

## **RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY RULE 3:7 INDICTMENT AND ACCUSATION**

### **Rule 3:7-1. Entitling of Papers**

The indictment and all subsequent papers in connection therewith shall be entitled in the Superior Court.

**Note:** Source -- R.R. 3:4-1(b).

### **Rule 3:7-2. Use of Indictment or Accusation**

Every crime shall be prosecuted by indictment unless the defendant, after having been advised of the right to indictment, shall waive the right in a signed writing, in which case the defendant may be tried on accusation. Such accusation shall be prepared by the prosecuting attorney and entitled and proceeded upon in the Superior Court. Nothing herein contained, however, shall be construed as limiting the criminal jurisdiction of a municipal court over indictable offenses provided by law and these rules.

**Note:** Source\_\_R.R. 3:4-2(a) (b). Amended August 28, 1979 to be effective September 1, 1979; amended July 13, 1994 to be effective September 1, 1994; amended July 28, 2017 to be effective September 1, 2017.

### **Rule 3:7-3. Nature and Contents of Indictment or Accusation**

**(a) Nature and Contents Generally.** The indictment or accusation shall be a written statement of the essential facts constituting the crime charged, need not contain a formal commencement and shall be signed by the prosecuting attorney. The indictment shall be endorsed as a true bill by the foreperson and conclude: "against the peace of this State, the government and dignity of the same." Allegations made in one count of the indictment or accusation may be incorporated by reference in another count. It may be alleged in a single count either that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specific means. An indictment or accusation or any count thereof charging the violation of a statute or statutes shall state the official or customary citation thereof, but error in the citation or its omission shall not be ground for dismissal of the indictment or accusation or for reversal of a conviction if the error or omission did not prejudicially mislead the defendant. Surplusage in the indictment or accusation may be stricken by the court on defendant's motion.

**(b) Indictment for Murder.** Every indictment for murder shall specify whether the act is murder as defined by N.J.S.A. 2C:11-3(a)(1), (2) or (3) and whether the defendant is alleged: (1) to have committed the act by his or her own conduct or (2) to have procured the commission of the offense by payment or promise of payment, of anything of pecuniary value or (3) to be the leader of a drug trafficking network, as defined in

N.J.S.A. 2C:35-3, and who, in furtherance of a conspiracy enumerated in N.J.S.A. 2C:35-3, commanded or by threat or promise solicited the commission of the offense.

**Note:** Source -- R.R. 3:4-3(a) (b) (c), 3:4-4. Paragraphs (a) and (b) amended August 28, 1979 to be effective September 1, 1979; paragraph (b) amended September 28, 1982 to be effective immediately; paragraph (b) amended July 13, 1993 to be effective immediately; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994; caption amended and new paragraphs (c) and (d) adopted March 14, 2005 to be effective immediately; paragraph (b) text and caption amended June 15, 2007 to be effective September 1, 2007; caption amended and paragraphs (c) and (d) deleted July 28, 2017 to be effective September 1, 2017.

### **Rule 3:7-4. Amendment of Indictment or Accusation**

The court may amend the indictment or accusation to correct an error in form or the description of the crime intended to be charged or to charge a lesser included offense provided that the amendment does not charge another or different offense from that alleged and the defendant will not be prejudiced thereby in his or her defense on the merits. Such amendment may be made on such terms as to postponing the trial, to be had before the same or another jury, as the interest of justice requires.

**Note:** Source -- R.R. 3:4-5. Amended August 28, 1979 to be effective September 1, 1979; amended July 13, 1994 to be effective September 1, 1994.

### **Rule 3:7-5. Bill of Particulars**

A bill of particulars shall be ordered by the court if the indictment or accusation is not sufficiently specific to enable the defendant to prepare a defense. The defendant shall move therefore pursuant to Rule 3:10-2. The application shall point out clearly the particulars sought by the defense. The prosecutor shall furnish the bill of particulars within 10 days after the order of the court. Further particulars may be ordered when a demand therefor is promptly made. A bill of particulars may be amended at any time, subject to such conditions as the interest of justice requires. Any particulars that have been furnished to the defendant pursuant to R. 3:13-3 and 4 shall not be subject to an application pursuant to this rule.

**Note:** Source -- R.R. 3:4-6; amended June 29, 1990, to be effective September 4, 1990; amended July 13, 1994 and December 9, 1994, to be effective January 1, 1995.

### **Rule 3:7-6. Joinder of Offenses**

Two or more offenses may be charged in the same indictment or accusation in a separate count for each offense if the offenses charged are of the same or similar character or are based on the same act or transaction or on 2 or more acts or transactions connected together or constituting parts of a common scheme or plan. Relief from prejudicial joinder shall be afforded as provided by R. 3:15-2.

**Note:** Source -- R.R. 3:4-7; amended August 28, 1979, to be effective September 1, 1979.

### **Rule 3:7-7. Joinder of Defendants**

Two or more defendants may be charged in the same indictment or accusation if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count. The disposition of the indictment or accusation as to one or more of several defendants joined in the same indictment or accusation shall not affect the right of the State to proceed against the other defendants. Relief from prejudicial joinder shall be afforded as provided by R. 3:15-2.

**Note:** Source -- R.R. 3:4-8.

### **Rule 3:7-8. Issuance of a Warrant or Summons Upon Indictment or Accusation Where Defendant Has Not Been Previously Charged**

Upon the return of an indictment or the filing of an accusation, a summons on indictment or warrant on indictment shall be prepared by a law enforcement officer or the prosecutor using the Judiciary's computerized system for issuance by the Assignment Judge or a designated Superior Court judge or, in their absence, by any Superior Court judge assigned to the Law Division in that county in accordance with R. 3:3-1 for each defendant named in the indictment or accusation who has not been previously charged in the matter. A defendant who is the subject of a warrant on indictment is an eligible defendant pursuant to N.J.S.A. 2A:162-15 et seq. If the defendant fails to appear in response to a summons, a bench warrant shall issue.

If a summons on indictment is issued to a defendant who has not been previously held to answer a complaint, the defendant shall undergo all post-arrest identification procedures that are required by law upon arrest, on the return date of the summons, or upon written request of the appropriate law enforcement agency.

**Note:** Source -- R.R. 3:4-9. Amended July 22, 1983 to be effective September 12, 1983; amended July 13, 1994 to be effective January 1, 1995; amended August 30, 2016 to be effective January 1, 2017; caption and text amended July 28, 2017 to be effective September 1, 2017.

### **Rule 3:7-9. Form of Post-Indictment or Post-Accusation Warrant and Summons**

The post-indictment or post-accusation warrant shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty, shall describe the offense charged in the indictment or accusation and shall command that the defendant be arrested and remanded to the county jail pending a determination of conditions of pretrial release or a determination regarding pretrial detention if a motion has been filed by the prosecutor.

The post-indictment or post-accusation summons shall be in the same form as the warrant described above except that it shall be directed to the defendant and require the defendant to appear to plead before the court at a stated time and place. The summons shall also state that if the defendant fails to so appear, a bench warrant for defendant's arrest shall issue.

**Note:** Source -- R.R. 3:4-10(a) (b); amended July 13, 1994 to be effective January 1, 1995; amended August 30, 2016 to be effective January 1, 2017; caption and text amended July 28, 2017 to be effective September 1, 2017.

### **Rule 3:7-10. Execution of Service; Return**

**(a) Execution of Warrant.** The warrant shall be executed in accordance with R. 3:3-3.

**(b) Summons to an Individual.** The summons shall be served upon an individual in accordance with R. 4:4-4.

**(c) Summons to a Corporation.** Service of a summons upon a defendant corporation, municipal or otherwise, shall be made in accordance with R. 4:4-4. If the defendant corporation does not appear, the court shall order the clerk to enter an appearance for said corporation and endorse the plea of not guilty on the indictment or accusation, and further proceedings may then be had thereon in the same manner as if the corporation had appeared and so pleaded. A plea to an indictment or accusation by a defendant corporation shall be made by an attorney of this State.

**(d) Service Upon a Corporation by Publication.** If the summons directed to a corporation is returned "not served" and it appears to the satisfaction of the court that the summons could not be served, the court shall by order direct the corporation to cause its appearance and plea to be entered by a day certain. A copy of such order shall within 5 days after the date thereof be published in a newspaper in this State once, at least 2 weeks preceding the day certain so specified. If the defendant corporation does not appear within the time specified by the order, the court, if satisfied that publication has been duly made, shall direct the clerk to enter an appearance and a plea of "not guilty" for the defendant corporation, and thereupon further proceedings may be had on the indictment or accusation as provided by these rules.

**(e) Return.** The officer executing a warrant shall make prompt return thereof to the court, and at the request of the prosecuting attorney any unexecuted warrant shall be returned and cancelled. The officer serving a summons shall make return thereof on or before the return day. At the request of the prosecuting attorney made at any time while the indictment or accusation is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the clerk to the sheriff or other authorized officer for execution or service.

**Note:** Source -- R.R. 3:4-11, 3:4-12(a) (b), 3:4-13. Paragraph (d) amended July 7, 1971 to be effective September 13, 1971.