courts. If the defendant fails to comply with the provisions of the notice, a warrant may be issued, except if the notice is returned to the court by the post office marked to indicate that the defendant cannot be located. If the warrant is not executed within 30 days after issue or the notice is returned to the court by the post office, the court shall then mark the case as closed on its records. If bail has been posted and the defendant fails to appear or answer within 30 days after it was posted or on the date specified by the court, the court shall declare a forfeiture of the bail and the court shall mark the case as closed on its records. A copy of the notice and any envelope returned by the post office and a copy of any warrant issued shall be filed with the complaint. A case marked closed may be reopened and a bail forfeiture may be set aside if it appears that justice so requires.

**(b) Residents -- Non-Parking Cases.** If a defendant residing in this State fails to appear or answer a traffic summons for a non-parking traffic offense, the court shall either issue a warrant for his arrest or mail a notice to him on a form approved by the Administrative Director of the Courts. If a notice is mailed to the defendant and he fails to comply with its provisions, a warrant shall be issued. If the warrant is not executed within 30 days after issue and no bail has been posted, the court shall promptly report the failure to appear or answer to the Division of Motor Vehicles on a form approved by the Administrative Director of the Courts and mark the case as closed on its records but if bail has been posted, the court shall declare a forfeiture of the bail and report the forfeiture to the Division of Motor Vehicles in accordance with the provisions of R.S. 39:5-42. A case marked closed may be reopened and a bail forfeiture may be set aside if it appears that justice so requires.

**(c) Non-Residents -- All Traffic Cases.** If a defendant residing outside this State fails to appear or answer a traffic summons within 30 days of the return date of such summons and no bail has been posted, the court shall mail a notice to the defendant on a form approved by the Administrative Director of the Courts and file a copy with the complaint provided, however, that the mailing of such notice in parking cases shall be discretionary with the court. If the defendant fails to appear or otherwise answer within 30 days of the mailing of the notice in a non-parking traffic case, the court shall promptly mail a copy of the notice to the Division of Motor Vehicles and mark the case as closed on its records. If the defendant fails to comply with the provisions of the notice in a parking case or if no notice is mailed in such case within 60 days of the return date of the summons, the court shall mark the case as closed on its records. If a non-resident defendant fails to appear or answer a traffic summons within 30 days of the return date thereof, and he has posted bail, the court shall declare a forfeiture of the bail and in a parking case mark the case as closed on its records and in a non-parking traffic case report the forfeiture to the Division of Motor Vehicles in accordance with the provisions of R.S. 39:5-42. A case marked closed may be reopened and a bail forfeiture may be set aside if it appears that justice so requires.

Note: Source -- R.R. 8:10-3(a)(b). Paragraph (a) amended November 5, 1986 to be effective January 1, 1987.]

### **7:6-3 ISSUANCE AND CONTENTS**

An applicant for a search warrant shall appear personally before the judge, who must take the applicant's affidavit or testimony before issuing the warrant. The judge may also examine, under oath, any witness the applicant produces, and may in the judge's discretion require that any person upon whose information the applicant relies appear personally and be examined under oath concerning such information. If the judge is satisfied that grounds for granting the application exist

or that there is probable cause to believe they exist, he/she shall date and issue the warrant identifying the property to be seized, naming or describing the person or place to be searched and specifying the hours when it may be executed. The warrant shall be directed to any law enforcement officer, without the officer, and it shall state the basis for its issuance and the names of the persons whose affidavits or testimony have been taken in support thereof. The warrant shall direct that it be returned to the judge who issued it.

#### COMMENTARY

The source rule for this rule was R. 3:5-3. Subsection (b) of the source rule has been deleted in its entirety because that subsection dealt with the procedure for the issuance of telephonic search warrants. Municipal Court judges do not have the authority to issue telephonic search warrants. Otherwise, the source rule remains unchanged.

#### **[7:6-4. Trial Date; Adjournment**

The date fixed for the trial of any traffic offense shall be at least five days from the date of its commission unless the defendant, having been informed of his right to such trial date, waives it and the court in its discretion fixes an earlier date. If a hearing is adjourned, the court may detain the defendant in safe custody unless he makes a cash deposit or gives a recognizance in accordance with R. 7:5 in an amount not exceeding \$500, or himself qualifies and justifies in real estate security situated in this State in twice the amount fixed for the bail.

Note: Source -- R.R. 8:10-5, 8:10-6(g).]

#### **7:6-4 SECRECY**

A search warrant shall be issued with all practicable secrecy and the affidavit or testimony upon which it is based shall not be filed with the administrator of the

court or made public in any way unless a warrant is issued and executed. The disclosure, prior to its execution, that a warrant has been applied for or issued except as necessary for its execution, may constitute a contempt.

Source - R.R. 3:5-4

#### **[7:6-5. Calendar Parts; Sessions**

Insofar as practicable, traffic offenses shall be tried separate and apart from other offenses. If a court sits in part and one part sitting in daily session has been designated as a traffic court, traffic offenses shall be tried in such part only, or if a court has designated a particular session (which may be an evening session) as the traffic session, traffic offenses shall be tried only in such session, except for good cause shown. Otherwise the court shall designate the time for the trial of traffic offenses. The Administrative Division of the Courts may, where necessary, direct a court to hold more frequent traffic sessions, or to coordinate sessions held by him with those regularly scheduled by other municipal court judges in the county.

Note: Source -- R.R. 8:10-6(a)(b)(c)(d)(f).]

#### **7:6-5 EXECUTION AND RETURN WITH INVENTORY**

(a) A search warrant may be executed by any law enforcement officer, including the Attorney General or county prosecutor or sheriff or members of their staffs. The warrant must be executed within 10 days after its issuance and within the hours fixed therein by the judge issuing it, unless for good cause shown the warrant provides for its execution at any time of day or night. The officer taking property under the warrant shall give to the person from whom of from whose premises the property is taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property is taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made and verified by the

officer executing the warrant in the presence of the person from whom or from whose premises the property is taken or, if such person is not present, in the presence of some other person. The judge shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(b) If a duplicate search warrant has been executed, the person who executed the warrant shall enter the exact time of its execution on its face. If a tape or stenographic record of the oral testimony has been made, the judge shall require the applicant to sign a transcript of that record. In all other respects, execution and return of the duplicate original search warrant shall be that required by paragraph (a) of this rule.

Source - R.R. 3:5-5

#### **[7:6-6. Statement in Mitigation or Defense by Affidavit; Judgment**

**(a) Statement in Mitigation or Defense by Affidavit.** In all traffic cases 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 statement in defense or mitigation of penalty imposed upon conviction or enter a guilty plea by affidavit if 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 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.

**(b) Judgment.** If a defendant presents his statement in mitigation or defense by affidavit, the court shall send him a copy of the judgment by ordinary mail.

Note: Source -- R.R. 8:10-8(a)(b). Paragraph (b) amended June 29, 1973 to be effective September 10, 1973. Paragraph (a) amended July 17, 1975 to be effective September 8, 1975; paragraph (a) amended July 29, 1977 to be effective September 6, 1977; paragraph (a) amended November 2, 1987 to be effective January 1, 1988.]

### 7:6-6 FILING

(a) The judge who issued the warrant shall attach thereto the return, inventory, and all other papers in connection therewith, including the affidavits and a transcript or summary of any oral testimony and, where applicable, a duplicate original search warrant. The judge shall promptly deliver them to the municipal court administrator who shall file them with the county clerk of the county wherein the property was seized. The municipal court administrator shall retain in a confidential file copies of all papers filed with the county clerk. When a tape or transmitted recording has been made, it shall also be sent to the county clerk without retaining a copy by the municipal court administrator.

(b) All warrants that have been completely executed and the papers accompanying them, including the affidavits, transcript or summary of any oral testimony, duplicate original search warrant, return and inventory, and any original tape or stenographic recording shall be available for inspection and copying by the defendant as provided in R. 3:13-3 and by any person claiming to be aggrieved by an unlawful search and seizure upon notice to the county prosecutor for good cause shown.

## COMMENTARY

The source rule for this rule was R. 3:5-6. Subsection (a) of the source rule was amended to reflect filing procedures as they apply to municipal not Superior Court practice.

Subsection (b) of the source rule has been deleted as that rule has no applicability to Municipal Court practice. In light of the deletion of subsection (b) of the source rule, subsection (c) has become subsection (b).

### **[7:6-7. Notice to Defendant on Guilty Plea**

Before accepting a plea of guilty to a traffic offense other than a parking offense, the court shall inform the defendant that a record of the conviction will be sent to the Director of the Division of Motor Vehicles of this State or the Commissioner of Motor Vehicles of the state where defendant received his license to drive, to become a part of his driving record.

Note: Source -- R.R. 8:10-9(a).]

### **RULE 7:6-7 MOTIONS TO SUPPRESS**

Except for cases involving a search pursuant to warrant, motions to suppress evidence in matters subject to trial within the Municipal Court may be filed and heard therein in any case in which the Attorney General, county prosecutor, or municipal prosecutor is prosecuting attorney on behalf of the State and on notice to said prosecutor. Written letter briefs shall be filed by the prosecutor and defense attorney/defendant. The briefing schedule shall reside in the discretion of the judge.

When a motion to suppress evidence is granted, the order shall be entered forthwith and the administrator shall within ten days thereafter dispatch a copy thereof to all parties and to the county prosecutor. All further proceedings in the Municipal Court shall be stayed pending a timely appeal by the State pursuant to R.

3:24. Property the use of which is suppressed pursuant to an order entered under this rule, and which is not otherwise subject to a lawful detention shall be delivered to the person entitled thereto only after a decision on any appeal by the State. Denial of a motion to suppress heard in the Municipal Court may be reviewed on appeal from a judgment of conviction pursuant to R. 3:23, notwithstanding that such judgment is entered following a guilty plea or the entry of a conditional discharge without a guilty plea, pursuant to N.J.S. 2C:36A-1. If a pretrial motion is not made in accordance with this rule, the defendant shall be deemed to have waived any objection during trial to the admission of evidence on the ground that such evidence was unlawfully obtained.

#### COMMENTARY

The source rules for this rule were a combination of R. 3:5-7 and R. 7:4-2(f). Since, June, 1989, the implementation date for R. 7:4-2(f), that first brought limited motions to suppress evidence allegedly unlawfully seized into Municipal Court practice, there has been a great deal of confusion among members of the bench and bar over which rule controls this matter in Municipal Courts. The primary reasons for confusion, apparently, were attorney's reliance upon R. 3:5-7 for procedural guidance on motions to suppress in years prior to 1989 in Superior Court, an unfamiliarity with R. 7:4-2(f) (as it did not follow the normal cause of rule amendment in September of any given year) and general confusion over the cross referencing of Part III to Part VII Rules.

The rule, as revised, borrows from both of the source rules. The revised rule makes the filing of briefs mandatory by both the state and defense. Yet it leaves the briefing schedule in the discretion of the judge. These changes recognize the importance of the issues to be decided but take into account the necessary flexibility which has to be accorded a system with only part-time prosecutors or assigned counsel.

In addition, the revised rule reserves the defendant's right to appeal an adverse determination of a motion to suppress, notwithstanding the entry of a conditional discharge without a guilty plea pursuant to N.J.S.A. 2C:36-A(1). The Rule also provides that if a pre-trial motion is not made in accordance with the Rule, the defendant shall have waived any objection during the trial to the admission of evidence on the grounds such evidence was unlawfully obtained or unconstitutionally obtained, which is a current problem in Municipal Court practice. Sometimes litigants will only make the court aware of the motion to suppress during the pendency of the trial. Hopefully, this Rule revision will put an end to that practice.

#### **RULE 7:6-8 SEARCH AND SEIZURE WITHOUT SEARCH WARRANT**

R. 7:6 shall not be construed to make illegal a lawful search and seizure without a search warrant.

Source - R.R. 3:5-8

#### **[RULE 7:7. VIOLATIONS BUREAU**

##### **7:7.1. Designation; Functions**

If the court determines that the efficient disposition of its business and the convenience of defendants so requires, it may establish a violations bureau and designate as the violations clerk the clerk or deputy clerk of the court or, with the prior approval of the Supreme Court pursuant to R. 1:17-1 any other appropriate official or employee (except an elected official or officer or employee of a police department) of the municipality in which the court is held, or if none is available, any other suitable and responsible person. The judge designated to preside over the Special Civil Part of the Superior Court may designate the clerk, deputy clerk or other employee of the court as violations clerk. The violations clerk shall accept appearances, waiver of trial, pleas of guilty and payments of fine and costs in non-

indictable offenses, subject to limitations hereinafter prescribed. The violations clerk shall serve under the direction and control of the court designating him.

Note: Source -- R.R. 8:10-10(a). Amended November 7, 1988 to be effective January 2, 1989.]

#### **RULE 7:7-1(a) PLEADINGS AND MOTIONS**

Pleadings in Municipal Court actions shall consist only of the complaint. Any defense or objection capable of determination without trial of the general issue must be raised before trial by motion to dismiss or for other appropriate relief except for a motion to dismiss based upon the unconstitutionality of a municipal ordinance or a motion to dismiss for lack of jurisdiction.

#### **COMMENTARY**

The source Rule is R. 3:10-1. R. 3:10-1 was specifically cross-referenced by old R. 7:4-2(c). The reference to pleadings as consisting of indictment, accusation and/or pleas has been deleted since, in Municipal Court practice, there is no indictment or accusation and there is no separate plea sheet used in the Municipal Courts. Otherwise, the Rule remains unchanged.

#### **7:7-1(b) MOTION PRACTICES**

All motions made in Municipal Court which are based in whole or in part upon an alleged violation of defendant's constitutional rights or upon the unconstitutionality of a municipal ordinance must be in writing and supported by accompanying affidavits. All other motions may be made orally and informally, but affidavits or oral testimony may be presented in the discretion of the judge.

## COMMENTARY

This is a totally new section of the Rules. Not long ago, it was common Municipal Court practice that any constitutional issue touching upon a Municipal Court matter could not be resolved in Municipal Court, but had to be resolved by a Superior Court judge. That would include a hearing on the voluntariness of a statement under the Fifth Amendment; whether items seized were lawfully seized under the Fourth Amendment; whether defendant's speedy trial rights had been violated under the Sixth Amendment; and dealing with issues concerning the constitutionality of a statute, ordinance and/or regulation. However, over time and through an ill-defined evolutionary process, it gradually came to be accepted Municipal Court practice to hold these types of hearings in Municipal Court. Therefore, today all hearings concerning the admissibility of a statement, pursuant to Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966) and Berkemer v. McCarty, 468 U.S. 420 (1984) under the Fifth Amendment to the United States Constitution, all issues related to the reliability of either line-ups or photo identifications, pre-trial, pursuant to United State v. Wade, 388 U.S. 218 (1967) under the Sixth Amendment, all issues concerning the defendant's right to a speedy trial, pursuant to Barker v. Wingo, 407 U.S. 514 (1972) under the Sixth Amendment to the Constitution, and all matters with certain limitations concerning the constitutionality of statutes, ordinances and/or regulations, if they concern original municipal court jurisdiction, are now heard in Municipal Court. Also, since June of 1989, all issues concerning the constitutionality of searches and seizures without warrants, if it concerns original Municipal Court jurisdiction, are properly cognizable within the Municipal Courts. Faced with this issue, the Supreme Court Committee on Municipal Courts unanimously decided that since a constitutional issue is of such importance, if any motion made in Municipal Court touched upon in whole or in part an alleged violation of defendant's constitutional rights or upon the constitutionality of a municipal ordinance that such motion mandatorily had to be in

writing supported by accompanying affidavits. This new rule is also deleting the cross reference of R. 3:10-3 to R. 7:4-2(e) in so far as that cross reference concerns the determination of the constitutionality of a statute and/or regulation. This revised court rule makes clear that Municipal Court jurisdiction will be limited to the determination of the constitutionality of a municipal ordinance, if raised. See State v. Barcheski, 181 N.J. Super 34 (App. Div. 1981) and State v. Celmar, 157 N.J. Super 242 (App. Div. 1978).

The second sentence of the rule relies upon R. 7:4-2(e), in part, for its source. This part of the rule recognizes that, if a constitutional issue is not involved in the decision of a motion, that the flexibility of the Municipal Court practice should be maintained by allowing motions to be made orally and informally. However, affidavits of oral testimony may be presented in the discretion of the judge. The earlier source rule does not make clear as to whose authority would require the additional documentation and/or testimony to be presented to the court before the court can make a determination as to the merits of the motion.

#### **[7:7-2. Location**

Whenever practical the violations bureau shall be in a public building. The location shall be designated by the court subject to the approval of the Administrative Director of the Courts and the violations clerk shall take pleas and accept payment of fines and costs only at such location. An appropriate sign reading "Violations Bureau, \_\_\_\_\_ Municipal Court" shall be posted at the entrance to the violations bureau.

Note: Source -- R.R. 8:10-10(e).]

#### **7:7-2 HEARING ON MOTION**

A motion made before trial shall be determined before trial unless the court orders it deferred for determination after trial.

## COMMENTARY

The source rule for this rule is R. 3:10-6. The second sentence of R. 3:10-6 has been deleted from this rule because that refers to a trial by jury and there is no right to a trial by jury on any cases heard in Municipal Court. See State v. Hamm, 121 N.J. 109 (1990). Municipal Court judges must also be mindful that if they permit the defense of unconstitutionality of a municipal ordinance to be raised during trial in contravention of the mandate of the rule and if that defense is sustained, the State's right to appeal on that issue may have been precluded.

### **[7:7-3. Designated Offenses; Schedule of Penalties**

The court shall by order, which may from time to time be amended, supplemented or repealed, designate the non-indictable offenses within the authority of the violations clerk, provided that such offenses shall not include:

- (1) non-parking traffic offenses requiring an increased penalty for a subsequent violation;
- (2) offenses involving traffic accidents resulting in personal injury;
- (3) 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;
- (4) reckless driving;
- (5) careless driving where there has been an accident resulting in personal injury;
- (6) leaving the scene of an accident;
- (7) driving while on the revoked list;
- (8) driving without being licensed.

The court by published order, which shall be submitted to and approved by the Assignment Judge of the county in which the court is located, shall specify the

amount of fines to be imposed for each offense within the authority of the violations clerk, including, in the discretion of the court higher fines and costs for second and subsequent offenses, provided such fines and costs are within the limits declared by statute or ordinance. A schedule of such penalties shall be posted for public view at the violations bureau.

Note: Source - R.R. 8:10-10(b), 8:10A. Amended July 7, 1971 to be effective September 13, 1971. Subparagraphs (3) and (4) amended and new subparagraph (5) added July 29, 1977 to be effective September 6, 1977; subparagraphs (2), (5) and (8) amended and subparagraph (9) deleted July 22, 1983 to be effective September 12, 1983.]

### **7:7-3 EFFECT OF DETERMINATION OF MOTION**

Except as provided in R. 7:8-4(k), if a motion is determined adversely to the defendant, he/she shall be permitted to plead if he/she has not previously pleaded but a plea previously entered shall stand or he/she may be permitted to go to trial at that point. If an objection or defense specified in R. 7:7-1(a) and (b) is sustained and is not otherwise remediable the court shall order the complaint dismissed. If the court grants a motion to dismiss a complaint and the defendant is held in custody on that complaint, the court shall order the defendant to be released.

### **COMMENTARY**

The source for this rule is R. 3:10-7. R. 3:10-7 had not been specifically cross referenced to Part VII but was generally cross referenced by R. 7:1. The language in R. 3:10-7 has been modified to reflect Municipal Court practice. Therefore any reference to indictment or accusation has been changed to "complaint". This rule revision also makes one important procedural change from its source rule. Under the source rule if the court were to grant a motion to dismiss an

indictment or accusation the court may also order that the defendant be held in custody and his bail continued for a specified time pending filing a new indictment or accusation. Since Municipal Court matters do not have the gravamen or weight of Superior Court matters, if a defendant is held in custody and the court grants a motion to dismiss a complaint in Municipal Court the court shall order the defendant to be released on that complaint only.

**[7:7-4. Plea and Payment of Fines and Costs**

A person charged with an offense within the authority of the violations clerk may, upon signing the plea of guilty and waiver of trial on the back of the summons and upon ascertaining the fine and costs established for the offense charged, pay the same, either by mail or in person, to the violations clerk on or before the return date of the summons, provided that when the summons is marked to indicate that a court appearance is required, payment may not be made to the violations clerk even though the offense is on the schedule of penalties. If the defendant is a corporation, partnership or unincorporated association, the plea and waiver may be signed on its behalf by any of its agents or employees. The court in its discretion may authorize the violations clerk to accept such plea and payment after the return date of the summons.

Note: Source - R.R. 8:3-2(c)(3)(iii) (third sentence, second clause), 8:10-10(c). ]

**RULE 7:7-4(a) ALIBIS**

If a defendant intends to rely in any way on an alibi, the defendant shall, on written demand of the prosecuting attorney and within 10 days thereafter, furnish a written statement, signed by the defendant, stating the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he/she intends to rely to establish

such alibi. Within 10 days after receipt of such statement from the defendant, the prosecuting attorney shall, on written demand, furnish the defendant's attorney with a written statement stating the names and addresses of the witnesses upon whom the State intends to rely to establish defendant's presence at the scene of the alleged offense. The trial court may order the amendment or amplification of such statements, or of the time of their service, as the interest of justice requires.

**7:7-4(b) FAILURE TO FURNISH**

If such statement is not furnished as required, the court may refuse to allow the party in default to present witnesses at trial as to defendant's absence from or presence at the scene of the alleged offense, or make such other order or grant such adjournment as the interest of justice requires.

**COMMENTARY**

The source rule for R. 7:7-4(a) and (b) is R. 3:11-1 and R. 3:11-2. The language from the source rule remains intact except for reference to a bill of particulars in the source rule. That legal phrase has no applicability to Municipal Court practice and has been replaced with the term "statement". The source rule was never specifically cross referenced to Part VII but was generally cross referenced by R. 7:1.

**RULE 7:7-5(a) NOTICE OF DEFENSE OF INSANITY; EVIDENCE OF MENTAL DISEASE OR DEFECT**

If the defendant intends to claim insanity as a defense, pursuant to N.J.S.A. 2C:4-1, or that he/she lacked the requisite state of mind, pursuant to N.J.S.A. 2C:4-2, the defendant shall serve a written notice of such intention upon the prosecuting attorney prior to trial. For good cause shown, the court may extend the time for service of the notice or make such other order as the interest of justice

requires. If the defendant fails to comply with this rule the court may take such action as the interest of justice requires.

#### COMMENTARY

The source rule for this rule was R. 3:12. R. 3:12 was never specifically cross referenced to Part VII. The New Jersey Code of Criminal Justice, pursuant to N.J.S.A. 2C:4-1 or 2C:4-2, makes no differentiation as to its applicability between indictable and non-indictable offenses. Therefore, it could be said that with equal force that those defenses apply equally to indictable offenses heard in Superior Court and non-indictable offenses heard in Municipal Court. That is the reason for the specific reference under Part VII which is capable of being brought under either N.J.S.A. 2C:4-1 or N.J.S.A. 2C:4-2. The rule revision makes minor language changes to the source rule, R. 3:12. Instead of requiring the defendant to give written notice of such intention to claim insanity as a defense or lacking the requisite state of mind as a defense at the time the defendant enters his/her plea or within thirty (30) days thereafter, the new rule requires the defendant to make such written notice of intention known to the prosecuting attorney prior to trial. Of course, it is going to be up to the judge to make sure the State has enough notice to provide sufficient time prior to trial in order to allow the State's opportunity to respond to this defense.

#### RULE 7:7-5(b) ACQUITTAL BY REASON OF INSANITY

If a defendant interposes the defense of insanity and the defendant is acquitted after trial on that ground, the verdict and judgment shall so state.

Upon the court entering a finding of "Not Guilty by Reason of Insanity," the procedure for referral of the defendant shall be as provided by N.J.S.A. 2C:4-8 and 2C:4-9 and R. 4:74-7.

## COMMENTARY

The source rule for this rule was R. 3:19-2. That rule has been grouped together with R. 7:7-5(a) because one action necessarily follows the other. The source rule has been changed only in one minor aspect and that is under the second sentence of the source rule the exception has been deleted since that refers to a defendant acquitted of murder and there is no applicability for that exception in Municipal Court practice.

### RULE 7:7-6 PRETRIAL PROCEDURE

(a) Pretrial Conference. At any time after the filing of the complaint the court may order one or more conferences to consider the results of negotiations between the parties relating to plea and other matters as will promote a fair and expeditious disposition or trial.

(b) Pretrial Hearing. Hearings to resolve issues relating to the admissibility of statements by defendant, pretrial identifications of defendant and sound recordings may be held at any time prior to trial and, upon a showing of good cause, hearings as to admissibility of other evidence may also be so held.

## COMMENTARY

The source rule for this rule is R. 3:13-1 which had been specifically cross referenced to Municipal Court practice in R. 7:4-2(h). Certain language in the source rule is inapplicable to Municipal Court practice and has been changed. For example, any reference to an indictment or accusation has been changed to "complaint" in accordance with other rule revisions. Also, Subsection (a) of the rule has been simplified to delete the requirement that a memorandum of the matters agreed upon during the pretrial conference should be prepared and filed by the court and that the pretrial conference should be conducted within sixty (60) days of the arraignment in order to promote greater flexibility as required by Municipal

Court practice. The rule has been left flexible enough to allow the court to make a determination as to when, if at all, a pretrial conference(s) should be held in any particular case. The revised rule makes it a discretionary matter rather than a mandatory matter to have a pretrial conference in Municipal Court. The last sentence of subsection (a) was deleted in whole because that issue, at least for Municipal Court practice, is adequately covered by N.J.R.E. 410.

#### **RULE 7:7-7 DEPOSITIONS**

**(a) When Authorized.** If it appears to the judge of the court in which a complaint is pending that a material witness is likely to be unable to testify at trial because of death or physical or mental incapacity, the court, upon motion and notice to the parties, and after a showing that such action is necessary to prevent manifest injustice, may order that a deposition of the testimony of such witness be taken and that any designated books, papers, document or tangible objects, not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that the witness' deposition be taken, and after the deposition has been subscribed the court may discharge the witness.

**(b) Procedure.** The deposition shall be videotaped unless the court orders otherwise. The deposition shall be taken before the judge at such location as will be convenient to all parties. If, because the deposition is to be taken outside of the State, the judge is unable to preside, the deposition shall be taken before a person designated by the judge to perform that function. All parties and counsel shall have a right to be present at the deposition. Examination, cross-examination and determination of admissibility of evidence, shall proceed in the same manner as at trial. Videotaping shall be done by a person independent of both prosecution and defense and chosen by the judge.

(c) Use. Depositions taken pursuant to this rule may be used at trial in lieu of live testimony of the witness in open court if the witness is unable to testify because of death or physical or mental incapacity. In the case of a witness deposed to allow discharge from commitment for failure to give bail as provided in paragraph (a) above, the deposition may be used, in addition, if the court finds that the party offering the deposition has been unable to procure the attendance of the witness by subpoena or otherwise. The deposition shall be admissible insofar as allowable under the Rules of Evidence applied as though the witness were then present and testifying. The deposition shall not be used unless the court finds that the circumstances surrounding its taking allowed full preparation and cross-examination by all parties. A record of the videotaped testimony, which shall be part of the official record of the court proceedings, shall be made in the same manner as if the witness were present and testifying but, in addition, the videotape shall be retained by the court. If the court finds that use of the videotaped testimony would be unfairly prejudicial to a party, he may order that only the audiotape of the testimony be used or that the transcript of the witness's testimony be read to the jury if either of these limitations would prevent such prejudice.

#### COMMENTARY

The source rule was R. 3:13-2. Subsection (d) of the source rule was deleted since there is no right to a jury trial in any case in municipal court. See State v. Hamm, 121 N.J. 109 (1990).

#### RULE 7:7-8 DISCOVERY AND INSPECTION

(a) Discovery by Defendant. Upon written request by the defendant, the prosecuting attorney shall permit defendant to inspect and copy or photograph any relevant

- (1) books, tangible objects, papers or documents obtained from or belonging to him;
- (2) records of statements or confessions, signed or unsigned, by the defendant or copies thereof, and a summary of any admissions or declarations against penal interest made by the defendant that are known to the prosecution but not recorded;
- (3) grand jury proceedings recorded pursuant to R. 3:6-6;
- (4) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies thereof, which are within the possession, custody or control of the prosecuting attorney;
- (5) reports or records of prior convictions of the defendant;
- (6) books, papers, documents or copies thereof, or tangible objects, buildings or places which are within the possession, custody or control of the State;
- (7) names and addresses of any persons whom the prosecuting attorney knows to have relevant evidence of information including a designation by the prosecuting attorney as to which of those persons he may call as witnesses;
- (8) record of statements, signed or unsigned, by such persons or by co-defendants which are within the possession, custody or control of the prosecuting attorney and any relevant record of prior conviction of such persons;
- (9) police reports which are within the possession, custody or control of the prosecuting attorney;
- (10) warrants, which have been completely executed, and the papers accompanying them including the affidavits, transcript or summary of any oral testimony, return and inventory;

(11) names and addresses of each person whom the prosecuting attorney expects to call to trial as an expert witness, his qualifications, the subject matter on which the expert is expected to testify, a copy of the report, if any, of such expert witness, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is requested and not furnished, the expert witness may, upon application by the defendant, be barred from testifying at trial.

(b) Discovery by the State. A defendant who seeks discovery shall permit

the State to inspect and copy or photograph;

(1) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies thereof, which are within the possession, custody or control of defense counsel;

(2) any relevant books, papers, documents or tangible objects, buildings or places or copies thereof, which are within the possession, custody or control of defense counsel;

(3) the names and addresses of those persons known to defendant whom he may call as witnesses at trial and their written statements, if any, including memoranda reporting or summarizing their oral statements;

(4) written statements, if any, including any memoranda reporting or summarizing the oral statements, made by any witnesses whom the State may call as a witness at trial;

(5) names and addresses of each person whom the defense expects to call to trial as an expert witness, his qualifications, the subject matter on which the expert is expected to testify, and a copy of the report, if any, of such expert witness, or if no report is prepared a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each

opinion. If this information is requested and not furnished the expert may, upon application by the prosecutor, be barred from testifying at trial.

(c) Documents Not Subject to Discovery. This rule does not require discovery of a party's work product consisting of internal reports, memoranda or documents made by that party or his attorney or agents, in connection with the investigation, prosecution or defense of the matter nor does it require discovery by the State or records or statements, signed or unsigned, or defendant made to defendant's attorney or agents.

(d) Protective Orders.

(1) Grounds. Upon motion and for good cause shown the court may at any time order that the discovery or inspection sought pursuant to this rule be denied, restricted, or deferred to make such other order as is appropriate. In determining the motion, the court may consider the following: protection of witnesses and other from physical harm, threats of harm, bribes, economic reprisals and other intimidation; maintenance of such secrecy regarding informants as is required for effective investigation of criminal activity; protection of confidential relationships and privileges recognized by law; any other relevant considerations.

(2) Procedures. The court may permit the showing of good cause to be made, in whole or in part, in the form of a written statement to be inspected by the court alone, and if the court thereafter enters a protective order, the entire text of the statement shall be sealed and preserved in the records of the court, to be made available only to the appellate court in the event of an appeal.

(e) Time and Procedure. Defendant's request for discovery shall be made contemporaneous with the entry of appearance by the attorney and a copy shall be submitted directly to the prosecutor of the court. The prosecutor shall respond 10 days of the receipt by him of the defendant's request. Defendant, without request

therefor, shall provide the State discovery as provided in this rule within 20 days of compliance with the defendant's discovery request.

(f) **Continuing Duty to Disclose: Failure to Comply.** If subsequent to the compliance with a request by the prosecuting attorney or defendant or with an order issued pursuant to the within rule and prior to or during trial a party discovers additional material or witnesses previously requested or ordered subject to discovery or inspection, he shall promptly notify the other party or his attorney of the existence thereof. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, it may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems appropriate.

#### COMMENTARY

The source rule was R. 3:13-3. Subsections (a), (b), (c), and (d) have been continued unchanged from the source rule. Subsection (e) has been changed to make mandatory the filing of a request for discovery contemporaneous with the initial appearance by the attorney pursuant to Rule 7:7-10. In Municipal Court practice, the time goals for disposition of cases, particularly N.J.S.A. 39:4-50 cases, is considerably shorter than the time goal for disposition of any criminal case heard in the Superior Court. In order to speed the process, the Committee on Municipal Courts unanimously believed that the time for the initial request of discovery should also be stepped up. Otherwise, the time limits in this rule remain unchanged from the source rule.

In subsection (f) the source rule has been changed by deleting the term "defense counsel" and replaced with "defendant" to make the nomenclature

consistent in the rule and also in recognition that there are a great number more pro  
se litigants in Municipal Court.

#### **RULE 7:7-9 FORM OF SUBPOENA**

In cases involving non-indictable offenses, law enforcement officers may issue and serve subpoenas to testify in the form prescribed by the Administrative Director of the Courts. Courts having jurisdiction over such offenses, the Division of State Police, the Division of Motor Vehicles and any other agency so authorized by the Administrative Director of the Courts may supply subpoena forms to their law enforcement officers. After service of a subpoena the officer shall attach a copy of the subpoena to the appropriate complaint and promptly file them within the court.

Source - R.R. 7:3-3

#### **RULE 7:7-10 FILING APPEARANCE**

The attorney for a defendant in an action before the court shall forthwith file his/her appearance with the administrator of the court wherein venue is laid.

#### **COMMENTARY**

The source for this rule is a combination of R. 3:8-1 and R. 7:10-3(b). There have been obvious language changes made from clerk of the county to administrator of the court to conform with Municipal Court practice. The rule also would necessarily mean that, if for any reason, venue of the court is changed pursuant to R. 7:8-3, the entry of appearance should be filed with the court acquiring venue.

#### **RULE 7:7-11 JOINT REPRESENTATION**

No attorney or law firm shall enter an appearance for or represent more than one defendant in a multi-defendant trial or plea without securing permission of the court.

Such application shall be made in the presence of the defendants sought to be represented as early as practicable in the proceedings so as to avoid delay of the trial. For good cause shown, the court may allow the motion to be brought at any time.

#### COMMENTARY.

The source rule for this rule was R. 3:8-2. Oddly enough, there was never any specific cross-referencing of old rule R. 3:8-2 to the old Part VII, although it was argued in many jurisdictions throughout the State that R. 7:1 cross referenced the intent of this rule to Municipal Court practice. That interpretation of the rules, therefore, led to a great deal of confusion regarding who had the authority to grant permission to an attorney or law firm to represent more than one defendant in a Municipal Court, multi-defendant case. Obviously, the language of the source rule in its reference to multi-defendant indictments would seem to apply only to Superior Court practice. However, because of the vacuum in the Municipal Court rules without any specific cross-referencing, the rule was deemed to apply to Municipal Court practice as well notwithstanding the reference only to indictments. Thus the language of the rule has been changed to make it conform to Municipal Court practice by deleting the term "indictment" and inserting the term "trial" or "plea". Moreover, it is clear now that the application for waiver of the representation of more than one defendant in a multi-defendant trial or plea in Municipal Court now has to be made to the trial judge and not to the Assignment Judge or his/her designee.

#### RULE 7:7-12(a) INDICTABLE OFFENSES

Every person charged with an indictable offense shall be advised by the court of their right to retain counsel and to have the Office of the Public Defender represent them if they are indigent. If the defendant asserts he/she is indigent, unless he/she affirmatively states his/her intention to proceed without counsel, the

court shall have the defendant complete the appropriate form prescribed by the Administrative Director of the Courts and shall refer the defendant to the Office of the Public Defender.

#### COMMENTARY

The source rule for this rule was R. 3:27-1. The majority of defendants, charged with an indictable offense, have their first appearance for preliminary arraignment in municipal, not Superior Court, pursuant to R. 7:4-1. This rule must be included as part of Municipal Court practice to explain that it is mandatory to notify or to advise each and every defendant charged in an indictable offense of the right to counsel and the right to be represented by the Office of Public Defender, if indigent. The revised rule deletes the second half of R. 3:27-1 as that refers to the filing of an appearance by a Public Defender in the Superior Court and to the parameters of representation by the Public Defender of defendants in Superior Court and thus has no applicability to Municipal Court practice.

#### **RULE 7:7-12(b) NON-INDICTABLE OFFENSE**

Every person charged with a non-indictable offense shall be advised by the court of the right to retain counsel or, if indigent and constitutionally or otherwise entitled by law to counsel, of the right to have counsel assigned without cost. If the defendant asserts he/she is indigent, unless he/she affirmatively states his/her intention to proceed without counsel, the court shall have the defendant complete the appropriate form prescribed by the Administrative Director of the Courts (Form 5A). If the court is satisfied that the defendant is indigent and that the defendant is constitutionally or otherwise entitled by law to counsel, the court shall assign counsel to represent the defendant. Such assignment shall, so far as practicable, from a list of attorneys by the Administrative Office of the Courts or the court's public defender shall be assigned to represent the defendant. Counsel so assigned

shall promptly file his/her appearance pursuant to R. 7:7-10. The representation of the defendant by counsel so assigned shall continue through trial and, in the event of a conviction, shall continue through sentencing and shall include advising the defendant with respect to the right to appeal, and, if the defendant desires to appeal, the preparation and filing of the notice of appeal and of an application for the assignment of counsel on appeal, but shall not include representation thereafter on such appeal or on any subsequent application for post-conviction relief unless further assigned. Counsel shall, however, be responsible for prosecution of the appeal if he/she fails to file with the notice of appeal an application for the assignment of counsel on appeal.

#### COMMENTARY

The source rule for this rule was R. 3:27-2. The source rule has been revised to bring it into conformance with Madden v. Delran, 126 N.J. 591 (1992) in that the rule mandates that attorneys are to be assigned from a list maintained by the Administrative Office of the Courts or if the court has its own public defender, then the public defender. The Committee on Municipal Courts believes that a public defender should be appointed in every municipal court but understands the Supreme Court's reluctance to enter such an Order. Oddly enough, even though this rule refers to non-indictable offenses, there was no specific cross-referencing of this rule to Part VII. See Rodriguez v. Rosenblatt 58 N.J. 281 (1971), State v. Abbondanza, 201 N.J. Super. 181 (App. Div. 1985), State v. Gale, 226 N.J. Super. 699 (Law Div. 1988), State v. Lach, 213 N.J. Super. 466 (App. Div. 1986), as to whether the advisement of the right to counsel is constitutionally required in certain cases and as to the sufficiency of the colloquy between the court and defendant on the issue of whether the court obtains an effective and intelligent waiver of right to counsel if the defendant decides to waive, after being fully advised.

**[RULE 7:8. APPEALS**

**7:8-1. Appeals**

Appeals from judgments of conviction shall be taken in accordance with Rules 3:23 and 3:24, and in extraordinary cases and in the interests of justice, in accordance with R. 2:2-3(b). Appeals from judgments of conviction and interlocutory orders in municipal court actions heard in the Law Division, Special Civil Part pursuant to R. 6:1-2(a)(5) shall be taken to the Appellate Division pursuant to Rules 2:2-3(a)(1) and 2:2-4, respectively.

Note: Source - R.R. 8:11-1. Amended July 14, 1992 to be effective September 1, 1992.]

**RULE 7:8-1 APPLICABILITY**

Except as otherwise provided by R. 7:10 (Traffic Offenses and Violations Bureau), the provisions of R. 7:8 apply to the trial by the court of all complaints charging offenses within its trial jurisdiction and all indictable offenses triable by it upon the defendant's waiver of indictment and trial by jury.

Source - R.R. 7:4-1

**[7:8-2. Stay**

A sentence to pay a fine, a fine and costs, a forfeiture, an order for probation, or a revocation of the license to operate a motor vehicle may be stayed by the court in which the conviction was had or to which the appeal is taken upon such terms as the court deems proper.

Note: Source - R.R. 8:11-2.]

**RULE 7:8-2 MEDIATION OF MINOR DISPUTES, NOTICE IN LIEU OF COMPLAINT**

If a person seeks to file a complaint or a complaint is filed charging an offense that may constitute a minor dispute, a notice may issue to the person

making the charge and person or persons charged, requesting their appearance before the court, or such person or program designated by the court and approved by the Assignment Judge to provide mediation under R. 1:40-7. If on the return date of a summons, it appears to the court that the offense charged may constitute a minor dispute, the court may order the persons involved to mediation in accordance with R. 1:40-7. Regardless of how any court defines the term "minor dispute", this rule shall not apply to any complaint filed or contemplated to be filed under Title 39, the New Jersey Motor Vehicle Code.

#### COMMENTARY

The text of this rule as part of the 1969 revision was substantially the same as the source rule. The rule was amended effective September 1977, to expand the scope of the "notice in lieu" practice, first by eliminating the former condition that no statute or ordinance had been violated and second, by permitting a designated person other than the court itself to act as an intake officer to determine whether a complaint should issue. The rule was again amended effective January, 1986 to provide for implementation of local mediation programs. It was again amended effective September, 1992 by limiting the informal proceeding to mediation under R. 1:40-7. The rule was again amended in the comprehensive revision to Part VII September, 1994 to provide that the rule would have no applicability to any Title 39 offense either filed or contemplated to be filed. This specific disqualifier that Title 39 offenses could not be heard in mediation would be in addition to the limiting language of R. 1:40-7 which lists five other disqualifiers for referral to mediation.

#### **[7:8-3. Reversal; Remission of Fine and Costs**

A fine or a fine and costs paid pursuant to a judgment of conviction and disbursed by the court in accordance with R. 7:10-4(a) shall be remitted by the

recipient thereof to the defendant or his attorney upon the service upon the recipient of a copy of the order of reversing the judgment.

Note: Source - R.R. 8:11-3.]

**RULE 7:8-3 VENUE; ON DISQUALIFICATION OF JUDGE**

(a) Generally. Except as otherwise provided by the law, the prosecution for an offense shall be had in the jurisdiction in which the offense was committed.

(b) On Disqualification of Judge. In the event of the disqualification or inability for any reason of a judge to hear any pending matter, and in addition to the provisions of R. 1:12-3(a), the judge may refer the matter to the Assignment Judge for designation of a trial judge or may transfer the matter for trial to any municipality within the vicinage provided that:

(1) the judge of the municipality has been designated as an acting judge of the court of origin by the Assignment Judge of the vicinage pursuant to R. 1:12-3(a); and,

(2) the transferring judge has found that transfer of the matter will not substantially inconvenience any party; and

(3) upon completion of the trial the transferee court shall forthwith advise the original court of the disposition made and shall remit to it the complaint, judgment, all records and any fines and costs collected; and

(4) upon any such transfer the original court shall retain jurisdiction and shall maintain all necessary records as though the matter had been tried in the original court which shall be responsible for effecting final disposition of the matter.

(5) the municipality of the court of origin shall bear the costs of prosecution of the matter.

## COMMENTARY

The source rule for this rule was R. 7:4-3. The source rule has been revised to give the Municipal Court judge discretion to refer any case, in the event of a disqualification for the judge to hear a pending matter, directly to the Assignment Judge for designation of a new trial judge, presumably in a different venue. Of course, the Assignment Judge may give an order to the new trial judge that at that judge's discretion the matter could be heard in the court of original jurisdiction. This rule revision is intended to give Municipal Court judges more discretion, in the event of a disqualification, in high profile cases to remove themselves from any contact with the case. Examples of this type of case would be where a mayor is charged with an offense, a local police officer is charged with an offense or where a court employee or relative is charged with an offense. Otherwise, the language from the source rule remains unchanged.

### RULE 7:8-4 PROCEEDINGS BEFORE TRIAL

#### (a) Arraignment

(1) Except as otherwise provided by paragraph (2) of this rule, arraignment shall be conducted in open court and shall consist of reading the complaint to the defendant or stating to the defendant the substance of the charge, and calling on the defendant after he/she is given a copy of the complaint, to plead thereto. The defendant may waive the reading of the complaint.

(2) When a defendant is represented by an attorney and desires to plead not guilty, unless the court otherwise orders, such plea shall be entered by the filing, at or before the time fixed for arraignment, of a written statement, signed by the attorney, certifying that the defendant has received a copy of the complaint, has read it or the attorney has read it or

explained it to the defendant, understands the substance of the charge, and pleads not guilty to the charge.

(b) Pleas. A defendant may plead not guilty or guilty, but the court may in its discretion refuse to accept a plea of guilty, and shall not accept such plea without first addressing the defendant personally and determining by inquiry of the defendant and of others in the court's discretion that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea and that there is a factual basis for the plea. Upon the request of the defendant the court may at the time of the acceptance of a plea of guilty order that such plea shall not be evidential in any civil proceeding. If a defendant refuses to plead or stands mute or if the court refuses to accept a plea of guilty, the court shall enter a plea of not guilty. If a plea of guilty is entered, the court may hear the witnesses in support of the complaint prior to judgment and sentence, and after such hearing may, in its discretion, refuse to accept the plea. A defendant, corporation, partnership, or unincorporated association may enter a plea by an agent pursuant to R. 7:10-10 and may appear by an officer or agent provided the appearance is consented to in writing by the named party defendant and the court finds that the interest of justice would not require the appearance of counsel. If the defendant is a corporation, partnership or unincorporated association and fails to respond to an order entered pursuant to R. 7:2-5(d), the court, if satisfied that service was duly made, shall enter an appearance and a plea of not guilty for the defendant and thereupon proceed to hear the complaint.

(c) Withdrawal of Plea. A motion to withdraw a plea of guilty shall be made before sentencing, but the court may permit it to be made thereafter to correct a manifest injustice.

(d) Conditional Plea. With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty reserving on the record the right to appeal from the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, he shall be afforded the opportunity to withdraw his/her plea, pursuant to R. 7:8-4(c). Nothing in this rule shall be construed as limiting the right to appeal provided in R. 7:6-7.

(e) Plea agreements.

(1) Plea agreements shall be permitted in the Municipal Courts under the Guidelines established by the Supreme Court.

(2) Plea agreements will be allowed only in those Municipal Courts where there is a municipal prosecutor and only in those cases handled by the municipal prosecutor; provided, however, that plea agreements will be allowed in any Municipal Court in cases handled by the Office of the Attorney General or the County Prosecutor.

(3) No plea agreement will be allowed unless the defendant is either represented by counsel or makes a knowing waiver on the record of the right to be so represented.

(4) In all plea agreement matters, before the plea is entered the prosecution must represent to the court that the complainant and the victim, if the victim is present at the hearing, have been consulted about the agreement.

(5) Plea agreements will be allowed only in matters within the jurisdiction of the Municipal Court; in particular, plea agreements shall not be allowed to downgrade or dispose of indictable complaints without the consent of the County Prosecutor, which consent shall be noted on the record.

(6) When a plea agreement is reached, the terms and the factual basis that supports it shall be set forth fully on the record in open court.

(7) The Court shall not accept a plea agreement involving sentence recommendations that circumvent minimum sentences imposed by law for the offense(s).

(8) If the judge determines that the interest of justice would not be served by accepting the agreement, the judge shall so state, and the defendant shall be informed of the right to withdraw the plea.

**GUIDELINES FOR OPERATION OF PLEA AGREEMENTS IN THE  
MUNICIPAL COURTS OF NEW JERSEY**

**GUIDELINE 1. Purpose.** The purpose of these Guidelines is to allow for flexibility in the definitions and exclusions relating to the plea agreement process as that process evolves and certain offenses come to demand lesser or greater scrutiny.

**GUIDELINE 2. Definitions.** For the purpose of these Guidelines, a plea agreement occurs in a Municipal Court matter whenever the prosecutor and the defense agree as to the offense or offenses to which a defendant will plead guilty on condition that any or all of the following occur:

(a) the prosecutor will recommend to the court that another offense or offenses be dismissed,

(b) the prosecutor will recommend to the court that it accept a plea to a lesser or other offense (whether included or not) than that originally charged,

(c) the prosecutor will recommend a sentence(s), not to exceed the maximum permitted, to the court or remain silent at sentencing,

**GUIDELINE 3. Prosecutor's Responsibilities.** Nothing in these Guidelines should be construed to affect in any way the prosecutor's discretion in any case to move unilaterally for an amendment to the original charge or a dismissal of the charges

pending against a defendant if the prosecutor determines and represents on the record the reasons in support of the motion.

**GUIDELINE 4. Limitation.** No plea agreements whatsoever will be allowed in drunken driving or certain drug offenses. Those offenses are:

- A. Driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50) and refusal to provide a breath sample (N.J.S.A. 39:4-50.2) and,
- B. Possession of marijuana or hashish (N.J.S.A. 2C:35-10a(4)); being under the influence of a controlled dangerous substance or its analog (N.J.S.A. 2C:35-10b); and use, possession or intent to use or possess drug paraphernalia, etc. (N.J.S.A. 2C:36-2).

The Municipal Court may, for certain other offenses subject to minimum mandatory penalties, refuse to accept a plea agreement unless the municipal prosecutor represents that the possibility of conviction is so remote that the interests of justice require the acceptance of a plea of a lesser offense.

#### **COMMENT**

Over the years, various unique practices and procedures have evolved in connection with the disposition of Municipal Court cases. Thus, it is the intent of these Guidelines to define regulated plea agreements as including every common practice that has evolved as a subterfuge for plea agreements. Therefore, for the purpose of these Guidelines, a plea agreement shall include all of those traditional practices, utilized by prosecutors and defense counsel, including "merger", "dismissal", "downgrade" or "amendment". Generally, "mergers" involve the dismissal of lesser-included or related offenses when a defendant pleads to the most serious offense. "Dismissals" involve motions to dismiss a pending charge or plea agreement when the municipal prosecutor determines, for cause (usually for

insufficient evidence), that the charge should be dismissed.

"Downgrades" or "amendments" involve the taking of a plea to a lesser or included offense to that originally charged.

Plea agreements are to be distinguished from the discretion of a prosecutor to charge or unilaterally move to dismiss, amend or otherwise dispose of a matter. It is recognized that it is not the municipal prosecutor's function merely to seek convictions in all cases. The prosecutor is not an ordinary advocate. Rather, the prosecutor has an obligation to defendants, the State and the public to see that justice is done and truth is revealed in each individual case. The goal should be to achieve individual justice in individual cases.

In discharging the diverse responsibilities of that office, a prosecutor must have some latitude to exercise the prosecutorial discretion demanded of that position. It is well established, for example, that a prosecutor should not prosecute when the evidence does not support the State's charges. Further, the prosecutor should have the ability to amend the charges to conform to the proofs.

Note: Guidelines and Comment to be adopted simultaneously with Rule 7:8-4.

#### COMMENTARY

The source rules for this rule were certain sections of R. 7:4-2, R. 3:21-1, R. 7:4-8 and R. 3:9-3(f). The source rule for subsection (c) of this rule was R. 3:21-1. Interestingly enough, there was never any prior specific mention in Part VII (aside from an oblique reference in old R. 7:4-8(h)), which is only of recent vintage and would appear to apply only to situations where the judge has refused

to approve the terms of a plea bargain). Nor was there any specific cross-referencing of the right to withdraw a plea in Municipal Court practice.

Therefore R. 3:21-1 was used as a source rule for this rule with the deletion of the term "non vult" since that has no applicability to Municipal Court practice.

Old R. 7:4-8 (Plea Agreements) was moved in its entirety to this particular section of the Rules because it was felt that the rule regarding pleas and plea bargaining in Municipal Courts should be together in the same section of the rules.

The source rule for R. 7:8-4(d) is R. 3:9-3(f). Since a limited form of plea bargaining is now allowed in Municipal Courts, the Committee on Municipal Courts unanimously believed that the entry of a conditional plea of guilty should be permissible in the Municipal Court as well as in the Superior Court.

#### **RULE 7:8-5 ADJOURNMENT**

On or before the return day of a warrant or summons, the court may adjourn the hearing for a period not exceeding 14 days, except that an adjournment for a longer period or additional adjournments may be granted if the court deems postponement of the hearing to be reasonably necessary. In contested matters, the court, on granting an adjournment, may specify a trial date. The court shall cause the complaining witness, all defendants and all other known witnesses to be notified of any adjournment.

#### **RULE 7:8-6 TRIAL OF COMPLAINTS TOGETHER**

(a) The court may order that 2 or more complaints be tried together if the offenses arose out of the same facts and circumstances, regardless of the number of defendants. In all other matters, with the consent of the persons charged, the court, for convenience, may consolidate complaints for trial.

(b) Cases from two or more different municipalities may be consolidated in one court for the purposes of trial only upon approval of the Assignment Judge(s). A written motion shall be made by the parties directly to the Assignment Judge to seek consolidation.

Source of paragraph (a) is R.R. 7:4-2(g)

#### COMMENTARY

The source rule for R. 7:8-6(a) is R. 7:4-2(g). R. 7:8-6(b) is a new rule which, prior to this time, has not been found in either Part III or Part VII. This rule makes as part of a formal, statewide procedure the informal procedure already ongoing in many vicinages throughout the State. For the first time, it makes clear that the Assignment Judge is the only person to whom the application for consolidation of cases from two or more different municipalities may be made. Pursuant to R. 1:33-4, the Assignment Judge is the chief judicial officer present in each vicinage throughout the State who has supervisory responsibility for the municipal courts. The revised rule uses the term "Assignment Judge" in either the singular or plural form, because in cases which involve charges, otherwise capable of being consolidated, arising in more than one vicinage, there may be a need to obtain the approval of more than one Assignment Judge for the consolidation. Of course, this rule could be changed to provide that the Presiding Judge of Municipal Courts could make this determination with the consent of the Assignment Judge if a Presiding Judge's authority were broadened.

#### RULE 7:8-7 CLOSE OUT PROCEDURES

(a) If a defendant in any case before the court fails to appear or answer a complaint, the court may either issue a warrant for the defendant's arrest in

accordance with R. 7:3-3(b), or mail a notice to the defendant on a form approved by the Administrative Director of the Courts.

(b) If a notice is mailed to the defendant and he/she fails to comply with its provisions, a warrant may be issued in accordance with R. 7:3-3(b).

(1) In a non-parking motor vehicle case, upon the failure of the defendant to comply with the notice, if no warrant is issued in the court's discretion, the court shall promptly report the failure to appear or answer to the Division of Motor Vehicles on a form approved by the Administrative Director of the Courts and mark the case as closed on its records.

(2) In all other cases, whether or not the warrant is issued, the court may also order the suspension of the defendant's driver license or of defendant's reciprocity privileges in this State, and mark the case as closed on its records.

(c) If a warrant is issued in a non-parking motor vehicle case, the court may simultaneously with the issuance of a warrant report the failure to appear or answer to the Division of Motor Vehicles on a form approved by the Administrative Director of the Courts and mark the case as closed on its records. If any warrant is not executed, it shall remain open and active until and unless the court either recalls, withdraws or discharges the warrant. If bail has been posted after the issuance of the warrant and the defendant fails to appear or answer, the court may declare a forfeiture of the bail, report the motor vehicle bail forfeiture to the Division of Motor Vehicles, and mark the case as closed on its records. Bail forfeitures may be set aside if it appears that justice so requires.

(d) In parking cases, no warrant may be issued if the initial failure to appear notice is returned to the court by the post office marked to indicate that the defendant cannot be located. The court shall then order the suspension of defendant's driver license or defendant's reciprocity privileges in this State and forward the order to suspend to the Division of Motor Vehicles on a form approved

by the Administrative Director of the Courts and mark the case as closed on its records.

(e) For the purposes of this rule, a case marked closed shall be reopened upon the request of the defendant, the prosecuting attorney or on the court's own motion.

#### COMMENTARY

The source rule for this rule is R. 7:6-3 and a merger of the procedure outlined in N.J.S.A. 2A:8-27.1. As a result of that merger of procedures and with the passage of the statute referred to above and its implementation into law in April, 1991, it is now clear that the courts' close-out procedures may be utilized for any case coming before the court. Therefore, for the purposes of this rule, the distinction among a criminal case, a traffic case, an ordinance violation and a civil penalty action becomes moot. The net effect of this rule is to give the Municipal Court judge and his/her court administrator much more flexibility and discretion in dealing with the failure to appear before the court of any defendant in any type of case. The rule also gives the judge and his/her court administrator the option of imposing simultaneous sanctions in a given case. For example, after a defendant fails to respond to a failure to appear notice, the court could, at the same time, issue a warrant for the defendant and/or close the case out and suspend the defendant's driving privilege or license in this State. Also, the old distinction of a resident traffic case as opposed to a non-resident traffic case has been eliminated.

This rule also makes clear under subsection (e) that a case marked closed can be reopened either at the request of defendant, prosecuting attorney or on the court's own motion to once again give the parties in Municipal Court flexibility to deal with those cases marked closed. It is to be noted, however, that any case

marked closed, where the court has suspended the defendant's drivers license, issued a warrant for the defendant's arrest or both, should not be dismissed.

**RULE 7:8-8 DISMISSAL**

If the complaint is not moved on the return day, the court may direct that it be heard on a specified date and a notice thereof to be served on the complaining witness, all defendants and all other known witnesses. Upon failure of trial to be held on the day set, the court may order the complaint dismissed. A complaint may be dismissed by the court for good cause at any time on the motion of the State or municipality, on the motion of the defendant or on the court's own motion. Upon dismissal any warrant issued shall be recalled.

**COMMENTARY**

The source rule for this rule is R. 7:4-2(i). The continuation of the source rule is deemed to be irrelevant by the Committee on Municipal Courts in light of the creation of R. 7:8-7. At the same time, the Committee on Municipal Courts felt that the court should still have some residual discretion to dismiss a case when and if the court felt a case should be dismissed for any reason. However, the Municipal Court judges and court administrators should be aware that once a case is dismissed it cannot be reopened, except upon the filing of a new complaint, if the tolling period for filing those complaints has not lapsed. The revised rule also makes clear that a complaint may be dismissed either by the court, on the motion of the State or defendant for good cause. It is to be further noted that upon dismissal any warrant issued shall be recalled by the court because the case, upon dismissal, cannot be reopened on the original complaint.

**RULE 7:8-9 TRANSFER TO THE CHANCERY DIVISION, FAMILY PART**

An action pending in a Municipal Court may be transferred to the Superior Court, Chancery Division, Family Part pursuant to R. 5:1-2(c)(3) and R. 5:1-3(b)(2).

Source - R.R. 7:4-2(j)

**RULE 7:8-10 APPEARANCES; EXCLUSION OF PUBLIC**

(a) Presence of Defendant. Except as otherwise provided by R. 7:8-4(b) and R. 7:10-6, the defendant shall be present at every state of the trial and at the imposition of sentence, but his/her voluntary absence after the trial has commenced in his/her presence shall not prevent continuing the trial to and including the entry of judgment. A corporation, partnership or unincorporated association shall appear by its attorney, except where pro se appearance has been allowed pursuant to R. 7:8-4(b). The defendant's presence is not, however, required at a reduction of sentence.

(b) Appearance of Prosecution. Whenever in his/her judgment the interests of justice so require, or upon the request of the court, the Attorney General, county prosecutor, municipal court prosecutor, or municipal attorney, as the case may be, may appear in any court on behalf of the State, or of the municipality, and conduct the prosecution of any action, but if the Attorney General, county or municipal court prosecutor or municipal attorney does not appear, any attorney may appear on behalf of any complaining witness and prosecute the action for and on behalf of the State or municipality.

(c) Exclusion of Public. The court, in its discretion and with the defendant's consent, may exclude from the courtroom during the trial or hearing of any matter involving domestic relations, bastardy cases, sex offenses, school truancy and parental neglect of any person not directly interested in the matter being heard or tried.

Source - R.R. 7:4-4(a), (b), and (c).

**RULE 7:8-11 RECORD OF PROCEEDINGS; TRANSCRIPTS**

(a) Record. When required by order of the Supreme Court, a court shall cause all proceedings to be recorded by sound recording equipment approved by the Administrative Office of the Courts. When not so required a court may at its own expense cause proceedings to be recorded either by sound recording equipment or by a reporter. When sound recording equipment is being used, in addition thereto, or when the proceedings are not otherwise to be recorded, at the request and expense of any party the court shall permit a record of the proceedings to be made by a certified shorthand reporter. Every sound recording and stenographic record of proceedings made pursuant to this rule shall be kept by the administrator of the court or by the reporter, as the case may be, for five (5) years.

(b) Transcript. If the proceedings have been sound recorded, any person may order a transcript from the administrator of the court, and if the proceedings have been recorded stenographically any person may order a transcript from the reporter. In either instance the charge therefore shall not exceed the transcript rates as provided by law. The person preparing the transcript shall certify to its accuracy.

(c) Supervision. The recording of proceedings and the preparation of transcripts thereof, whether by sound recording or stenographic reporters, shall be subject to the supervision and control of the Administrative Director of the Courts.

Source - R.R. 7:4-5.

**RULE 7:8-12 SENTENCE AND JUDGMENT**

**(a) Sentence.** If the defendant has been convicted or pleaded guilty to an indictable offense, the court may postpone imposition of a sentence in order to obtain a presentence investigation from the chief probation officer of the county. If the defendant has been convicted or pleaded guilty to a non-indictable offense, sentence shall be imposed immediately unless the court postpones sentencing in order to obtain a presentence report or for other good cause. Pending sentence the court may commit the defendant or continue or alter the bail. Before imposing sentence the court shall afford the defendant and the defendant's counsel an opportunity to make a statement on defendant's behalf and to present any information in mitigation of punishment. Where a sentence has been opened and vacated, the defendant shall be re-sentenced forthwith, except where a new trial is granted.

**(b) Judgment.** A judgment shall be set forth on the complaint. If at the time of hearing, judgment is reserved, the court upon entry of judgment of acquittal shall forthwith mail a copy thereof to the defendant by ordinary mail; otherwise, the defendant shall be notified to appear for entry of judgment and sentencing.

**(c) Reasons for Sentence.** At the time sentence is imposed the judge shall state the court's reasons for imposing such sentence including findings pursuant to the criteria for withholding or imposing imprisonment, fines or restitution under N.J.S.A. 2C:44-1 to 2C:44-3 and the factual basis supporting the court's finding of particular aggravating or mitigating factors affecting sentence.

**(d) Conviction of a Corporation.** If a corporation is convicted of an offense the court shall give judgment thereon and shall cause such judgment to be enforced in the same manner as a judgment in a civil action.

(e) Sentence to Probation. The court, at time of sentence, shall inform defendants sentenced to probation what penalties might be imposed on revocation should they not adhere to the conditions of their probation.

(f) Probation and Suspended Sentence. After conviction, unless otherwise provided by law, the court may suspend the imposition of a sentence or the defendant may be placed on probation.

(1) Conditions. The order shall require the defendant to comply with standard conditions adopted by the court and filed with the administrator thereof (except as otherwise ordered), as well as such special conditions, including a term of imprisonment pursuant to N.J.S.A. 2C:45-1(c), as the court imposes. As a condition of probation the court may impose a term of community-related service to be performed by the defendant under such terms and conditions as the court may determine. A copy of the order, together with the standard and special conditions, shall be furnished the defendant, and read and explained to him/her by the probation officer, whereupon the defendant and the probation officer shall sign a joint statement, to be filed with the clerk of the court, as to the officer's compliance with such reading and explanation requirement. If the defendant refuses to sign such statement, he shall be re-sentenced.

(g) Credit for Confinement Pending Sentence. The defendant shall receive credit on the pending charge on the term of custodial sentence for any time he/she has served in custody in jail or in a state hospital between arrest and the imposition of a sentence.

#### COMMENTARY

The source rule for R. 7:8-12 was R. 7:4-6. Subsections (a) and (b) of the rule continue unchanged from the source rule. The source rule for subsection (c) was R. 3:21-4(f) which has been specifically cross referenced by

R. 7:4-6(c). The source rule is unchanged in these revisions. The source rule for subsection (d) of this revision was R. 3:21-6 which had been specifically cross referenced by R. 7:4-6(d). The source rule remains unchanged for this revision.

The source rule for subsection (f) was R. 3:21-7 which had a cross reference to R. 3 through R. 7:4-6(e). However, there has been one deletion from the source rule and that is R. 3:21-7(b). The Committee on Municipal Courts unanimously believed that a Municipal Court judge should not have the authority to detain a person without bail in Municipal Court pending determination of a new charge of a defendant who is already on probation as a result of a Municipal Court sentence, even though the language of the enabling statute, N.J.S.A. 2C:45-3(a)(3), and the source rule, R. 3:21-7(b), does not limit that authority to the Superior Court.

### **RULE 7:8-13 REDUCTION OR CHANGE OF SENTENCE**

(a) Time. Except as provided in paragraph (b) hereof, a motion to reduce or change a sentence shall be filed not later than 60 days after the date of the judgment of conviction. The court may reduce or change a sentence, either on motion or on its own initiative at any time within the discretion of the court.

(b) Procedure. All changes of sentence shall be made in open court upon notice to the defendant and the prosecuting attorney. An appropriate order setting forth the revised sentence and specifying the change made and the reasons therefor shall be entered on the record.

### **COMMENTARY**

The source rule for this rule, as revised, was R. 3:21-10 which is specifically cross referenced to Municipal Court practice through the old R. 7:4-6(g). This rule revision makes considerable changes from the source rule to

allow for greater flexibility in the court entertaining either on its own motion or on the motion of a party to reduce or change a sentence and also as to procedure. The language of the revised rule brings it into accordance with R. 7:7-1(b). Therefore, the language requiring a formal written notice of motion, as found in the Part III source rule, is not needed for the purposes of Municipal Court practice.

**[RULE 7:9. MUNICIPAL COURTS: STATUTORY PENALTY PROCEEDING**

The provisions of R. 4:70 govern the practice and procedure in the municipal court in summary proceedings for enforcement of statutory penalties and for confiscation or forfeiture of chattels.

Note: Source - R.R. 7:18-1, 7:18-2, 7:18-3, 7:18-4. Amended June 29, 1973 to be effective September 10, 1973; caption and text amended November 2, 1987 to be effective January 1, 1988.]

**RULE 7:9-1 NEW TRIAL**

The court may, on defendant's motion, grant the defendant a new trial if required in the interest of justice. The court may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only before, or within 2 years after, final judgment. A motion for a new trial based on other grounds shall be made within 10 days after the entry of judgment of conviction, or within such further time as the court fixes during the 10-day period. In no event shall this rule be construed to limit the right of a defendant to apply to the court for a new trial on the ground of fraud or lack of jurisdiction.

Source - R.R. 7:4-7

**RULE 7:9-2 POST-CONVICTION RELIEF**

**(a) Petition for Relief** - Any person convicted of an offense may, pursuant to this Rule, file with the municipal court administrator of the municipality in which the conviction took place, a petition for post-conviction relief captioned in the action in which the conviction was entered.

**(b) Limitations and Exclusiveness**

**(1)** A petition to correct an illegal sentence may be filed at any time.

**(2)** No other petition shall be accepted for filing pursuant to this Rule more than 5 years after the judgment or sentence sought to be attacked unless it alleges facts showing that the delay beyond said time was due to defendant's excusable neglect.

**(3)** A petition for post-conviction relief shall be the exclusive means of challenging a judgment of conviction except as otherwise required by the Constitution of New Jersey, but it is not a substitute for appeal from a conviction or for motion incident to the proceedings in the trial court and may not be filed while such appellate review or motion is available.

**(c) Grounds** - A petition for post-conviction relief is cognizable if based upon any of the following grounds:

**(1)** Substantial denial in the conviction proceedings of defendant's rights under the Constitution of the United States or the Constitution or statutes of the State of New Jersey.

**(2)** Lack of jurisdiction of the court to impose the judgment rendered upon defendant's conviction.

**(3)** Imposition of sentence in excess of or otherwise not in accordance with the sentence authorized by law.

**(4)** Any ground heretofore available as a basis for collateral attack upon a conviction by habeas corpus or any other common law or statutory relief.

**(d) Bar of Grounds Not Raised in Prior Proceedings; Exceptions**

(1) Any ground for relief not raised in a prior proceeding under this Rule, or in the proceedings resulting in the conviction, or in a post-conviction proceeding brought and decided prior to the adoption of R. 3:22-4, or any appeal taken in any such proceedings is barred from assertion in a proceeding under this Rule unless the court on motion or at the hearing finds (a) that the ground for relief not previously asserted could not reasonably have been raised in any prior proceeding; or (b) that enforcement of the bar would result in fundamental injustice; or (c) that denial of relief would be contrary to the Constitution of the United States or of the State of New Jersey.

(2) A prior adjudication upon the merits of any ground for relief is conclusive whether made in the proceedings resulting in the conviction or any post-conviction proceeding brought pursuant to this Rule or prior to the adoption thereof, or in any appeal taken from such proceedings.

(e) Procedure

(1) At the time of filing a petition under this Rule, a defendant represented by a public defender or assigned counsel in another Municipal Court proceeding or proceeding pro se may annex thereto a sworn statement alleging indigency in the form prescribed by the Administrative Director of the Courts, which shall be furnished by the municipal court administrator. The Municipal Court judge, if satisfied, from a review of the Form 5A, that the defendant is indigent, shall order counsel to be assigned to represent defendant and further shall grant an application for the transcript of testimony of any proceeding shown to be necessary to establish the grounds of relief asserted. Absent a showing of good cause, which shall not include lack of merit of the petition, the court shall not substitute new assigned counsel.

(2) The municipal court administrator shall make an entry of the filing of the petition in the proceedings in which the conviction took place, and if it is filed pro se, forthwith transmit a copy to the municipal prosecutor. If the petition is filed by an attorney, a copy shall be served on the municipal prosecutor before filing.

(3) The petition shall be verified by defendant and shall set forth with specificity the facts upon which the claim for relief is based, the legal grounds of the complaint asserted, and the particular relief sought. The petition shall include the following information: (a) the date, docket number and content of the complaint upon which the conviction is based and the municipality where filed; (b) the date and content of the sentence or judgment complained of and the name of the Municipal Court judge then presiding; (c) any appellate proceedings brought from the conviction, attaching copies of the opinions therein; (d) any prior post-conviction relief proceedings relating to the same conviction, giving date and nature of the claim and date and nature of disposition, and concerning any appeal therefrom; (e) whether petitioner was represented by counsel in any of the proceedings mentioned, naming the counsel in each, and stating whether counsel was retained or assigned; (f) whether and where defendant is presently confined. A separate memorandum of law may be submitted.

(4) Amendments of pleadings shall be liberally allowed and assigned counsel may as a matter of course serve and file an amended petition within 25 days after assignment. Within 30 days after service of a copy of the petition or amended petition upon him/her, the municipal prosecutor shall serve and file an answer or move on 10 days' notice for dismissal. If the notice for dismissal is denied, the State's answer shall be filed within 15 days thereafter.

(5) A defendant in custody may be present in the Municipal Court judge's discretion but shall be present when oral testimony is adduced on a material issue of fact within the defendant's personal knowledge.

(6) In making a final determination upon a petition, either on motion for dismissal or after hearing, the Municipal Court judge shall state separately the findings of fact and conclusions of law, and shall enter a judgment or sentence in the conviction proceedings and any appropriate provisions as to re-arraignment, retrial, custody, bail, discharge, correction of sentence or as may otherwise be required.

#### COMMENTARY

The source rule was R. 3:22. With the advent of State v. Laurick, 120 N.J. 1 (1990), it becomes necessary to include post conviction relief rules within the stand alone rules for Municipal Court. The source rule has been modified slightly to bring it into conformance with municipal court practice and nomenclature.

#### [RULE 7:10. GENERAL PROVISIONS; ADMINISTRATION

##### 7:10-1. Local Rules

Any judge of a municipal court may, with the approval of the Administrative Director of the Courts, makes rules for the orderly conduct of the proceedings of his court, not inconsistent with these rules.

Note: Source - R.R. 8:12-2.]

#### RULE 7:10-1 IMPROPER DISPOSITION OF TRAFFIC TICKET; CONTEMPT OF COURT

The aid by any person in the disposition of a traffic ticket or summons in any manner other than that authorized by the court may constitute a contempt.

Source R.R. 7:6-2

**[7:10-2. Amendment of Process or Pleading**

The court may amend any process or pleading for any omission or defect therein, or for any variance between the complaint and the evidence adduced at the trial but no such amendment will be permitted which charges a different substantive offense (other than a lesser included offense). If the defendant is surprised as a result of such amendment, the court shall adjourn the hearing to some future day, upon appropriate terms.

Note: Source - R.R. 8:12-3.]

**RULE 7:10-2 TRIAL DATE; ADJOURNMENT**

The date fixed for the trial of any traffic offenses shall be at least 5 days from the date of its commission unless the defendant, having been informed of his/her right to such trial date, waives it and the court in its discretion fixes an earlier date. If a hearing is adjourned, the court may detain the defendant in safe custody unless he makes a cash deposit or gives a recognizance in accordance with R. 7:5 in an amount not exceeding \$500, or qualifies and justifies in real estate security situate in this State in twice the amount fixed for the bail.

Source - R.R. 7:6-4

**[7:10-3. Court Calendar; Attorneys**

(a) Calendar. The court calendar shall follow as closely as possible, the following order: (1) applications for adjournment; (2) unlitigated motions; (3) arraignments; (4) guilty pleas; (5) litigated motions; (6) contested matters with an attorney; (7) other contested matters.

(b) Appearances of Attorneys. Appearance by attorneys shall be entered promptly with the court or clerk. Unless the appearance is entered, the attorney shall not receive priority on the trial list.

Note: Source - R.R. 8:13-8(a)(b).]

**RULE 7:10-3 CALENDAR PARTS; SESSIONS**

Insofar as practicable, traffic offenses shall be tried separate and apart from other offenses. If a court sits in part and in one part sitting in daily session has been designated as a traffic court, traffic offenses shall be tried in such part only, or if a court has designated a particular session (which may be an evening session) as the traffic session, traffic offenses shall be tried in such session, except for good cause shown. Otherwise the court shall designate the time for a trial of traffic offenses. The Administrative Office of the Courts may, where necessary, direct a court to hold more frequent traffic sessions, or to coordinate sessions held by the court with those regularly scheduled by other Municipal Court judges in the county.

Source - R.R. 7:6-5

**[7:10-4. Financial Control**

(a) Fines and Forfeitures. Moneys received by a court as fines or forfeitures, together with the financial reports covering such funds, shall be forwarded by the court on or before the tenth day of each month as follows:

(1) To the custodian of the funds of the municipality where such moneys were received in the course of enforcing municipal ordinances or local regulations, if assessed and collected by the municipal court, or to the custodian of funds of the municipality in which the violation occurred, if assessed and collected by a county district court.

(2) To the custodian of the funds of the municipality or of the county, or to such state agency or officer, as the case may be, where the moneys were collected in the course of enforcing state laws and regulations, as provided by law.

(b) Receipts and Disbursements. The court shall keep an accurate account of all fees, costs and moneys received, as well as of any moneys disbursed and to whom disbursed. Receipts shall be turned over to the appropriate municipal, county or state finance officer, or deposited as soon after receipt as practical, in a bank or banks authorized to do business in this State. No disbursement shall be made except by check drawn on such bank. The court shall issue or cause to be issued and shall obtain a receipt in the form and manner prescribed by the Administrative Director of the Courts in every instance where money is received or disbursed.

(c) Payment of Moneys Due. No moneys due the court, its employees, or any persons attending upon it, for salaries, fees, costs or other charges shall be deducted from receipts but shall be paid only on a voucher submitted by the court to the appropriate finance officer.

(d) Docket; Fiscal Forms and Procedure: Record-Keeping. The court shall maintain such separate dockets in such form as the Administrative Director of the Courts prescribes. All fiscal forms, procedures and record-keeping shall conform to the requirements of the Administrative Director of the Courts.

Note: Source - R.R. 8:13-9(a)(b)(c)(d). 8:13-10(a), paragraph (a) amended July 21, 1978 to be effective immediately.]

**RULE 7:10-4(a) STATEMENT IN MITIGATION OR DEFENSE BY AFFIDAVIT;  
JUDGMENT**

**Statement in Mitigation or Defense by Affidavit.** In all traffic cases 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 the defendant's custody or control; reckless driving; or leaving the scene of an accident, the court may permit the defendant to present his/her statement in defense or mitigation of penalty imposed upon conviction or enter a guilty plea by affidavit if the court determines that it would be an undue hardship on the defendant to require him/her to appear in person at the time and place set for trial; and the defendant, having been fully informed of his/her right to a reasonable postponement of the trial, waives in writing the right to be present at the trial.

Source - R.R. 7:6-6(a)

#### **RULE 7:10-4(b) JUDGMENT**

If a defendant presents his statement in mitigation or defense by affidavit, the court shall send him a copy of the judgment by ordinary mail.

Source - R.R. 7:6-6(b)

#### **RULE 7:10-5 VIOLATIONS BUREAU; DESIGNATION; FUNCTIONS**

If the court determines that the efficient disposition of its business and the convenience of the defendants so requires, it may establish a violations bureau and designate as the violations clerk the administrator, the deputy administrator of the court or, with prior approval of the Supreme Court pursuant to R. 1:17-1 any other appropriate official or employee (except an elected official or officer or employee of a police department) of the municipality in which the court is held, or if none is available, any other suitable and responsible person. The judge designated to preside over the Special Civil Part of the Superior Court may designate the clerk, the deputy clerk or other employee of the court as violations clerk. The violations clerk shall accept appearances, waiver of trial, pleas of

guilty and payments of fine and costs in non-indictable offenses, subject or the limitation hereinafter prescribed. The violations clerk shall serve under the direction and control of the court designating him/her.

Source - R.R. 7:7-1

#### **RULE 7:10-6 LOCATION**

Whenever practical the violations bureau shall be in a public building. The location shall be designated by the court subject to the approval of the Administrative Director of the Courts and the violations clerk shall take pleas and accept payment of fines and costs only at such location. An appropriate sign reading "Violations Bureau, \_\_\_\_\_ Municipal Court" shall be posted at the entrance to the violations bureau.

Source - R.R. 7:7-2

#### **RULE 7:10-7 DESIGNATED OFFENSES; SCHEDULE OF PENALTIES**

The Court shall by order, which may from time to time be amended, supplemented or repealed, designate the non-indictable offenses within the authority of the violations clerk, provided that such offenses shall not include:

- (1) non-parking traffic offenses requiring an increased penalty for a subsequent violation;
- (2) offenses involving traffic accidents resulting in personal injury;
- (3) 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/her custody or control;
- (4) reckless driving;

- (5) careless driving where there has been an accident resulting in personal injury;
- (6) leaving the scene of an accident;
- (7) driving while on the revoked list;
- (8) driving without being licensed.

The court by published order, which shall be submitted to and approved by the Assignment Judge of the county in which the court is located, shall specify the amount of fines and costs to be imposed for each offense within the authority of the violations clerk, including, in the discretion of the court higher fines and costs for second and subsequent offenses, provided such fines and costs are within the limits declared by the statute or ordinance. A schedule of such penalties shall be posted for public view at the violations bureau.

Source - R.R. 7:7-3

#### **RULE 7:10-8 PLEA AND PAYMENT OF FINE AND COST**

A person charged with an offense within the authority of the violations clerk, may, upon signing the plea of guilty and waiver of trial on the back of the summons and upon ascertaining the fine and costs established for the offense charged, pay the same, either by mail or in person, to the violations clerk on or before the return date of the summons, provided that when the summons is marked to indicate that a court appearance is required, payment may not be made to the violations clerk even though the offense is on the schedule of penalties. If the defendant is a corporation, partnership or unincorporated association, the plea and waiver may be signed on its behalf by any of its agents or employees. The court in its discretion may authorize the violations clerk to accept such plea and payment after the return date of the summons.

Source - R.R. 7:7-4

**RULE 7:11 SUMMARY PROCEEDINGS FOR COLLECTION OF STATUTORY  
PENALTIES**

**Rule 7:11-1 APPLICABILITY OF RULE**

Any penalty imposed by any statute or ordinance which may be collected or enforced by a summary civil proceeding shall be collected and enforced pursuant to R. 7:11 in every court upon which jurisdiction is conferred by the statute imposing the penalty. This rule shall not, however, be applicable if a statute requires a civil penalty to be collected by a plenary action. Proceedings for the confiscation or forfeiture of chattels shall conform, insofar as possible, with the provisions of R. 7:11.

**COMMENTARY**

The source rule for this rule is R. 4:70-1. R. 4:70-1(b) has been deleted from this rule revision as that rule refers to asking the court for injunctive or other relief, which relief cannot be granted by any municipal court. That type of action may be filed only in the Chancery Division of the Superior Court.

**RULE 7:11-2 COMPLAINT; VERIFICATION**

The complaint, which shall be in writing and verified, shall specify (1) the person alleged to have violated the provision of statute for whose violation is imposed a penalty to be enforced in a summary manner; (2) the statute and provision thereof violated; and (3) the time, place and nature of such violation. If the proceeding is instituted by a governmental body or officer, the verification of the complaint may be made on information and belief by any person duly authorized to act on its or his/her behalf.

Source - R.R. 4:70-2

**RULE 7:11-3(a) PROCESS**

Issuance; Return; Warrant or Summons; Service. Upon the filing of a complaint, a summons specifying the provisions of the statute alleged to have been violated shall issue and shall be returnable in not less than 5, nor more than 15 days, except if the statute so provides, a warrant may issue in lieu of a summons, without court order, and shall be returnable forthwith. The Administrative Director of the Courts may prescribe special forms of complaints and summonses for use in proceedings under R. 7:11, and a law enforcement officer may make and sign any such prescribed complaint and summons, serving the summons upon the defendant and thereafter filing the complaint promptly with the court therein named. Unless so served, process may be served and executed by any person authorized to serve and execute process in the court in which the proceedings are brought or by any other person designated for that purpose by the statute imposing the penalty.

Source - R.R. 4:70-3(a)

**RULE 7:11-3(b) ARREST WITHOUT A WARRANT**

If the statute imposing the penalty authorizes arrest without a warrant for the violation committed within the view of a law enforcement officer, for which a penalty is imposed enforceable in a summary manner, the officer shall upon making such an arrest for such a violation without a warrant, bring the defendant before a court having jurisdiction of the proceedings and shall forthwith file a complaint. In such case no process for the defendant's appearance shall issue, but upon the filing of the complaint the matter shall proceed as though process had issued and had been there and then duly served and returned.

Source - R.R. 4:70-3(b)

**RULE 7:11-3(c) AUTHORITY OF ADMINISTRATOR AS TO PROCESS**

The administrator of the court in which the proceedings are instituted or the deputy court administrator thereof may sign, seal and issue any process required to be issued under R. 7:11, except a warrant of commitment.

Source - R.R. 4:70-3(c)

**RULE 7:11-4 PENALTIES; PAYMENT; HEARING**

(a) Payment Upon Plea of Guilty. For violations where the statutory penalty does not exceed \$50 for each offense, including where the minimum statutory penalty does not exceed \$50 for each offense, the defendant at any time before the hearing date, upon presentation of a signed plea of guilty and waiver of trial endorsed on the summons, may pay the penalty and costs by appearing before the court or violations clerk or by mailing the same to the court or violations clerk subject to the limitations prescribed in R. 7:10.

(b) Summary Hearing; Judgment Without Filing of Pleadings. On the return of the process or at any time to which the trial has been adjourned, the court in which the proceedings were instituted shall summarily, without the filing of any pleadings except the complaint, hear the testimony and determine and give judgment in the matter, whether for the recovery of money penalty or costs or both, or otherwise, or for the defendant.

(c) Adjournment of Hearing; Defendant Detained; Bond for Release During Adjournment. If the court in which the proceedings were instituted, adjourns the hearing it shall, except where the first process was a summons, detain the defendant in custody, unless the defendant makes deposit in cash, in the amount of the penalty claimed and costs, or enters into a bond with at least one sufficient surety in double the amount of the penalty claimed and costs, or if there is no money penalty, then in such sum, not exceeding \$500 as the court fixes, conditioned for the defendant's appearance on the adjourned date, and from day

to day thereafter until judgment is rendered and further conditioned, unless the court otherwise orders, to abide by the judgment of the court. If the plaintiff is a governmental body or officer, the bond shall run to it or him/her, and, if forfeited, may be prosecuted by the obligee. If the plaintiff is the State, the bond shall run to it and, if forfeited, may be prosecuted at the relation of a person authorized by law to prosecute the penalty proceeding.

Source - R.R. 4:70-4

### **RULE 7:11-5 JUDGEMENT; COMMITMENT**

(a) Form of Judgment. The judgment of conviction in proceedings under R. 7:11 shall be signed by the judge or judicial officer rendering it and shall be in the form prescribed by the Administrative Director of the Courts.

(b) Commitment of Defendant Failing to Pay Judgment. If the statute imposing the penalty provides for commitment of the defendant upon his/her failure to pay forthwith the amount of any money judgment rendered against the defendant, the court shall direct the defendant to be committed to any institution and for such time as the statute authorizes, unless the judgment is sooner paid. The form of commitment shall be added beneath the signature of the judgment, signed in duplicate by the judge or other judicial officer, and in the form prescribed by the Administrative Director of the Courts. One of the duplicates shall serve the purpose of a warrant of commitment.

(c) Money Judgment; Execution; Property and Persons Subject To. If a money judgment is rendered against a defendant, execution may issue, in the form prescribed by the Administrative Director of the Courts, against the goods and chattels of the defendant; against defendant's real estate if the judgment is entered in the Civil Judgment and Order Docket; and against the body of an individual defendant provided the court in which the judgment is rendered shall by special order so direct and shall designate in said order the maximum number

of days during which the defendant may be detained in custody under such body execution.

(d) Costs. The costs prescribed by the statute imposing the penalty in any proceeding under R. 7:11 shall be recovered by the plaintiff if the judgment is rendered against the defendant.

Source - R.R. 4:70-5

## **RULE 7:12 APPEALS**

### **RULE 7:12-1 APPEALS**

Appeals from judgments of conviction shall be taken in accordance with R. 3:23 and 3:24, and in extraordinary cases and in the interests of justice, in accordance with R. 2:2-3(b).

Source - R.R. 7:8-1

### **RULE 7:12-2 STAY**

A sentence to pay a fine, a fine and costs, a forfeiture, an order for probation, or a revocation of the license to operate a motor vehicle may be stayed by the court in which the conviction was had or to which the appeal is taken upon such terms as the court deems proper.

Source - R.R. 7:8-2

### **RULE 7:12-3 REVERSAL; REMISSION OF FINES AND COSTS**

A fine or a fine and costs paid pursuant to a judgment of conviction and disbursed by the court in accordance with R. 7:13-5(a) shall be remitted by the recipient thereof to the defendant or defendant's attorney upon the service upon the recipient of a copy of the order reversing the judgment.

Source - R.R. 7:8-3

**RULE 7:13 GENERAL PROVISIONS; ADMINISTRATION**

**RULE 7:13-1 LOCAL RULES**

Any judge of a Municipal Court may, with the approval of the Administrative Director of the Courts , make rules for the orderly conduct of the proceedings of the court, not inconsistent with these rules.

Source - R.R. 7:10-1

**RULE 7:13-2(a) OPENING STATEMENT**

An opening statement shall be given by the Municipal Court judge prior to the commencement of the court session concerning court procedures and rights of defendants. This statement shall not be a substitute for the judge advising an individual defendant of his or her rights prior to hearing.

**COMMENTARY**

The source rule for this rule was R. 7:4-4(d). The rule concerning opening statements has been brought into the general provisions section of the rules because it does not deal with any specific part of Municipal Court practice.

**RULE 7:13-2(b) NOTICE TO DEFENDANT ON GUILTY PLEA**

Before accepting a plea of guilty to a traffic offense other than a parking offense and as part of the opening statement, the court shall inform the defendant that a record of the conviction will be sent to the Director of the Division of Motor Vehicles of this State or the Commissioner of Motor Vehicles of the state where defendant received his/her license to drive, to become a part of the defendant's driving record.

**RULE 7:13-2(c) NOTIFICATION OF RIGHT TO APPEAL**

As part of the opening statement, the court shall advise every defendant of his/her right to appeal and, if indigent, of his or her right to appeal as an indigent, regardless of whether the defendant pleads guilty or is found guilty after a trial.

**COMMENTARY**

These are two new provisions to the rules to reflect that the court shall inform each defendant convicted of a motor vehicle offense other than a parking offense in Municipal Court that the conviction will be sent to the Director of the Division of Motor Vehicles to become part of defendant's driving record as part of the opening statement only. The notice of right to appeal shall also be a part of the opening statement only. This rule makes clear that the Municipal Courts do not have to notify every individual defendant convicted in Municipal Court of his/her rights to appeal. Due to the high volume of cases heard during an average Municipal Court session and the resultant delay that the individual advisement of right to appeal would cause, the Committee on Municipal Courts felt that the individual advisement would be unduly repetitive and that the notice could be amply handled in the opening statement at the beginning of each court session.

**RULE 7:13-3 AMENDMENT OF PROCESS OR PLEADING**

The court may amend any process or pleading for any omission or defect therein, or for any variance between the complaint and the evidence adduced at the trial but no such amendment shall be permitted which charges a different substantive offense (other than a lesser included offense). If the defendant is surprised as a result of such amendment, the court shall adjourn the hearing to some future day, upon appropriate terms.

Source - R.R. 7:10-2

**RULE 7:13-4(a) CALENDAR**

The court shall follow as closely as possible, the following order: (1) applications for adjournment; (2) unlitigated motions; (3) arraignments; (4) guilty pleas; (5) litigated motions; (6) contested matters with an attorney; (7) other contested matters.

Source - R.R. 7:10-3(a)

**RULE 7:13-4(b) APPEARANCES OF ATTORNEYS**

Appearances by attorneys shall be entered promptly with the court or administrator. Unless the appearance is entered, the attorneys shall not receive priority on the trial list.

Source - R.R. 7:10-3(b)

**RULE 7:13-5 FINANCIAL CONTROL**

(a) Fines and Forfeitures. Moneys received by a court as fines or forfeitures, together with the financial reports covering such funds, shall be forwarded by the court on or before the fifteenth day of each month as follows:

(1) To the custodian of the funds of the municipality where such moneys were received in the course of enforcing municipal ordinances or local regulations, if assessed and collected by the Municipal Court, as provided by law, or to the custodian of the funds of the municipality in which the violation occurred, if assessed and collected by a Special Civil Part of the Superior Court.

(2) To the custodian of the funds of the municipality or of the county, or to such state agency or officer, as the case may be, where the moneys were collected in the course of enforcing state laws and regulations, as provided by law.

(b) Receipts and Disbursements. The court shall keep an accurate account of all fees, costs and moneys received, as well as of any moneys disbursed and to

whom disbursed. Receipts shall be turned over to the appropriate municipal, county or state finance officer, or deposited as soon after receipt as practical in a bank or banks authorized to do business in this State. No disbursements shall be made except by check drawn on such bank. The court shall issue or cause to be issued and shall obtain a receipt in the form and manner prescribed by the Administrative Director of the Courts in every instance where money is received or disbursed.

(c) **Payment of Moneys Due.** No moneys due the court, its employees, or any persons attending upon it, for salaries, fees, costs or other charges shall be deducted from receipts but shall be paid only on a voucher submitted by the court to the appropriate finance officer.

(d) **Docket; Fiscal Forms and Procedures; Record-Keeping.** The court shall maintain such separate dockets in such form as the Administrative Director of the Courts prescribes. All fiscal forms, procedures and record-keeping shall conform to the requirements of the Administrative Director of the Courts.

#### COMMENTARY

The source rule was R. 7:10-4 in recognition of the added duties which have been imposed upon municipal court administrators over the past decade, the time for filing the monthly report has been enlarged from the tenth of each month to the fifteenth.

#### **RULE 7:13-6 OATH OF MUNICIPAL COURT JUDGE**

The oath of office of a municipal court judge before entering upon the duties of his/her office shall be taken before a judge of the Superior Court. The original shall be filed with the administrator of the Municipal Court and a copy thereof filed with the Administrative Director of the Courts.

Source - R.R. 7:10-5

## **B. MATTERS PREVIOUSLY SENT TO THE SUPREME COURT**

### **1. Revision to the Statewide Violations Bureau Schedule**

During the 1992 -1994 term there were several legislative changes that impacted on the Statewide Violation Bureau Schedule. Each time there was a statutory change the Committee reviewed and recommended to the Supreme Court changes to the Statewide Violations Bureau Schedule. In some instances the legislature passed laws that required immediate changes in the Violation Bureau Schedule because it had an immediate effective date. Administrative Office of the Courts (AOC) staff, who were charged with the responsibility of incorporating relevant legislative changes in the Schedule and distributing it to the courts found that where a law was passed with an immediate effective date it was difficult to revise the schedule, present it to the full Committee for review, submit it to the Court for approval, and distribute it to the various municipal courts in a timely fashion.

Because of this problem, in October 1992, the staff of the AOC petitioned the Committee to form a subcommittee to review passed on revisions to the Statewide Violation Bureau Schedule where the changes were non-discretionary statutory penalties, surcharges or fees and the effective date was either immediate or extremely short. After review of the AOC staff's request, the Committee formed a Subcommittee on Non-Discretionary Penalties which was given the authority to review and approve, on an emergent basis, changes to the Violation Bureau Schedule that require quick approval.

The legislative enactments that required changes to the schedule during this term are as follows:

- (a) N.J.S.A. 39:3-76(a) Failure to Use a Child Passenger Restraint - In April, 1992, at the request of a Municipal Court Judge the Committee considered and approved the inclusion of N.J.S.A.

- 39:3-76(a) Failure to Use Child Passenger Restraint on the Statewide Violation Bureau Schedule. Prior to that time violations of this statute were not payable through the Violation Bureau even though it was less than fifty dollars and a "consequence of magnitude" was not implicated.
- (b) The fifty cents (50¢) Emergency Medical Technician Training Fund surcharge assessment pursuant to N.J.S.A. 39:5-41 to all motor vehicle or traffic violations. In December, 1992, the Governor signed the Emergency Medical Technician Training Fund Act (EMTTF). This law added a fifty cent (50¢) surcharge assessment to penalties for violation of Title 39 offenses. The Violations Bureau Schedule was revised to reflect this increased penalty.
- (c) Revision of Title 2A Municipal Courts (S-875). On December 22, 1993, the Governor signed S-875 which revised Title 2A. The bill increased court cost from \$25 to \$3 and designated \$2 of this amount to be paid into the Automated Traffic System (ATS) Fund for all offenses cognizable in municipal courts and 50¢ to be paid into the EMTTF. On the effective date of the increased court costs, the \$1 Automated Traffic System and 50¢ EMTTF surcharges were converted to court cost assessments.

## 2. Faxing of Complaints

An application was made by Camden County for a pilot program to allow Fax machines to be placed in the homes of municipal court administrators for the faxing of complaints. After careful deliberations regarding the procedures for faxing complaints, the Committee recommended that the Supreme Court approve the pilot program subject to the following conditions:

- (1) The program should not extend beyond one year, at the conclusion of which an evaluation report should be submitted for the Court's further consideration. The report would include an accounting of the actual savings to the municipality;
- (2) The affidavit of probable cause should be faxed along with the faxed complaint/warrant; and
- (3) A proposal to record the telephone calls made by the police to court administrators was deemed unnecessary and could be eliminated at the option of the Camden County FAX Committee.

The Supreme Court authorized the commencement of the pilot proposal.

**C. RECOMMENDATIONS FOR LEGISLATIVE CHANGES**

The Committee suggested the following to the AOC's Legislative liaison:

- (1) All new legislation which may impact the Statewide Violation Bureau Schedule and Uniform Traffic Ticket, wherever practical should have at least a 30 day (and preferably a 90 day) effective date. This would allow for the promulgation of revised schedules or traffic tickets in a timely fashion.
  
- (2) Alternatives to the collection of certain penalty assessments should be considered by the legislature. Currently, certain nonsuspendable penalties are unable to be collected and cases remain open indefinitely.

**D. RULE RECOMMENDATIONS HELD FOR FUTURE CONSIDERATION**

The Standing Subcommittee on Plea Agreements reported on the results of its ongoing monitoring activities pursuant to R. 7:4-8:

It was the consensus of the Committee that there was not sufficient documented experience with the application of the rule to support the development of any modifications at this time. It was decided that the subcommittee should continue to monitor the application of the rule and revisit the matter, next term, or as necessary.

**SUPREME COURT COMMITTEE ON MUNICIPAL COURTS**

Jeffrey A. April, Esq.  
Raymond T. Bolanowski, Esq.  
William G. Brigiani, Esq.  
Evan W. Broadbelt, Esq.  
James A. Caporrino, Esq.  
Michael A. Diamond, Esq.  
Hon. Linda R. Feinberg, J.S.C.  
Allen S. Ferg, Esq.  
Samuel C. Inglese, Esq.  
Hon. David A. Keyko, P.J.M.C.  
Francis J. Leddy, Jr., Esq.  
Fred J. Levin, Esq.  
Lois Lipton, Esq.  
Hon. John L. Madden, J.M.C.  
Jeffrey M. Martin, Esq.  
Edwin R. Matthews, Esq.  
John McFeeley, III, Esq.  
Hon. R. Kevin McGrory, P.J.M.C.  
Boris Moczula, Esq., DAG  
Francis X. Moore, Esq.  
Robert Pentangelo, Esq.  
Robert E. Ramsey, Esq.  
Alan Sant'Angelo, Esq.  
Hon. Samuel J. Serata, J.M.C.  
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Bertha L. Scott, Esq.  
Alberto Ulloa, Esq.  
Patricia Vargo, Court Administrator  
Hon. Joan Robinson Gross, P.J.M.C., Chair

**AOC STAFF**

Dennis L. Bliss, Esq., Assistant Director, Municipal Court Services Division  
Lawrence E. Walton, Esq., Assistant Chief, Court Operations