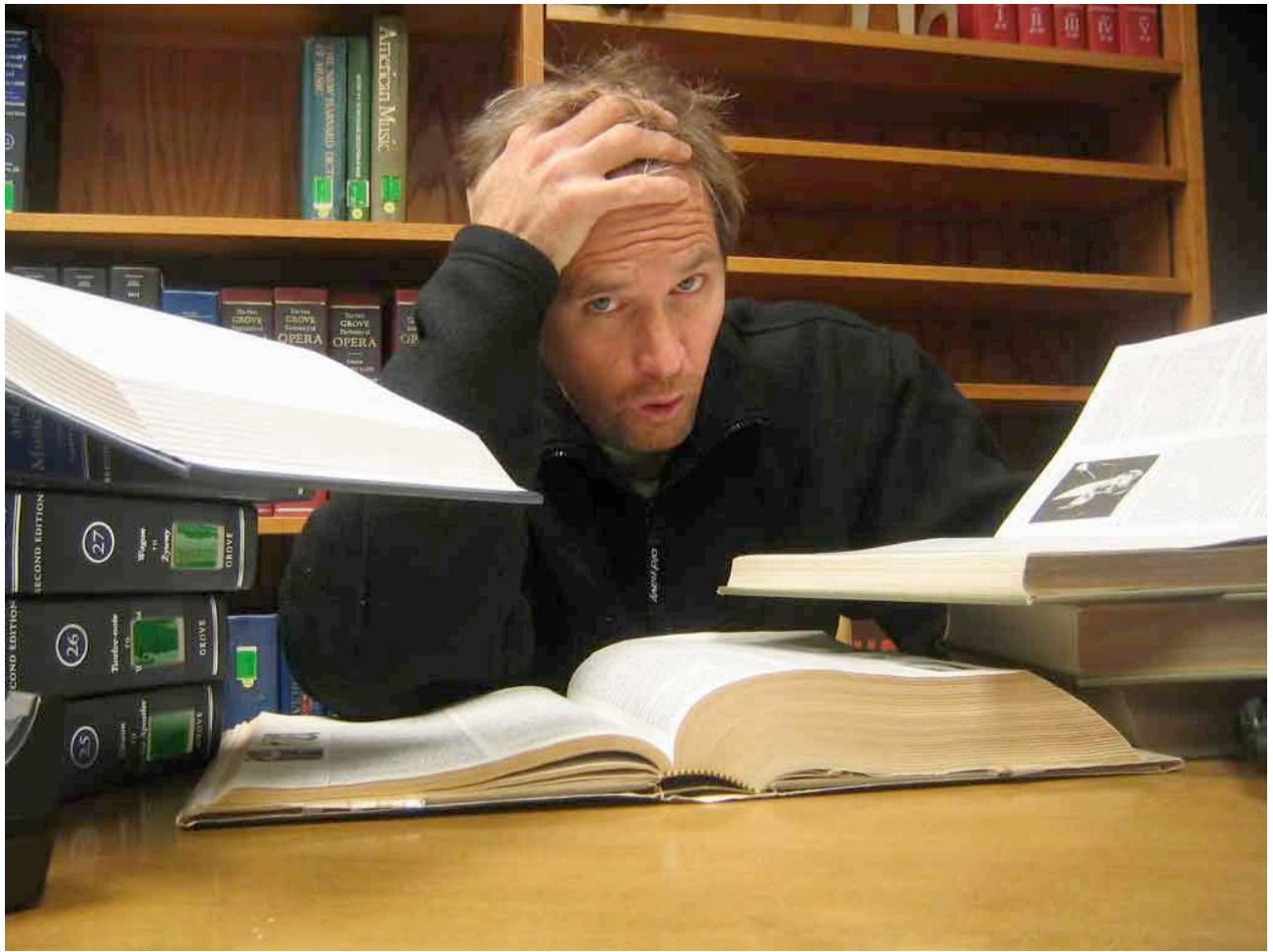


Garden State CLE presents:

## **Municipal Court Trial Certification**

### **Exam Preparation and Review**



### **Municipal Court Rules**

## **Introduction**

# **1. The Rules of Court – In General**

**NJ Constitution of 1947 – Art VI, Section 2, Paragraph 3**

**The Supreme Court shall make rules governing the administration of all courts in the State and, subject to the law, the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.**

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**Supreme Court Committee on Municipal Courts**

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# **2. The Development of “Stand-alone” Part VII Rules**

**State v. Gonzalez, 114 NJ 592 (1989)**

**Eliminate cross-references to other Chapters in Rules of Court (See Rule 7:1)  
Plain Language Requirement (No Latin)**

**Address Issues unique to Municipal Court Practice  
Statewide in nature - Eliminates purely local issues**

## **Scope: Rule 7:1**

**The rules in Part VII govern the practice and procedure in the municipal courts in all matters within their statutory jurisdiction, including disorderly and petty disorderly persons offenses; other non-indictable offenses not within the exclusive jurisdiction of the Superior Court; violations of motor vehicle and traffic, fish and game, and boating laws; proceedings to collect penalties where jurisdiction is granted by statute; violations of county and municipal ordinances; and all other proceedings in which jurisdiction is granted by statute. The rules in Part III govern the practice and procedure in indictable actions, and Rule 5:7A governs the practice and procedure in the issuance of temporary restraining orders pursuant to the Prevention of Domestic Violence Act of 1990.**

## **7:2-1(a). Contents of Complaint, Arrest Warrant and Summons**

- **(a) Complaint: General.** 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. Except as otherwise provided by paragraphs (f) (Traffic Offenses), (g) (Special Form of Complaint and Summons), and (h) (Use of Special Form of Complaint and Summons in Penalty Enforcement Proceedings), the complaining witness shall attest to the facts contained in the complaint by signing a certification or signing an oath before a judge or other person so authorized by N.J.S.A. 2B:12-21.

**If the complaining witness is a law enforcement officer, the complaint may be signed by an electronic entry secured by a Personal Identification Number (hereinafter referred to as an electronic signature) on the certification, which shall be equivalent to and have the same force and effect as an original signature.**

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Essential function is to inform defendant as to the nature of the charges and the date the offense was committed.

The complaint is “a written statement of the essential facts constituting the offense charged[.]” R. 7:2-1(a). Like a criminal indictment, its primary purpose is “to inform a defendant of the charges he must defend against.” [State v. Salzman, 228 N.J.Super. 109, 114, 549 A.2d 46, 49 \(App.Div.1987\)](#).

Unsigned complaint – State v. Fisher, 180 NJ 462 (2004) [post p/c determination]

## **7:2-1(b).**

- **(b) Acceptance of Complaint.** The municipal court administrator or deputy court administrator shall accept for filing every complaint made by any person.
- 

**1. Note First amendment considerations.**

**2. A municipal court is “the people's court.” Municipal courts remain a place in which people, sometimes on the verge of violence, can seek relief. In effect, municipal courts provide a safety valve for society. By providing access to impartial judges, municipal courts forestall violence and encourage the peaceful resolution of disputes. State v. Storm, 141 NJ 245, 254 (1995)**

**3. Note that whether process in the form of a summons or warrant ever issues on a complaint is a separate issue.**

- **7:2-1(c) Summons: General.** The summons shall be on a Complaint-Summons form (CDR-1) or other form prescribed by the Administrative Director of the Courts and shall be signed by the officer issuing it. An electronic signature of any law enforcement officer or any other person authorized by law to issue a Complaint-Summons shall be equivalent to and have the same force and effect as an original signature. The summons shall be directed to the defendant named in the complaint, shall require defendant's appearance at a stated time and place before the court in which the complaint is made, and shall inform defendant that an arrest warrant may be issued for a failure to appear.

**Note – Service upon the defendant must be accomplished under one of the authorized methods under Rule 7:2-4 within the statute of limitations period. State v. Buczkowski, 395 NJ Super. 40 (App. Div. 2007).**

- . **7:2-1(d) Arrest Warrant: General.**
- .
  - . The arrest warrant shall be made on a Complaint-Warrant form (CDR-2) or other form prescribed by the Administrative Director of the Courts and shall be signed by the judge or, when authorized by the judge, by the municipal court administrator or deputy court administrator after a determination of probable cause. An electronic signature by the judge, authorized municipal court administrator, or deputy court administrator shall be equivalent to and have the same force and effect as an original signature. The warrant shall contain the defendant's name or, if unknown, any name or description that identifies the defendant with reasonable certainty. It shall be directed to any officer authorized to execute it and shall order that the defendant be arrested and brought before the court issuing the warrant. The judicial officer issuing a warrant may specify therein the amount and conditions of bail, consistent with R. 7:4, required for defendant's release.

**Note – Constitutional requirement based upon Article I, para 7 of State Constitution and Amendment IV.**

**Decision to use a warrant to a summons is based upon the factors in Rule 7:2-2(b)**

- **7:2-1(e) Arrest Warrant: By Telephone.** A judge may issue an arrest warrant upon sworn oral testimony of a law enforcement applicant who is not physically present. Such sworn oral testimony may be communicated by the applicant to the judge by telephone, radio, or other means of electronic communication.

The judge shall administer the oath to the applicant. Subsequent to taking the oath, the applicant must identify himself or herself and read verbatim the Complaint-Warrant (CDR-2) and any supplemental affidavit that establishes probable cause for the issuance of an arrest warrant. If the facts necessary to establish probable cause are contained entirely on the Complaint-Warrant (CDR-2) and/or supplemental affidavit, the judge need not make a contemporaneous written or electronic recordation of the facts in support of probable cause. If the law enforcement applicant provides additional sworn oral testimony in support of probable cause, the judge shall contemporaneously record such sworn oral testimony by means of a tape-recording device or stenographic machine, if such are available; otherwise, adequate longhand notes summarizing the contents of the law enforcement applicant's testimony shall be made by the judge. This sworn testimony shall be deemed to be an affidavit or a supplemental affidavit for the purposes of issuance of an arrest warrant.

**An arrest warrant may issue if the judge is satisfied that probable cause exists for issuing the warrant. Upon approval, the judge shall memorialize the date, time, defendant's name, complaint number, the basis for the probable cause determination, and any other specific terms of the authorization. That memorialization shall be either by means of a tape-recording device, stenographic machine, or by adequate longhand notes. Thereafter, the judge shall direct the applicant to print his or her name, the date and time of the warrant, followed by the phrase "By Officer \_\_\_\_\_, per telephonic authorization by \_\_\_\_\_" on the Complaint-Warrant (CDR-2) form. Within 48 hours, the applicant shall deliver to the judge either in person or via facsimile transmission the signed Complaint-Warrant (CDR-2) and supporting affidavit. The judge shall verify the accuracy of these documents by affixing his or her signature to the Complaint-Warrant (CDR-2).**

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**Note – Failure to swear in the affiant might result in suppression of evidence seized as a result of a search incident to the arrest. See for example, State v. Cassidy, 179 NJ 150 (2004) (Unsworn DV search warrant)**

## **. 7:2-1(g) Traffic Offenses**

- **(1) Form of Complaint and Process.** The Administrative Director of the Courts shall prescribe the form of Uniform Traffic Ticket to serve as the complaint, summons or other process to be used for all parking and other traffic offenses. On a complaint and summons for a parking or other non-moving traffic offense, the defendant need not be named. It shall be sufficient to set forth the license plate number of the vehicle, and its owner or operator shall be charged with the violation.
  - **(2) Issuance.** The complaint may be made and signed by any person, but the summons shall be signed and issued only by a law enforcement officer or other person authorized by law to issue a Complaint-Summons, the municipal court judge, municipal court administrator or deputy court administrator of the court having territorial jurisdiction. An electronic signature of any law enforcement officer or other person authorized by law to issue a Complaint-Summons shall be equivalent to and have the same force and effect as an original signature.
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**Note - Civilians have no authority to issue process – See State v. Ross, 189 NJ Super. 67 (1983)**

**Expansion of definition of Law Enforcement Officer – see Rule Issues related to off-duty police – See State v. Gebbia, 414 NJ Super. 406 (Law Div. 2010).**

## **7:2-2. Issuance of Arrest Warrant or Summons**

- (a) Authorization for Process.
  - (1) Citizen Complaint. An arrest warrant or a summons on a complaint charging any offense made by a private citizen may be issued only by a judge or, if authorized by the judge, by a municipal court administrator or deputy court administrator of a court with jurisdiction in the municipality where the offense is alleged to have been committed within the statutory time limitation. The arrest warrant or summons may be issued only if it appears to the judicial officer from the complaint, affidavit, certification or testimony that there is probable cause to believe that an offense was committed, the defendant committed it, and an arrest warrant or summons can be issued. The judicial officer's finding of probable cause shall be noted on the face of the summons or warrant and shall be confirmed by the judicial officer's signature issuing the arrest warrant or summons. If, however, the municipal court administrator or deputy court administrator finds that no probable cause exists to issue an arrest warrant or summons, or that the applicable statutory time limitation to issue the arrest warrant or summons has expired, that finding shall be reviewed by the judge. A judge finding no probable cause to believe that an offense occurred or that the statutory time limitation to issue an arrest warrant or summons has expired shall dismiss the complaint.
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**No standing to appeal – State v. Vitiello, 377 NJ Super. 452 (App. Div. 2005). Note Rule 3:24(b).**

- **(2) Complaint by Law Enforcement Officer or Other Statutorily Authorized Person.** A summons on a complaint made by a law enforcement officer charging any offense may be issued by a law enforcement officer or by any person authorized to do so by statute without a finding by a judicial officer of probable cause for issuance. A law enforcement officer may personally serve the summons on the defendant without making a custodial arrest.
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**Codifies State v. Gonzalez, 114 NJ 592 (1989) and State v. Dangerfield, 171 NJ 446 (2002); see also State v. Daniels, 393 NJ Super. 476 (App. Div. 2007).**

**Note exceptions in Rule 7:2-2(e) for shoplifting & prostitution due to required post-arrest identification procedures in NJSA 53:1-15.**

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- **(3) Complaint by Code Enforcement Officer.** A summons on a complaint made by a Code Enforcement Officer charging any offense within the scope of the Code Enforcement Officer's authority and territorial jurisdiction may be issued without a finding by a judicial officer of probable cause for issuance. A Code Enforcement Officer may personally serve the summons on the defendant. Otherwise, service shall be in accordance with these rules. For purposes of this rule, a "Code Enforcement Officer" is a public employee who is responsible for enforcing the provisions of any state, county or municipal law, ordinance or regulation which the public employee is empowered to enforce.
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**Expands definition of Law Enforcement Officer.**

- **7:2-2(b) Determination Whether to Issue a Summons or Warrant.** A summons rather than an arrest warrant shall issue if the defendant is a corporation, partnership or unincorporated association. If the defendant is an individual, a summons rather than an arrest warrant shall issue unless the judge or duly authorized municipal court administrator or deputy court administrator finds that:
    - (1) the defendant has failed to respond to a summons; or
    - (2) there is reason to believe that the defendant is dangerous to himself or herself, to others, or to property; or
    - (3) there is one or more outstanding arrest warrants for the defendant; or
    - (4) 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
    - (5) the defendant cannot be satisfactorily identified; or
    - (6) there is reason to believe that the defendant will not appear in response to a summons.
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**Note – preparation for an arrest warrant will usually apply in domestic violence cases – does not apply to any non-d/p traffic offenses, including DWI.**

## **7:4-1. Right to Bail before Conviction**

**Every defendant shall have a right to bail before conviction on such terms as, in the judgment of the court, will insure the defendant's presence when required, having regard for the defendant's background, residence, employment and family status and, particularly, the general policy against unnecessary sureties and detention. In its discretion, the court may order defendant's release on defendant's own recognizance and may impose terms or conditions appropriate to such release.**

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**Implements Article 1, para 11 of State Constitution of 1947**

**11. No person shall, after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or presumption great.**

## **7:4-2. Authority to Set Bail**

- (a) Authority to Admit to Initial Bail.**
  - Conditions of pre-trial release, including bail, may be set by a judge sitting regularly in or as acting or temporary judge of the jurisdiction in which the offense was committed, or by a vicinage Presiding Judge of the Municipal Courts, or as authorized by any other rule of court. A judge who has fixed the amount of bail may designate the taking of the recognizance by the municipal court administrator or any other person authorized by law to take recognizances, other than the law enforcement arresting officer. In the absence of the judge, and to the extent consistent with N.J.S.A. 2B:12-21, a defendant, arrested and charged with a non-indictable offense that may be tried by the judge, may be admitted to bail by the duly authorized municipal court administrator or deputy court administrator. In the absence of the judge, the municipal court administrator, and deputy court administrator, the defendant may be admitted to bail by any other person authorized by law to admit to bail. The authority of the municipal court administrator, deputy court administrator or other authorized persons shall, however, be exercised only in accordance with bail schedules promulgated by the Administrative Office of the Courts or the municipal court judge.
  - **(b) Bail Revisions.** A municipal court judge may modify bail or any other condition of pre-trial release on any non-indictable offense at any time during the course of the municipal court proceedings.

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**Note – Changing conditions of bail pending a domestic violence case.**

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**Note issues related to bail forfeiture, remission and exoneration.**

## **7:4-8. Bail after Conviction**

**When a sentence has been imposed and an appeal from the judgment of conviction has been taken, the trial judge may admit the appellant to bail within 20 days from the date of conviction or sentence, whichever occurs later. Bail after conviction may be imposed only if the trial judge has significant reservations about the appellant's willingness to appear before the appellate court. The bail or other recognizance shall be of sufficient surety to guarantee the appellant's appearance before the appellate court and compliance with the court's judgment. Once the appellant has placed bail or filed a recognizance, if the appellant is in custody, the trial court shall immediately discharge the appellant from custody. The court shall transmit to the vicinage Criminal Division Manager any cash deposit and any recognizance submitted.**

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**Cross reference to Rule 3:23-5 – mandatory bail following municipal appeal.**

### **3:23-5. Relief Pending Appeal**

- **(a) Relief From Custodial Sentence.** If a custodial sentence has been imposed, and an appeal from the judgment of conviction has been taken, the defendant shall be admitted to bail by a judge of the Superior Court in accordance with the standards set forth in R. 3:26-1a.
- **(b) Relief From Fine.** A sentence to pay a fine, a fine and costs, or a forfeiture 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 appropriate.
- **(c) Relief From Order for Probation.** An order for probation may be stayed if an appeal is taken.

## **Search Warrants**

### **7:5-1. Filing**

- **(a) By Whom; Documents to be Filed.** The judge issuing a search warrant shall attach to it the return, inventory, and all other papers related to the warrant, including affidavits and a transcript or summary of any oral testimony and, if applicable, a duplicate original search warrant. The judge shall promptly deliver these documents to the municipal court administrator, who shall file them with the vicinage Criminal Division Manager of the county in which the property was seized. The municipal court administrator shall retain in a confidential file copies of all papers filed with the Criminal Division Manager. If a tape or transmitted recording has been made, the municipal court administrator shall also send them to the Criminal Division Manager, but shall not retain a copy.
- **(b) Inspection.** All completely executed warrants, together with the supporting papers and recordings described in paragraph (a) of this rule, shall be available for inspection and copying by the defendant pursuant to R. 7:7-7 and, upon notice to the county prosecutor and for good cause shown, by any other person claiming to be aggrieved by the search and seizure.

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**Note the limited applicability of this Rule to only \_ the vicinages in the State.**

**Procedure - State v. Broom-Smith, 201 N.J. 229, 235-237 (2010).**

**Motion to suppress must always be in Superior Court (Rule 7:5-2(a)**

## **7:5-2. Motion to Suppress Evidence**

- **(a) Jurisdiction.** The municipal court shall entertain motions to suppress evidence seized without a warrant in matters within its trial jurisdiction on notice to the prosecuting attorney and, if the county prosecutor is not the prosecuting attorney, also to the county prosecutor. A motion to suppress evidence seized pursuant to a warrant and motions to suppress evidence seized without a warrant, but in matters beyond the trial jurisdiction of the municipal court, shall be made and heard in the Superior Court.
- **(b) Procedure.** Written briefs in support of and opposition to the motion to suppress shall be filed only in the discretion of the judge, who shall determine the briefing schedule, if briefs are permitted. All motions to suppress shall be heard before the start of the trial.
- **(c) Order; Stay.**
  - **(1) Order Granting Suppression.** An order granting a motion to suppress evidence shall be entered immediately upon decision of the motion. Within ten days after its entry, the municipal court administrator shall provide a copy of the order to all parties and, if the county prosecutor is not the prosecuting attorney, also 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. The property that is the subject of the suppression order shall, if not otherwise subject to lawful detention, be returned to the person entitled to it only after exhaustion by the State of its right to appeal.
  - **(2) Order Denying Suppression.** An order denying suppression may be reviewed on appeal from an ensuing judgment of conviction pursuant to R. 3:23 whether the judgment was entered on a guilty plea or on a finding of guilt following trial.

- (d) Waiver. Unless otherwise ordered by the court for good cause, defendant's failure to make a pretrial motion to the municipal court pursuant to this rule shall constitute a waiver of any objection during trial to the admission of the evidence on the ground that the evidence was unlawfully obtained.
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## **7:5-3. Search and Seizure without a Warrant**

**R. 7:5 shall not be construed to make illegal a lawful search and seizure executed without a warrant.**

## **7:6-2. Pleas, Plea Agreements**

- **(a) Pleas Allowed, Guilty Plea.**
  - **(1) Generally.** A defendant may plead not guilty or guilty, but the court may, in its discretion, refuse to accept a guilty plea. Except as otherwise provided by Rules 7:6-2, 7:6-3, and 7:12-3, the court shall not, however, accept a guilty plea without first addressing the defendant personally and determining by inquiry of the defendant and, in the court's discretion, of others, 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. Prior to accepting a guilty plea when an unrepresented defendant faces a consequence of magnitude, the judge shall make a finding on the record that the court is satisfied that the defendant's waiver of the right to counsel is knowing and intelligent. On the request of the defendant, the court may, at the time of the acceptance of a guilty plea, order that the 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 guilty plea, the court shall enter a plea of not guilty. If a guilty plea 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.

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Civil Reservation generally see: State v. LaResca, 267 NJ Super. 411 (App. Div. 1993) and State v. Tsilimidos, 364 NJ Super. 454 (App. Div. 2003).

Applies to all offenses except those submitted thru the violations bureau. Utility for post conviction relief, especially on the issue of “knowing” component of plea.

- **7:6-2(b) 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.
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## **State v. Slater, 198 NJ 145 (2009)**

- (1) Has the defendant asserted a colorable claim of innocence?
- (2) What are the nature and strength of defendant's reasons for withdrawal?
- (3) Was the plea entered as part of a plea bargain?
- (4) Would withdrawal of the plea result in unfair prejudice to the State or unfair advantage to the accused?

**NOTE** - Trial courts should consider and balance all of the factors discussed above in assessing a motion for withdrawal of a plea. No factor is mandatory; if one is missing, that does not automatically disqualify or dictate relief.

**Applies to municipal courts (drunk driving) as per:  
State v. Mustaro, 411 NJ Super. 91 (App. Div. 2009)**

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- **7:6-2(c) Conditional Pleas.** 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. A defendant who prevails on appeal shall be afforded the opportunity to withdraw the guilty plea. Nothing in this rule shall be construed as limiting the right to appeal provided by R. 7:5-2(c)(2).
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**Not necessary in those instances where the plea follows the denial of a motion to suppress physical evidence secured by the police as the result of an unreasonable search or seizure. Rule 7:5-2(c)(2).**

- **7:6-2(d) Plea Agreements.**
  - Plea agreements may be entered into only pursuant to the Guidelines and accompanying Comment issued by the Supreme Court, both of which are annexed as an Appendix to Part VII, provided, however, that:
    - (1) the complaint is prosecuted by the municipal prosecutor, the county prosecutor, or the Attorney General; and
    - (2) the defendant is either represented by counsel or knowingly waives the right to counsel on the record; and
    - (3) the prosecuting attorney represents to the court that the [complaining witness and the] victim, if the victim is present at the hearing, has been consulted about the agreement; and
    - (4) the plea agreement involves a matter within the jurisdiction of the municipal court and does not result in the downgrade or disposition of indictable offenses without the consent of the county prosecutor, which consent shall be noted on the record; and
    - (5) the sentence recommendations, if any, do not circumvent minimum sentences required by law for the offense.

Pursuant to paragraph (a)(1) of this rule, when a plea agreement is reached, its terms and the factual basis that supports the charge(s) shall be fully set forth on the record personally by the prosecutor, except as provided in Guideline 3 for Operation of Plea Agreements. If the judge determines that the interests 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 if already entered.

**Refer to Guidelines in Appendix to Part VII Rules**

## **APPENDIX TO PART VII**

### **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 personally represents on the record the reasons in support of the motion.**

**The prosecutor shall also appear in person to set forth any proposed plea agreement on the record. However, with the approval of the municipal court judge, in lieu of appearing on the record, the prosecutor may submit to the court a Request to Approve Plea Agreement, on a form approved by the Administrative Director of the Courts, signed by the prosecutor and by the defendant. Nothing in this Guideline shall be construed to limit the court's ability to order the prosecutor to appear at any time during the proceedings.**

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**Required to conform to RPC 3.8 (Special responsibilities of the prosecutor)**

**Also conforms to practice using written plea forms**

**Must be read in conjunction with Supreme Court commentary as reproduced below.**

## **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**

**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).**

**No plea agreements will be allowed in which a defendant charged for a violation of N.J.S.A. 39:4-50 with a blood alcohol concentration of 0.10% or higher seeks to plead guilty and be sentenced under section a(1)(i) of that statute (blood alcohol concentration of .08% or higher, but less than 0.10%).**

**If a defendant is charged with a second or subsequent offense of 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) arising out of the same factual transaction, and the defendant pleads guilty to the N.J.S.A. 39:4-50 offense, the judge, on recommendation of the prosecutor, may dismiss the refusal charge. A refusal charge in connection with a first offense N.J.S.A. 39:4-50 charge shall not be dismissed by a plea agreement, although a plea to a concurrent sentence for such charges is permissible.**

**Except in cases involving an accident or those that occur when school properties are being utilized, if a defendant is charged with driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50(a)) and a school zone or school crossing violation under N.J.S.A. 39:4-50(g), arising out of the same factual transaction, and the defendant pleads guilty to the N.J.S.A. 39:4-50(a) offense, the judge, on the recommendation of the prosecutor, may dismiss the N.J.S.A. 39:4-50(g) charge.**

**If a defendant is charged with more than one violation under Chapter 35 or 36 of the Code of Criminal Justice arising from the same factual transaction and pleads guilty to one charge or seeks a conditional discharge under N.J.S.A. 2C:36A-1, all remaining Chapter 35 or 36 charges arising from the same factual transaction may be dismissed by the judge on the recommendation of the prosecutor.**

**Nothing contained in these limitations shall prohibit the judge from considering a plea agreement as to the collateral charges arising out of the same factual transaction connected with any of the above enumerated offenses in Sections A and B of this Guideline.**

**The judge may, for certain other offenses subject to minimum mandatory penalties, refuse to accept a plea agreement unless the prosecuting attorney represents that the possibility of conviction is so remote that the interests of justice requires the acceptance of a plea to a lesser offense.**

## **SUPREME COURT COMMENT (JUNE 29, 1990)**

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.

## **7:6-3. Guilty Plea by Mail in Non-Traffic Offenses**

- **(a) Entry of Guilty Plea by Mail.** In all non-traffic and non-parking offenses, except as limited below, on consideration of a written application, supported by certification, with notice to the complaining witness and prosecutor, and at the time and place scheduled for trial, the judge may permit the defendant to enter a guilty plea by mail if the court is satisfied that a personal appearance by the defendant would constitute an undue hardship such as illness, physical incapacity, substantial distance to travel, or incarceration. The guilty plea by mail form may also include a statement for the court to consider when determining the appropriate sentence. A guilty plea by mail shall not be available for the following:
  - **(1)** cases involving the imposition of a mandatory term of incarceration on conviction, unless defendant is currently incarcerated and the mandatory term of incarceration would be served concurrently and would not extend the period of incarceration;
  - **(2)** cases involving an issue of the identity of the defendant;
  - **(3)** cases involving acts of domestic violence;
  - **(4)** cases where the prosecution intends to seek the imposition of a custodial term in the event of a conviction, unless defendant is currently incarcerated and the proposed term of incarceration would not extend the period of incarceration and would be served concurrently; and
  - **(5)** any other case where excusing the defendant's appearance in municipal court would not be in the interest of justice.
- **(b) Plea Form-Certification.** The Guilty Plea by Mail shall be submitted on a form approved by the Administrative Director of the Courts.

**Note exclusion for domestic violence, mandatory jail, identity issues and the like. – This Rule can be relaxed in those instances via Rule 1:1-2.**

**Make sure there that the plea fully conforms to Rule 7:6-2(a)(1).**

## **7:7-1. Pleadings; Objections**

**Pleadings in municipal court actions shall consist only of the complaint. A defense or objection capable of determination without trial of the general issue shall be raised before trial by motion to dismiss or for other appropriate relief, except that a motion to dismiss based upon lack of jurisdiction or the unconstitutionality of a municipal ordinance may be made at any time.**

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**Cross reference to Rule 7:7-5(b). (See discussion below). Typical motions filed under these Rules**

**Motions *in limine***

**Motion to exclude a confession or admission under NJRE 104(c).**

**Motion to exclude an out-of-court identification**

**Note – challenges to constitutionality of a statute should be brought before the Superior Court, Law Division on notice to the Attorney General.**

## **7:7-2. Motions**

- (a) How Made. Except as otherwise provided by R. 7:5-2 (motion to suppress), motions in the municipal court and answers to motions, if any, shall be made orally, unless the court directs that the motion and answer be in writing. Oral testimony or affidavits in support of or in opposition to the motion may be required by the court in its discretion.
  - (b) Hearings. A motion made before trial shall be determined before trial unless the court, in the interest of justice, directs that it be heard during or after trial.
  - (c) Effect of Determination of Motion. Except as otherwise provided by R. 7:6-2(c) (conditional pleas), if a motion is determined adversely to the defendant, the defendant shall be permitted to plead, if a plea has not already been entered. If a plea has been entered, the defendant may be permitted to stand trial as soon as the adverse determination on the motion is made. If an objection or defense specified in R. 7:7-1 is sustained and is not otherwise remediable, the court shall order the complaint dismissed. If the court dismisses the complaint and the defendant is held in custody on that complaint, the court shall order the defendant released.
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**Notwithstanding the Rule, formal motion practice is required when dealing with complex issues. See generally State v. Holup, 253 NJ Super. 320 (App. Div. 1992).**

## **7:7-5. Pretrial Procedure**

- (a) Pretrial Conference. **At any time after the filing of the complaint, the court may order one or more conferences with the parties to consider the results of negotiations between them relating to a proposed plea or to other matters that will promote a fair and expeditious disposition or trial. With the consent of the parties or counsel for the parties, the court may permit any pretrial conference to be conducted by means of telephone or video link.**
- (b) Pretrial Hearings. **The court may conduct hearings to resolve issues relating to the admissibility of statements by defendant, pretrial identifications of defendant, and sound recordings at any time prior to trial. Upon a showing of good cause, hearings as to the admissibility of other evidence may also be conducted at any time prior to trial.**  
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**Cross reference to Rule 7:7-1**

## **7:7-6. Depositions**

- (a) When Authorized. If it appears to the judge of the court in which a complaint is pending that a witness is likely to be unable to testify at trial because of impending 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 that witness be taken and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place.
- (b) Procedure. The deposition shall be videotaped, unless the court otherwise orders. The deposition shall be taken before the judge at a location convenient to all parties. If the judge is unable to preside because the deposition is to be taken outside of the State, the deposition shall be taken before a person designated by the judge. 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 chosen by the judge who is independent of both prosecution and defense.
- (c) Use. Depositions taken pursuant to paragraph (a) of this rule may be used at trial instead of the testimony of the witness if the witness is unable to testify in court because of impending death or physical or mental incapacity, or if the judge 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 pursuant to the Rules of Evidence applied as though the witness were then present and testifying. The deposition shall not be admissible, however, unless the court finds that the circumstances surrounding its taking allowed adequate 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. On conclusion of the trial, the videotape shall be retained by the court.

**Note that depositions can only be *de bene esse*.**

**Use of this procedure has been harshly criticized by one panel the Appellate Division. See State v. Benitez, 360 N.J. Super. 101 (App. Div. 2003). But see also State v. Kent, 391 NJ Super. 352 (App. Div. 2007).**

## **Rule 7:7-7 Discovery – In general**

**Note that since September 1, 2011, requirement for consequence of magnitude has been eliminated.**

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### **Rule 7:7-7(e) Discovery – New Version**

(d) Documents Not Subject to Discovery. ...no change

(e) Reasonableness of Cost. Upon motion of any party, the court may consider the reasonableness of the cost of discovery ordered by the court to be disseminated to the parties. If the court finds that the cost charged for discovery is unreasonable, the court may order the cost reduced or make such other order as is appropriate.

(d) Cost Protective Orders ...no change to text

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**Time provisions in Rule 7:7-7(g) are intended to help resolve DWI cases within 60-days**

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**Protective order under Rule 7:7-7(h) and continuing duty to disclose under Rule 7:7-7(i) must both be read in conjunction with State v. Holup, 253 NJ Super. 320 (App. Div. 1992).**

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## **7:7-8. Form of Subpoena**

- (a) Issuance. Except as otherwise provided in paragraph (d), upon the issuance of process on a complaint within the trial jurisdiction of the municipal court, a subpoena may be issued by a judicial officer, by an attorney in the name of the court administrator, or, in cases involving a non-indictable offense, by a law enforcement officer or other authorized person. The subpoena shall be in the form approved by the Administrative Director of the Courts. In cases involving non-indictable offenses, the law enforcement officer may issue 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 Motor Vehicle Commission, and any other agency so authorized by the Administrative Director of the Courts may supply subpoena forms to law enforcement officers.
- (b) Subpoena to Testify. A subpoena to testify shall state the name of the municipal court and the title of the action. It shall contain the appropriate case docket number and shall command each natural person or authorized agent of an entity to whom it is directed to attend and give testimony at a specific time and date when the court will be in session. The subpoena may also specify that the specific time and date to attend court will be established at a later time by the court. If the witness is to testify in an action for the State or for an indigent defendant, the subpoena shall so note and shall contain an order to appear without the prepayment of any witness fee as otherwise required under N.J.S.A. 22A:1-4.
- (c) Subpoena to Produce Documents or Electronically Stored Information. A subpoena may require the production of books, papers, documents, electronically stored information or other items on the date of the scheduled court appearance. The court may enter a supplemental order directing that the items designated in the subpoena be produced in court at a time prior to the scheduled court appearance or at another location. The order of the court may also specify that the designated items may, upon their production, be inspected by the parties and their attorneys.

- (d) Investigative Subpoenas in Operating While Under the Influence Cases. When the State demonstrates to the court through sworn testimony and/or supporting documentation that there is a reasonable basis to believe that a person has operated a motor vehicle in violation of N.J.S.A. 39:4-50 or N.J.S.A. 39:3-10.13, a vessel in violation of N.J.S.A. 12:7-46, or an aircraft in violation of N.J.S.A. 6:1-18, a municipal court judge with jurisdiction over the municipality where the alleged offense occurred may issue an investigative subpoena directing an authorized agent of a medical facility located in New Jersey to produce medical records related to the presence of alcohol, narcotics, hallucinogens, habit-producing drugs or chemical inhalants in the operator's body. If no case is pending, the subpoena may be captioned "In the Matter" under investigation.
- (e) Personal Service. A subpoena may be served at any place within the State of New Jersey by any person 18 or more years of age. Service of a subpoena shall be made by personally delivering a copy to the person named, together with the fee allowed by law, except that if the person is a witness in an action for the State or an indigent defendant, the fee shall be paid before leaving the court at the conclusion of the trial by the municipal court administrator as otherwise required by N.J.S.A. 22A:1-4. After service of a subpoena, the person serving the subpoena shall promptly file a copy of the subpoena and proof of service with the court.
- (f) Continuing Duty to Appear. A witness who has been personally served with a subpoena shall remain under a continuing obligation to appear until released by the court.
- (g) Failure to Appear. In the absence of an adequate excuse, any person who fails to obey a personally served subpoena, as evidenced by an executed return of service, is subject to punishment for contempt of court. The court may issue a warrant for the arrest of the person subject to contempt as authorized by N.J.S.A. 2A:10-8.

- (h) Motion to Quash. The court, on motion made prior to the scheduled court date, may quash or modify a subpoena to testify or a subpoena to produce writings or electronically stored information if compliance would be unreasonable, oppressive or not in compliance with the procedures required under this rule.

**Note requirement of personal service.**

## **7:7-9. Filing Appearance**

**The attorney for the defendant in an action before the municipal court shall immediately file an appearance with the municipal court administrator of the court having jurisdiction over the matter and shall serve a copy on the appropriate prosecuting attorney or other involved party, as identified by the municipal court administrator.**

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**Intended to speed discovery – must be read in conjunction with Rule 7:7-7(g) -----**

**Time and Procedure. A defense request for discovery shall be made contemporaneously with the entry of appearance by the defendant's attorney, who shall submit a copy of the appearance and demand for discovery directly to the municipal prosecutor.**

## **7:7-10. Joint Representation**

**No attorney or law firm shall enter an appearance for or represent more than one defendant in a multi-defendant trial or enter a plea for any defendant without first securing the court's permission by motion made in the presence of the defendants who seek joint representation. The motion shall be made as early as practicable in the proceedings in order to avoid delay of the trial. For good cause shown, the court may allow the motion to be brought at any time.**

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**Best practice is to have all potential clients testify on the record in open court at a pre-trial hearing under Rule 7:7-5(b)**

**Codifies State v. Land, 73 NJ 24 (1977)**

## **7:8-1. Mediation of Minor Disputes in Municipal Court Actions**

If a person seeks to file or has filed a complaint charging an offense that may constitute a minor dispute, the court may issue a notice to the person making the charge and the person charged, requiring their appearance before the court or before a person or program designated by the court and approved by the Assignment Judge pursuant to R. 1:40-8 (Mediation of Minor Disputes in Municipal Court Actions). 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 participate in mediation in accordance with R. 1:40-8. No referral to mediation shall be made, however, if the complaint involves (1) serious injury, (2) repeated acts of violence between the parties, (3) clearly demonstrated psychological or emotional disability of a party, (4) incidents involving the same persons who are already parties to a Superior Court action between them, (5) matters arising under the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.), (6) a violation of the New Jersey Motor Vehicle Code (Title 39), or (7) matters involving penalty enforcement actions.

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### **Note disqualifications**

### **Cross-reference to Rule 1:40-8**

## **7:8-2. Place of Trial; Disqualification**

- (a) **Generally.** Except as otherwise provided by law, the prosecution for an offense shall take place in the jurisdiction in which the offense was committed.
- (b) **Disqualification of Judge.** In the event of the judge's disqualification or inability for any reason to hear a pending matter, the judge, in addition to the provisions of R. 1:12-3(a), may either refer the matter to the Assignment Judge for designation of an acting judge pursuant to N.J.S.A. 2B:12-6 or transfer the matter to a judge sitting in another municipality within the vicinage. The transferee judge may, however, accept the transfer only if:
  - (1) the transferee judge has been designated as an acting judge of the court of origin by the Assignment Judge of the vicinage, pursuant to N.J.S.A. 2B:12-6 and R. 1:12-3(a); and
  - (2) the transferring judge has found that transfer of the matter will not substantially inconvenience any party.

**Upon completion of the trial, the transferee court shall immediately advise the court of origin of the disposition made and shall remit to it the complaint, judgment, all records, and any fines and costs collected. The court of origin shall retain jurisdiction and shall maintain all necessary records as though the matter had been tried in the court of origin, which shall be responsible for effecting final disposition of the matter. The municipality of the court of origin shall bear the costs of prosecution of the matter.**

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Read in conjunction with Rule 1:12-1(f)

## **7:8-3. Adjournment**

**On or before the first scheduled trial date, the court may adjourn the trial for not more than fourteen days, except that an adjournment for a longer period or additional adjournments may be granted if the court deems postponement of the trial to be reasonably necessary in the interest of justice. In contested matters, the court shall specify the new trial date in granting the adjournment and shall cause the complaining witness, all defendants, and all other known witnesses to be notified of the adjournment and of the new trial date.**

## **7:8-4. Trial of Complaints Together**

**The court may order two or more complaints to be tried together if the offenses arose out of the same facts and circumstances, regardless of the number of defendants. In all other matters, the court may consolidate complaints for trial with the consent of the persons charged. A party seeking consolidation Complaints originating in two or more municipalities may be consolidated for trial only with the approval of the appropriate Assignment Judge, who shall designate the municipal court in which trial is to proceed. A party seeking consolidation of complaints originating in different municipalities shall file a written motion for that relief directly with the Assignment Judge.**

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**Example:**

**See State v. Gray, 215 NJ Super. 286 (App. Div. 1987)  
(Multiple Conditional Discharge Applications)**

**Discuss cross vicinage issues**

## **7:8-5. Dismissal**

**If the complaint is not moved on the day for trial, the court may direct that it be heard on a specified return date and a notice thereof be served on the complaining witness, all defendants and all other known witnesses. If the complaint is not moved on that date, the court may order the complaint dismissed. A complaint may also be dismissed by the court for good cause at any time on its own motion, on the motion of the State, county or municipality or on defendant's motion. On dismissal, any warrant issued shall be recalled, and the matter shall not be reopened on the same complaint except to correct a manifest injustice.**

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### **Note:**

**Rule 7:8-5 provides general authority that can be used in any motion to dismiss a complaint in municipal court, including an oral motion during trial to dismiss at the end of the State's case (State v. Reyes, 50 N.J. 454 (1967) see Rule 3:18-1), a discovery violation (Rule 7:7-7(h)) or dismissals as part of a plea and sentence agreement. (Rule 7:6-2(d) and Guideline 2(a))**

**Simply put...the most important Rule of all.**

## **7:8-6. 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).

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One of the few cross-reference exceptions

**Rule 5:1-2(c)(3)**

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### **5:1-2. Actions Cognizable**

**The following actions shall be cognizable in the Family Part:**

**(3) Any non-indictable offense or violation pending in the municipal court and any indictable offense within the trial jurisdiction of the municipal court may be transferred for trial and disposition to the Family Part pursuant to R. 5:1-3(b) provided that the gravamen of the offense or violation arises out of a family or family-type relationship between the defendant and a victim.**

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### **5:1-3. Transfer of Actions to and From the Family Part**

#### **(b) Criminal and Quasi-Criminal Actions.**

**(2) The transfer of proceedings pending in a municipal court shall be on motion made by the defendant, the complaining witness or the municipal prosecutor. If there is a pending Family Part matter the motion shall be made to the judge assigned to that case and if no judge has been assigned, then to the presiding judge of that vicinage. If there is no pending Family Part matter, then the motion should be made to the presiding judge of the Family Part where the municipal court is located.**

## **7:8-7. Appearances; Exclusion of the Public**

- **(a) Presence of Defendant.** Except as otherwise provided by Rules 7:6-1(b), 7:6-3, or 7:12-3, the defendant shall be present, either in person, or by means of a video link as approved by the Administrative Office of the Courts, at every stage of the proceeding and at the imposition of sentence. If, however, defendant is voluntarily absent after the proceeding has begun in the defendant's presence or the defendant fails to appear at the proceeding after having been informed in open court of the time and place of the proceeding, the proceeding may continue to and including entry of judgment. A corporation, partnership or unincorporated association shall appear by its attorney unless an appearance on its behalf by an officer or agent has been permitted pursuant to R. 7:6-2(a)(2). The defendant's presence is not, however, required at a hearing on a motion for reduction of sentence.
- **(b) Appearance for the Prosecution.** The municipal prosecutor, municipal attorney, Attorney General, county prosecutor, or county counsel, as the case may be, may appear in any municipal court in any action on behalf of the State and conduct the prosecution either on the court's request or on the request of the respective public official. The court may also, in its discretion and in the interest of justice, direct the municipal prosecutor to represent the State. The court may permit an attorney to appear as a private prosecutor to represent the State in cases involving cross-complaints. Such private prosecutors may be permitted to appear on behalf of the State only if the court has first reviewed the private prosecutor's motion to so appear and an accompanying certification submitted on a form approved by the Administrative Director of the Courts. The court may grant the private prosecutor's application to appear if it is satisfied that a potential for conflict exists for the municipal prosecutor due to the nature of the charges set forth in the cross-complaints. The court shall place such a finding on the record.
- **(c) Exclusion of the Public.** In matters involving domestic relations, sex offenses, school truancy, parental neglect, and as may be otherwise provided by law, the court, in its discretion and with defendant's consent, may exclude from the courtroom any person not directly interested in the matter during the conduct of the trial or hearing.
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**Note –**

Codifies procedure in **State v. Storm, 141 NJ 245, 254 (1995); State v. Valentine, 374 NJ Super. 292 (App. Div. 2005).**  
**Presence of Defendant may be relaxed via Rule 1:1-2.**

## **7:8-10. Waiver of Right to Counsel at Trial**

**In all cases other than parking cases, a request by a defendant to proceed to trial without an attorney shall not be granted until the judge is satisfied from an inquiry on the record that the defendant has knowingly and voluntarily waived the right to counsel following an explanation by the judge of the range of penal consequences and an advisement that the defendant may have defenses and that there are dangers and disadvantages inherent in defending oneself.**

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Implements for municipal court the procedures from the following cases:

Faretta v. California, 422 US 806 (1975)

State v. Crisafi, 128 NJ 499 (1992)

State v. Reddish, 181 NJ 553 (2004)

State v. DuBois, 189 NJ 454 (2007)

## **7:9-1. Sentence**

- **(a) Imposition of Sentence; Bail.** If the defendant has been convicted of 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 modify the bail. Before imposing sentence the court shall afford the defendant and defense 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 resentenced immediately, except where a new trial is granted.
- **(b) Statement of Reasons.** At the time sentence is imposed, the court shall state its reasons for imposing the sentence, including its findings respecting the criteria prescribed by N.J.S.A. 2C:44-1 to 2C:44-3 for withholding or imposing imprisonment, fines or restitution. The court shall also state its factual basis for its finding of particular aggravating or mitigating factors affecting sentence.
- **(c) Probation.** The court, at the time of sentencing, shall inform a defendant sentenced to probation of the penalties that may be imposed upon revocation of probation for failure to adhere to the conditions of probation.

- **(d) Probation and Suspended Sentence.** After conviction, unless otherwise provided by law, the court may suspend the imposition of a sentence or place the defendant on probation. The order shall require the defendant to comply with standard conditions of probation adopted by the court and filed with the municipal court administrator, 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 also 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 to the defendant and read and explained to the defendant by the probation officer. The defendant and the probation officer shall sign a joint statement, to be filed with the municipal court administrator, as to the officer's compliance with the reading and explanation requirements of this rule. If the defendant refuses to sign the statement, the defendant shall be resentenced. At any time before termination of the period of suspension or probation, the court may revoke a suspension or probation pursuant to N.J.S.A. 2C:45-3.

7:9-1. Sentence

(a) ... no change

(b) Statement of Reasons – Criminal Code Cases. In disorderly and petty disorderly cases and indictable fourth degree cases within the jurisdiction of the municipal court, at [At] the time the sentence is imposed[,] the court shall state its reasons for imposing the sentence, including the findings respecting the criteria prescribed by N.J.S.A. 2C:44-1 to N.J.S.A. 2C:44-3, for withholding or imposing imprisonment, fines or restitution and pursuant to N.J.S.A. 2C:51-2 for ordering or denying forfeiture of public office, position, or employment. The court shall also state its factual basis for its finding of particular aggravating or mitigating factors affecting sentence.

(c) Statement of Reasons—Non-Criminal Code Cases. In non-criminal code cases involving a consequence of magnitude, at the time the sentence is imposed the court shall state its reasons for imposing sentence, including the findings for withholding or imposing imprisonment, driver's license suspension,

**The first amendment to Rule 7:9-1(b) is technical and recognizes the authority of the municipal court to try certain crimes of the 4<sup>th</sup> degree under N.J.S.A. 2B:12-18 and Rule 3:4-2(d).**

**The second amendment became necessary as a result of the Supreme Court's holding in State v. Hupka, 203 N.J. 222, 242 (2010) ("Prosecutors should include discussions of forfeiture and disqualification in plea negotiations with public employees.") and State v. Rone, 410 N.J. Super. 589 (App. Div. 2009).**

**Rule 7:9-1(c) is new and was promulgated as a result of the Supreme Court decision in State v. Moran, 202 N.J. 311, 328-329 (2010). (Listing factors to consider for suspensions under N.J.S.A. 39:5-31). The new Rule creates a record for review in motor vehicle, ordinance, fish & game and other violations outside the *Code of Criminal Justice*.**

## **7:9-3. Credit for Confinement Pending Sentence**

**The defendant shall receive credit on the term of custodial sentence for any time served in custody, either in jail or in a state hospital, between the arrest and the imposition of a sentence.**

Multiple detainees see State v. Grate, 311 NJ Super. 456 (App. Div. 1998); State v. Grate, 311 NJ Super. 544 (Law Div. 1998);

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## **7:9-4. Reduction or Change of Sentence**

- **(a) Time.** The court, in its discretion, may reduce or change a sentence, either on its own motion or on the motion of defendant, which may be either oral or written, at any time during which the court retains jurisdiction over the matter.
- **(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 for the change shall be entered on the record.

Notice – no time limitation

No appeal filed

Example – d/l suspension on a drug case.

## **7:10-1. New Trial**

**On defendant's motion, the court may, pursuant to the time limitations of this rule, grant the defendant a new trial if required in the interest of justice. The court may vacate the judgment if already 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, shall be made within two years after entry of a final judgment. A motion for a new trial on the grounds of fraud or lack of jurisdiction may be made at any time. A motion for a new trial, based on any other grounds, shall be made within twenty days after the entry of judgment of conviction or within such further time as the court fixes during the twenty-day period.**

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Time periods may not be expanded – Rule 1:3-4(c).

## **7:10-2. Post-Conviction Relief**

- **(a) Petition for Relief.** A 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) A petition based on any other grounds shall not be accepted for filing more than five years after entry of the judgment of conviction or imposition of the sentence sought to be attacked, unless it alleges facts showing that the delay in filing 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 a motion incident to the proceedings in the trial court, and may not be filed while appellate review or the filing of a motion in the municipal court is available.
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- **(c) Grounds.** A petition for post-conviction relief is cognizable if based on 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 laws of New Jersey;
  - (2) lack of jurisdiction of the court to impose the judgment rendered on defendant's conviction;
  - (3) imposition of sentence in excess of or otherwise not in accordance with the sentence authorized by law; or
  - (4) any ground previously available as a basis for collateral attack on a conviction by habeas corpus or any other common law or statutory remedy.

- (d) **Bar of Grounds Not Raised in Prior Proceedings; Exceptions.**
  - (1) The defendant is barred from asserting in a proceeding under this rule any grounds 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 in any appeal taken in any of those proceedings, unless the court on motion or at the hearing finds that:
    - (A) the grounds for relief not previously asserted could not reasonably have been raised in any prior proceeding;
    - (B) enforcement of the bar would result in fundamental injustice; or
    - (C) denial of relief would be contrary to the Constitution of the United States or of New Jersey.
  - (2) A prior adjudication on the merits of any grounds for relief asserted in the petition is conclusive, whether made in the proceedings resulting in the conviction or any prior post-conviction proceeding, or in any appeal taken from those proceedings.

- (e) **Assignment of Counsel.** A defendant may annex to the petition a sworn statement asserting indigency in the form (Form 5A) prescribed by the Administrative Director of the Courts, which form shall be furnished by the municipal court administrator. If the court finds that the defendant is indigent as herein provided, and that the original conviction involved a consequence of magnitude, it shall order counsel assigned to represent defendant and shall further order a transcript of testimony of any proceeding shown to be necessary in establishing 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. If counsel is assigned, the court shall not thereafter substitute new assigned counsel absent a showing of good cause, which shall not, however, include lack of merit of the petition.
- (f) **Procedure.**
  - (1) 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, shall forthwith transmit a copy to the municipal prosecutor. An attorney filing the petition shall serve a copy on the municipal prosecutor before filing.
  - (2) 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 contents of the complaint upon which the conviction is based and the municipality where filed;
- (B) the sentence or judgment complained of, the date it was imposed or entered, and the name of the municipal court judge then presiding;
- (C) any appellate proceedings brought from the conviction, with copies of the appellate opinions attached;
- (D) any prior post-conviction relief proceedings relating to the same conviction, including the date and nature of the claim and the date and nature of disposition, and whether an appeal was taken from those proceedings and, if so, the judgment on appeal;
- (E) the name of counsel, if any, representing defendant in any prior proceeding relating to the conviction, and whether counsel was retained or assigned; and
- (F) whether and where defendant is presently confined. A separate memorandum of law may be submitted.
- (G) In addition, the moving papers in support of such an application shall include, if available, records related to the underlying conviction, including, but not limited to, copies of all complaints, applications for assignment of counsel, waiver forms and transcripts of the defendant's first appearance, entry of guilty plea and all other municipal court proceedings related to the conviction sought to be challenged. The petitioner shall account for any unavailable records by way of written documentation from the municipal court administrator or the custodian of records, as the case may be.

- **(3) Amendments of the petitions shall be liberally allowed.** 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, the municipal prosecutor shall serve and file an answer to the petition or move on ten days' notice for dismissal. If the motion for dismissal is denied, the government's answer shall be filed within fifteen days after entry of the order denying the dismissal.
- **(4) A defendant in custody shall be present in court if oral testimony is adduced on a material issue of fact within the defendant's personal knowledge.** A defendant in custody may otherwise be present in court only in the judge's discretion.
- **(5) In making a final determination on a petition, either on motion for dismissal or after hearing,** the court shall state separately its findings of fact and conclusions of law and shall enter judgment or sentence in the conviction proceedings and any appropriate provisions as to rearraignment, retrial, custody, bail, discharge, correction of sentence or as may otherwise be required.

**Note on section (g):**

**[State v. Laurick, 120 NJ 1 (1990); State v. Hrycak, 184 NJ 351 (2005) and State v. Bringhurst, 401 NJ Super. 421 (App. Div. 2008)]**

- **(g) Petition to Obtain Relief from an Enhanced Custodial Term Based on a Prior Conviction**
- - (1) **Venue.** A post-conviction petition to obtain relief from an enhanced custodial term based on a prior conviction shall be brought in the court where the prior conviction was entered.
  - (2) **Time Limitations.** The time limitations for filing petitions for post-conviction relief under this section shall be the same as those set forth in R. 7:10-2(b)(2).
  - (3) **Procedure.** A petition for post-conviction relief sought under this section shall be in writing and shall conform to the requirements of Rule 7:10-2(f). In addition, the moving papers in support of such an application shall include, if available, records related to the underlying conviction, including, but not limited to, copies of all complaints, applications for assignment of counsel, waiver forms and transcripts of the defendant's first appearance, entry of guilty plea and all other municipal court proceedings related to the conviction sought to be challenged . The petitioner shall account for any unavailable records by way of written documentation from the municipal court administrator or the custodian of records, as the case may be.
  - (4) **Appeal.** Appeals from a denial of post-conviction relief from the effect of a prior conviction shall be combined with any appeal from proceedings involving the repeat offense. Appeals by the State may be taken under R. 3:23-2(a).

## **7:13-1. Appeals**

Appeals shall be taken in accordance with R. 3:23, 3:24, and 4:74-3, and in extraordinary cases and in the interest 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.

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## **7:13-2. Stay**

Notwithstanding R. 3:23-5, a sentence or a portion of a sentence may be stayed by the court in which the conviction was had or to which the appeal is taken on such terms as the court deems appropriate.

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## **7:13-3. 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. 7:14-4(a) shall be remitted by the recipient of that money to the defendant or defendant's attorney upon service on the recipient of a copy of the order reversing the judgment.

## **7:14-2. 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 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 a future date, upon such terms as the court deems appropriate.**