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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 \_\_\_\_\_

**Compendium of New Rules of Court effective  
January 1, 2013**

**R 1:11-2**

**R 3:5-6**

**R 3:6-6 [Technical Amendments]**

**R 3:9-1**

**R 3:12-1**

**R 3:13-3**

**R 3:13-5 (NEW)**

**R 7:5-1**

**R 7:7-5**

**R 7:7-6**

**R 7:7-7**

**By order of the Chief Justice dated  
December 4, 2012.**

**(INCLUDES DEC 20, 2012 CORRECTIONS)**

**Section I**  
**Changes to the Part III Criminal Rules of Court**  
**effective Jan 1, 2013**

**11-2. Withdrawal or Substitution**

**(a)(3) In a criminal action, no substitution shall be permitted unless the withdrawing attorney has provided the court with a document certifying that he or she has provided the substituting attorney with the discovery that he or she has received from the prosecutor.**

**COMMENTARY**

**R. 1:11-2(a)(3) – (new paragraph) would require that prior to being relieved as counsel by the trial judge, the withdrawing attorney provide the court with a certification stating that he or she has provided the substituting attorney with the discovery that was received from the prosecutor.**

### **3:5-6. Filing; confidentiality**

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

### **COMMENTARY**

**R. 3:5-6(c) – would be amended to require that a search warrant and any accompanying papers be provided to defendant in discovery, and available for inspection and copying (which is the current rule) by any other person claiming to be aggrieved by an unlawful search and seizure.**

**This same change is also proposed for R. 7:5-1(b).**

**3:9-1. Prearrest Conference; Meet and Confer; Plea Offer; Arraignment/Status Conference; Pretrial Hearings; Pretrial Conference**

**(a) Prearrest Conference. Except for good cause shown**

**A defendant's attorney seeking discovery shall obtain a copy of the discovery from the prosecutor's office or the criminal division manager's office prior to, or at, the pre-arrest conference. If the defendant is unrepresented and is seeking to be represented by the public defender's office, defense counsel shall obtain a copy of the discovery at the arraignment/status conference which shall occur no later than 28 days after the return or unsealing of the indictment.**

**No pre-arrest conference shall be required where the defendant has counsel and the criminal division manager's office has established to its satisfaction: (1) that an appearance has been filed under Rule 3:8-1; (2) that [discovery, if requested, has been obtained] if the defendant is represented by the Office of the Public Defender, discovery has been obtained; or if the defendant has retained private counsel, discovery[, if ] has been pursuant to R. 3:13-3(b)(1), or counsel has affirmatively stated that discovery will not be requested; [has been obtained;] and (3) that defendant and counsel have obtained a date, place and time for the arraignment/status conference.**

## COMMENTARY

**R. 3:9-1(a) - would require that defense counsel pick up discovery prior to, or at, the pre-arraignment conference (which shall occur within 21 days of indictment). If the defendant is unrepresented and seeking representation by the Public Defender's Office, counsel would be required to obtain discovery at the arraignment/status conference - which would be held no later than 28 days after indictment. In addition, consistent with a proposed change to R. 3:13-3(b)(1) that would allow private defense attorneys to receive discovery by mail or e-mail, this change would revise one of the conditions for waiver of the pre-arraignment conference (PAC). This change would apply only to private defense attorneys. In order to waive the PAC, defense counsel would be required to either request discovery in writing or affirmatively state that he/she will not be requesting discovery.**

**(b) Meet and Confer Requirement; Plea Offer. Prior to the arraignment/status conference the prosecutor and the defense attorney shall discuss the case, including any plea offer[,] and any outstanding or anticipated motions, [and discovery issues] and shall report thereon at the arraignment/status conference.**

**The prosecutor and defense counsel shall also confer and attempt to reach agreement on any discovery issues, including any issues pertaining to discovery provided through the use of CD, DVD, e-mail, internet or other electronic means. Any plea offer to be made by the prosecutor shall be in writing and forwarded to the defendant's attorney.**

## COMMENTARY

**R. 3:9-1(b) – would be amended to require that the prosecutor and defense counsel confer and attempt to resolve any discovery issues, including those related to discovery provided electronically, before bringing them to the court’s attention at the arraignment/status conference.**

**A similar change is also proposed for R. 7:7-5(a), but only the word “discovery” would be added because of concerns that defense counsel in Alcotest cases would be forced to inform the court that the prosecutor hadn’t provided all of the evidence necessary to convict his/her client.**

**(c) Arraignment/Status Conference; In Open Court. The arraignment/status conference shall be conducted in open court no later than 50 days after indictment, unless the defendant did not appear at the prearraignment conference, or was unrepresented at the prearraignment conference. If the defendant did not appear at the prearraignment conference, or was unrepresented at the prearraignment conference, the arraignment/status conference shall be held within 28 days of indictment unless the defendant is a fugitive.**

## COMMENTARY

**R. 3:9-1(c) – would be amended to require that if the defendant did not appear at the prearraignment conference, or was unrepresented at the prearraignment conference, the arraignment/status conference would be held within 28 days of indictment (rather than 50), unless the defendant is a fugitive.**

### **3:12-1. Notice Under Specific Criminal Code Provisions**

**A defendant shall serve written notice on the prosecutor if the defendant intends to rely on any of the following sections of the Code of Criminal Justice:**

**Ignorance or Mistake, 2C:2-4(c); Accomplice: Renunciation Terminating Complicity, 2C:2-6(e)(3); Intoxication, 2C:2-8(d); Duress, 2C:2-9(a); Entrapment, 2C:2-12(b); General Principles of Justification, 2C:3-1 to 2C:3-11; Insanity, 2C:4-1; Lack of Requisite State of Mind, 2C:4-2; Criminal Attempt (renunciation of criminal purpose), 2C:5-1(d); Conspiracy (renunciation of criminal purpose), 2C:5-2(e); Murder (affirmative defense, felony murder), 2C:11-3(a)(3); Criminal Restraint, 2C:13-2(b); Theft by Extortion, 2C:20-5; Perjury (retraction), 2C:28-1(d); False Swearing (retraction), 2C:28-2(b); Controlled Dangerous Substances Near or On School Property, 2C:35-7; and Distributing, Dispensing or Possessing Controlled Substances Within 500 Feet of Public Housing Facilities, Parks or Buildings, 2C:35-7.1.**

**No later than seven days before the arraignment/status conference the defendant shall serve on the prosecutor a notice of intention to claim any of the defenses listed herein; and if the defendant requests or has received discovery pursuant to R. [3:13-3(c)] 3:13-3(b)(1), the defendant shall, pursuant to R. [3:13-3(d)] 3:13-3(b)(2), furnish the prosecutor with discovery pertaining to such defenses at the time the notice is served.**

**If, however, the arraignment/status conference was held within 28 days of indictment pursuant to R. 3:9-1(c), the defendant shall serve such notice on the prosecutor, along with the pertinent discovery, by a date to be determined by the trial judge, except in no event later than 14 days after the date of the arraignment/status conference. The prosecutor shall, within 14 days after receipt of such discovery, comply with R. [3:13-3(c) and (g)] 3:13-3(b)(1) and (f) with respect to any defense for which the prosecutor has received notice.**



**For good cause shown the court may extend the time of service of any of the foregoing, or make such other orders as the interest of justice requires. If a party fails to comply with this Rule, the court may take such action as the interest of justice requires. The action taken may include refusing to allow the party in default to present witnesses in support or in opposition of that defense at the trial or to allow the granting of an adjournment or delay during trial as the interest of justice demands.**

**Commentary**

**R. 3:13-2(a) – would be amended to expand the list of materials that must be produced in connection with the deposition of the testimony of a material witness who is unlikely to testify at trial due to death or physical or mental incapacity. This is consistent with changes proposed for R. 3:13-3(b)(1)(A), -3(b)(1)(E) and -3(b)(2)(B).**

**The same change is also proposed for R. 7:7-6(a).**

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**See State v. Benitez, 360 NJ Super. 101, 119 (App. Div. 2003) “The use of deposition testimony in criminal cases is highly disfavored, mainly because such use tends to diminish a defendant’s Sixth Amendment confrontation rights.”**

### **3:13-3. Discovery and Inspection**

**(a) Pre-Indictment Discovery. Unless the defendant agrees to more limited discovery, [W]where the prosecutor has made a pre-indictment plea offer, the prosecutor shall, at the time the plea offer is made, [upon request permit] provide defense counsel [to inspect and copy or photograph any] with all available relevant material which would be discoverable at the time of [following an] indictment pursuant to paragraph (b)(1) of this rule, except that:**

**(1) where the prosecutor determines that pre-indictment delivery of all discoverable material would hinder or jeopardize a prosecution or investigation, the prosecutor, consistent with the intent of this rule, shall provide to defense counsel at the time the plea offer is made, such relevant material as would not hinder or jeopardize the prosecution or investigation, and advise defense counsel that complete discovery has not been provided; or**

**(2) where the prosecutor determines that physical or electronic delivery of the discoverable material would impose an unreasonable administrative burden on the prosecutor's office given the nature, format, manner of collation or volume of discoverable material, the prosecutor may in his or her discretion make discovery available by permitting defense counsel to inspect and copy or photograph such material at the prosecutor's office.**

**Notwithstanding the exceptions contained in paragraphs (a)(1) and (a)(2) of this rule, the prosecutor shall provide defense counsel with any exculpatory information or material.**

## COMMENTARY

**R. 3:13-3(a) - would be amended to require that, unless the defendant agrees to more limited discovery, the prosecutor provide defense counsel with all available pre-indictment discovery when a plea offer is made, except (1) where the prosecutor determines that providing all discoverable material would hinder or jeopardize a prosecution or investigation, the prosecutor shall instead provide defense counsel with such relevant material as would not hinder or jeopardize the prosecution or investigation, and advise defense counsel that complete discovery has not been provided; and (2) where the prosecutor determines that delivery of the discoverable material would impose an unreasonable administrative burden on the prosecutor's office given the nature, format, manner of collation or volume of the discoverable material, the prosecutor may make discovery available by permitting defense counsel to inspect and copy or photograph the material at the prosecutor's office.**

### **(b) Post Indictment Discovery.**

**(1) [(c)] Discovery by the Defendant. Except for good cause shown, a copy of the indictment, together with the prosecutor's discovery for each defendant named therein, shall be delivered to the criminal division manager's office, or shall be available through the prosecutor's office, within 7 days of the return or unsealing of the indictment. Good cause shall include, but is not limited to, circumstances in which the nature, format, manner of collation or volume of discoverable materials would involve an extraordinary expenditure of time and effort to copy. In such circumstances, the prosecutor may make discovery available by permitting defense counsel to inspect and copy or photograph discoverable materials at conference.**

**However, if the defendant has retained private counsel, upon written request of counsel, submitted along with a copy of counsel's entry of appearance and received by the prosecutor's office prior to the date of the pre-arraignment conference, the prosecutor shall, within three business days, send the discovery to defense counsel by U.S. mail at the defendant's cost or by e-mail without charge, at the prosecutor's discretion. Defense counsel shall simultaneously send a copy of the request for mail or e-mail discovery, along with any request for waiver of the pre-arraignment conference under R. 3:9-1(a), to Criminal Case Management. If the defendant is unrepresented and is seeking to be represented by the public defender's office, defense counsel shall obtain a copy of the discovery at the arraignment/status conference which shall occur no later than 28 days after the return or unsealing of the indictment.**

**Discovery shall include, but is not limited to, the following relevant material:**

#### **COMMENTARY**

**R. 3:13-3(b)(1) – would be amended to require that the prosecutor provide defense counsel with post-indictment discovery unless there is good cause for not doing so. “Good cause” shall include, but is not limited to, circumstances in which the nature, format, manner of collation or volume of discoverable materials would involve an extraordinary expenditure of time and effort to copy. In such cases, the prosecutor may make discovery available by permitting defense counsel to inspect and copy or photograph the material at the prosecutor's office. Defense counsel would also have an obligation to provide the prosecution with discovery. (R. 3:13-3(b)(2))**

**R. 7:7-7(b) would be similarly amended to require that unless the defendant agrees to more limited discovery, the prosecutor must provide the defendant with all discovery. In addition, R. 7:7-7(c) would be amended to impose that same obligation on the defendant. In Municipal Courts, however, discovery is provided upon written notice.**

**R. 3:13-3(b)(1) - would also be amended to require that, along with the discovery, the prosecutor provide defense counsel with (1) a listing of the materials that have been supplied in discovery; and (2) a listing of any items that are missing, along with an explanation of why they have not been supplied. Defense counsel would also have that same obligation. (R. 3:13-3(b)(2)).**

**The same change is also proposed for R. 7:7-7(g)**

#### **COMMENTARY**

**R. 3:13-3(b)(1) - would also be amended to require prosecutors, upon receiving a written request from defense counsel, to mail or e-mail discovery within 3 business days. The decision to mail or e-mail the discovery would be within the prosecutor's discretion. Defense counsel's request, along with any request for waiver of the PAC, would also be required to be sent to Criminal Case Management. Again, this change is limited to private defense attorneys. Public Defenders would still be required to pick up discovery at the courthouse or prosecutor's office. If mailed, discovery would be mailed at the defendant's expense. If e-mailed, discovery would be provided free of charge.**

**R. 3:13-3(b)(1) - would also be amended to require that the prosecutor make discovery available 7 days after indictment. (Currently, it is 14 days). Defense counsel's reciprocal discovery would be required 7 days before the arraignment/status conference. (R. 3:13-3(b)(2)).**

**(A) [1] books, tangible objects, papers or documents obtained from or belonging to the defendant, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;**

## **COMMENTARY**

**R. 3:13-3(b)(1)(A), -3(b)(1)(E) and -3(b)(2)(B) - would be amended to expand the list of materials that must be provided in discovery. This is intended to address concerns that the current rule does not account for a number of materials, including various forms of electronically stored information, that are commonly provided in discovery.**

**The same changes were also proposed for R. 7:7-7(b)(1), -7(b)(6) and -7(c)(2).**

**(B) [2] records of statements or confessions, signed or unsigned, by the defendant or copies thereof, and a summary of any admissions or declarations against penal interest made by the defendant that are known to the prosecution but not recorded[;]. The prosecutor shall also provide the defendant with transcripts of all electronically recorded statements or confessions on a date to be determined by the trial judge, except in no event later than 30 days before the trial date set at the pretrial conference.**

## COMMENTARY

**R. 3:13-3(b)(1)(B) - would be amended to require that the prosecutor provide the defendant with transcripts of all of the defendant's electronically recorded statements or confessions on a date to be determined by the trial judge, but no later than 30 days before the trial date set at the pretrial conference. That same requirement would also apply to transcripts of all electronically recorded co-defendant and witness statements, but only if the prosecutor intends to call that co-defendant or witness as a witness at trial. (R. 3:13-3(b)(1)(G)). The defendant would have a similar obligation to the State. (R. 3:13-3(b)(2)(D)).**

**(E) [5] books, papers, documents, or copies thereof, or tangible objects, buildings or places which are within the possession, custody or control of the prosecutor, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;**

**(G) [7] record of statements, signed or unsigned, by such persons or by co-defendants which are within the possession, custody or control of the prosecutor and any relevant record of prior conviction of such persons[;]. The prosecutor shall also provide the defendant with transcripts of all electronically recorded co-defendant and witness statements on a date to be determined by the trial judge, except in no event later than 30 days before the trial date set at the pretrial conference, but only if the prosecutor intends to call that co-defendant or witness as a witness at trial.**

**(2) [(d)] Discovery by the State. Defense counsel shall forward a copy of the discovery materials to the prosecuting attorney no later than 7 days before the arraignment/status conference. Defense counsel shall also provide the prosecuting attorney with a listing of the materials that have been supplied in discovery. If any discoverable materials known to defense counsel have not been supplied, defense counsel shall also provide the prosecuting attorney with a listing of the materials that are missing and explain why they have not been supplied. A defendant shall [permit] provide the State with all [to inspect and copy or photograph the following] relevant material, including, but not limited to, the following:**

**(B) [2] any relevant books, papers, documents or tangible objects, buildings or places or copies thereof, which are within the possession, custody or control of defense counsel, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;**

**(D) [4] written statements, if any, including any memoranda reporting or summarizing the oral statements, made by any witnesses whom the State may call as a witness at trial[;]. The defendant shall provide the State with transcripts of all electronically recorded witness statements on a date to be determined by the trial judge, except in no event later than 30 days before the trial date set at the pretrial conference.**



**(c) Motions for Discovery. No motion for discovery shall be filed unless the moving party certifies that the prosecutor and defense counsel have conferred and attempted to reach agreement on any discovery issues, including any issues pertaining to discovery provided through the use of CD, DVD, e-mail, internet or other electronic means.**

## **COMMENTARY**

**R. 3:13-3(c) – (new paragraph) would not allow a motion for discovery unless the moving party certifies that the prosecutor and defense counsel have conferred and attempted to reach agreement on any discovery issues.**

**A similar change is also proposed for new paragraph R. 7:7-7(h), but the wording differs to reflect that Municipal Court motions are typically made orally, rather than filed and certified.**

**(3) Discovery Provided through Electronic Means. Unless otherwise ordered by the court, the parties may provide discovery pursuant to sections (a), (b) and (c) through the use of CD, DVD, e-mail, internet or other electronic means. Documents provided through electronic means shall be in PDF format. All other discovery shall be provided in an open, publicly available (non-proprietary) format that is compatible with any standard operating computer. If discovery is not provided in a PDF or open, publicly available format, the transmitting party shall include a self-extracting computer program that will enable the recipient to access and view the files that have been provided. Upon motion of the recipient, and for good cause shown, the court shall order that discovery be provided in the format in which the transmitting party originally received it. In all cases in which an Alcotest device is used, any Alcotest data shall, upon request, be provided for any Alcotest 7110 relevant to a particular defendant's case in a readable digital database format generally available to consumers in the open market. In all cases in which discovery is provided through electronic means, the transmitting party shall also include a list of the materials that were provided and, in the case of multiple disks, the disk on which they can be located.**

## **COMMENTARY**

**R. 3:13-3(d) - (new paragraph) would specifically authorize discovery to be provided via electronic means. Documents provided through electronic means would have to be in PDF format. All other discovery would have to be provided in an open, publicly available (non-proprietary) format compatible with any standard operating computer. If discovery is not provided in a PDF or open, publicly available format, the transmitting party would be required to include a self-extracting computer program that will enable the recipient to access and view the files that have been provided. This new paragraph would also allow, upon motion of the recipient and a showing of good cause, the court to order that**

discovery be provided in the format in which the transmitting party originally received it (native format). It would also require that in all cases involving the use of an Alcotest device, any Alcotest data shall, upon request, be provided in a readable digital database format generally available to consumers in the open market. Finally, in all cases in which discovery was provided through electronic means, the transmitting party would also have to include a list of the materials that were provided; i.e., an index, and, in the case of multiple disks, the disk on which they can be located.

The same changes are also proposed for R. 7:7-7(g).

**(f) [(g)]** There shall be a continuing duty to provide discovery pursuant to this rule. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, it may order such party to permit the discovery [or inspection] of materials not previously disclosed, grant a continuance or delay during trial, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems appropriate.

### **3:13-5. Discovery Fees**

**(a) Standard Fees. The prosecutor may charge a fee for a copy or copies of discovery. The fee assessed for discovery embodied in the form of printed matter shall be \$0.05 per letter size page or smaller, and \$0.07 per legal size page or larger. From time to time, as necessary, these rates may be revised pursuant to a schedule promulgated by the Administrative Director of the Courts. If the prosecutor can demonstrate that the actual costs for copying discovery exceed the foregoing rates, the prosecutor shall be permitted to charge a reasonable amount equal to the actual costs of copying. The actual copying costs shall be the costs of materials and supplies used to copy the discovery, but shall not include the costs of labor or other overhead expenses associated with making the copies, except as provided for in section (b) of this rule. Electronic records and non-printed materials shall be provided free of charge, but the prosecutor may charge for the actual costs of any needed supplies such as computer discs.**

### **COMMENTARY**

**New Rule - R. 3:13-5 – paragraph (a) would establish uniform fees for discovery: 5 cents for a regular page; 7 cents for a legal size page; electronic materials and non-printed materials would be free unless the prosecutor wants to charge for the actual cost of the disk. These fees are identical to those charged under OPRA.**

**The same changes are also proposed for new paragraphs R. 7:7-7(i)(1)-(3)**

**State v. Green, 327 NJ Super. 334 (App. Div. 2000)**

**State v. Green, 417 NJ Super. 190 App. Div. 2010)**

**Constantine v. Bass River, 406 NJ Super. 305 (App. Div. 2009)**

**Libertarian Party v. Murphy, 384 NJ Super. 136 (App. Div. 2006)**

**NJSA 39:4-131 [Copying police accident reports]**

**NJSA 47:1A-1 thru 13 [Open Public Records Act]**

**(b) Special Service Charge for Printed Copies. Whenever the nature, format, manner of collation, or volume of discovery embodied in the form of printed matter to be copied is such that the discovery cannot be reproduced by ordinary document copying equipment in ordinary business size, or is such that it would involve an extraordinary expenditure of time and effort to copy, the prosecutor may charge, in addition to the actual copying costs, a special service charge that shall be reasonable and shall be based upon the actual direct costs of providing the copy or copies. Pursuant to R. 3:10-1, defense counsel shall have the opportunity to review and object to the charge prior to it being incurred.**

**[Note - Costs of labor not included]**

**(c) Special Service Charge for Electronic Records. If defense counsel requests an electronic record: (1) in a medium or format not routinely used by the prosecutor; (2) not routinely developed or maintained by the prosecutor; or (3) requiring a substantial amount of manipulation or programming of information technology, the prosecutor may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the prosecutor or attributable to the prosecutor for the programming, clerical, and supervisory assistance required, or both. Pursuant to R. 3:10-1, defense counsel shall have the opportunity to review and object to the charge prior to it being incurred.**

**Paragraphs (b) and (c) would provide that in certain circumstances a prosecutor may charge a special service charge for printed materials or electronic records, respectively. In that instance, defense counsel would have an opportunity to review and contest the special service charge prior to it being incurred.**

**[Note costs of labor included]**

## **Section II**

### **Changes to the Part VII Municipal Court Rules of Court effective Jan 1, 2013**

#### **Search Warrants/Suppression**

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

**(b) Providing to Defendant; 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] provided to the defendant in discovery pursuant to R. 7:7-7 and, upon notice to the county prosecutor and for good cause shown, available for inspection and copying by any other person claiming to be aggrieved by the search and seizure.

##### **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, discovery, 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.

## **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, that are not privileged, including, but not limited to, writings, drawings, graphs, charts, photographs, sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form, be produced at the same time and place.

## **Rule 7:7-7 Discovery and Inspection**

**(b) Discovery by Defendant.** Unless the defendant agrees to more limited discovery, [I]n all cases, the defendant, on written notice to the municipal prosecutor or private prosecutor in a cross complaint case, shall be [allowed to inspect, copy, and photograph or to be] provided with copies of [any] all relevant material, including, but not limited to, the following:

**(1)** books, tangible objects, papers or documents obtained from or belonging to the defendant, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;



**(6) books, originals or copies of papers and documents, or tangible objects, buildings or places that are within the possession, custody or control of the government, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;**

**(c) Discovery by the State. In all cases, the municipal prosecutor or the private prosecutor in a cross complaint case, on written notice to the defendant, shall be [allowed to inspect, copy, and photograph or to be] provided with copies of [any] all relevant material, including, but not limited to, the following:**

**(2) any relevant books, originals or copies of papers and other documents or tangible objects, buildings or places within the possession, custody or control of the defendant or defense counsel, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;**

**(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. If the defendant is not represented, any requests for discovery shall be made in writing and submitted by the defendant directly to the municipal prosecutor. The municipal prosecutor shall respond to the discovery request in accordance with paragraph (b) of this rule within 10 days after receiving the request. Unless otherwise ordered by the judge, the defendant shall provide the prosecutor with discovery, as provided by paragraph (c) of this rule, within 20 days of the prosecuting attorney's compliance with the defendant's discovery request. If any discoverable materials known to a party have not been supplied, the party obligated with providing that discovery shall also provide the opposing party with a listing of the materials that are missing and explain why they have not been supplied. Unless otherwise ordered by the judge, the parties may provide [exchange] discovery pursuant to paragraphs (a), (b), (c) and (f) of this rule through the use of e-mail, internet or other electronic means. sections (a), (b), (c) and (f) of this rule through the use of CD, DVD, e-mail, internet or other electronic means. Documents provided through electronic means shall be in PDF format. All other discovery shall be provided in an open, publicly available (non-proprietary) format that is compatible with any standard operating computer. If discovery is not provided in a PDF or open, publicly available format, the transmitting party shall include a self-extracting computer program that will enable the recipient to access and view the files that have been provided. Upon motion of the recipient, and for good cause shown, the court shall order that discovery be provided in the format in which the transmitting party originally received it. In all cases in which an Alcotest device is used, any Alcotest data shall, upon request, be provided for any Alcotest 7110 relevant to a particular defendant's case in a readable digital database format generally available to consumers in the open market. In all cases in which discovery is provided through electronic means, the transmitting party shall also include a list of the materials that were provided and, in the case of multiple disks, the disk on which they can be located.

**(h) Motions for Discovery. No motion for discovery shall be made unless the prosecutor and defendant have conferred and attempted to reach agreement on any discovery issues, including any issues pertaining to discovery provided through the use of CD, DVD, e-mail, internet or other electronic means.**

**Commentary**

**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.**

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**[State v. Holup, 253 NJ Super. 320, 326 (App. Div. 1992)  
“As our municipal courts mature and become responsible for the disposition of more complex, more serious in terms of penal consequence and more communally important cases, more formal practices become essential. We understand that much of the subject matter in controversy in the municipal courts is minor and, in such cases, informal practices \*\*780 should continue, but in the more significant cases, a more careful, thorough procedure is warranted.”**

**7:7-7(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.

**(i) Discovery Fees.**

**(1) Standard Fees.** The municipal prosecutor, or a private prosecutor in a cross complaint case, may charge a fee for a copy or copies of discovery. The fee assessed for discovery embodied in the form of printed matter shall be \$0.05 per letter size page or smaller, and \$0.07 per legal size page or larger. From time to time, as necessary, these rates may be revised pursuant to a schedule promulgated by the Administrative Director of the Courts. If the prosecutor can demonstrate that the actual costs for copying discovery exceed the foregoing rates, the prosecutor shall be permitted to charge a reasonable amount equal to the actual costs of copying. The actual copying costs shall be the costs of materials and supplies used to copy the discovery, but shall not include the costs of labor or other overhead expenses associated with making the copies, except as provided for for in paragraph (i)(2) of this rule. Electronic records and non-printed materials shall be provided free of charge, but the prosecutor may charge for the actual costs of any needed supplies such as computer discs.

**See generally:**

**Rule 7:7-7(e) [Hearing on reasonableness of discovery costs]**

**State v. Green, 327 NJ Super. 334 (App. Div. 2000)**

**State v. Green, 417 NJ Super. 190 App. Div. 2010)**

**Constantine v. Bass River, 406 NJ Super. 305 (App. Div. 2009)**

**Libertarian Party v. Murphy, 384 NJ Super. 136 (App. Div. 2006)**

**NJSA 39:4-131 [Copying police accident reports]**

**NJSA 47:1A-1 thru 13 [Open Public Records Act]**

**(2) Special Service Charge for Printed Copies. Whenever the nature, format, manner of collation, or volume of discovery embodied in the form of printed matter to be copied is such that the discovery cannot be reproduced by ordinary document copying equipment in ordinary business size, or is such that it would involve an extraordinary expenditure of time and effort to copy, the prosecutor may charge, in addition to the actual copying costs, a special service charge that shall be reasonable and shall be based upon the actual direct costs of providing the copy or copies. Pursuant to R. 7:7-1, the defendant shall have the opportunity to review and object to the charge prior to it being incurred.**

**[note - no reference to labor costs]**

**[Note - Correct Rule should be 7:7-7(e)]**

**(3) Special Service Charge for Electronic Records. If the defendant requests an electronic record: (1) in a medium or format not routinely used by the prosecutor; (2) not routinely developed or maintained by the prosecutor; or (3) requiring a substantial amount of manipulation or programming of information technology, the prosecutor may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the prosecutor or attributable to the prosecutor for the programming, clerical, and supervisory assistance required, or both. Pursuant to R. 7:7-1, the defendant shall have the opportunity to review and object to the charge prior to it being incurred.**

[note - reference to labor costs]

[Note - Correct Rule should be 7:7-7(e)]

**(j) Continuing Duty to Disclose; Failure to Comply. There shall be a continuing duty to provide discovery pursuant to this rule. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order that party to provide [permit] the discovery [inspection, copying or photographing] of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed or enter such other order as it deems appropriate.**