REPORT OF THE

SUPREME COURT COMMITTEE ON

MUNICIPAL COURT PRACTICE

2019 - 2021 TERM

JANUARY 19, 2021

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I. Introduction

The Municipal Court Practice Committee ("Committee") recommends that the Supreme Court adopt the proposed rule amendments contained in this report. The Committee also reports on other issues reviewed in which it concluded no rule change was appropriate. Where rule changes are proposed, deleted text is bracketed **[as such],** and added text is underlined **as such**. For context and ease of understanding, the full text of each rule with proposed changes has been provided herein.

II. Proposed Part I and Part VII Rule Amendments Recommended for Adoption[1]

A. Proposed Amendments to R. 1:30-4 (Clerks' Offices)

The Committee proposes amendments to R. 1:30-4. R. 1:30-4 provides for the hours of operation for clerk's offices – for Municipal and all other courts – and that the court is open on days and during hours fixed by the judge or presiding judge, subject to the approval of the Administrative Director of the Courts.

The rule references the "office of the clerk of every municipal court." However, in 1993 the Legislature changed the title of municipal "court clerk" to "court administrator." See N.J.S.A. 2B:12-10 (Municipal Court Administrator and Personnel). Therefore, the Committee recommends amending R. 1:30-4 to add "Municipal Court Offices" in the rule's title and to remove "of the clerk" in the rule's text, which will make clear that "clerk" is no longer the appropriate term in the municipal system.

The Committee also recommends clarifying that it is a municipal court judge (rather than simply a 'judge') who fixes the days and hours of the municipal court.

[1] Part I rules are applicable to all courts unless expressly stated. The Part I rules recommended for amendment herein were initially drafted decades ago, before the 1997 creation of a separate section addressing the Municipal Courts (Part VII), and before the creation of the Municipal Presiding Judge position during the 1990s. In terms of the Part I amendments proposed herein, the Civil Practice Committee has considered and voted to approve the proposed cross-reference amendment to Rule 1:11-2. There is no other committee that regularly handles amendments to Rules 1:30, 1:33, and 1:34.

The Committee also recommends removing the outdated reference to "presiding judge" and replacing it with "chief judge." The term presiding judge has a different meaning today as compared to when it was initially included in the rule. Presiding judge now refers to a judge, appointed by the Supreme Court, who exercises powers delegated by the Chief Justice or established by the Rules of Court. N.J.S.A. 2B:12-9. The Municipal Presiding Judge's responsibilities are vicinage-wide and include supervision of the vicinage's Municipal Division and general oversight over all municipal courts in the vicinage. The Committee further recommends including a reference to the Assignment Judge, since the Assignment Judge is consulted and approves the days and hours of municipal court operations.

Where a municipal court has more than one judge, the county or municipality designates one of the judges as the chief judge of the court. The duties of the chief judge include designating the time and place of court and assigning cases among the judges, pursuant to Rules of Court. N.J.S.A. 2B:12-8. Prior to the 1993 enactment of N.J.S.A. 2B:12-8, the chief judge of the municipal court was referred to as the "presiding judge." Since the reference to "presiding judge" in the rule predates the statute's revision, it should be removed and replaced with "chief judge."

Therefore, the Committee recommends the following amendments, set forth within the full text of the rule.

1:30-4. Clerks' Offices; Municipal Court Offices

The office of the clerk of every court, except the municipal courts, shall be open to the public for the transaction of all business of the court for such hours and on such days as shall be fixed by the Chief Justice. The office [of the clerk] of every municipal court shall be open to the public for the transaction of all business of the court on days and during hours fixed by the municipal court judge thereof, or, in courts where there is a chief judge, the chief judge, [presiding judge] and the Assignment Judge, subject to the approval of the Administrative Director of the Courts.

Note: Source-R.R. 7:19-4. Amended December 21, 1971 to be effective January 31, 1972. Caption and text amended _____ to be effective _____.

B. Proposed Amendments to R. 1:33-2 (Court Managerial Structure)

The Committee recommends two amendments to R. 1:33-2. R. 1:33-2(c) discusses the functional units of the trial courts but does not include municipal. A municipal division manager brought to the attention of the Administrative Office of the Courts this apparent omission, noting that there are vicinage departments for municipal courts and municipal court presiding judges but municipal is not listed as a functional unit.

1. Add reference to "Superior Court" in R. 1:33-2(c)

The Committee initially considered recommending a change in the number of functional units in paragraph (c) from four to five to include municipal. The four functional units in the current rule are Civil, Criminal, Family and General Equity. The Committee discussed the functional designation in light of the structural path of appeals. The members concluded that since municipal court appeals are brought to the Superior Court, municipal courts are not on an equivalent functional level as the Superior Court. Thus, the members determined that the intent of paragraph (c) is to reference the Superior Court only and a modification to include municipal would add confusion. For clarity and to preserve the intent of the current rule, the Committee recommends adding "Superior Court" to paragraph (c).

2. Add new paragraph (f) to provide for designation of Presiding Judge of the Municipal Courts in each vicinage

The Committee discussed that R. 1:33-2, as written, does not consider the Tax Court a functional unit within the trial court but a separate court that shall have a designated presiding judge. Tax and municipal are both legislatively created courts. N.J. Const. Art. VI, § I, par. 1. The members concluded that it would therefore make sense to include a new subparagraph indicating that the municipal courts should have a designated presiding judge. Paragraph (f) mirrors the language in paragraph (e) for Tax Court and specifies that the Municipal Presiding Judge shall report directly to and be responsible to the Assignment Judge of the vicinage.

Therefore, the Committee recommends the following amendments, set forth within the full text of the rule.

Rule 1:33-2 (Court Managerial Structure)

(a) The Chief Justice shall divide the State into such geographical divisions as appropriate to facilitate the efficient administration of the courts. Such geographical divisions shall be known as "vicinages."

(b) For each vicinage, the Chief Justice shall designate a judge of the Superior Court to serve as Assignment Judge. Each such Assignment Judge shall serve at the pleasure of and report directly to the Chief Justice.

(c) Within each vicinage, the Chief Justice shall organize the Superior Court trial court system into four functional units to facilitate the management of the trial court system within that vicinage. These units shall be: Civil, Criminal, Family and General Equity.

(1) Each functional unit shall be supervised by a Presiding Judge who shall be appointed by the Chief Justice, after consultation with the Assignment Judge, and who shall serve at the pleasure of the Chief Justice. A Presiding Judge may supervise more than one functional unit. The Presiding Judge shall report directly and be responsible to the Assignment Judge.

(2) The Chief Justice may appoint the Assignment Judge to serve as the Presiding Judge for one or more functional units within the vicinage.

(d)

(1) Each functional unit shall be supervised by a Presiding Judge who shall be appointed by the Chief Justice, after consultation with the Assignment Judge, and who shall serve at the pleasure of the Chief Justice. A Presiding Judge may supervise more than one functional unit. The Presiding Judge shall report directly and be responsible to the Assignment Judge.

(2) The Chief Justice may appoint the Assignment Judge to serve as the Presiding Judge for one or more functional units within the vicinage

(e) The Chief Justice shall designate a judge of the Tax Court as presiding judge, to serve at the pleasure of the Chief Justice.

(f) The Chief Justice shall designate a judge of the municipal court as Presiding Judge within each vicinage, to serve at the pleasure of the Chief Justice. The Presiding Judge shall report directly and be responsible to the Assignment Judge of the vicinage.

Note: Former rule redesignated R. 1:33-3 and new rule adopted October 26, 1983 to be effective immediately; paragraphs (a) (b) (d) and (e) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended June 28, 1996 to be effective September 1, 1996. Paragraph (c) amended and paragraph (f) adopted_____ to be effective _____.

C. Proposed Amendments to R. 1:34-2 (Clerks of Court)

The Committee recommends amendments to R. 1:34-2 to reflect changes in the professional title of the highest managerial position in the municipal courts, the municipal court administrator. This rule currently provides: "The clerk of every court, except the Supreme Court, the Appellate Division, the Superior Court and the Tax Court, shall be responsible to and under the supervision of the judge or presiding judge of the court that the clerk serves, the Assignment Judge of the county, and the Administrative Director of the Courts." Separate provisions regarding the Supreme Court, the Appellate Division, the Superior Court, and the Tax Court are also set forth in the rule.

1. Add "Municipal Court Administrators" to title of R. 1:34-2 and separate rule into two paragraphs

The Committee recommends adding "Municipal Court Administrators" to the title of the rule in order to clarify that the rule covers this group and to distinguish them from "Clerks of Court," which is the appropriate title used in other courts. With respect to the municipal courts, the municipal court administrator title has replaced the clerk title. The position of municipal court clerk was originally provided for by N.J.S.A. 2A:8-13; this law was repealed by L. 1993, c. 293. The municipal court administrator title is set forth in N.J.S.A. 2B:12-10 and a municipality or other entity establishing a court is required by that statute to provide for an administrator.

For clarity, the Committee also recommends separating the one paragraph rule into two paragraphs designated by (a) and (b) with the second paragraph discussing deputy clerks, the Surrogate and Vicinage Chief Probation Officer.

2. Remove "exception" sentence and add sentence focusing on Municipal Court Administrators

The current rule delineates individual provisions for the clerks of the Supreme Court, the Appellate Division, the Superior Court, and the Tax Court. However, the first sentence of the rule focuses on "the clerk of every court" – while the only remaining court not so designated is the municipal court. As noted above, municipal no longer uses the term court clerk but rather municipal court administrator.

Since all courts are included in R. 1:34-2 and to eliminate confusion stemming from the current exception language in the first sentence, the Committee recommends removing the first sentence and adding a new sentence that specifically sets forth to whom the municipal court administrator is responsible.

Therefore, the Committee recommends the following amendments, set forth within the full text of the rule.

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1:34-2. Clerks of Court; Municipal Court Administrators

[The clerk of every court, except the Supreme Court, the Appellate Division, the Superior Court and the Tax Court, shall be responsible to and under the supervision of the judge or presiding judge of the court that the clerk serves, the Assignment Judge of the county, and the Administrative Director of the Courts.]

(a) The clerks of the Supreme and Superior Courts shall be responsible to and under the supervision of the Administrative Director of the Courts and the Chief Justice. The clerk of the Appellate Division shall be responsible to and under the supervision of the Administrative Director of the Courts, the Chief Justice, and the Presiding Judge for Administration of the court. The clerk of the Tax Court shall be responsible to and under the supervision of the presiding judge of the court and the Administrative Director of the Courts. Each county shall have one or more deputy clerks of the Superior Court with respect to Superior Court matters filed in that county; deputy clerks may issue writs out of the Superior Court. The Surrogate of the county shall be the deputy clerk of the Superior Court, Chancery Division, Probate Part, with respect to probate matters pending in that county. The Vicinage Chief Probation Officer shall be the deputy clerk of the Superior Court for the purpose of certifying child support judgments and orders as required by R. 4:101, and with respect to writs of execution as provided by R. 4:59-1(c). All employees

serving as deputy clerks of the Superior Court shall be, in that capacity, responsible to the clerk of the Superior Court.

(b) The Municipal Court Administrator in each municipal court shall be responsible to and under the supervision of the Municipal Court Judge, or in courts where there is a Chief Judge, the Chief Judge, the Vicinage Municipal Presiding Judge, the Assignment Judge, the Administrative Director of the Courts, and the Chief Justice.

Note: Source — R.R. 6:2-7, 7:21-1, 7:21-2, 8:13-4. Amended July 14, 1972 to be effective September 5, 1972; amended June 20, 1979 to be effective July 1, 1979; amended June 29, 1990 to be effective September 4, 1990; amended July 14, 1992 to be effective September 1, 1992; amended June 28, 1996 to be effective June 28, 1996; amended July 28, 2004 to be effective September 1, 2004; amended July 19, 2012 to be effective September 4, 2012; subsections (a) designation added and subsection (b) added _____ to be effective _____.

D. Proposed Amendments to R. 1:11-2 (Withdrawal or Substitution) and R. 7:7-9 (Filing Appearance)

The Committee recommends a minor amendment to R. 1:11-2 that adds a cross-reference to R. 7:7-9 and a substantive amendment to R. 7:7-9 that sets forth a process for withdrawal of an attorney from representation and substitution of attorney. The process for withdrawal or substitution in Municipal and Tax Court actions are not currently addressed within R. 1:11-2.

1. Add cross-reference in R. 1:11-2(a)

Rule 1:11-2 sets forth procedures for the withdrawal and substitution of an attorney prior to an entry of a plea in a criminal action or prior to fixing of a trial date in a civil action, except as otherwise provided in R. 5:3-5(e), which addresses withdrawal in a civil family action. The Committee recommends amending R. 1:11-2(a) to add a cross-reference to R. 7:7-9 following the "except as otherwise provided" language.

As R. 1:11-2 falls within the purview of the Civil Practice Committee, the proposed amendment to that rule was submitted to this committee. The members approved it as submitted, pending the Court's approval of the Municipal Court Practice Committee's proposed amendments to R. 7:7-9, as set forth below and to which the cross-reference refers.

2. Set forth process in R. 7:7-9 on withdrawals and substitutions in a municipal court action

The Committee also recommends amending R. 7:7-9 to include a formal process on withdrawal of an attorney from representation and substation of counsel. Currently, R. 7:7-9 provides straightforward instructions on filing an appearance of counsel in municipal court but does not provide guidance on withdrawal or substitution of attorney.

The Committee considered whether withdrawal or substitution should be conducted on the record (in court) or by filing. If it were conducted on the record, the defendant could not be served; the Committee thus concluded that a formal filing would be more appropriate.

The proposed amendments to R. 7:7-9 provide a uniform and structured process that would allow for substitutions of attorney by motion and without motion (in instances where leave of court is not necessary). Proposed R. 7:7-9 ties these processes to the receipt of any discovery or the completion of discovery and the setting of a trial date. The goal of the proposed amendment is to protect clients and to prevent further delay in the case.

Proposed paragraph (b) provides that prior to the receipt of any discovery an attorney may withdraw as counsel without leave of court with the client's consent provided a substitution of attorney is filed naming the substituted attorney or indicating that the client will appear pro se.

Proposed paragraph (c) specifies that when there is some discovery exchanged but a trial date has not yet been set, an attorney may withdraw as counsel without leave of court upon the filing of the client's written consent and a substitution of attorney executed by both the withdrawing attorney and the substituted attorney indicating that the withdrawal and substitution will not cause or result in delay. In the substitution of attorney process, the withdrawing attorney shall certify that all discovery received from the State has been or will be provided to the substituting attorney within five (5) business days of the filing of the fully executed substitution of attorney with the court. The certification would provide accountability and ensure that the substituting attorney has been or will be provided with discovery to avoid any undue delay on the part of the withdrawing attorney.

Paragraph (d) proposes that after completion of discovery and the setting of the trial date, an attorney may not withdraw or substitute as counsel without leave of court.

Proposed paragraph (e) would allow an attorney to file a motion to be relieved from representing the defendant or substituted as counsel at any stage of the proceeding as intended to preserve flexibility, where necessary.

Proposed paragraph (f) allows a pro se defendant or substituting attorney to request discovery at any stage of the proceedings.

The Committee recommends the following amendments to R. 7:7-9 and R. 1:11-2, set forth within the full text of the rules.

Rule 1:11-2. Withdrawal or Substitution

(a) Generally. Except as otherwise provided by R. 5:3-5(e) (withdrawal in a civil family action) and R. 7:7-9 (withdrawal and substitution in a municipal court action),

(1) prior to the entry of a plea in a criminal action or prior to the fixing of a trial date in a civil action, an attorney may withdraw upon the client's consent provided a substitution of attorney is filed naming the substituted attorney or indicating that the client will appear pro se. If the client will appear pro se, the withdrawing attorney shall file a substitution. An attorney retained by a client who had appeared pro se shall file a substitution. If a mediator has been appointed, the attorney shall serve a copy of the substitution of attorney on that mediator simultaneously with the filing of the substitution with the court, and

(2) after the entry of a plea in a criminal action or the fixing of a trial date in a civil action, an attorney may withdraw without leave of court only upon the filing of the client's written consent, a substitution of attorney executed by both the withdrawing attorney and the substituted attorney, a written waiver by all other parties of notice and the right to be heard, and a certification by both the withdrawing attorney and the substituted attorney that the withdrawal and substitution will not cause or result in delay.

(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.

(b) Professional Associations. If a partnership or attorney assumes the status of a professional corporation, or limited liability entity, pursuant to Rules 1:21-1A, 1:21-1B or 1:21-1C, respectively, or if a professional corporation or a limited liability entity for the practice of law dissolves and reverts to an unincorporated status, it shall not be necessary for the firm to file substitutions of attorney in its pending matters provided that the firm name, except for the addition or deletion of the entity designation, is not changed as a result of the change in status.

(c) Appearance by Attorney for Client Who Previously Had Appeared Pro Se. Where an attorney is seeking to appear representing a client who previously appeared pro se, the attorney must file a notice of appearance, not a substitution of attorney, and pay the appropriate notice of appearance fee.

Note: Source - R.R. 1:12-7A; amended July 16, 1981 to be effective September 14, 1981; amended November 7, 1988 to be effective January 2, 1989; amended June 28, 1996 to be effective September 1, 1996; amended July 10, 1998 to be effective September 1, 1998; amended and paragraph designations and captions added January 21, 1999 to be effective April 5, 1999; paragraphs (a)(1) and (a)(2) amended July 27, 2006 to be effective September 1, 2006; subparagraph (a)(1) amended July 19, 2012 to be effective September 4, 2012; new paragraph (a)(3) adopted December 4, 2012 to be effective January 1, 2013; paragraph (a) amended [and]; new paragraph (c) added July 28, 2017 to be effective September 1, 2017; and paragraph (a) amended _____ to be effective _____.

Rule 7:7-9. Filing appearance; Withdrawal from Representation and Substitution of Attorney

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

(b) Withdrawal, Substitution Prior to Receipt of Discovery. Prior to the receipt of any discovery, an attorney may withdraw as counsel without leave of court with the client's consent provided a substitution of attorney is filed naming the substituted attorney or indicating that the client will appear pro se.

(c) Withdrawal, Substitution Prior to Completion of Discovery and Prior to the Setting of a Trial Date. Prior to the completion of discovery and the setting of a trial date, an attorney may withdraw as counsel without leave of court upon the filing of the client's written consent and a substitution of attorney executed by both the withdrawing attorney and the substituted attorney indicating that the withdrawal and substitution will not cause or result in delay. In the substitution of attorney, the withdrawing attorney shall certify that all discovery received from the State has been or will be

provided to the substituting attorney within five business days of the filing of the fully executed substitution of attorney with the court.

(d) Withdrawal, Substitution after Completion of Discovery and after the Setting of a Trial Date. After completion of discovery and the setting of a trial date, an attorney may not withdraw or substitute as counsel without leave of court.

(e) Motion at Any Stage of Proceedings. Nothing herein prohibits an attorney from filing a motion to be relieved from representing the defendant or substituted as counsel at any stage of the proceedings.

(f) Requesting Discovery at Any Stage of Proceedings. Nothing herein prohibits a pro se defendant or substituting attorney from requesting discovery at any stage of the proceedings.

Note: Source-R. (1969) 3:8-1. Adopted October 6, 1997 to be effective February 1, 1998; caption amended, text designated as paragraph (a) and caption added, and new paragraphs (b) through (f) added _____ to be effective _____.

E. Proposed Amendments to R. 7:6-3 (Guilty Plea by Mail in Non-Traffic Offenses); R. 7:12-3 (Pleas of Not Guilty and Pleas of Guilty by Mail in Certain Traffic or Parking Offenses); and Guideline 3 of the Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey

1. Background

The COVID-19 public health emergency and the attendant social distancing requirements and move to virtual court proceedings prompted the Committee to consider Court Rule amendments to allow for increased remote resolution of certain matters. On March 16, 2020, in response to the public health emergency, the Supreme Court issued a Court Rule relaxation order for R. 7:6-3 and R. 7:12-3 to allow more defendants to plead to certain offenses through a 'plea by mail process' without the need to come to court.[2] Prior to the relaxation order, defendants would have to demonstrate an "undue hardship" to take advantage of this option; the Court removed this requirement.

The Committee recognized the value in expanding options for defendants to resolve their municipal court matters without the time and effort to physically come to court – both during the immediate public health emergency as well as going forward. Greater convenience to defendants has been an overarching goal in recent municipal court reform efforts. The Committee considered the Court's relaxation order as well as a recent technical development – the online Municipal Case

[2] The Court's order can be found here: https://njcourts.gov/notices/2020/n200317b.pdf?c=x5W.

Resolution system for certain minor offenses, implemented statewide in July 2020. The system allows defendants with certain, minor traffic tickets that do not require a court appearance (and which have a preset, 'payable' monetary penalty if resolved outside of court) to request that the prosecutor review their ticket to possibly amend to a lesser charge. The defendant may accept or reject the prosecutor's recommendation. Accepted recommendations must then be considered and approved or rejected by the municipal court judge. If approved by the judge, the defendant can then satisfy the payable penalty via the municipal court online payment system (www.NJMCdirect.com) or pay in person at the municipal court's violation bureau window.

The Committee formed a working group to examine both rules and the members drafted amendments for the Committee's consideration. The Committee recommends amendments to R. 7:6-3 (Guilty Plea by Mail in Non-Traffic Offenses); R. 7:12-3 (Pleas of Not Guilty and Pleas of Guilty by Mail in Certain Traffic or Parking Offenses); and Guideline 3 (Prosecutor's Responsibilities) of the Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey.

2. Amendments to R. 7:6-3

(a) Remove hardship requirement for plea by mail

In line with the Court's March 16, 2020 rule relaxation order, the Committee recommends removing the plea by mail undue hardship requirement in R. 7:6-3(a).

The rule currently provides that in all non-parking and non-traffic offenses (except certain listed offenses) the judge may permit the defendant to enter a guilty plea by mail if the court is satisfied that a personal appearance by the defendant would constitute an undue hardship such as illness, physical incapacity, substantial distance to travel, or incarceration.

The Committee considered whether removal of the hardship requirement would affect the judge's discretion to allow or not allow plea by mail, or whether removal of the hardship requirement could be perceived as creating an automatic right to plea by mail. The members acknowledged that a judge always retains the right to reject the plea and request that the defendant appear in person. The current language of R. 7:6-3 provides that "the judge **may** permit the defendant to enter a guilty plea by mail" (emphasis added) if undue hardship is shown. Under the proposed amendment, the judge's discretion will remain; only the undue hardship requirement is recommended for removal. In addition, R. 7:6-3(a)(5) provides that a guilty plea by mail is not available in "any other case where excusing the defendant's appearance in municipal court would not be in the interest of justice." This is another expression of the judge's discretion in determining whether to permit a guilty plea by mail.

(b) Expand plea by mail rules to formalize engaging in plea arrangements through an electronic system

The Committee recommends expanding the plea by mail rule in R. 7:6-3 to

set forth a process for plea arrangements through an electronic system approved by the Administrative Director of the Courts. The online Municipal Case Resolution system would be expanded to allow for electronic submission of guilty pleas in all non-traffic and non-parking offenses pursuant to R. 7:6-3. The proposed amendments to R. 7:6-3 include adding the terms "electronic system" to the title and text of the rule and "electronically" to the text of the rule. This recommendation is also made for electronic entry of not guilty and guilty pleas in certain traffic or parking offenses pursuant to R. 7:12-3, discussed later in this report.

(c) Add acknowledgement, waiver, and certification language to R. 7:6-3(c)

The Committee recommends adding a new paragraph R. 7:6-3(c) in non-traffic offenses that includes acknowledgment and waiver language. This language mirrors the language currently in R. 7:12-3(b) for certain traffic and parking offenses. New paragraphs (c)(1)(A), (B), and (C) would provide that in those cases where a defendant enters a guilty plea to a non-traffic offense by mail or electronically, the plea must include an acknowledgement that the defendant committed the non-traffic offense to which the defendant is pleading guilty and a factual basis for the plea;[3] a waiver of the defendant's right to contest the case at trial; a waiver of the right to appear personally in court; and, if unrepresented by an

[3] The Committee also suggests modifying the existing, manual plea by mail form to include a space for the defendant to set forth a factual basis.

attorney, a waiver of the right to be represented by an attorney; and an acknowledgment by the defendant that the plea of guilty is being entered voluntarily with the understanding of the nature of the charge and the consequences of the plea.

These plea requirements mirror those currently in R. 7:12-3(b), but with the recommended addition to new subparagraph R. 7:6-3(c)(1)(C) that the plea should also be entered with the "understanding of the nature of the charge and the consequences of the plea." This language is modeled on the current language in R. 7:6-2(a)(1) and is also proposed (see below) to be added to R. 7:12-3(b)(1)(C).

The Committee also recommends adding a new subparagraph R. 7:6-3(c)(1)(D) providing that for cases where an attorney submits a plea of guilty on behalf of the defendant through the electronic system, a certification signed by the defendant must be submitted.[4] The certification must recite the terms of the plea, specify that the defendant has reviewed such terms, establish a factual basis for the plea, and establish that the plea of guilty is being entered voluntarily with understanding of the nature of the charge and the consequences of the plea.

(d) Add new subparagraphs in redesignated paragraph R. 7:6-3(d), setting forth procedures for the entry of guilty pleas submitted via the electronic system and via a manual plea form

At the request of a Committee member, the working group was asked to consider proposing amendments to R. 7:6-3 and R. 7:12-3 that would permit the

[4] Current paragraph (c) would be redesignated as paragraph (d).

judge to use the computer system to effectuate/render the disposition, as opposed to the judge having to place it on the record in open court, as is the current procedure. See Administrative Directive #02-08 (Procedures for the Dismissal of Municipal Court Complaints and Voiding Uniform Traffic Tickets and Special Forms of Complaint).

Recommended new paragraph R. 7:6-3(d) sets forth the procedures for scheduling and entry of guilty pleas in all non-traffic and non-parking offenses except as limited in the rule. Recommended new subparagraph R. 7:6-3(d)(1) focuses on guilty pleas submitted in the electronic system in those matters where prosecutor review is required. In those cases, the court shall enter the disposition in the electronic system and the judge is given the discretion to schedule the matter for disposition on the record in open court. The Committee suggested adding a checkbox to the electronic system for the defendant to acknowledge that the prosecutor may weigh in on sentencing without the defendant being present.

Recommended new subparagraph R. 7:6-3(d)(2) focuses on guilty pleas pursuant to the rule that are submitted on a manual plea by mail form or in the electronic court system involving matters that do not involve the prosecutor's review. In these cases, the court shall schedule the matter to be heard on the record in open court.

Recommended new subparagraph R. 7:6-3(d)(3) provides that the court shall send a copy of its decision to the defendant and complaining witness by ordinary mail or through the electronic system. The Committee was of the view that providing the court with the option to send a copy of its decision in the electronic system would be consistent with promoting the use of that system for entry of pleas and may provide greater convenience to defendants.

The Committee recommends the following amendments to R. 7:6-3, set forth within the full text of the rule.

7:6-3. Guilty Plea by Mail or in an Electronic System in Non-Traffic Offenses

(a) Entry of Guilty Plea by Mail or in an Electronic System. In all non-traffic and non-parking offenses, except as limited below, on consideration of a written or electronically submitted application, supported by certification, with notice to the complaining witness and prosecutor, and at the time and place scheduled for trial, the judge may permit the defendant to enter a guilty plea by mail or in an electronic system approved by the Administrative Director of the Courts [if the court is satisfied that a personal appearance by the defendant would constitute an undue hardship such as illness, physical incapacity, substantial distance to travel, or incarceration]. The guilty plea by mail form or electronic application may also include a statement for the court to consider when determining the appropriate sentence. Entry of [A] a guilty plea by mail or submitted in the electronic system shall not be available for the following:

(1) cases involving the imposition of a mandatory term of incarceration on conviction, unless defendant is currently incarcerated and the mandatory term of incarceration would be served concurrently and would not extend the period of incarceration;

(2) cases involving an issue of the identity of the defendant;

(3) cases involving acts of domestic violence;

(4) cases where the prosecution intends to seek the imposition of a custodial term in the event of a conviction, unless defendant is currently incarcerated and the proposed term of incarceration would not extend the period of incarceration and would be served concurrently; and

(5) any other case where excusing the defendant's appearance in municipal court would not be in the interest of justice.

(b) Plea Form Submitted by Mail or in the Electronic System-Certification. The [G]guilty [P]plea [by Mail] shall be submitted on a form by mail or in an electronic system approved by the Administrative Director of the Courts.

(c) Plea of Guilty by Mail or in the Electronic System—Acknowledgements, Waiver and Certification.

(1) In those cases where a defendant may enter a plea of guilty to a non-traffic offense by mail or in the electronic system, such plea shall include:

(A) an acknowledgement that the defendant committed the non-traffic offense to which the defendant is pleading guilty and a factual basis for the plea;

(B) a waiver of the defendant's right to contest the case at a trial, the right to appear personally in court and, if unrepresented by an attorney, a waiver of the right to be represented by an attorney;

(C) an acknowledgement by the defendant that the plea of guilty is being entered voluntarily with understanding of the nature of the charge and the consequences of the plea.

(D) in those cases where an attorney submits a plea of guilty on behalf of the defendant through the electronic system, a certification signed by the defendant that: recites the terms of the plea; specifies that the defendant has reviewed such terms; establishes a factual basis for the plea; and establishes that the plea of guilty is being entered voluntarily with understanding of the nature of the charge and the consequences of the plea.

[(c)] (d) Scheduling and Judgment.

(1) For guilty pleas submitted in the electronic system in matters that require review by the municipal prosecutor, the court shall enter the disposition in the electronic system. The matter may be scheduled for disposition on the record in open court at the discretion of the municipal court judge.

(2) For guilty pleas pursuant to this Rule submitted on a manual plea by mail form or in the electronic system that do not involve the municipal prosecutor's review, the court shall schedule the matter to be heard on the record in open court.

(3) [The court shall send the defendant and complaining witness a copy of its decision by ordinary mail.] The court shall send a copy of its decision to the

defendant and complaining witness by ordinary mail or through the electronic system.

Note: Adopted June 15, 2007 to be effective September 1, 2007. Captions and text of paragraphs (a) and (b) amended, new paragraph (c) added, and former paragraph (c) redesignated as paragraph (d), caption and text amended, and new subparagraphs (d)(1), (d)(2), and (d)(3) added and adopted _____ to be effective _____.

3. Amendments to R. 7:12-3

(a) Remove undue hardship requirement for plea by mail

In line with the Court's March 16, 2020 rule relaxation order, the Committee also recommends removing the plea by mail undue hardship requirement in R. 7:12-3(a). This amendment mirrors the Committee's recommendation for R. 7:6-3(a).

(b) Expand description of plea by mail to add reference to Judiciary's electronic system

The Committee recommends expanding the description of plea by mail in R. 7:12-3 by adding the terms "electronic system" to the title and text of the rule and "electronically" to the text of the rule to encompass the electronic submission of such pleas. This amendment mirrors the Committee's rule amendment recommendation in R. 7:6-3.

(c) Add acknowledgement, waiver, and certification language to R. 7:12-3(b)

Currently, R. 7:12-3(b)(1)(A) requires that plea of guilty to a traffic offense or parking offense shall include an acknowledgement that the defendant committed the traffic violation or parking offense set forth in the complaint. The Committee recommends adding to this subparagraph that the defendant provide a factual basis for the plea. The additional factual basis language is also recommended in R. 7:6-3(c)(1)(A).

Currently, R. 7:12-3(b)(1)(C) provides that the plea shall include an

acknowledgment by the defendant that the plea of guilty is being entered voluntarily. The Committee recommends that the rule should also provide that the plea is entered with the "understanding of the nature of the charge and the consequences of the plea." This terminology mirrors language in current R. 7:6-2(a)(1) and it is also recommended to be added to R. 7:6-3(c).

The Committee further recommends adding new subparagraph R. 7:12-3(b)(1)(D) to require that a guilty plea to a traffic or parking offense include a certification signed by the defendant in those cases where an attorney submits a guilty plea on the defendant's behalf through the electronic system. The signed certification must recite the terms of the plea, specify that the defendant has reviewed such terms, establish a factual basis for the plea, and establish that the plea of guilty is being entered voluntarily with understanding of the nature of the charge and the consequences of the plea.

(d) Add new subparagraphs in R. 7:12-3(e) setting forth procedures for the entry of pleas submitted via the electronic system and via a manual plea form

Recommended new subparagraphs within R. 7:12-3(e) set forth procedures for scheduling of not guilty and guilty pleas in certain traffic or parking offenses. Subparagraph (e)(1) focuses on guilty pleas submitted in the electronic system in those matters where municipal prosecutor review is required. In these cases, the

court shall enter the disposition in the electronic system and the judge is given the discretion to schedule the matter for disposition on the record in open court.

Recommended subparagraph (e)(2) provides that for not guilty pleas submitted in the electronic system in matters where municipal prosecutor review is required, the court shall schedule the matter to be heard on the record in open court.

Recommended subparagraph (e)(3) provides that for not guilty and guilty pleas pursuant to this rule that are submitted on a manual plea by mail form or in the electronic system and do not involve the municipal prosecutor's review, the court shall schedule the matter to be heard on the record in open court.

Recommended new subparagraph (e)(4) requires that the court send a copy of its decision to the defendant and complaining witness by ordinary mail or through the electronic system.

The Committee recommends the following amendments to R. 7:12-3, set forth within the full text of the rule.

7:12-3. Pleas of Not Guilty and Pleas of Guilty by Mail or in an Electronic System in Certain Traffic or Parking Offenses

(a) [Use] Entry of Pleas by Mail or in an Electronic System; Limitations. In all traffic or parking offenses, except as limited below, the judge may permit the defendant to enter a guilty or not guilty plea [by mail, or to plead not guilty by mail] and submit a [written] defense for use at trial by mail or in an electronic system approved by the Administrative Director of the Courts.[, if a personal appearance by the defendant would constitute an undue hardship such as illness, physical incapacity, substantial distance to travel, or incarceration. The Administrative Director of the Courts may designate certain traffic or parking offenses as exempt from the hardship requirement.] This procedure shall not be available in the following types of cases:

(1) traffic offenses or parking offenses that require the imposition of a mandatory loss of driving privileges on conviction;

(2) traffic offenses or parking offenses involving an accident that resulted in personal injury to anyone other than the defendant;

(3) traffic offenses or parking offenses that are related to non-traffic matters that are not resolved;

(4) any other traffic offense or parking offense when excusing the defendant's appearance in municipal court would not be in the interest of justice.

(b) Plea of Guilty by Mail or in the Electronic System – Acknowledgements, Waiver and Certification.

(1) In those cases where a defendant may enter a plea of guilty to a traffic offense or parking offense by mail or in the electronic system, such plea shall include:

(A) an acknowledgement that the defendant committed the traffic violation or parking offense to which the defendant is pleading guilty and a factual basis for the plea [set forth in the complaint(s)];

(B) a waiver of the defendant's right to contest the case at a trial, the right to appear personally in court and, if unrepresented by an attorney, the right to be represented by an attorney;

(C) an acknowledgement by the defendant that the plea of guilty is being entered voluntarily with understanding of the nature of the charge and the consequences of the plea;

(D) in those cases where an attorney submits a plea of guilty on behalf of the defendant through the electronic system, a certification signed by the defendant that: recites the terms of the plea; specifies that the defendant has reviewed such terms; establishes a factual basis for the plea; and establishes that the plea of guilty is being entered voluntarily with understanding of the nature of the charge and the consequences of the plea.

(2) A plea of guilty to a traffic offense or parking offense by mail or in the electronic system may also include a statement for the court to consider when determining the appropriate sentence.

(c) Plea of Not Guilty by Mail or in the Electronic System.

(1) In those cases where a defendant may enter a plea of not guilty to a traffic offense or parking offense and submit any defense to the charge(s) by mail or in the electronic system, such not guilty plea and defense shall include the following:

(A) A waiver of the defendant's right to appear personally in court to contest the charge(s) and, if unrepresented by an attorney, a waiver of the right to be represented by an attorney;

(B) Any factual or legal defenses that the defendant would like the court to consider;

(2) A defense to a traffic offense or parking offense submitted by mail or in the electronic system may also include a statement for the court to consider when deciding on the appropriate sentence in the event of a finding of guilty.

(d) Forms. Any forms necessary to implement the provisions of this rule shall be approved by the Administrative Director of the Courts.

(e) Scheduling and Judgment.

(1) For guilty pleas submitted in the electronic system in matters that require review by the municipal prosecutor, the court shall enter the disposition in the electronic system. The matter may be scheduled for disposition on the record in open court at the discretion of the municipal court judge.

(2) For not guilty pleas submitted in the electronic system in matters that require review by the municipal prosecutor, the court shall schedule the matter to be heard on the record in open court.

(3) For not guilty and guilty pleas pursuant to this Rule submitted on a manual plea by mail form or in the electronic system that do not involve the municipal prosecutor's review, the court shall schedule the matter to be heard on the record in open court.

(4) [If a defendant elects to enter a plea of guilty or to enter a plea of not guilty under the procedures set forth in this rule, the court shall send the defendant a copy of the judgment by ordinary mail.] The court shall send a copy of its decision to the defendant and complaining witness by ordinary mail or through the electronic system.

Note: Source - R. (1969) 7:6-6. Adopted October 6, 1997 to be effective February 1, 1998; caption amended, paragraph (a) caption and text amended, former paragraph (b) amended and redesignated as paragraph (c), and new paragraph (b) adopted July 28, 2004 to be effective September 1, 2004; caption of rule amended, captions and text of former paragraphs (a) and (b) deleted, former paragraph (c) redesignated as paragraph (e) and amended, and new paragraphs (a), (b), (c), and (d) adopted June 15, 2007 to be effective September 1, 2007; paragraph (a) amended July 16, 2009 to be effective September 1, 2009; paragraph (a) amended July 9, 2013 to be effective September 1, 2013. Caption of rule, caption and text of paragraph (a), caption and text of paragraphs (b), (b)(1)(A), (b)(1)(C) amended and new paragraph (b)(1)(D) added, (b)(2) amended, caption and text of paragraphs (c), (c)(1), (c)(2) amended, caption and text of (e) amended, and new paragraphs (e)(1), (e)(2), (e)(3) added and adopted _____ to be effective _____.

4. Amendment to Guideline 3 of the Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey (Part VII Appendix)

Guideline 3 of the Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey addresses the prosecutor's responsibility for placing the plea agreement on the record in open court or to use the approved plea form (slips) to do so. The Committee recommends amending Guideline 3 to reflect that when a plea agreement has been reached between the defendant and the prosecutor in the Judiciary's electronic system (referenced in recommended amendments to R. 7:6-3 and R. 7:12-3, above), the prosecutor shall electronically submit any proposed amended charge and plea agreement to the court.

The Committee recommends the following amendment to Guideline 3.

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. When a plea agreement has been reached between the defendant and prosecutor in the Judiciary’s electronic system, the prosecutor shall submit any proposed amended or dismissed charge and plea agreement electronically in that system. 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.

F. Proposed Amendments to R. 7:8-9 (Non-Monetary Procedures on Failure to Appear) that align with new law which removes the ability of the municipal court to order license suspensions

The Committee recommends amendments to R. 7:8-9 (Non-Monetary Procedures on Failure to Appear). The amendments address legislation signed into law on December 20, 2019, L. 2019, c. 276. This law repealed N.J.S.A. 2B:12-31(Suspension of Driving Privileges) and N.J.S.A. 39:4-203.2 (Failure to comply with installment order; additional penalties), effective January 1, 2021. Additional clarifying amendments are also proposed in R. 7:8-9(a)(1) and R. 7:8-9(c).

N.J.S.A. 2B:12-31 had granted municipal courts the authority, upon the provision of notice and an opportunity to be heard, to suspend the driving privileges of a defendant charged with a disorderly persons offense, petty disorderly persons offense, violation of a municipal ordinance, or a violation of any other law of this State for a failure to appear or failure to pay. Under this law, the municipal court could also order the suspension of the person's nonresident reciprocity privilege or prohibit the person from receiving or obtaining driving privileges until the pending matter is adjudicated or otherwise disposed of, except by dismissal for failure to appear.

L. 2019, c. 276 removed the ability of the municipal court to order license suspensions or prohibit the person from obtaining driving privileges for certain crimes and offenses set forth in N.J.S.A. 2B:12-31. It should be noted that while L.

2019, c. 276 specifically repealed N.J.S.A. 2B:12-31, it did not repeal N.J.S.A. 39:4-139.6 nor N.J.S.A. 39:4-139.10 – these statutes provide the authority for municipal courts to issue driver's license and vehicle registration suspensions for failure to appear in parking matters.

On December 11, 2020 the Court issued an order effective January 1, 2021 that relaxed and supplemented R. 7:8-9(b) so as to conform to L. 2019, c. 276, eliminating the authority for municipal courts to issue driver's license suspensions for failures to appear for non-parking violations. The order remains in effect pending development and adoption of conforming rule amendments.

The license suspension process for a failure to appear in municipal court is also captured in R. 7:8-9. Therefore, because the authority for license suspensions in R. 7:8-9(b) is reliant on N.J.S.A. 2B:12-31, the repeal of that statute necessitates amendments to R. 7:8-9(b)(1) and (b)(2). The Committee convened a working group to address these amendments, and the working group provided suggestions to the Committee.

Rule 7:8-9(a)(1) focuses on warrant and notice procedures in non-parking motor vehicle cases. For clarity, the Committee recommends removing "Motor Vehicle" in the caption to be consistent with the context of the rule, which is more general as it references "any non-parking case."

In addition, R. 7:8-9(a)(1) currently provides the option to either issue a bench warrant or mail a notice if the defendant fails to appear. In January 2017, Criminal Part III R. 3:2-2 was amended to require written notice and a subsequent failure to appear **before** a warrant may issue. The Committee recommends amending (a)(1) to be more in line with Criminal's requirements. If a defendant in a non-parking case fails to appear at the first appearance court event, the Committee recommends that the court shall first issue a notice advising the defendant of the rescheduled first appearance and that a failure to appear at the rescheduled first appearance may result in a bench warrant in accordance with R. 7:2-2(h).

The Committee also recommends amending (a)(1) to provide that – for all court appearances other than the first appearance – if the defendant fails to appear the court may either issue a bench warrant for the defendant's arrest in accordance with R. 7:2-2(h) or shall issue and mail another failure to appear notice rescheduling the matter.[5] Finally, the Committee recommends correcting a cross-reference in (a)(2) from (c) to (h).

[5] For non-parking motor vehicle cases R. 7:8-9(b)(1) requires the court to report the failure to appear or answer to the Motor Vehicle Commission if the court has not issued a bench warrant upon the failure of the defendant to comply with the court's failure to appear notice. The court shall then mark the case as closed. If the court instead issues a bench warrant it may simultaneously report the failure to appear or answer to the Motor Vehicle Commission. This process remains unchanged under the new legislation; thus, this rule needs no amendment. The license will not be suspended by the court, but the court will advise the Motor Vehicle Commission of the failure to appear and that the matter is closed.

It should be noted that the Judiciary has limited the issuance of bench warrants for failure to appear in all but the most serious traffic matters via 15 Assignment Judge orders, issued in 2018.

Currently, under R. 7:8-9(b)(2) for all other matters (e.g., parking, fish and game, disorderly persons offenses, ordinance violations), whether or not a bench warrant is issued, the municipal court may order the suspension of the defendant's driving privileges or nonresident reciprocity privileges or prohibit the person from receiving or obtaining driving privileges where a defendant fails to appear. The court shall then mark the case as closed on its records. The Committee recommends amending (b)(2) to provide to cover only parking cases to comport with the new statutory framework. Thus, the amendment removes "all other cases" from the caption and replaces it with "parking cases."

In addition, the Committee recommends removing the term "closed" from R. 7:8-9(b)(2) and replacing it with marking the case as "suspended" on its records as that term more accurately reflects the action taken by the court. The Committee also recommends adding the requirement that the court shall forward the order to suspend to the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts. This requirement is currently in R. 7:8-9(d) and is in line with current practice.

For clarity, the Committee recommends amending the caption of R. 7:8-9(c) to provide "Unexecuted Bench Warrant or Bail Posted after Bench Warrant Executed." This caption will more accurately reflect the substance of the rule, i.e., when a bench warrant is not executed and when bail has been posted after the issuance of the bench warrant.

The Committee recommends additional minor amendments to R. 7:8-9(d). This paragraph addresses a subset of parking matters and focuses on instances in which the initial failure to appear notice is returned and no bench warrant is issued, and the license may be suspended. The Committee recommends removing the term "closed" and replacing it with marking the case as "suspended" on its records as that term more accurately reflects the action taken by the court. In addition, the Committee recommends reversing the last two sentences of the current rule. The sentence regarding forwarding the order to suspend to the Motor Vehicle Commission has been moved to the end of the paragraph to accurately reflect the flow of current practice.

The Committee recommends the following amendments to R. 7:8-9, set forth within the full text of the rule.

7:8-9. Non-Monetary Procedures on Failure to Appear

(a) Warrant or Notice.

(1) Non-Parking [Motor Vehicle] Cases. If a defendant in any non-parking case before the court fails to appear or answer a complaint in response to first appearance, the court [may either issue a bench warrant for the defendant's arrest in accordance with R. 7:2-2(c)[sic, now (h)] or issue and mail a failure to appear notice to the defendant] shall issue a notice advising the defendant of the rescheduled first appearance and that a failure to appear at that rescheduled first appearance may result in the issuance of a bench warrant on a form approved by the Administrative Director of the Courts. If the defendant fails to appear for that rescheduled first appearance hearing, a bench warrant may be issued in accordance with R. 7:2-2(h). [If a failure to appear notice is mailed to the defendant and the defendant fails to comply with its provisions, a bench warrant may be issued in accordance with R. 7:2-2(c)[sic , now (h)].] For all court appearances other than the first appearance, if the defendant fails to appear the court may either issue a bench warrant for the defendant's arrest in accordance with R. 7:2-2(h) or shall issue and mail another failure to appear notice rescheduling the matter.

(2) Parking Cases. If a defendant in any parking case before the court fails to appear or answer a complaint, the court shall mail a failure to appear notice to

the defendant on a form approved by the Administrative Director of the Courts. Where a defendant has not appeared or otherwise responded to failure to appear notices associated with two or more pending parking tickets within the court's jurisdiction, the court may issue a bench warrant in accordance with R. 7:2-2([c]h). Such a bench warrant shall not issue when the pending tickets have been issued on the same day or otherwise within the same 24-hour period.

(b) Driving Privileges; Report to Motor Vehicle Commission.

(1) Non-Parking Motor Vehicle Cases. If the court has not issued a bench warrant upon the failure of the defendant to comply with the court's failure to appear notice, the court shall report the failure to appear or answer to the Chief Administrator of the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts within 30 days of the defendant's failure to appear or answer. The court shall then mark the case as closed on its records, subject to being reopened pursuant to subparagraph (e) of this rule. If the court elects, however, to issue a bench warrant, it may simultaneously report the failure to appear or answer to the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts. If the court does not simultaneously notify the Motor Vehicle Commission and the warrant has not been executed within 30 days, the court shall report the failure to appear or answer to the Motor Vehicle Commission on a form approved by the

Administrative Director of the Courts. Upon the notification to the Motor Vehicle Commission, the court shall then mark the case as closed on its records subject to being reopened pursuant to subparagraph (e) of this rule.

(2) [All Other] Parking Cases. In all [other] parking cases, whether or not a bench warrant is issued, the court may order the suspension of the defendant's driving privileges or of defendant's nonresident reciprocity privileges or prohibit the person from receiving or obtaining driving privileges until the pending matter is adjudicated or otherwise disposed of. The court shall then mark the case as [closed] suspended on its records, subject to being reopened pursuant to subparagraph (e) of this rule. The court shall forward the order to suspend to the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts.

(c) Unexecuted Bench Warrant or Bail Posted after Bench Warrant Executed. If a bench warrant is not executed, it shall remain open and active until the court either recalls, withdraws or discharges it. If bail has been posted after the issuance of the bench warrant and the defendant fails to appear or answer, the court may declare a forfeiture of the bail, report a motor vehicle bail forfeiture to the Motor Vehicle Commission and mark the case as closed on its records subject to being reopened pursuant to subparagraph (e) of this rule. The court may set aside any bail forfeiture in the interest of justice.

(d) Parking Cases; Unserved Notice. In parking cases, no bench warrant may be issued if the initial failure to appear notice is returned to the court by the Postal Service marked to indicate that the defendant cannot be located. The court then may order a suspension of the registration of the motor vehicle or of the defendant's driving privileges or defendant's nonresident reciprocity privileges or prohibit the person from receiving or obtaining driving privileges until the pending matter is adjudicated or otherwise disposed of. [The court shall forward the order to suspend to the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts.] The court shall then mark the case as [closed] suspended on its records, subject to being reopened pursuant to subparagraph (e) of this rule. The court shall forward the order to suspend to the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts.

(e) Reopening. A case marked closed shall be reopened upon the request of the defendant, the prosecuting attorney or on the court's own motion.

(f) Dismissal of Parking Tickets. In any parking case, if the municipal court fails, within three years of the date of the violation, to either issue a bench warrant for the defendant's arrest or to order a suspension of the registration of the vehicle or the defendant's driving privileges or the defendant's non-resident reciprocity privileges or prohibit the person from receiving or obtaining driving privileges, the matter shall be dismissed and shall not be reopened.

(g) Monetary Sanctions for Failure to Appear. Monetary sanctions on defendants for failure to appear are addressed in R. 7:8-9A.

Note: Source – Paragraphs (a), (b), (c), (d), (e): R. (1969) 7:6-3; paragraph (f): new. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) text deleted, and new paragraphs (a)(1) and (a)(2) adopted July 28, 2004 to be effective September 1, 2004; paragraph (b) caption amended, paragraphs (b)(1), (c), (d) and (f) amended July 16, 2009 to be effective September 1, 2009; paragraphs (a)(1), (a)(2), (b)(1), (b)(2) amended, paragraph (c) caption and text amended, and paragraphs (d) and (f) amended August 30, 2016 to be effective January 1, 2017; caption amended and new paragraph (g) adopted July 17, 2018 to be effective September 1, 2018; paragraph (a)(1) caption and text amended, paragraph (a)(2) amended, paragraph (b)(2) caption and text amended, paragraph (c) caption amended, and paragraph (d) amended_____ to be effective_____.

III. RULE AMENDMENT CONSIDERED AND REJECTED

A. Amendment to the Guidelines for Determination of Consequence of Magnitude to remove and replace the term "mental disease or defect"

A Municipal Court Presiding Court Judge requested that the Committee consider an amendment to the Guidelines for Determination of Consequence of Magnitude (Guidelines), to remove and replace the term "mental disease or defect." The judge suggested that the Guideline language is archaic and may reflect negatively on defendants. The Guidelines were adopted in 2004 and are contained in the Appendix to Part VII of the Rules of Court and referenced in R. 7:3-2(b) (Hearing on First Appearance; Right to Counsel). The determination of whether a charge involves a consequence of magnitude can impact whether an indigent defendant may be eligible for the appointment of counsel. See N.J.S.A. 2B:24-7(a); Rodriguez v. Rosenblatt, 58 N.J. 281, 295 (1971).

The Guidelines provide judges with a list of factors that should be considered when determining whether an offense constitutes a consequence of magnitude. These are: (1) any sentence of imprisonment; (2) any period of (a) driver's license suspension, (b) suspension of the defendant's non-resident reciprocity privileges or (c) driver's license ineligibility; or (3) any monetary sanction imposed by the court of $800 or greater in the aggregate, except for any public defender application fee or any costs imposed by the court.

The Guidelines further provide that "if a defendant is alleged to have a **mental disease or defect**, and the judge, **after examination of the defendant on the record, agrees that the defendant may have a mental disease or defect**, the judge shall appoint the municipal public defender to represent that defendant, **if indigent**, regardless of whether the defendant is facing a consequence of magnitude, if convicted." (emphasis added). In other words, a public defender must be appointed if the defendant is indigent and faces a consequence of magnitude. A public defendant must also be appointed if the defendant has a mental disease or defect and is indigent, regardless of whether they are facing a consequence of magnitude. Where the defendant may have a mental disease or defect and is indigent, the presence of a consequence of magnitude is immaterial to the decision to appoint a public defender.

As a threshold matter, the Committee considered whether an amendment to the Guidelines on this issue was necessary and should be explored with further discussion. The Committee was advised that "mental disease or defect" mirrors language in numerous federal and New Jersey statutes. Effective 2012, L. 2011, c. 232 eliminated the term "mentally defective" from the New Jersey Criminal Code and replaced it with references to "mental disease or defect" in multiple statutes. These included, but were not limited to: N.J.S.A. 2C:12-10.2 (temporary restraining order for allegation of stalking certain victims) – "mentally defective" replaced with:

"has a mental disease or defect which renders the victim temporarily or permanently incapable of understanding the nature of his conduct, including, but not limited to, being incapable of providing consent;" and N.J.S.A. 2C:13-4 (interference with custody) – the term "mentally defective" replaced with "mental disease, defect or illness."

The Committee concluded that the language should not be amended. The members based this decision on the fact that term is used elsewhere in recently amended statutes; they also determined that possible replacement language delves into other areas of law and complex issues involving mental illness, developmental disabilities, and various matters in the field of mental health that are outside the expertise of the Committee members.

The full text of Appendix 2 is set forth below.

Appendix 2.

GUIDELINES FOR DETERMINATION OF CONSEQUENCE OF MAGNITUDE (SEE RULE 7:3-2)

On October 6, 1997, the Supreme Court adopted the Comprehensive Revision of Part VII of the Rules of Court to be effective on February 1, 1998. R. 7:3-2 of that Comprehensive Revision provides for the assignment of counsel "[i]f 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 Supreme Court directed that guidelines for the determination of a consequence of magnitude be developed by the Supreme Court Municipal Court Practice Committee to assist municipal court judges in deciding what factors should be considered when determining a consequence of magnitude.

In response to this direction, the Supreme Court Municipal Court Practice Committee developed the following set of guidelines. The Supreme Court, as recommended by the Committee, has included the guidelines as an Appendix to the Part VII Rules.

In determining if an offense constitutes a consequence of magnitude in terms of municipal court sentencing, the judge should consider the following:

(1) Any sentence of imprisonment;

(2) Any period of (a) driver's license suspension, (b) suspension of the defendant's nonresident reciprocity privileges or (c) driver's license ineligibility; or

(3) Any monetary sanction imposed by the court of $ 800 or greater in the aggregate, except for any public defender application fee or any costs imposed by the court. A monetary sanction is defined as the aggregate of any type of court imposed financial obligation, including fines, restitution, penalties and/or assessments.

It should be noted that if a defendant is alleged to have a mental disease or defect, and the judge, after examination of the defendant on the record, agrees that the defendant may have a mental disease or defect, the judge shall appoint the municipal public defender to represent that defendant, if indigent, regardless of whether the defendant is facing a consequence of magnitude, if convicted.

Note: Guidelines adopted July 28, 2004 to be effective September 1, 2004; amended July 22, 2014 to be effective September 1, 2014.

IV. CONCLUSION

The members of the Committee appreciate the opportunity to serve the Supreme Court in this capacity.

Respectfully submitted,

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