

## **RULE 7:8. TRIAL**

### **7:8-1. Mediation of Minor Disputes in Municipal Court Actions**

If a person seeks to file or has filed a complaint charging an offense that may constitute a minor dispute, the court may issue a notice to the person making the charge and the person charged, requiring their appearance before the court or before a person or program designated by the court and approved by the Assignment Judge pursuant to R. 1:40-8 (Mediation of Minor Disputes in Municipal Court Actions). If on the return date of a summons, it appears to the court that the offense charged may constitute a minor dispute, the court may order the persons involved to participate in mediation in accordance with R. 1:40-8. No referral to mediation shall be made, however, if the complaint involves (1) serious injury, (2) repeated acts of violence between the parties, (3) clearly demonstrated psychological or emotional disability of a party, (4) incidents involving the same persons who are already parties to a Superior Court action between them, (5) matters arising under the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.), (6) a violation of the New Jersey Motor Vehicle Code (Title 39), or (7) matters involving penalty enforcement actions.

**Note:** Source-R. (1969) 7:3-2. Adopted October 6, 1997 to be effective February 1, 1998; amended July 5, 2000 to be effective September 5, 2000; caption and text amended June 15, 2007 to be effective September 1, 2007.

### **7:8-2. Place of Trial; Disqualification**

**(a) Generally.** Except as otherwise provided by law, the prosecution for an offense shall take place in the jurisdiction in which the offense was committed.

**(b) Disqualification of Judge.** In the event of the judge's disqualification or inability for any reason to hear a pending matter, the judge, in addition to the provisions of R. 1:12-3(a), may either refer the matter to the Assignment Judge for designation of an acting judge pursuant to N.J.S.A. 2B:12-6 or transfer the matter to a judge sitting in another municipality within the vicinage. The transferee judge may, however, accept the transfer only if:

(1) the transferee judge has been designated as an acting judge of the court of origin by the Assignment Judge of the vicinage, pursuant to N.J.S.A. 2B:12-6 and R. 1:12-3(a); and

(2) the transferring judge has found that transfer of the matter will not substantially inconvenience any party.

Upon completion of the trial, the transferee court shall immediately advise the court of origin of the disposition made and shall remit to it the complaint, judgment, all records, and any fines and costs collected. The court of origin shall retain jurisdiction and shall maintain all necessary records as though the matter had been tried in the court of origin, which shall be responsible for effecting final disposition of the matter. The municipality of the court of origin shall bear the costs of prosecution of the matter.

**Note:** Source-R. (1969) 7:4-3. Adopted October 6, 1997 to be effective February 1, 1998.

### **7:8-3. Adjournment**

On or before the first scheduled trial date, the court may adjourn the trial for not more than fourteen days, except that an adjournment for a longer period or additional adjournments may be granted if the court deems postponement of the trial to be reasonably necessary in the interest of justice. In contested matters, the court shall specify the new trial date in granting the adjournment and shall cause the complaining witness, all defendants, and all other known witnesses to be notified of the adjournment and of the new trial date.

**Note:** Source-R. (1969) 7:4-2(c). Adopted October 6, 1997 to be effective February 1, 1998.

### **7:8-4. Trial of Complaints Together**

The court may order two or more complaints to be tried together if the offenses arose out of the same facts and circumstances, regardless of the number of defendants. In all other matters, the court may consolidate complaints for trial with the consent of the persons charged. Complaints originating in two or more municipalities may be consolidated for trial only with the approval of the appropriate Assignment Judge, who shall designate the municipal court in which trial is to proceed. A party seeking consolidation of complaints originating in different municipalities shall file a written motion for that relief directly with the Assignment Judge.

**Note:** Source-R. (1969) 7:4-2(g) Adopted October 6, 1997 to be effective February 1, 1998.

### **7:8-5. Dismissal**

**(a) Dismissal of Complaint Not Moved.** If the complaint is not moved on the day for trial, the court may direct that it be heard on a specified return date and a notice thereof be served on the complaining witness, all defendants and all other known witnesses. If the complaint is not moved on that date, the court may order the complaint dismissed.

**(b) Dismissal of Complaint by Motion; Recall of Warrant.** A complaint may also be dismissed by the court for good cause at any time on its own motion, on the motion of the State, county or municipality or on defendant's motion. On dismissal, any warrant issued shall be recalled, and the matter shall not be reopened on the same complaint except to correct a manifest injustice.

**(c) Periodic Dismissal of Certain Municipal Court Complaints.** At least annually, after notice to the prosecutor and pursuant to procedures promulgated by the Administrative Director of the Courts, the court shall dismiss all eligible complaints that are more than ten years old, unless the court determines that, in the interests of justice, the complaint should not be dismissed.

**Note:** Source-R. (1969) 7:4-2(i). Adopted October 6, 1997 to be effective February 1, 1998; amended July 28, 2004 to be effective September 1, 2004; text redesignated as paragraph (a) and (b) and paragraph captions added, new paragraph (c) added August 14, 2019 to be effective January 1, 2020.

#### **7:8-6. Transfer to the Chancery Division, Family Part**

An action pending in a municipal court may be transferred to the Superior Court, Chancery Division, Family Part pursuant to R. 5:1-2(c)(3) and R. 5:1-3(b)(2).

**Note:** Source-R. (1969) 7:4-2(j). Adopted October 5, 1998 to be effective February 1, 1998.

#### **7:8-7. Appearances; Exclusion of the Public**

**(a) Presence of Defendant.** Except as otherwise provided by Rules 7:6-1(b), 7:6- 3, or 7:12-3, the defendant shall be present, either in person, or by means of a video link as approved by the Administrative Office of the Courts, at every stage of the proceeding and at the imposition of sentence. If, however, defendant is voluntarily absent after the proceeding has begun in the defendant's presence or the defendant fails to appear at the proceeding after having been informed in open court of the time and place of the proceeding, the proceeding may continue to and including entry of judgment. A corporation, partnership or unincorporated association shall appear by its attorney unless an appearance on its behalf by an officer or agent has been permitted pursuant to R. 7:6- 2(a)(2). The defendant's presence is not, however, required at a hearing on a motion for reduction of sentence.

**(b) Appearance for the Prosecution.** The municipal prosecutor, municipal attorney, Attorney General, county prosecutor, or county counsel, as the case may be, may appear in any municipal court in any action on behalf of the State and conduct the prosecution either on the court's request or on the request of the respective public official. The court may also, in its discretion and in the interest of justice, direct the

municipal prosecutor to represent the State. The court may permit an attorney to appear as a private prosecutor to represent the State in cases involving cross-complaints. Such private prosecutors may be permitted to appear on behalf of the State only if the court has first reviewed the private prosecutor's motion to so appear and an accompanying certification submitted on a form approved by the Administrative Director of the Courts. The court may grant the private prosecutor's application to appear if it is satisfied that a potential for conflict exists for the municipal prosecutor due to the nature of the charges set forth in the cross-complaints. The court shall place such a finding on the record.

**(c) Exclusion of the Public.** In matters involving domestic relations, sex offenses, school truancy, parental neglect, and as may be otherwise provided by law, the court, in its discretion and with defendant's consent, may exclude from the courtroom any person not directly interested in the matter during the conduct of the trial or hearing.

**Note:** Source-R. (1969) 7:4-4(a),(b),(c). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended June 15, 2007 to be effective September 1, 2007.

## **7:8-8. Record of Proceedings; Transcripts**

**(a) Record.** If required by order of the Supreme Court, the municipal court shall cause all proceedings to be recorded by sound recording equipment approved by the Administrative Office of the Courts. If not so required, the court may, at its own expense, cause proceedings to be recorded either by sound recording equipment or by a court reporter. If sound recording equipment is used, or if the proceedings are not otherwise recorded, the court shall permit a record of the proceedings to be made by a certified shorthand reporter at the request and expense of any party. Every sound recording and stenographic record of proceedings made pursuant to this rule shall be retained by the municipal court administrator or by the reporter, as the case may be, for 5 years.

**(b) Transcript.** If the proceedings have been sound recorded, any person may order a transcript from the municipal court administrator, and if the proceedings have been recorded stenographically, any person may order a transcript from the court reporter. The charge shall not exceed the rates as provided by law. The person preparing the transcript shall certify to its accuracy.

**(c) Supervision.** The recording of proceedings and the preparation of transcripts thereof, whether by sound recording or reporters, shall be subject to the supervision and control of the Administrative Director of the Courts.

**Note:** Source-R. (1969) 7:4-5. Adopted October 6, 1997 to be effective February 1, 1998.

## **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, the court may either issue a bench warrant for the defendant's arrest in accordance with R. 7:2-2(c) or issue and mail a failure to appear notice to the defendant on a form approved by the Administrative Director of the Courts. 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).

(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). 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 Cases. In all other 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 on its records, subject to being reopened pursuant to subparagraph (e) of this rule.

**(c) Unexecuted Bench Warrant.** 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 on its records, subject to being reopened pursuant to subparagraph (e) of this rule.

**(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.

## **7:8-9A. Monetary Sanctions for Defendant's Failure to Appear**

**(a) In General.** If without just cause or excuse, a defendant, who is required to appear at a trial, hearing or other scheduled municipal court proceeding fails to appear, the municipal court judge may order that defendant to pay a monetary sanction based on the following factors: (1) defendant's history of failure to appear; (2) defendant's criminal and offense history; (3) the seriousness of the offense; and (4) the resulting inconvenience to the defendant's adversary and to witnesses called by the parties. The judge shall state the reasons for the sanction on the record.

**(b) Maximum Sanction.** For consequence of magnitude cases, the aggregate sanction per case shall not exceed \$100. For other than consequence of magnitude cases, the aggregate sanction per case shall not exceed \$25 for parking offenses and \$50 for all other matters.

**(c) Contempt of Court.** A judge may impose a higher sanction on a defendant for failure to appear only in accordance with the provisions of R. 1:10.

**(d) Calculation of Sanction.** When a case includes multiple offenses, the maximum sanction shall be calculated solely on the most serious offense charged. Only one sanction may be imposed per case.

**(e) Payment of Sanction.** The defendant shall pay the assessed sanction to the municipal court to be disbursed to the municipality where the offense occurred.

**(f) Non-monetary procedures on Failure to Appear.** Non-monetary procedures on failure to appear are addressed in R. 7:8-9.

**Note:** Adopted July 17, 2018 to be effective September 1, 2018.

## **7:8-10. Waiver of Right to Counsel at Trial**

In all cases other than parking cases, a request by a defendant to proceed to trial without an attorney shall not be granted until the judge is satisfied from an inquiry on the record that the defendant has knowingly and voluntarily waived the right to counsel following an explanation by the judge of the range of penal consequences and an advisement that the defendant may have defenses and that there are dangers and disadvantages inherent in defending oneself.

**Note:** Adopted July 16, 2009 to be effective September 1, 2009.

## **7:8-11. Limitations on Pretrial Incarceration**

**(a) Defendants Subject to Limitations on Pretrial Incarceration.** This rule applies to a defendant for whom a Complaint-Warrant (CDR-2) has been issued and who: (1) has been charged with a disorderly persons offense involving domestic violence and is detained pursuant to R. 3:4A, or (2) is detained in jail due to an inability to post monetary bail on the initial disorderly persons offense charged on a Complaint-Warrant (CDR-2). This rule only applies to a defendant who is arrested on or after January 1, 2017, regardless of when the offense giving rise to the arrest was allegedly committed.

**(b) Limitation on Pretrial Incarceration.** A defendant as described in subsection (a) above may not be incarcerated for a time period longer than the maximum period of incarceration for which the defendant could be sentenced for the initial offense charged on the Complaint-Warrant (CDR-2).

**(c) Time Period of Pretrial Incarceration.** This time period of incarceration starts on the day the defendant was initially taken into custody.

**(d) Release.** If a defendant is detained pursuant to subsection (a) of this rule and the maximum period of incarceration is reached pursuant to subsection (b) of this rule, the court shall establish conditions of pretrial release pursuant to R. 3:26 and release the defendant. For matters in which the defendant was issued a Complaint-Warrant (CDR-2), was charged with any offense involving domestic violence, and was detained pursuant to R. 3:4A, a judge of the Superior Court shall conduct a release hearing and make the release decision. In matters in which the defendant has been issued a Complaint- Warrant (CDR-2) and detained in jail due to an inability to post monetary bail on the initial offense charged, a judge with authority to modify the conditions of release shall make the release decision.

**Note:** Adopted August 30, 2016 to be effective January 1, 2017; paragraph (a) amended November 14, 2016 to be effective January 1, 2017.