

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 7:5. SEARCH WARRANTS; SUPPRESSION

Rule 7:5-1. Filing

(a) **By Whom; Documents to be Filed.** The judge issuing a search warrant shall attach to it the return, inventory, and all other papers related to the warrant, including affidavits and a transcript or summary of any oral testimony and, if applicable, a duplicate original search warrant. The judge shall promptly deliver these documents to the municipal court administrator, who shall file them with the vicinage Criminal Division Manager of the county in which the property was seized. The municipal court administrator shall retain in a confidential file copies of all papers filed with the Criminal Division Manager. If a tape or transmitted recording has been made, the municipal court administrator shall also send them to the Criminal Division Manager, but shall not retain a copy.

(b) **Providing to Defendant; Inspection.** All completely executed warrants, together with the supporting papers and recordings described in paragraph (a) of this rule, shall be provided to the defendant in discovery pursuant to R. 7:7-7 and, upon notice to the county prosecutor and for good cause shown, available for inspection and copying by any other person claiming to be aggrieved by the search and seizure.

Note: Source-R. (1969) 3:5-6(a), (c). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (b) caption and text amended December 4, 2012 to be effective January 1, 2013.

Rule 7:5-2. Motion to Suppress Evidence

(a) **Jurisdiction.** The municipal court shall entertain motions to suppress evidence seized with a warrant issued by a municipal court judge or without a warrant in matters within its trial jurisdiction on notice to the prosecuting attorney and, if the county prosecutor is not the prosecuting attorney, also to the county prosecutor. In matters beyond the trial jurisdiction of the municipal court, and in matters where a search warrant was issued by a Superior Court judge, a motion to suppress evidence shall be made and heard in the Superior Court.

(b) **Procedure.** If the search was made with a warrant, a brief stating the facts and arguments in support of the motion shall be submitted with the notice of motion. The State shall submit a brief stating the facts and arguments in support of the search, within a time as determined by the judge, but no less than 10 days after submission of the motion. If the search was made without a warrant, written briefs in support of and in opposition to the motion to suppress shall be filed either voluntarily or in the discretion of the judge, who shall determine the briefing schedule. All motions to suppress shall be heard before the start of the trial. If the municipal court having jurisdiction over the motion to suppress evidence seized with a warrant has more than one municipal court judge, the motion shall

be heard by a judge other than the judge who issued the warrant, such judge to be designated by the chief judge for that municipal court. If the municipal court having jurisdiction of the motion to suppress evidence seized with a warrant has only one judge, who issued the warrant, the motion to suppress evidence shall be heard by the Municipal Court Presiding Judge for the vicinage, or such municipal court judge in the vicinage that the Assignment Judge shall designate.

(c) Order; Stay.

(1) Order Granting Suppression. An order granting a motion to suppress evidence shall be entered immediately upon decision of the motion. Within ten days after its entry, the municipal court administrator shall provide a copy of the order to all parties and, if the county prosecutor is not the prosecuting attorney, also to the county prosecutor. All further proceedings in the municipal court shall be stayed pending a timely appeal by the State, pursuant to R. 3:24. The property that is the subject of the suppression order shall, if not otherwise subject to lawful detention, be returned to the person entitled to it only after exhaustion by the State of its right to appeal.

(2) Order Denying Suppression. An order denying suppression may be reviewed on appeal from an ensuing judgment of conviction pursuant to R. 3:23 whether the judgment was entered on a guilty plea or on a finding of guilt following trial.

(d) Waiver. Unless otherwise ordered by the court for good cause, defendant's failure to make a pretrial motion to the municipal court pursuant to this rule shall constitute a waiver of any objection during trial to the admission of the evidence on the ground that the evidence was unlawfully obtained.

(e) Effect of Irregularity in Warrant. In the absence of bad faith, no search or seizure made with a search warrant shall be deemed unlawful because of technical insufficiencies or irregularities in the warrant or in the papers or proceedings to obtain it, or in its execution.

Note: Source-Paragraphs (a),(b),(c): R. (1969) 7:4-2(f); paragraph (d): R. (1969) 3:5-7(f). Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (a) and (b) amended, new paragraph (e) caption and text adopted July 27, 2015 to be effective September 1, 2015.

Rule 7:5-3. Search and seizure without a warrant

R. 7:5 shall not be construed to make illegal a lawful search and seizure executed without a warrant.

Note: Source-R. (1969) 3:5-8. Adopted October 6, 1997 to be effective February 1, 1998.

7:5-4. Motion to Suppress Medical Records Obtained Pursuant to Rule 7:7-8(d)

The procedures set forth in Rule 7:5-2 shall apply to a motion to suppress records obtained pursuant to a subpoena issued under Rule 7:7-8(d) to produce medical records related to the presence of alcohol, narcotics, hallucinogens, habit-producing drugs or chemical inhalants in the body of an operator of a vehicle or vessel, in matters within the trial jurisdiction of the municipal court. In matters beyond the jurisdiction of the municipal court, the motion shall be made and heard in the Superior Court.

Note: Adopted July 27, 2015 to be effective September 1, 2015.