

GARDEN STATE CLE LESSON PLAN

A 2.0 CLE CREDIT COURSE

FREE DOWNLOAD LESSON PLAN AND EVALUATION

BRIDGING THE GAP: PREPARING FOR MUNICIPAL COURT

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AND FEATURING

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Program Description

At some point in every young lawyer's life, he will be tasked with going to municipal court to defend a client on some seemingly minor offense. However, upon arrival the newly admitted attorney will find that municipal court can be complex and involve enormous jeopardy for a client. This CLE program will introduce you to handling of to handle a municipal court case.

I. INTRODUCTION

II. MUNICIPAL COURT HISTORY

- a. Not a constitutional court per New Jersey's Constitution of 1947, created by the Legislature
- b. Most people's contact with the Court system is in Municipal Court
- c. Although a lower court, many cases have a complex element. They involve criminal law, traffic law, sentencing, and collateral consequences. You need people skills and need to know a quilt of various areas of the law: constitutional, criminal, evidence, Rules of Court, etc.

III. ESTABLISHMENT OF MUNICIPAL COURT

- NJ Constitution of 1947 – Article VI, section I, Para. 1
- N.J.S.A. 2B:12-1 et seq.
- NJ Rules of Court – Part VI

III. PLEA BARGAINING

- a. Affects the entire spectrum of persons in New Jersey
- b. NO PLEA BARGAINING OF DWI IN NJ
- c. Plea bargaining is governed by written guidelines

IV. THE DRUNK DRIVING REPRESENTATION

- a. Is there a prior DWI?
- b. Get the client's story, recognizing that it is self serving or inaccurate
- c. Investigate the case
- d. Determine whether the Defendant was "operating" the vehicle per definition of case law
- e. Review the discovery provided by the State
- f. Experts?

V. RETAINER AGREEMENTS AND LEGAL FEES

- a. Get one in every case, flat fee or hourly
- b. If a retainer is paid, must it go into the attorney trust account? Be safe, put it in the attorney trust account. It is the better practice. Don't deposit to your business account what you can't refund in 24 hours.
- c. Take fees as earned and inform the client of withdrawals.

VI. DRUNK DRIVING AND *PER SE* VIOLATIONS

- a. Example: Alcotest for driver
- b. State v. Foley, 370 N.J. Super 341 (Law Div. 2003)
- c. .08 or greater buys a DWI charge, maybe conviction
- d. .08 to .10 nets suspension of 90 days
- e. .10 gives the offender a suspension of 7 months to 1 year. Ignition interlock device is required over .
- f. *Per se* violations = reading over .08 irrespective of physical observations
- g. Low Blood Alcohol Concentration (BAC) but highly intoxicated person if not accustomed to being intoxicated vs. those that consume a great amount and show little sign of intoxication
- h. *Per se* violations are those based on the BAC of the defendant.
- i. "Under the influence" is defined by the caselaw, it is not defined in the statute. Observations, field sobriety testing, etc.
- j. Extraction of blood for alcohol testing
- k. Crawford v. Washington, 541 U.S. 36 (2004)
- l. State v. Berezansky, 386 N.J. Super. 84 (App. Div. 2006); State v. Renshaw, 390 N.J. Super. 456 (App. Div. 2007); State v. Kent, 391 N.J. Super. 352 (App. Div. 2007)

- m. Taking blood samples for diagnosis and treatment differs from those cases where taken for purpose of prosecution.
- n. State v. Dyal, 97 N.J. 229 (1984). Procedure Prosecutor must utilize to obtain blood from the health care provider.
- o. DWI is usually an issue of sentencing, not guilt or innocence
- p. Collateral consequences of State surcharges issued with the DWI, etc. There are other consequences.
- q. Bar to civil suit if you are intoxicated at time of the accident, irrespective of liability issue. *Example*: intoxicated driver of stopped vehicle struck in rear: barred from suit vs. driver. N.J.S.A. 39: 6A-4.5. But dram shop action is not barred per Voss v. Tranquilino, 206 N.J. 93 (2011).

VII. JURISDICTION OF MUNICIPAL COURTS

- Jurisdiction
- Territorial – N.J.S.A. 2B:12-16
- Subject-matter – N.J.S.A. 2B:12-17

A municipal court has jurisdiction over the following cases within the territorial jurisdiction of the court:

- a. Violations of county or municipal ordinances;
- b. Violations of the motor vehicle and traffic laws;
- c. Disorderly persons offenses, petty disorderly persons offenses and other non-indictable offenses except where exclusive jurisdiction is given to the Superior Court;
- d. Violations of the fish and game laws;

- e. Proceedings to collect a penalty where jurisdiction is granted by statute;
- f. Violations of laws regulating boating; and
- g. Any other proceedings where jurisdiction is granted by statute. Civil/Equitable – State v. Bartek, 129 N.J. Super. 211 (App. Div. 1974)

JUVENILES – N.J.S.A. 2A:4A-23

VIII. WHAT ARE YOUR CLIENTS NEEDS AND CAN YOU ASSIST THEM WITH THOSE NEEDS?

- a. Use candor in speaking with your client. Hope is not a strategy. Realistically, the loss of driving privileges is likely and the concepts of when and for how long are the only issues?
- b. Explain the range of outcomes
- c. Take into account the personalities involved
- d. Develop an intake form

IX. DRIVING WHILE REVOKED/SUSPENDED

- a. Police are able to catch the revoked driver fairly easily
- b. Carries surcharges, increases your points, has other consequences as well.
- c. Mandatory jail after first offense

X. LEAVING THE SCENE OF THE ACCIDENT

- a. Naturally, the more serious cases of death and serious injury, are handled in the Superior Court
- b. Lifetime suspension can result
- c. 8 points with injuries, 2 points otherwise

XI. MEDIATION IN THE MUNICIPAL COURTS

- a. Community Dispute Resolution is very successful
- b. Excludes the lawyers from participation
- c. Helps to prevent bubbling over of neighbor disputes
- d. State v. Storm, 141 N.J. 245 (1995): private prosecutor application is possible but likely to be eliminated one day.

XII. MOTIONS IN THE MUNICIPAL

- a. Motion to Suppress (it IS the trial) and it requires that the County Prosecutor be given notice
- b. Motion for Post Conviction Relief (PCR) like in State v. Laurick, 120 N.J. 1 (1995)
- c. Hybrid motion: a Laurick application does not eliminate the conviction, but requires that evidence of conviction not be used in enhancing sentences of the defendant
- d. Rule 7:9-4 Reduction of Change of Sentence like in a third DWI conviction and getting credit for residential inpatient program. Move to get the Judge to back down off a harsh sentence
- e. Motion to Vacate a Plea. Harder after the decision in State v. Slater, 198 N.J. 145, 156 (2009)
- f. Motion for Sanctions. State v. Holup, 253 N.J. Super 320 (App. Div. 1992). Ramsey moves for a cap of \$3.00 in order not to offend the Prosecutor so much.

XIII. APPEALS

- a. When: within 20 days
- b. Where: to the Superior Court
- c. What: conviction
- d. Conditional guilty plea?
- e. Appeals is *de novo* on the record. The Court will make its own findings of fact and conclusions of law.

XIV. CERTIFIED MUNICIPAL COURT ATTORNEYS

- a. A coming trend
- b. Classes and training and experience are required

XV. ADVICE FOR YOUNG ATTORNEYS

- a. Keep up with the law
- b. See Judiciary website
- c. Read the legal newspapers
- d. Ask for advice from experienced attorneys
- e. Enjoy the social part of Municipal Court

New Jersey Municipal Court Practice

Lesson Plan

1. Establishment of Municipal Court

NJ Constitution of 1947 – Article VI, section I, Para. 1

NJSA 2B:12-1 et seq.

NJ Rules of Court – Part VII

2. Jurisdiction

Territorial – NJSA 2B:12-16

Subject-matter – NJSA 2B:12-17

A municipal court has jurisdiction over the following cases within the territorial jurisdiction of the court:

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- c. Disorderly persons offenses, petty disorderly persons offenses and other non-indictable offenses except where exclusive jurisdiction is given to the Superior Court;**
- d. Violations of the fish and game laws;**
- e. Proceedings to collect a penalty where jurisdiction is granted by statute;**
- f. Violations of laws regulating boating; and**
- g. Any other proceedings where jurisdiction is granted by statute.**

Civil/Equitable – State v. Bartek, 129 N.J. Super. 211 (App. Div. 1974)

Juveniles – NJSA 2A:4A-23

3. Statutes of Limitation

Dp & Petty DP – NJSA 2C:1-6(b)(2) (one year)

Motor Vehicle Offenses – NJSA 39:5-3

Ordinance Violation – Caldwell Terrance Apartments v. Borough of Caldwell, 224 NJ Super. 588 (App. Div. 1988)

4. Process

Summons Rule 7:2-1

Warrants Rule 7:2-2

5. Procedure

Issuance of Summons & Complaint or Arrest Warrant

First Appearance (Arraignment and Bail)

Counsel Notification Date (Demand for Discovery)

Pre-trial Conferences

Plea Entry

Trial

Appeal

Post-conviction motions

6. Burdens of Proof

7. Traffic Offenses – In General

Moving violations

DWI/Refusal

No Insurance

Leaving the Scene

Revoked/Unlicensed

POAA

8. Quasi-criminal Offenses – In General

Disorderly Persons

Petty Disorderly Persons

9. Ordinances

The Part VII Rules of Court

1:1-1. Applicability; Scope

Unless otherwise stated, the rules in Part I are applicable to the Supreme Court, the Superior Court, the Tax Court, the surrogate's courts, and the municipal courts.

1:1-2. Construction and Relaxation

The rules in Part I through Part VIII, inclusive, shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. Unless otherwise stated, any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice. In the absence of rule, the court may proceed in any manner compatible with these purposes and, in civil cases, consistent with the case management/trial management guidelines set forth in Appendix XX of these rules.

Part II – Scope

RULE 7:1. SCOPE

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.

Part III – Process

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. 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 and the defendant has committed it. The judicial officer's finding of probable cause shall be noted on the face of the summons or warrant. If, however, the municipal court administrator or deputy court administrator finds no probable cause exists to issue an arrest warrant or summons, that finding shall be reviewed by the judge. A judge finding no probable cause shall dismiss the complaint.

(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.

(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.

Part IV – First Appearance

7:3-2. Hearing on First Appearance; Right to Counsel

(a) Hearing on First Appearance. At the defendant's first appearance, the judge shall inform the defendant of the charges and shall furnish the defendant with a copy of the complaint or copy of the electronic ATS/ACS record of the complaint, if not previously provided to the defendant. The judge shall also inform the defendant of the right to remain silent and that any statement made may be used against the defendant. The judge shall inform the defendant of the right to retain counsel or, if indigent, to have counsel assigned pursuant to paragraph (b) of this rule. The defendant shall be specifically asked whether legal representation is desired and defendant's response shall be recorded on the complaint. If the defendant is represented at the first appearance or then affirmatively states the intention to proceed without counsel, the court may, in its discretion, immediately arraign the defendant pursuant to R. 7:6-1.

(b) Assignment of Counsel. If the defendant asserts indigency but does not affirmatively state an intention to proceed without counsel, the court shall order defendant to complete an appropriate application and other forms prescribed by the Administrative Director of the Courts. Pursuant to law, the judge shall either order defendant to pay any application fee or shall waive its payment. If the court is satisfied that the defendant is indigent and that the defendant faces a consequence of magnitude or is otherwise constitutionally or by law entitled to counsel, the court shall assign the municipal public defender to represent the defendant. The "Guidelines for Determining a Consequence of Magnitude" are contained in the Appendix to Part VII of the Rules of Court.

7:6-1. Arraignment

(a) Conduct of Arraignment. Except as otherwise provided by paragraph (b) of this rule, the arraignment shall be conducted in open court and shall consist of reading the complaint to the defendant or stating to the defendant the substance of the charge and calling upon the defendant, after being given a copy of the complaint, to plead thereto. The defendant may waive the reading of the complaint.

(b) Written Statement. A defendant who is represented by an attorney and desires to plead not guilty may do so, unless the court otherwise orders, by the filing, at or before the time fixed for arraignment, of a written statement, signed by the attorney, certifying that the defendant has received a copy of the complaint and has read it or the attorney has read it and explained it to the defendant, that the defendant understands the substance of the charge, and that the defendant pleads not guilty to the charge.

Part V – Bail

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.

Pleas and Plea Agreements

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.

(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.

(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).

Part VII – Pre-trial

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.

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.

Discovery 7:7-7

(e) Protective Orders.

(1) Grounds. Upon motion and for good cause shown, the court may at any time order that the discovery or inspection, copying or photographing sought pursuant to this rule be denied, restricted, or deferred or make such other order as is appropriate.

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

(f) 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 directly to the municipal prosecutor

(g) Continuing Duty to Disclose; Failure to Comply. If a party who has complied with this rule discovers, either before or during trial, additional material or names of witnesses previously requested or ordered subject to discovery or inspection, that party shall promptly notify the other party or that party's attorney of the existence of these additional materials and witnesses. 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 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.

Part VIII – Sentence & Judgment

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.

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.

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.

Part IX – Administration

7:14-3. Court Calendar; Attorneys

(a) Court Calendar. On each hearing day, the court shall follow as closely as possible, the following order:

- (1) applications for adjournment;**
- (2) unlitigated motions;**
- (3) arraignments;**
- (4) guilty pleas;**
- (5) litigated motions;**
- (6) contested matters with an attorney;**
- (7) other contested matters.**

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

Plea Bargaining In Municipal Court

Introductory Fact Pattern 1

Defendant is 22-year old foreign national. He has been charged by a local police department with the following offenses following a two-car accident on April 30, 2010:

Drunk Driving (NJSA 39:4-50(a))

Drunk Driving in a School Zone (NJSA 39:4-50(g))

Refusal to submit to breath testing (NJSA 39:4-50.4a)

Driving on the revoked list (NJSA 39:3-40)

Reckless Driving (NJSA 39:4-96)

Unlicensed Driver (NJSA 39:3-10)

Failure to signal (NJSA 39:4-126)

Seatbelt (NJSA 39:3-76.2(f))

The defendant claims this is a first offense for all charges.

What additional facts, if any, do you need to know to propose a plea agreement?

What plea agreement would you attempt to recommend to the prosecutor? What objections, if any, do you anticipate?

Would your proposed plea agreement change if this were the defendant's second DWI offense?



I. Introduction

Plea bargaining has become institutionalized as a legitimate, respectable, and practical tool in the efficient and fair administration of criminal justice. It is widely viewed as an appropriate accommodation of the conflicting interests of society and persons accused of crime and as a needed response to an ever-burgeoning caseload.

The cornerstone of the plea-bargaining system is the "mutuality of advantage" it affords to both the defendant and the State. The system enables a defendant to reduce the penal exposure and avoid the stress of trial while assuring the State that the wrongdoer will be punished and that scarce and vital judicial and prosecutorial resources will be conserved through a speedy resolution of the controversy.

State v. Barboza, 115 NJ 415(1989)

II. The Plea Bargaining Process

It is a collaborative Process between the advocates requiring the following steps:

- * Identifying the participants to the plea agreement
- * Agreeing upon a resolution that will meet their individual needs.

The Participants

1. The Court (May not directly participate in the process except as provided in R. 3:9-3(c)). Needs include:

Agreement and Sentence be in Interests of Justice
A Legal Sentence must be imposed
Guilty Plea must be voluntary and knowing
Guilty Plea must be accompanied by a Factual Basis

2. Municipal Prosecutor

Do Justice (see comment to Plea Bargaining Guidelines)
Speak for victims

3. Defendant - a function of the direct and collateral consequences that are minimally acceptable to the defendant.

4. Defense Counsel - Negotiate a disposition that will meet or exceed the reasonable expectations of the client.

4. Victims

Restitution
No contact
Speak in open court

5. Others (Witnesses and Police)

III. Rules and Guidelines - Rule 7:6-2(d)

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 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.

**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.

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.

IV. Sample Traffic & Criminal Cases

1. Motor Vehicle Offenses - Review of Driving Abstract

Considerations:

Fines

Jail

Points (penalty & insurance eligibility)

D/L Loss

Increase or loss of insurance

Employment as related to commercial d/l

May not be expunged

Civil Liability

2. Quasi-criminal - Review of Criminal History

Considerations:

Fines & monetary sanctions

Jail

Forfeiture of public office

Removal from United States

Loss of d/l

Loss of presumption against incarceration

Impact on expungement

Impact on PTI Eligibility

Civil Liability

Fact Pattern 2

The defendant is 17 years old. He has received a speeding ticket charging him with travelling 44 mph in a 25 mph zone. He has no current points on his record.

What plea offer would you attempt to negotiate with the prosecutor?

Would your offer change if the defendant is:

22 years old

60 years old

Fact Pattern 3

The defendant has been charged with careless driving as a result of an accident. His insurance company has paid a property damage claim of \$6000. He currently has 4 points on his record. What plea offer would you consider proposing to the prosecutor? What objections or concerns do you expect from the prosecutor?

Fact Pattern 4

The defendant is a 37 year old woman who works as an elementary school teacher in a public school. She has been charged with shoplifting \$214 worth of retail merchandise from a local store. Evidence of the theft has been captured on the store's security camera system. The complaint has been downgraded by the county prosecutor. She has no prior criminal record.

What plea offer would you consider proposing to the prosecutor? What objections or concerns do you expect from the prosecutor?