Garden State CLE
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Video Course Evaluation Form

Attorney Name_____

Atty ID number for Pennsylvania:_____

Name of Course You Just Watched_____

Please Circle the Appropriate Answer

Instructors:	Poor	Satisfactory	Good	Excellent
Materials:	Poor	Satisfactory	Good	Excellent
CLE Rating:	Poor	Satisfactory	Good	Excellent

Required: When you hear the bell sound, write down the secret word that appears on your screen on this form.

Word #1 was: _____ Word #2 was: _____

Word #3 was: _____ Word #4 was: _____

What did you like most about the seminar?

_____

_____

_____

What criticisms, if any, do you have?

_____

_____

I Certify that I watched, in its entirety, the above-listed CLE Course

Signature _____ Date _____

New Jersey Continuing
Legal Education Services
Presents:

The New NJ Criminal Court Rules 2009

3:9-1. Prearraignment Conference; Plea Offer; Arraignment/Status Conference; Pretrial Hearings; Pretrial Conference

(a) … no change

(b) … no change

(c) Arraignment/Status Conference; In Open Court. The arraignment/status conference shall be conducted in open court no later than 50 days after indictment. The judge shall advise the defendant of the substance of the charge and confirm that the defendant has reviewed with counsel the indictment and the discovery. The judge shall inform all parties of their obligation to redact confidential personal identifiers from any documents submitted to the court in accordance with Rule 1:38-7(b). The defendant shall enter a plea to the charges. If the plea is not guilty counsel shall report on the results of plea negotiations, and such other matters, discussed pursuant to R. 3:9-1(b), which shall promote a fair and expeditious disposition of the case. At that time, the dates for hearing of motions and a further status conference, if necessary shall be scheduled according to the differentiated needs of each case. Each status conference shall be held in open court with the defendant present.

(d) … no change

(e) … no change

Note: Source—R.R. 3:5-1. Paragraph (b) deleted and new paragraph (b) adopted July 7, 1971, to be effective September 13, 1971; paragraph (b) amended July 29, 1977 to be effective September 6, 1977; paragraph (a) amended and paragraph (b) deleted July 21, 1980 to be effective September 8, 1980; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; first three sentences of former paragraph (a) amended and redesignated paragraph (c), last sentence of former

paragraph (a) amended and moved to new paragraph (e), new paragraphs (a), (b), (d) and (e) adopted July 13, 1994 to be effective January 1, 1995; paragraph (e) amended July 12, 2002 to be effective September 3, 2002; paragraph (c) amended July 16, 2009 to be effective September 1, 2009.

3:21-4. Sentence

(a) . . . no change.

(b) . . . no change

(c) . . . no change

(d) . . . no change

(e) . . . no change

(f) . . . no change

(g) . . . no hange

(h) Notification of Right to Appeal and to File Petitions for Post-Conviction Relief. After imposing sentence, whether following the defendant's plea of guilty or a finding of guilty after trial, the court shall advise the defendant of the right to appeal and, if the defendant is indigent, of the right to appeal as an indigent. The court shall also inform the defendant of the time limitations in which to file petitions for post-conviction relief.

(i) . . . no change

(j) . . . no change

Note: Source-R.R. 3:7-10(d). Paragraph (f) amended September 13, 1971, paragraph (c) deleted and paragraphs (d), (e) and (f) redesignated as (c), (d) and (e) July 14, 1972 to be effective September 5, 1972; paragraph (e) adopted and former paragraph (e) redesignated as (f) August 27, 1974 to be effective September 9, 1974; paragraph (b) amended July 17, 1975 to be effective September 8, 1975; paragraphs (d) and (e) amended August 28, 1979 to be effective September 1, 1979; paragraph (d) amended December 26, 1979 to be effective January 1, 1980; paragraph (g) adopted July 26, 1984 to be effective September 10, 1984; paragraph (d) caption and text amended November 5, 1986 to be effective January 1, 1987; paragraph (d) amended November 2, 1987 to be effective January 5, 1988; to be effective February 1, 1988; new paragraph (c) adopted and former paragraphs (c), (d), (e), (f), and (g) redesignated (d), (e), (f), (g), and (h) respectively June 29, 1990 to be effective September 4, 1990; paragraph (b) amended July 14, 1992 to be effective September 1, 1992; paragraph (I) adopted April 21, 1994 to be effective June 1, 1994; paragraphs (b), (e), (f) and (g) amended July 13, 1994 to be effective January 1, 1995; former paragraphs (f), (g), (h), and (I) redesignated as paragraphs (g), (h), (I), and (j) and new paragraph (f) adopted

July 10, 1998 to be effective September 1, 1998; paragraph (j) amended July 5, 2000 to be effective September 5, 2000; paragraph (h) caption and text amended July 16, 2009 to be effective September 1, 2009.

3:21-10. Reduction or Change of Sentence

(a) . . . no change.

(b) Exceptions. A motion may be filed and an order may be entered at any time (1) changing a custodial sentence to permit entry of the defendant into a custodial or non-custodial treatment or rehabilitation program for drug or alcohol abuse, or (2) amending a custodial sentence to permit the release of a defendant because of illness or infirmity of the defendant, or (3) changing a sentence for good cause shown upon the joint application of the defendant and prosecuting attorney, or (4) changing a sentence as authorized by the Code of Criminal Justice, or (5) correcting a sentence not authorized by law including the Code of Criminal Justice, or (6) [(5)] changing a custodial sentence to permit entry into the Intensive Supervision Program, or (7) [(6)] changing or reducing a sentence when a prior conviction has been reversed on appeal or vacated by collateral attack.

(c) Procedure. A motion filed pursuant to paragraph (b) hereof shall be accompanied by supporting affidavits and such other documents and papers as set forth the basis for the relief sought. A hearing need not be conducted on a motion filed under paragraph (b) hereof unless the court, after review of the material submitted with the motion papers, concludes that a hearing is required in the interest of justice. All changes of sentence shall be made in open court upon notice to the defendant and the prosecutor. An appropriate order setting forth the revised sentence and specifying the change made and the reasons therefor shall be entered on the record. On any motion filed pursuant to this rule, upon a showing of good cause, the court may assign the Office of the Public Defender to represent the defendant.

(d) . . . no change.

(e) . . . no change.

Source-R.R. 3:7-13(a)(b); paragraph (b) amended and redesignated as (c) and new paragraph (b) adopted July 17, 1975 to be effective September 8, 1975; paragraph (b) amended August 28, 1979 to be effective September 1, 1979; new paragraph (d) adopted July 16, 1981 to be effective September 14, 1981; paragraph (a) amended July 15, 1982 to be effective September 13, 1982; paragraph (b) amended and paragraph (e) adopted July 22, 1983 to be effective September 12, 1983; paragraph (c) amended July 13, 1994 to be effective January 1, 1995; paragraph (b) amended June 28, 1996 to be effective September 1, 1996; paragraphs (b) and (c) amended July 16, 2009 to be effective September 1, 2009.

3:22-2. Grounds

A petition for post-conviction relief is cognizable if based upon any of the following grounds:

(a) . . . no change.

(b) . . . no change.

(c) Imposition of sentence in excess of or otherwise not in accordance with the sentence authorized by law if raised together with other grounds cognizable under paragraph (a), (b), or (d) of this rule. Otherwise a claim alleging that the imposition of sentence in excess of or otherwise not in accordance with the sentence authorized by law shall be filed pursuant to R. 3:21-10(b)(5).

(d) . . . no change.

Note: Source--R.R. 3:10A-2; paragraph (c) amended July 16, 2009 to be effective September 1, 2009.

3:22-3. Exclusiveness of Remedy; Not Substitute for Appeal or Motion

Except as otherwise required by the Constitution of New Jersey, a petition pursuant to this rule is the exclusive means of challenging a judgment rendered upon conviction of a crime. It is not, however, a substitute for appeal from 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] pending.

Note: Source--R.R. 3:10A-3; amended July 16, 2009 to be effective September 1, 2009.

3:22-6. Indigents; Waiver of Fees; Assignment of Counsel, and Grant of Transcript; Assigned Counsel May Not Withdraw

(a) Waiver of Fees; Assignment on First Petition. At the time of filing of a petition under this Rule, a defendant who [is not] wants to be represented by the Office of the Public Defender may annex thereto a sworn statement alleging indigency in the form prescribed by the Administrative Director of the Courts, which form shall be furnished to the defendant by the criminal division manager's office. The criminal division manager's office shall determine whether the defendant is indigent and screen the petition to determine whether the petition is cognizable under R. 3:22-2 and, if so, whether the requirements of R. 3:22-8 have been met. The Criminal Division Manager shall thereafter forthwith submit the same to the [Presiding Judge of the Criminal Division] Criminal Presiding Judge who, if satisfied therefrom that the defendant is indigent, shall order the criminal division manager's office to file the petition without payment of filing fees. At the same time, and without separate petition therefor, if the petition is the first one filed by the defendant attacking the conviction pursuant to this rule, the court shall as of course, unless defendant affirmatively states an intention to proceed pro se, [refer] by order assign the matter to the Office of the Public Defender if the defendant's conviction was for an indictable offense, or assign counsel in accordance with R. 3:4-2 if the defendant's conviction was for a non-indictable offense. All orders of assignment pursuant to this section shall contain the name of the judge to whom the case is assigned and shall set a place and date for a case management conference.

If the petition is not cognizable under R. 3:22-2, or if the petition does not meet the requirements of R. 3:22-8, the court shall set forth the reasons that the petition is not cognizable under R. 3:22-2, or fails to meet the requirements of R. 3:22-8.

(b) Assignment of Counsel on Cause Shown. Upon any second or subsequent petition filed pursuant to this Rule attacking the same conviction, the matter shall be [referred] assigned to the Office of the Public Defender only upon application therefor and showing of good cause. For purposes of this section, good cause exists only when the court finds that a substantial issue of fact or law requires assignment of counsel and when a second or subsequent petition alleges on its face a basis to preclude dismissal under R. 3:22-4.

(c) Transcript. After assignment of counsel, or if the indigent defendant proceeds without counsel, the court may [shall] grant an application for the transcript of testimony of any proceeding shown to be necessary in establishing the grounds of relief asserted.

(d) Substitution; Withdrawal of Assigned Counsel. [Absent a showing of good cause, the] The court [will] shall not substitute new assigned counsel at the request of defendant while assigned counsel is serving[.], except upon a showing of good cause and notice to the Office of the Public Defender. Assigned counsel may not seek to withdraw on the ground of lack of merit of the petition. Counsel should advance [any grounds insisted upon by defendant notwithstanding that counsel deems them without merit] all of the legitimate arguments requested by the defendant that the record will

support. If defendant insists upon the assertion of any grounds for relief that counsel deems to be without merit, counsel shall list such claims in the petition or amended petition or incorporate them by reference. Pro se briefs can also be submitted.

Note: Source--R.R. 3:10A-6(a)(b)(c)(d). Paragraph (b) amended July 14, 1972 to be effective September 5, 1972; paragraphs (a) and (d) amended July 13, 1994 to be effective January 1, 1995; paragraphs (a), (b), (c) and (d) amended July 16, 2009 to be effective September 1, 2009.

3:22-6A. Notifying Court of Assignment; Filing of Appearance

(1) Within ninety days of receipt of an order of assignment on a filed petition for post-conviction relief, the Public Defender shall provide the court with the name of the attorney assigned to represent the defendant. That attorney shall, within ten days, file an appearance with the judge.

(2) If a direct appeal, including a petition for certification, is pending, the Public Defender shall notify the court, and the petition shall be dismissed without prejudice. If the defendant refiles the petition within 90 days of the date of the judgment on direct appeal, including consideration of a petition for certification, or within five years after rendition of the judgment or sentence sought to be attacked, whichever is later, it shall be considered a first petition for post-conviction relief.

(3) Where the order of assignment sets forth reasons that the petition is not cognizable under R. 3:22-2, or does not contain the requirements of R. 3:22-8, or the Office of the Public Defender determines that such deficiencies exist and so notifies the court, the attorney assigned to represent the defendant shall, within 120 days of assignment, file an amended petition or new application that is cognizable under R. 3:22-2 and which meets the requirements contained in R. 3:22-8, or shall seek other relief as may be appropriate. In the absence of an amended petition, the court may dismiss the petition without prejudice.

(4) In all other cases in which an attorney is representing the defendant, the attorney shall file an appearance contemporaneously with the filing of a petition for post-conviction relief.

Note: Adopted July 16, 2009 to be effective September 1, 2009.

3:22-7. Docketing; Service on Prosecutor; Assignment for Disposition

The [clerk] criminal division manager 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 thereof to the prosecutor of the county. If an attorney files the petition, that attorney shall serve a copy thereof on the prosecutor before filing and shall file proof, certification or acknowledgment of service with the petition. The [clerk] criminal division manager shall promptly notify the Criminal Presiding Judge [Assignment Judge or judge designated by the Assignment Judge] of the filing of the petition, [who] and the Criminal Presiding Judge shall forthwith refer the matter for disposition to a trial judge.

Note: Source--R.R. 3:10A-7; amended July 13, 1994 to be effective September 1, 1994; amended July 16, 2009 to be effective September 1, 2009.

3:22-9. Amendments of Pleadings; Answer [or Motion] by Prosecutor

Amendments of pleadings shall be liberally allowed. For all petitions assigned by the Office of the Public Defender pursuant to R. 3:22-6(a), [A]assigned counsel may as of course serve and file an amended petition within [25] 90 days after assignment. Except as provided in R. 3:22-6A(3), if assigned counsel determines that no amended petition is warranted, counsel must serve and file notice of that determination within 90 days after assignment. For all petitions assigned to the Office of the Public Defender, the prosecutor shall, within 60 days after service of a copy of the amended petition or the notice that no amended petition will be filed, serve and file an answer to the petition or amended petition. For all other petitions for post-conviction relief, w[W]ithin [30] 60 days after service of a copy of the petition or amended petition, the prosecutor shall serve and file an answer thereto. [or move on 10 days' notice for dismissal. If a motion for dismissal is denied the State's answer shall be filed within 15 days thereafter.] The court may make such other orders with respect to pleadings, as it deems appropriate.

Note: Source--R.R. 3:10A-9; caption and text amended July 16, 2009 to be effective September 1, 2009.

3:22-10. Presence of Defendant at Hearing; Preference; Evidentiary Hearing

[The proceedings shall be given preference and be determined promptly.] A defendant in custody may be present in court in the court's discretion and shall be entitled to be present when oral testimony is adduced on a material issue of fact within the defendant's personal knowledge.

(a) A defendant shall be entitled to an evidentiary hearing only upon the establishment of a prima facie case in support of post-conviction relief, a determination by the court that there are material issues of disputed fact that cannot be resolved by reference to the existing record, and a determination that an evidentiary hearing is necessary to resolve the claims for relief. To establish a prima facie case, defendant must demonstrate a reasonable likelihood that his or her claim, viewing the facts alleged in the light most favorable to the defendant, will ultimately succeed on the merits.

(b) Any factual assertion that provides the predicate for a claim of relief must be made by an affidavit or certification pursuant to Rule 1:4-4 and based upon personal knowledge of the declarant before the court may grant an evidentiary hearing.

(c) The scope of an evidentiary hearing shall be limited to the issue of whether the defendant was improperly convicted.

(d) A court shall not grant an evidentiary hearing:

(1) if an evidentiary hearing will not aid the court’s analysis of the defendant’s entitlement to post-conviction relief;

(2) if the defendant’s allegations are too vague, conclusory or speculative; or

(3) for the purpose of permitting a defendant to investigate whether additional claims for relief exist for which defendant has not demonstrated a reasonable likelihood of success as required by R. 3:22-10(a).

Note: Source--R.R. 3:10A-11; amended July 13, 1994 to be effective September 1, 1994; caption amended, first sentence of former rule deleted, remaining text of former rule retained as introductory language, and new paragraphs (a), (b), (c), and (d) adopted July 16, 2009 to be effective September 1, 2009.

3:22-11. Determination; Findings and Conclusions; Judgment; Supplementary Orders

In making final determination upon 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 a judgment, which shall include an appropriate order or direction with respect to the 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: Source--R.R. 3:10A-12; amended July 16, 2009 to be effective September 1, 2009.

3:22-12. Limitations

(a) General Time Limitations. A petition to correct an illegal sentence may be filed at any time. No other petition shall be filed pursuant to this rule more than 5 years after rendition of 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. A petition dismissed without prejudice pursuant to R. 3:22-6A(2) because a direct appeal, including a petition for certification, is pending, shall be treated as a first petition for purposes of these rules if refiled within 90 days of the date of the judgment on direct appeal, including consideration of a petition for certification, or within five years after rendition of the judgment or sentence sought to be attacked, whichever is later. A petition dismissed pursuant to R. 3:22-6A(3) without prejudice as not cognizable under R. 3:22-2, or for failing to meet the requirements of R. 3:22-8, shall be treated as a first petition for purposes of these rules if amended and refiled within 90 days after the date of dismissal, or 5 years after rendition of the judgment or sentence sought to be attacked, whichever is later.

(b) . . . no change

(c) These time limitations shall not be relaxed, except as provided herein.

Note: Source--R.R. 3:10A-13. Caption added and text designated as paragraph (a), and new paragraph (b) added July 12, 2002 to be effective September 3, 2002; paragraph (a) amended and new paragraph (c) adopted July 16, 2009 to be effective September 1, 2009.

3:23-8. Hearing on Appeal

(a) Plenary Hearing; Hearing on Record; Correction or Supplementation of Record; Transcript for Indigents. If a verbatim record or sound recording was made pursuant to R. 7:8-8 in the court from which the appeal is taken, the original transcript thereof duly certified as correct shall be filed by the clerk of the court below with the criminal division manager's office, and a certified copy served on the prosecuting attorney by the clerk of the court below within 20 days after the filing of the notice of appeal or within such extension of time as the court permits. In such cases the trial of the appeal shall be heard de novo on the record unless it shall appear that the rights of either party may be prejudiced by a substantially unintelligible record or that the rights of defendant were prejudiced below in which event the court to which the appeal has been taken may either reverse and remand for a new trial or conduct a plenary trial de novo without a jury. The court shall provide the municipal court with reasons for the remand. The court may also supplement the record and admit additional testimony whenever (1) the municipal court erred in excluding evidence offered by the defendant, (2) the state offers rebuttal evidence to discredit supplementary evidence admitted hereunder, or (3) the record being reviewed is partially unintelligible or defective. If the appellant, upon application to the court appealed to, is found to be indigent, the court may [shall] order the transcript of the proceedings below furnished at the county's expense if the appeal involves violation of a statute and at the municipality's expense if the appeal involves violation of an ordinance. If no such record was made in the court from which the appeal is taken, the appeal shall operate as an application for a plenary trial de novo without a jury in the court to which the appeal is taken.

(b) … no change

(c) … no change

(d) … no change

(e) …no change

(f) … no change

Note: Source-R.R. 3:10-13. Paragraph (b) amended by order of September 5, 1969 effective September 8, 1969; paragraph (a) amended June 29, 1973 to be effective September 10, 1973; paragraph (a) amended July 29, 1977 to be effective September 6, 1977; paragraphs (a), (b) and (e) amended November 22, 1978 to be effective December 7, 1978; paragraphs (a), (b) and (e) amended July 11, 1979 to be effective September 10, 1979; paragraph (a) amended February, 1983 to be effective immediately; paragraph (a) amended January 5, 1998 to be effective February 1, 1998; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended July 16, 2009 to be effective September 1, 2009.

RULE 3:30. FEES FOR EXPUNGEMENT OF RECORDS

Any person who files an application for an expungement of records, pursuant to N.J.S.A. 2C:52-1 to - 32, shall pay filing fees as required by N.J.S.A. 2C:52-29 and N.J.S.A. 22A:2-25.

Note: Adopted July 16, 2009 to be effective September 1, 2009.