2002 - 2004 REPORT

OF

THE MUNICIPAL COURT PRACTICE

COMMITTEE

Submitted January 15, 2004

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I. PROPOSED RULE AMENDMENTS RECOMMENDED

I. PROPOSED RULE AMENDMENTS RECOMMENDED

A. State v. Dangerfield and Proposed Amendments to R. 7:2–2 and 7:3-1

Under R. 3:4-1(a)(1), a law enforcement officer is required to take a defendant arrested without a warrant to the police station and to prepare a complaint immediately. In State v. Dangerfield, 171 N.J. 446 (2002), our Supreme Court held that "if, after making a non-pretextual warrantless arrest for a disorderly or petty disorderly persons offense under the Code, the officer, in the exercise of his or her discretion, wishes to issue a summons pursuant to Rule 3:3-1(b)(2) on being satisfied that Rule 3:3-1(c) does not require the issuance of a warrant, he or she need not transport the arrestee to a police station to prepare a complaint-summons contemplated by Rule 3:4-1(a)(1)," Dangerfield at 463. Instead, law enforcement officers are now permitted, in the exercise of their discretion, to issue a complaint-summons and permit the defendant to leave the scene.

The Court inferred that the impact of its holding would be to diminish the frequency of custodial arrests for petty offenses and, therefore, to reduce the number of searches incident to such arrests. The Justices referred the matter to the Criminal Practice Committee to draft an appropriate amendment to R. 3:4-1(a)(1). In turn, the Criminal Practice Committee was charged with referring the matter to the Municipal Practice Committee to draft appropriate changes to Part VII of the Rules consistent with the Court's opinion in Dangerfield.

The Joint Municipal Court Practice-Criminal Practice Subcommittee met to implement the directive of the Court. After studying the matter, the Subcommittee concluded that because the issue in Dangerfield involved the arrest of a defendant who committed a disorderly persons offense, it presented a problem that necessitated an amendment to Part VII of the Rules. In municipal court, an arrest without a warrant for a disorderly or petty disorderly persons offense is governed by R. 7:3-1(b)(1). Similar to R. 3:4-1(a)(1), R. 7:3-1(b)(1) requires a law enforcement officer who makes an arrest without a warrant to take the defendant to the police station where a complaint must be prepared immediately. Thus, R. 7:3-1, rather than R. 3:4-1, applies when an officer makes an arrest without a warrant for a petty offense, unless the offense was a companion to an indictable charge. Accordingly, Rules 7:3-1 and 7:2-2 were amended to permit police officers to issue the Special Form of Complaint and Summons when a defendant is arrested on a disorderly or petty disorderly persons offense and not taken into custody.

As a separate, housekeeping amendment to R. 7:3-1(b)(1), the Committee recommends changing the word "apply" to "applies." The sentence would then provide, "The complaint shall be prepared on a complaint-summons form (CDR-1) unless the law enforcement officer determines that one or more of the factors in R. 7:2-2(b) **[**apply**]** applies ."

Proposed revisions of the rules follow.

7:2-2. Issuance of Arrest Warrant or Summons

(a) Authorization for Process

(1) Citizen Complaint. An arrest warrant or a summons on a complaint charging any offense made by a private citizen may be issued only by a judge or, if authorized by the judge, by a municipal court administrator or deputy court administrator of a court with jurisdiction in the municipality where the offense is alleged to have been committed. The arrest warrant or summons may be issued only if it appears to the judicial officer from the complaint, affidavit, or testimony that there is probable cause to believe that an offense was committed and the defendant has committed it. The judicial officer's finding of probable cause shall be noted on the face of the summons or warrant. If, however, the municipal court administrator or deputy court administrator finds no probable cause exists to issue an arrest warrant or summons, that finding shall be reviewed by the judge. A judge finding no probable cause shall dismiss the complaint.

(2) Law Enforcement Officer Complaint. A summons on a complaint made by a law enforcement officer charging any offense may be issued by a law enforcement officer without a finding by a judicial officer of probable cause for issuance. A law enforcement officer may personally serve the summons on the defendant without making a custodial arrest.

(b) Determination Whether to Issue a Summons or Warrant. A summons rather than an arrest warrant shall issue if the defendant is a corporation, partnership or unincorporated association. If the defendant is an individual, a summons rather than an arrest warrant shall issue unless the judge or duly authorized municipal court administrator or deputy court administrator finds that:

(1) the defendant has failed to respond to a summons; or

(2) there is reason to believe that the defendant is a danger to himself or herself, to others, or to property; or

(3) there is one or more outstanding arrest warrants for the defendant; or

(4) the address of the defendant is not known, and an arrest warrant is necessary to subject the defendant to the jurisdiction of the court; or

(5) the defendant cannot be satisfactorily identified; or

(6) there is reason to believe that the defendant will not appear in response to a summons.

(c) Failure to Appear After Summons. If a defendant who has been served with a summons fails to appear on the return date, an arrest warrant may issue pursuant to law and Rule 7:8-9 (Procedures on Failure to Appear). If a corporation, partnership or unincorporated association has been served with a summons and has failed to appear on the return date, the court shall proceed as if the corporation had appeared and entered a plea of not guilty.

(d) Additional Arrest Warrants or Summonses: More than one arrest warrant or summons may issue on the same complaint.

(e) Identification Procedures. If a summons has been issued or an arrest warrant executed on a complaint charging either the offense of shoplifting or prostitution or on a complaint charging any non-indictable offense where the identity of the person charged is in question, the defendant shall submit to the identification procedures prescribed by N.J.S.A. 53:1-15. Upon the defendant's refusal to submit to any required identification procedures, the court may issue an arrest warrant.

Note: Source-- R. (1969) 7:2, 7:3-1, 3:3-1. Adopted October 6, 1997 to be effective February 1, 1998; Paragraphs (b) and (c) amended July 10, 1998 to be effective September 1, 1998; Paragraph (a)(1) amended July 5, 2000 to be effective September 5, 2000; Paragraph (a)(1) amended, new Paragraph (b)(5) added, and former Paragraph (b)(5) redesignated as Paragraph (b)(6) July 12, 2002 to be effective September 3, 2002.

7:3-1. Procedure After Custodial Arrest

(a) First Appearance; Time. Following the filing of a complaint and service of process upon the defendant, the defendant shall be brought, without unnecessary delay, before the court for a first appearance. If the defendant remains in custody, the first appearance shall be conducted within 72 hours after arrest by a judge with authority to set bail for the offenses charged in the complaint. If the defendant's bail was not set when the arrest warrant on a complaint was issued, bail or other conditions of release shall be set without unnecessary delay, but in no event later than 12 hours after arrest.

(b) Custodial Arrest Without Warrant.

(1) Preparation of a Complaint and Summons or Warrant. A law enforcement officer making a[n] custodial arrest without a warrant shall take the defendant to the police station where a complaint shall be immediately prepared. The complaint shall be prepared on a complaint-summons form (CDR-1 or Special Form of Complaint and Summons), unless the law enforcement officer determines that one or more of the factors in R. 7:2-2(b) [apply] applies. Upon such determination, the law enforcement officer shall prepare a complaint-warrant form (CDR-2).

(2) Probable Cause; Issuance of Process; Bail. If a complaint-warrant form (CDR-2) is prepared, the law enforcement officer shall, without unnecessary delay, but in no event later than 12 hours after arrest, present the matter to a judge, or in the absence of a judge, to a municipal court administrator or deputy court administrator who has been granted authority to set bail for the offense charged. The judicial officer shall determine whether there is probable cause to believe that the defendant has committed an offense. If probable cause is found, a summons or warrant may issue, but if the judicial officer determines that the defendant will appear in response to a summons, a summons shall be issued consistent with the standard prescribed by R. 7:2-2(b). If a warrant is issued, bail shall be set without unnecessary delay, but in no event later than 12 hours after arrest. The finding of probable cause shall be noted on the face of the summons or warrant. If no probable cause is found, no process shall issue and the complaint shall be dismissed by the judge.

(3) Summons. If a complaint-summons form (CDR-1 or Special Form of Complaint and Summons) has been prepared, or if a judicial officer has determined that a summons shall issue, the summons shall be served and the defendant shall be released after completion of post-arrest identification procedures required by law and pursuant to R. 7:2-2(e).

(c) Procedure After Non-Custodial Arrest: A law enforcement officer charging any offense may personally serve a complaint-summons (Special Form of Complaint and Summons) at the scene of the arrest without taking the defendant into custody.

Note: Source - R. (1969) 7:2, 7:3-1, 3:4-1. Adopted October 6, 1997 to be effective February 1, 1998; Paragraphs (b)(1) and (b)(2) amended July 12, 2002 to be effective September 3, 2002.

B. Electronic Signatures – Amendments to R. 7:2-1*

The Administrative Office of the Courts, along with a number of outside agencies, is in the process of implementing a number of new technologies that will enable law enforcement officers and other authorized personnel to issue process electronically. For instance, the Parking Authority Ticket System (PATS), a hand-held, ticket-issuing device for use by approved parking authorities or parking agencies, has recently been enhanced to permit operators to issue tickets using an instrument to cause an electronic signature to be written on the printed ticket. The result is that the integrity of the system is maintained, while the system is made more efficient and easier to use.

More recently, in 2003, the Administrative Office of the Courts received a Federal grant to develop an Internet (or web) enabled CDR (criminal complaint) system. The system will allow criminal complaints to be processed (i.e., prepared, reviewed for a probable cause determination and issued) via the Internet. Implementation of this project is set to begin this year.

Finally, the Administrative office of the Courts is working along with the New Jersey State Police to develop an "e-ticket." This will be an electronic form of process (the Uniform Traffic Ticket and the Special Form of Complaint and Summons) that will allow police officers to write and issue tickets electronically.

In order to take advantage of this new technology, the Committee recommends the adoption of a rule that would allow the use of an electronic signature in lieu of an original signature on the various forms of process. Accordingly, the Committee has amended R. 7:2-1 to make electronic signatures the equivalent of original, hand- written signatures.

The proposed amendments for the Court's consideration are as follows:

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* In the following Section "C" of this Report, the Committee recommends amendments to R. 7:2-1, in addition to the ones contained here in Section "B", "Electronic Signatures." However, the following recommended revisions pertain only to electronic signatures.

7:2-1**.** Contents of Complaint, Arrest Warrant and Summons

(a) Non-Traffic Offenses

(1) Complaint: General. The complaint shall be a written statement of the essential facts constituting the offense charged made on a form approved by the Administrative Director of the Courts. Except as otherwise provided by Paragraphs (b) (Traffic Offenses), (c) (Penalty Enforcement Proceedings), and (d) (Special Form of Complaint and Summons), all complaints shall be by certification or an oath before a judge or other person so authorized by N.J.S.A. 2B:12-21. The municipal court administrator or deputy court administrator shall accept for filing every complaint made by any person.

(2) Summons: General. The summons shall be on a Complaint-Summons form (CDR-1) or other form prescribed by the Administrative Director of the Courts and shall be signed by the officer issuing it. An electronic entry of the signature [hereinafter referred to as electronic signature] of any law enforcement officer or other person authorized by law to issue a Complaint-Summons shall be equivalent to and have the same force and effect as an original signature. The summons shall be directed to the defendant named in the complaint, shall require defendant's appearance at a stated time and place before the court in which the complaint is made, and shall inform defendant that an arrest warrant may be issued for a failure to appear.

(3) Arrest Warrant: General. The arrest warrant shall be made on a Complaint-Warrant form (CDR-2) or other form prescribed by the Administrative Director of the Courts and shall be signed by the judge, or when authorized by the judge, by the municipal court administrator or deputy court administrator. The warrant shall contain the defendant's name or, if unknown, any name or description that identifies the defendant with reasonable certainty. It shall be directed to any officer authorized to execute it and shall order that the defendant be arrested and brought before the court issuing the warrant. The judicial officer issuing a warrant may specify therein the amount and conditions of bail, consistent with R. 7:4, required for defendant's release.

(b) Traffic Offenses.

(1) Form of Complaint and Process. The Administrative Director of the Courts shall prescribe the form of Uniform Traffic Ticket to serve as the complaint, summons or other process to be used for all parking and other traffic offenses. On a complaint and summons for a parking or other non-moving traffic offense, the defendant need not be named. It shall be sufficient to set forth the license plate number of the vehicle, and its owner or operator shall be charged with the violation.

(2) Issuance. The complaint may be made and signed by any person, but the summons shall be signed and issued only by a law enforcement officer or other person authorized by law to issue a Complaint-Summons, the municipal court judge, municipal court administrator or deputy court administrator of the court having territorial jurisdiction. An electronic signature of any law enforcement officer or other person authorized by law to issue a Complaint-Summons shall be equivalent to and have the same force and effect as an original signature.

(3) Records and Reports. Each court shall be responsible for all Uniform Traffic Tickets printed and distributed to law enforcement officers or others in its territorial jurisdiction, for the proper disposition of Uniform Traffic Tickets, and for the preparation of such records and reports as the Administrative Director of the Courts prescribes. The provisions of this subparagraph shall apply to the Director of the Division of Motor Vehicles, the Superintendent of State Police in the Department of Law and Public Safety, and to the responsible official of any other agency authorized by the Administrative Director of the Courts to print and distribute the Uniform Traffic Ticket to its law enforcement personnel.

(c) Penalty Enforcement Proceedings. Unless a special form of complaint and summons is prescribed by the Administrative Director of the Courts for use in the municipal courts, the complaint and summons in a penalty enforcement proceeding shall conform to the form of civil complaint and summons prescribed by Part IV of the Rules of Court or other form approved by the Administrative Director of the Courts.

(d) Special Form of Complaint and Summons. In the event the Administrative Director of the Courts prescribes a special form of complaint and summons for any action or class or classes of actions, that form shall be used in the prescribed manner in place of any other form of complaint and process prescribed by this rule.

Note: Source-Paragraph (a): R. (1969) 7:2, 7:3-1, 3:2-1; Paragraph (b): R. (1969) 7:2, 7:3-1, 7:6-1, 3:2-2; Paragraph (c): R. (1969) 7:2, 7:3-1, 7:6-1, 3:2-3; Paragraph (d): R. (1969) 7:6-1; Paragraph (e): R. (1969) 4:70-3(a); Paragraph (f): new. Adopted October 6, 1997 to be effective February 1, 1998; Paragraph (a) caption added, former Paragraph (a) amended and redesignated as Paragraph (a)(1), former Paragraph (b) amended and redesignated as Paragraph (a)(2), former Paragraph (c) redesignated as Paragraph (a)(3), former Paragraph (d) redesignated as Paragraph (b), former Paragraph (e) caption and text amended and redesignated as Paragraph (c), and former Paragraph (f) redesignated as Paragraph (d) July 12, 2002 to be effective September 3, 2002.

C. Penalty Enforcement Actions -- Proposed Amendments to Rules 7:2-1* and 7:2-2; Proposed Deletion of R. 7:11

In its effort to create a stand-alone version of the municipal court practice rules within Part VII, the Committee, in 1997, recommended the adoption of R. 7:11 governing summary proceedings for the collection of statutory penalties. Rule 7:11 was taken directly from R. 4:70. Only minor changes were made to bring the provisions in line with municipal court terminology and practice. For example, reference to providing injunctive relief in the judgment of conviction was deleted from the Part VII draft. Compare R. 4:70-5(a) with R. 7:11-5(a).

Two years later, the statutes governing summary proceedings for the collection of penalties were repealed and replaced by P.L. 1999, c. 274, §4, the Penalty Enforcement Law of 1999. N.J.S.A. 2A:58-10 *et seq*. Under the Penalty Enforcement Law of 1999, if the statute that establishes the civil penalty provides that the action may be brought in municipal court, the action may be brought in any municipal court with territorial jurisdiction over the action or in Superior Court. N.J.S.A. 2A:58-11b. The court is to decide penalty enforcement proceedings in a summary manner without a jury. N.J.S.A. 2A:58-11c.

Further, the court is required to hear testimony on any factual issues, just as in any other case. If the court finds that a violation has occurred, it must impose the statutorily mandated penalty. The defendant has the right to contest the amount of the penalty. N.J.S.A. 2A:58-11c.

After a review of the rules governing penalty enforcement proceedings, the Committee determined that much of the content was unnecessary, repetitive, archaic, and not in general compliance with the Penalty Enforcement Law of 1999 and, thus, in need of revision. Moreover, some parts of these rules did not comport with other rules in Part VII or had never been incorporated into municipal court practice. Therefore, in an effort to update and streamline the rules, the Committee culled out those sections that were relevant and included them in more appropriate Part VII rules. The result was that nearly all of R. 7:11 was revised or eliminated.

Deputy Attorney General Neil Magnus, who is experienced in penalty enforcement actions on behalf of several agencies of the State, was afforded the opportunity to consider these proposed changes. DAG Magnus was in agreement with all of the amendments and deletions set forth below.

The proposed revisions to Rules 7:2-1 & 7:2-2 and the proposed deletion R. 7:11 are as follows:

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* In prior Section "B" of this Report, the Committee recommends amendments to R. 7:2-1 in addition to the ones contained here in Section "C", "Penalty Enforcement Actions." However, the following recommended revisions to R. 7:2-1 pertain only to modifications recommended in conjunction with the deletion of R. 7:11.

7:2-1. Contents of Complaint, Arrest Warrant and Summons

[(a) Non-Traffic Offenses]

(a) Complaint: General. The complaint shall be a written statement of the essential facts constituting the offense charged made on a form approved by the Administrative Director of the Courts. Except as otherwise provided by Paragraphs (d) (Uniform Traffic Tickets), (e) (penalty proceeding complaints), and (f) (special form of complaint and summons), all complaints shall be by certification or on oath before a judge or other person so authorized by N.J.S.A. 2B:12-21. The municipal court administrator or deputy court administrator shall accept for filing every complaint made by any person.

(b) Summons: General. The summons shall be on a Complaint-Summons form (CDR-1) or other form prescribed by the Administrative Director of the Courts and signed by the officer issuing it. The summons shall be directed to the defendant named in the complaint, shall require defendant's appearance at a stated time and place before the court in which the complaint is made, and shall inform defendant that an arrest warrant may be issued for a failure to appear.

(c) Arrest Warrant: General. The arrest warrant shall be made on a Complaint-Warrant form (CDR-2) or other form prescribed by the Administrative Director of the Courts and shall be signed by the judge or, when authorized by the judge, by the municipal court administrator or deputy court administrator. The warrant shall contain the defendant's name or, if unknown, any name or description that identifies the defendant with reasonable certainty. It shall be directed to any officer authorized to execute it and shall order that the defendant be arrested and brought before the court issuing the warrant. The judicial officer issuing a warrant may specify therein the amount and conditions of bail, consistent with R. 7:4, required for defendant's release.

(d) Traffic Offenses.

(1) Form of Complaint and Process. The Administrative Director of the Courts shall prescribe the form of Uniform Traffic Ticket to serve as the complaint, summons or other process to be used for all parking and other traffic offenses. On a complaint and summons for a parking or other non-moving traffic offense, the defendant need not be named. It shall be sufficient to set forth the license plate number of the vehicle, and its owner or operator shall be charged with the violation.

(2) Issuance. The complaint may be made and signed by any person, but the summons shall be signed and issued only by a law enforcement officer or the judge, municipal court administrator or deputy court administrator of the court having territorial jurisdiction.

(3) Records and Reports. Each court shall be responsible for all Uniform Traffic Tickets printed and distributed to law enforcement officers or others in its territorial jurisdiction for the proper disposition of Uniform Traffic Tickets and for the preparation of such records and reports as the Administrative Director of the Courts prescribes. The provisions of this subparagraph shall apply to the Director of the Division of Motor Vehicles, the Superintendent of State Police in the Department of Law and Public Safety, and to the responsible official of any other agency

authorized by the Administrative Director of the Courts to print and distribute the Uniform Traffic Ticket to its law enforcement personnel.

(e) [Penalty Proceedings. Unless a special form of complaint and summons is prescribed by the Administrative Director of the Courts for use in the municipal courts, the complaint and summons in a penalty proceeding shall conform to the form of civil complaint and summons prescribed by Part IV of the Rules of Court or other form approved by the Administrative Director of the Courts.**]**

[(f)**]** Special Form of Complaint and Summons. **[**In the event the Administrative Director of the Courts prescribes a**]** A special form of complaint and summons, as prescribed by the Administrative Director of the Courts, for any action [or class or classes of actions, that form] shall be used in the manner prescribed by the Administrative Director of the Courts [manner] in place of any other form of complaint and process **[**prescribed by this rule**]**.

(f) Use of Special Form of Complaint and Summons in Penalty Enforcement Proceedings. The Special Form of Complaint and Summons, as prescribed by the Administrative Director of the Courts, shall be used for all penalty enforcement proceedings in the municipal court and for all actions which may involve the confiscation and/or forfeiture of chattels, which are permitted by statute to be brought in the municipal courts. If the Special Form of Complaint and Summons is made by a governmental body or officer, it may be certified or verified on information and belief by any person duly authorized to act on its or the State's behalf.

Note: Source- Paragraph (a): R. (1969) 7:2, 7:3-1, 3:2-1; Paragraph (b): R. (1969) 7:2, 7:3-1, 7:6-1, 3:2-2; Paragraph (c): R. (1969) 7:2, 7:3-1, 7:6-1, 3:2-3; Paragraph (d): R. (1969) 7:6-1; Paragraph (e): R. (1969) 4:70-3(a); Paragraph (f): new. Adopted October 6, 1997 to be effective February 1, 1998; text of Paragraph (e) deleted and text of Paragraph (f) and new text substituted _____, _____, 20___ to be effective _____, _____, 20___.

7:2-2. Issuance of Arrest Warrant or Summons

(a) Authorization for Process.

(1) Citizen Complaint. An arrest warrant or a summons on a complaint charging any offense made by a private citizen may be issued only by a judge or, if authorized by the judge, by a municipal court administrator or deputy court administrator of a court with jurisdiction in the municipality where the offense is alleged to have been committed. The arrest warrant or summons may be issued only if it appears to the judicial officer from the complaint, affidavit or deposition that there is probable cause to believe that an offense was committed and the defendant has committed it. The judicial officer's finding of probable cause shall be noted on the face of the summons or warrant. If, however, the municipal court administrator or deputy court administrator finds no probable cause exists to issue an arrest warrant or summons, that finding shall be reviewed by the judge. A judge finding no probable cause shall dismiss the complaint.

(2) Law Enforcement Officer Complaint. A summons on a complaint made by a law enforcement officer charging any offense may be issued by a law enforcement officer or by any person authorized to do so by statute without a finding by a judicial officer of probable cause for issuance.

(b) Determination whether to Issue a Summons or Warrant. A summons rather than an arrest warrant shall issue if the defendant is a corporation, partnership or unincorporated association. If the defendant is an individual, a summons rather than an arrest warrant shall issue unless the judge or duly authorized municipal court administrator or deputy court administrator finds that:

(1) the defendant has failed to respond to a summons; or

(2) there is reason to believe that the defendant is a danger to himself or herself, to others, or to property; or

(3) there is one or more outstanding arrest warrants for the defendant; or

(4) the address of the defendant is not known and an arrest warrant is necessary to subject the defendant to the jurisdiction of the court; or

(5) there is reason to believe that the defendant will not appear in response to a summons.

(c) Failure to Appear After Summons. If a defendant who has been served with a summons fails to appear on the return date, an arrest warrant may issue pursuant to law and Rule 7:8-9 (Procedures on Failure to Appear). If a corporation, partnership or unincorporated association has been served with a summons and has failed to appear on the return date, the court shall proceed as if the corporation had appeared and entered a plea of not guilty.

(d) Additional Arrest Warrants or Summonses. More than one arrest warrant or summons may issue on the same complaint.

(e) Identification Procedures. If a summons has been issued or an arrest warrant executed on a complaint charging either the offense of shoplifting or prostitution or on a complaint charging any non-indictable offense where the identity of the person charged is in question, the defendant shall submit to the identification procedures prescribed by N.J.S.A. 53:1-15. Upon the defendant's refusal to submit to any required identification procedures, the court may issue an arrest warrant.

Note: Source R. (1969) 7:2, 7:3-1, 3:3-1. Adopted October 6, 1997 to be effective February 1, 1998; Paragraphs (b) and (c) amended July 10, 1998 to be effective September 1, 1998; Paragraph (a)(1) amended July 5, 2000 to be effective September 5, 2000; Paragraph (a)(2) amended , , 20 to be effective , , 20 .

[R. 7:11. SUMMARY PROCEEDINGS FOR COLLECTION OF STATUTORY PENALTIES

7:11-1. Applicability of Rule

This rule governs the collection or enforcement of a penalty prescribed by a statute or ordinance that confers jurisdiction on the municipal courts to entertain such actions by way of a summary civil proceeding. The municipal courts may not, however, entertain such actions if the statute requires collection or enforcement by a plenary action. Proceedings for the confiscation or forfeiture of chattels shall conform, as much as possible, with the provisions of R. 7:11.

Note: Source - R. (1969) 7:9, 4:70-1(a). Adopted October 6, 1997 to be effective February 1, 1998.

7:11-2 . Complaint; Verification

The complaint, which shall be in writing and verified, shall specify: (1) the person alleged to have violated the provision of a statute or ordinance imposing a penalty in a summary manner, (2) the specific provision of the statute or ordinance violated, and (3) the time, place and nature of the violation. If the complaint is made by a governmental body or officer, it may be verified on information and belief by any person duly authorized to act on its or plaintiff's behalf.

Note: Source - R. (1969) 7:9, 4:70-2. Adopted October 6, 1997 to be effective February 1, 1998.

7:11-3. Process

(a) Issuance; Return; Warrant or Summons; Service. Upon the filing of a complaint, a summons specifying the provisions of the statute or ordinance alleged to have been violated shall issue and shall be returnable in not less than five, nor more than 15 days. If, however, the statute or ordinance so provides, a warrant may issue in lieu of a summons without court order and, if issued, shall be returnable immediately. The Administrative Director of the Courts may prescribe special forms of complaint and summons for use in proceedings under R. 7:11. A law enforcement officer may make and sign any such prescribed complaint and summons, and, after compliance with R. 7:2-1(a), (e), and (f), R. 7:2-2(a) and R. 7:11-2, may issue and serve the summons upon the defendant and thereafter file the complaint promptly with the court named in the complaint. The prescribed complaint and summons may also be issued, served and executed by any person authorized to do so in the court in which the proceedings are brought or by any other person designated for that purpose by the statute imposing the penalty.

(b) Arrest Without a Warrant. If the statute imposing the penalty authorizes arrest without a warrant for a violation committed within the view of a law enforcement officer, the law enforcement officer shall, on making an arrest, bring the defendant before a court having jurisdiction of the proceedings and shall immediately file a complaint. In that event, no process for the defendant's appearance shall issue, but upon the filing of the complaint, the matter shall proceed as though process had issued and had been there and then duly served and returned.

(c) Authority of Municipal Court Administrator as to Process. The municipal court administrator or deputy court administrator of the court in which the proceedings are instituted may sign, seal, and issue any process required to be issued under R. 7:11, except a warrant of commitment.

Note: Source - R. (1969) 7:9, 4:70-3. Adopted October 6, 1997 to be effective February 1, 1998; Paragraph (a) amended July 5, 2000 to be effective September 5, 2000.

7:11-4. Penalties; Payment; Hearing

(a) Payment Upon Plea of Guilty. For violations where the statutory or ordinance penalty does not exceed $50 for each offense, including where the minimum statutory or ordinance penalty does not exceed $50 for each offense, the defendant at any time before the hearing date may pay the penalty and costs by appearing before the court or violations clerk or by mailing the same to the court or violations clerk, subject to the limitations prescribed in R. 7:12. The tender of payment for an offense to the Violations Bureau, without a signed guilty plea and waiver, may be accepted by the clerk and shall have the effect of a guilty plea. The court may process the payment and enter a guilty finding to the offense on its records. That finding shall be subject to being reopened at any time, in the court's discretion, on motion by either the court or the defendant.

(b) Summary Hearing; Judgment Without Filing of Pleadings. On the return of the process or on the day to which the trial has been adjourned, the court in which the proceedings were instituted shall summarily, without the filing of any pleadings except the complaint, hear the testimony and determine and give judgment in the matter, whether for the recovery of money penalty or costs or both, or otherwise, or for the defendant.

(c) Adjournment of Hearing; Defendant Detained; Bond for Release During Adjournment. If the court in which the proceedings were instituted adjourns the hearing, it shall, except where the first process was a summons, detain the defendant in custody, unless the defendant makes a deposit in cash in the amount of the penalty claimed and costs or enters into a bond with at least one sufficient surety in double the amount of the penalty claimed and costs or, if there is no money penalty, then in such sum, not exceeding $500, as the court fixes, conditioned for the defendant's appearance on the adjourned date and from day to day thereafter until judgment is rendered and further conditioned, unless the court otherwise orders, to abide by the judgment of the court. If the plaintiff is a governmental body or officer, the bond shall run to it and, if forfeited, may be prosecuted by the obligee. If the plaintiff is the government, the bond shall run to it and, if forfeited, may be prosecuted at the relation of a person authorized by law to prosecute the penalty proceeding.

Note: Source - R. (1969) 7:9, 4:70-4. Adopted October 6, 1997 to be effective February 1, 1998; Paragraph (a) amended July 5, 2000 to be effective September 5, 2000.

7:11-5. Judgment; Commitment

(a) Form of Judgment. The judgment of conviction in proceedings under R. 7:11 shall be signed by the judge rendering it and shall be in the form prescribed by the Administrative Director of the Courts.

(b) Commitment of Defendant Failing to Pay Judgment. If the statute imposing the penalty provides for commitment of the defendant on the failure immediately to pay the amount of any money judgment rendered against the defendant, the court shall direct defendant's commitment to any institution and, for such time as the statute authorizes, unless the judgment is sooner paid. The form of commitment shall be added beneath the signature to the judgment, signed in duplicate by the judge and in the form prescribed by the Administrative Director of the Courts. One of the duplicates shall serve as the warrant of commitment.

(c) Money Judgment, Execution, Property and Persons Subject To. If a money judgment is rendered against a defendant, execution may issue, in the form prescribed by the Administrative Director of the Courts, against the goods and chattels of the defendant; against defendant's real estate if the judgment is entered on the Civil Judgment and Order Docket in accordance with R. 4:10; and against the body of an individual defendant, provided the court in which the judgment is rendered shall by special order so direct and shall designate in said order the maximum number of days during which the defendant may be detained in custody under that body execution.

(d) Costs. The costs prescribed by the statute imposing the penalty in any proceeding under R. 7:11 shall be recovered by the plaintiff if the judgment is rendered against the defendant.**]**

Note: Source - R. (1969) 7:9, 4:70-5. Adopted October 6, 1997 to be effective February 1, 1998.

D. Proposed Amendments to R. 7:2-3, R. 7:2-4 and New R. 7:2-5 – Service of Process

The Municipal Court Practice Committee recommends to the Supreme Court amendments to Rules 7:2-3, 7:2-4 and a renumbering of prior R.7:2-4 to R.7:2-5 to streamline and enhance service of process procedures in the municipal courts. The Committee originally proposed these amendments in 2001. At its January 14, 2002 Administrative Conference, the Supreme Court determined not to act on the Committee's recommendations at that time because of the pendency of a case before it relative to service by mail in the Special Civil Part. The Court based its decision to defer action on the Committee's recommendations on the fact that the Committee, in drafting those rules, drew significantly from the rules for simultaneous service found in R. 6:2-3(d), "Service by Mail Program," used in the Special Civil Part.

On May 7, 2002, the Supreme Court issued its opinion in First Resolution v. Seker, 171 N.J. 502 (2002). The Committee was then asked by the Administrative Director to review its proposed service of process rules in light of the Seker decision and determine whether it would be timely to present those proposals to the Court or whether further revisions needed to be made.

On May 13, 2002, the Committee considered the impact of Seker on its previous rule recommendations and concluded that the proposed rules were in accord with that case, except that the U.S. Postal Service endorsements listed in the proposed rules should be updated to be consistent with current postal practices. Seker, 171 N.J. at 517 (asking the Civil Practice Committee, with input from the Special Civil Part Practice Committee, to review whether the postal designations listed in R. 6:2-3(d)(4) were inconsistent with existing post office practices and, if so, to recommend updated language for the rule).[1]

Thus, the postal designations in R. 7:2-4(b)(3) were amended to mirror the corresponding postal endorsements of the United States Postal Service (USPS) contained in its current Postal Bulletin. Proposed R. 7:2-4(b)(3) lists only the more common postal designations, rather than all 24 possible endorsements listed in the official Postal Bulletin. In addition, the introductory phrase "Consistent with due process of law" contained in R. 6:2-3(d)(4) was added to R. 7:2-4 for consistency.

In its original submission to the Supreme Court in 2001, the Municipal Practice Committee presented a detailed background, analysis and summary of the proposed service of process rules. That presentation, which follows, remains the same with the exception of R. 7:2-4(b)(3) noted above.

[1] Following the Municipal Court Practice Committee's action, pursuant to Guideline 10 (Coordination Among Rule Committees) of the Operational Guidelines for Supreme Court Committees, staff to the Municipal Court Practice Committee and the Special Civil Part Practice Committee coordinated their efforts to conform, to the greatest extent possible, the proposed language of R. 7:2-4(b)(3) to changes that were to be developed for R. 6:2-3(d)(4) to comply with the Seker decision in the Special Civil Part. As a result of these efforts, staff to the Special Civil Part Committee has strongly endorsed and will recommend to this Committee the adoption of the identical, updated postal endorsements contained in proposed R. 7:2-4(b)(3). We were advised that a subcommittee of the Special Civil Part Practice Committee will be taking this matter up at a future meeting.

R. 7:2-3, governing service of process of a Complaint-Summons, requires service to be effected in accordance with R. 4:4-4. R. 4:4-4 (c) provides that ". . . service, in lieu of personal service, may be made by registered, certified or ordinary mail, provided, however, that such service shall be effective for obtaining *in personam* jurisdiction only if the defendant answers the complaint or otherwise appears in response thereto. If defendant does not answer or appear within 60 days following mailed service, service shall be made as is otherwise prescribed by this rule, and the time prescribed by R. 4:4-1 for issuance of the summons shall then begin to run anew."

Currently, law enforcement officers personally serve the overwhelming majority of the approximately six million cases filed in the municipal courts each year. However, there are some cases, such as private citizen complaints and code enforcement matters, where service is normally attempted by mail pursuant to R. 4:4-4(b) & (c). Within this latter category, there are many instances when a defendant can avoid prosecution by not filing an answer or appearing in response to the complaint within 60 days of the mailed service.

To remedy this problem, the Committee proposes the adoption of amendments to Rules 7:2-3, 7:2-4 and a renumbering of prior R.7:2-4 to R.7:2-5. These revisions are designed to ensure that the defendant receives actual notice of a Complaint-Summons served by mail. It will effectively enable the court to gain *in personam* jurisdiction over the defendant and concomitantly ensure that the defendant's due process rights are not abrogated.

Proposed R. 7:2-4 permits the court to mail a Complaint-Summons to the last known mailing address of the defendant. If the defendant appears in court or acknowledges receipt of the Complaint-Summons, orally or in writing[2], service will be deemed to be effective. Frequently, in those instances where service is attempted by mail, the defendant will contact the court telephonically to determine the nature and status of the case. Such oral contact with the court rises to the level of an answer or appearance. If the defendant fails to respond to the complaint, the court may re-attempt service if it is provided with a different, updated address for the defendant, along with a postal verification or other satisfactory proof that the defendant receives mail at that address.

If service is attempted by ordinary mail and the defendant does not appear in court on the first appearance date or does not contact the court orally or in writing by that date, the court may send the Complaint-Summons simultaneously by ordinary mail and certified mail with return receipt requested to the defendant's last known mailing address.[3] Service by simultaneous mailing will be deemed effective service, unless the mail is returned to the court by the postal service and is marked "Moved, Left No Address, Attempted - Not Known, No Such Number, No Such Street, Insufficient Address, Not Deliverable as Addressed--Unable to Forward" or the court has other reason to believe that service was not effected. However, if the certified mail is returned to the court marked, "Refused or Unclaimed," service is effective providing that the ordinary mail has not been returned. Thus, if the defendant fails or refuses to claim or to accept delivery of the certified mail, the simultaneous, ordinary mailing shall be deemed to constitute effective service.

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[2] R. 4:4-4 contemplates either the filing of a written answer or a personal appearance in court by the defendant. In municipal court practice, answers are not permitted**.**

[3] The Committee was guided, in large part, by the provisions for simultaneous service set forth in R. 6:2-3(d) (Service by Mail Program).

The proposed rule amendments also provide a detailed procedure for the municipal courts to follow when *in personam* jurisdiction has not been obtained. If the municipal court cannot obtain effective service over the defendant after attempting service by simultaneous mailing, the court shall provide written notice of that fact to the prosecuting attorney and the complaining witness. The case will be eligible for dismissal unless, within 45 days of the receipt of the written notice, the prosecuting attorney or the complaining witness can provide the court with a different, updated address for the defendant, along with a postal verification or other satisfactory proof that the defendant receives mail at that address. It should be noted that the provisions of this proposed revision do not preclude the prosecuting attorney or other authorized person from attempting service in any other lawful manner.

If the prosecuting attorney and complaining witness do not respond to the court's written notice within 45 days or if the defendant is not otherwise served, the court may dismiss the case.

In conclusion, the recommended rule amendments would enable the municipal courts to obtain *in personam* jurisdiction over defendants in all cases, not only those brought and served by law enforcement officers, by the use of simultaneous service by mail. These proposed rule amendments will also serve to protect the due process rights of defendants by requiring an alternative form of notice in the event the defendant does not respond to the initial complaint.

Therefore, the Committee respectfully recommends at this time that the Court consider the adoption of these three proposed rules. The Committee further requests that the Court make these rules, if adopted, effective four months from the date of adoption to allow sufficient programming time to properly modify the ATS/ACS system.

Attached, for the Supreme Court's consideration, are the proposed revisions to Rules 7:2-3, 7:2-4 and a renumbering of prior R.7:2-4 to R.7:2-5.

7:2-3. Arrest Warrant: Execution and Service: Return

[(a) Arrest Warrant.]

[(1)] (a) By Whom Executed; Territorial Limits. An arrest warrant shall be executed by any officer authorized by law. The arrest warrant may be executed at any place within this State. A law enforcement officer arresting a defendant outside the territorial jurisdiction of the court that issued the warrant shall take the defendant, without unnecessary delay, before the nearest committing judge authorized to admit to bail in accordance with R. 7:4-2(a) and any other applicable rule of court.

[(2)] (b) How Executed. The arrest warrant shall be executed by the arrest of the defendant. The law enforcement officer need not possess the warrant at the time of the arrest, but upon request, the officer shall show the warrant or a copy of an Automated Traffic System/Automated Complaint System (ATS/ACS) electronic record evidencing its issuance to the defendant as soon as possible. If the law enforcement officer does not have the actual warrant to show or does not have access to an ATS/ACS printer to produce a copy of the electronic record at the time of the arrest, the officer shall inform the defendant of the offense charged and that an arrest warrant has been issued.

[(3)] (c) Return. The law enforcement officer executing an arrest warrant shall make prompt return of the arrest warrant to the court that issued the warrant. If the arrested defendant is not admitted to bail, the arresting officer shall notify the court issuing the arrest warrant by telephone or other electronic means of communication of the date and time of the arrest and the place of the defendant's incarceration.

[(b) Summons.

(1) Generally. The summons shall be served in accordance with R. 4:4-4. Service of the complaint by mail in accordance with R. 4:4-4 may be attempted either by the court or the law enforcement agency that prepared the complaint. If the law enforcement agency attempts to serve a defendant not in custody by mail, service shall not be made until an initial court date for the first appearance is fixed by the municipal court administrator, deputy court administrator, or other authorized court employee.

(2) Parking Offenses. A copy of the Uniform Traffic Ticket prepared and issued out of the presence of the defendant charging a parking offense may be served by affixing it to the vehicle involved in the violation.

(3) Corporations, Partnerships and Unincorporated Associations. A copy of the Uniform Traffic Ticket charging a corporation, partnership or unincorporated association with a violation of a statute or ordinance relating to motor vehicles may be served upon the operator of the vehicle.

(4) Return. The law enforcement officer serving a summons shall make return of the summons on or before the return date to the court before whom the summons is returnable.]

Note: Source - Paragraph (a): R. (1969) 7:2; 7:3-1, 3:3-3(a), (b), (c), (e); Paragraphs (b)(1), (2), (3): R. (1969) 7:3-1: Paragraph (b)(4): R. (1969) 7:2, 7:3-1, 3:3-3(e). Adopted October 6, 1997 to be effective February 1, 1998; title amended and Paragraphs (a)(1), (2) & (3) renumbered as Paragraphs (a), (b) & (c); Paragraphs (b)(1) through (4) redesignated and amended as Paragraphs (a)(1), (a)(2), (d),(e) and (f) of R. 7:2-4 to be effective , 2004

7:2-4. Summons: Execution and Service; Return

(a) Summons; Personal Service Under R. 4:4-4 or By Ordinary Mail.

(1) The Complaint-Summons shall be served personally in accordance with R. 4:4-4(a), by ordinary mail or by simultaneous mailing. Service of the Complaint-Summons by ordinary mail may be attempted by the court, by the law enforcement agency that prepared the complaint or by an agency or individual authorized by law to serve process

(2) Service by ordinary mail shall have the same effect as personal service if the defendant contacts the court orally or in writing in response to or in acknowledgment of the service of the Complaint-Summons. Service by ordinary mail shall not be attempted until a court date for the first appearance has been set by the municipal court administrator, deputy court administrator or other authorized court employee.

(3) If the court is provided with a different, updated address for the defendant, along with a postal verification or other proof satisfactory to the court that the defendant receives mail at that address, service of the Complaint-Summons may be re-attempted.

(b) Simultaneous Service by Mail.

(1) If service is attempted by ordinary mail and the defendant does not appear in court on the first appearance date or does not contact the court orally or in writing by that date, the court subsequently shall send the Complaint-Summons simultaneously by ordinary mail and certified mail with return receipt requested to the defendant's last known mailing address. Service by simultaneous mailing shall not be attempted until a new court date for the first appearance has been set by the municipal court administrator, deputy court administrator or other authorized court employee.

(2) When the Complaint-Summons is addressed and mailed to the defendant at a place of business or employment with postal instructions to deliver to addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the defendant to whom the Complaint-Summons was mailed.

(3) Consistent with due process of law, service by simultaneous mailing, as provided in Section (b)(1) of this rule, shall constitute effective service unless the mail is returned to the court by the postal service marked "Moved, Left No Address", "Attempted - Not Known", "No Such Number", "No Such Street", "Insufficient Address", "Not Deliverable as Addressed--Unable to Forward" or the court has other reason to believe that service was not effected. However, if the certified mail is returned to the court marked "Refused" or "Unclaimed," service is effective providing that the ordinary mail has not been returned.

(4) Process served by ordinary or certified mail with return receipt requested may be addressed to a post office box.

(c) Notice to Prosecuting Attorney and Complaining Witness; Dismissal of Complaint.

(1) If the court has not obtained effective service over the defendant after attempting service by simultaneous mailing under section (b)(1) of this rule, the court shall provide written notice of that fact to the prosecuting attorney and the complaining witness.

(2) The case shall be eligible for dismissal unless, within 45 days of the receipt of the written notice, the prosecuting attorney or the complaining witness provides the court with a different, updated address for the defendant, along with a postal verification or other proof satisfactory to the court that the defendant receives mail at that address.

(3) Notwithstanding the provisions of this rule, nothing shall preclude the prosecuting attorney or other authorized person from attempting service in any lawful manner.

(4) If the prosecuting attorney and complaining witness do not respond to the court's written notice within 45 days or if the defendant is not otherwise served, the court may dismiss the case pursuant to R. 7:8-5.

(d) Parking Offenses. A copy of the Uniform Traffic Ticket prepared and issued out of the presence of the defendant charging a parking offense may be served by affixing it to the vehicle involved in the violation.

(e) Corporations, Partnerships and Unincorporated Associations. A copy of the Uniform Traffic Ticket charging a corporation, partnership or unincorporated association with a violation of a statute or ordinance relating to motor vehicles may be served upon the operator of the vehicle.

(f) Return. The law enforcement officer serving a summons shall make return of the summons on or before the return date to the court before whom the summons is returnable.

Note: Source-Paragraphs (b)(1), (2), (3): R. (1969) 7:3-1: Paragraph (b)(4): R. (1969) 7:2, 7:3-1, 3:3-3(e). Adopted October 6, 1997 to be effective February 1, 1998; Title amended and Rule renumbered and amended , 2004 to be effective , 2004.

[7:2-4] 7:2-5**.** Defective Warrant or Summons; Amendment

No person arrested under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any technical insufficiency or irregularity in the warrant or summons, but the warrant or summons may be amended to remedy any such technical defect.

E. Proposed New Rule -- R. 7:2-6 -- Issuance of Warrants by FAX

In 1992, the Supreme Court issued an Order permitting municipal court administrators to issue summonses and warrants via facsimile machines (FAX). The Committee noted that the Order had been in place for over a decade and opined that the procedure should be formalized by the addition of a rule. The Committee felt that the procedure should be extended to municipal court judges, since it is anomalous for court administrators to be so permitted to the exclusion of municipal court judges.

The proposed new rule is attached for the Court's review and consideration.

7:2-6. FAX Transmission of Complaint-Warrants

During off-business hours, a law enforcement officer may submit a Complaint-Warrant (CDR-2) and any supporting documentation by facsimile (FAX) transmission to the municipal court judge or to the authorized court or deputy court administrator (judicial officer) to obtain a signature, if probable cause is found. The following are the FAX complaint procedures:

(a) Any law enforcement officer seeking the issuance of a Complaint-Warrant shall prepare a CDR-2 and contact a judicial officer.

(b) The law enforcement officer shall FAX the CDR-2 to the judicial officer for a determination of probable cause. The FAX machine used for the FAX complaint procedure shall be capable of printing on each transmitted document the time and date of the FAX transmission.

(c) If the judicial officer makes any corrections to the transmitted FAX document, the law enforcement officer shall make those corrections on the original document. The officer shall then re-FAX the corrected document to the judicial officer for signature.

(d) On the next business day, the judicial officer shall conform the original CDR-2 and shall attach the signed FAX copy to the original. If the judicial officer is the municipal court judge, the original CDR-2 may be signed by the judge or be attested in the judge's name and signed by the municipal court administrator.

Note: New rule, adopted , 2004 to be effective , 2004.

F. Amendment to R. 7:3-2(b) and Inclusion of Guidelines for Determining a Consequence of Magnitude in Appendix

On October 6, 1997, the Supreme Court adopted the Comprehensive Revision of Part VII of the Rules of Court. However, it did not adopt proposed R. 7:3-2, which provided guidelines for determining a consequence of magnitude. These guidelines included a definition of a monetary consequence of magnitude as a $750 penalty in the aggregate. In a subsequent advisory letter, dated June 6, 1997, from the Administrative Director of the Courts, the Committee was directed to redraft the definition so that a determination of a monetary consequence of magnitude would remain discretionary with the court. This redrafted definition would then be resubmitted to the Court for its consideration.

In late 1997, based on the Administrative Director's June 6, 1997 advisory letter, the Committee resubmitted a draft of "Guidelines for Determining a Consequence of Magnitude." The Guidelines essentially included the same factors that were presented in the Comprehensive Revision to Part VII of the Rules of Court. In order to address the concerns expressed in the advisory letter, the Committee proposed that the Guidelines be evaluated after they had in been in place for a reasonable period of time to assess their impact, particularly on the number of counsel assignments. The Committee advised that at a later date, if the Guidelines were acceptable, it would request the inclusion of the Guidelines in to the Appendix to Part VII of the Rules. The Court approved this recommendation on April 27, 1998.

Having monitored the application of the Guidelines, the Committee determined that they were clear and effectively assisted municipal court judges in deciding which cases constituted a "consequence of magnitude." Consequently, the Committee requests that the "Guidelines for Determining a Consequence of Magnitude" be adopted as part of the Appendix to Part VII of the Rules of Court with a reference to the Guidelines included in R. 7:3-2(b). A copy of R. 7:3-2(b) and the Guidelines is attached for the Court's review.

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

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

(b) Assignment of Counsel. If the defendant asserts indigency but does not affirmatively state an intention to proceed without counsel, the court shall order defendant to complete an appropriate application and other forms prescribed by the Administrative Director of the Courts. Pursuant to law, the judge shall either order defendant to pay any application fee or shall waive its payment. If the court is satisfied that the defendant is indigent and that the defendant faces a consequence of magnitude or is otherwise constitutionally or by law entitled to counsel, the court shall assign the municipal public defender to represent the defendant. The "Guidelines for Determining a Consequence of Magnitude" are contained in the Appendix to Part VII of the Rules of Court. The court may, however, excuse the municipal public defender for cause and assign counsel to represent the defendant, without cost to the defendant from, insofar as practicable, a list of attorneys maintained by the Assignment Judge. Assigned counsel shall promptly file an appearance pursuant to R. 7:7-9. The court shall allow the defendant a reasonable time and opportunity to consult trial defense counsel before proceeding further. Assigned counsel shall represent the defendant through trial and, in the event of a conviction, through sentencing, including advising the defendant of the right to appeal. If the defendant elects to appeal, assigned counsel or the municipal public defender shall prepare and file the notice of appeal and an application for the assignment of appellate counsel, but neither assigned counsel nor the municipal public defender shall act as appellate counsel or represent defendant on any subsequent application for post-conviction relief unless specifically so assigned by the court. Assigned counsel shall, however, be responsible for the representation of the defendant on the appeal upon failure to file either the notice of appeal or the application for the assignment of counsel on appeal.

Note: Source -- R. (1969) 7:2, 7:3-1, 3:4-2(b). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (b) amended July 10, 1998, to be effective September 1, 1998.

GUIDELINES FOR DETERMINATION OF CONSEQUENCE OF MAGNITUDE

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 the counsel…" The Supreme Court directed that guidelines for the determination of a consequence of magnitude be developed by the Supreme Court Committee on Municipal Courts 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 Committee on Municipal Courts has developed a set of guidelines. The Committee recommends that, 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 non-resident reciprocity privileges or (c) driver's license ineligibility; or

3. Any monetary sanction imposed by the court of $750 or greater in the aggregate, except for any public defender application fee. A monetary sanction is defined as the aggregate of any type of court imposed financial obligation, including fines, costs, 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.

G. Proposed Amendments to R. 7:4-3 and R. 7:4-5

By order dated November 1, 2000, the Supreme Court set forth a detailed set of notice and procedural requirements governing bail forfeitures and judgments of default. The Court modified one aspect of these procedures by order dated June 11, 2002, by increasing the time to file a written objection to vacate or set aside a bail forfeiture from within 45 days of the notice of forfeiture to within 75 days of that notice.

Subsequently, on August 15, 2001, the Legislature enacted the New Jersey Insurance Producer Licensing Act of 2001 (L.2001, c.210). As part of that law, the statute defining the terms "licensed insurance producer" and "limited insurance representative" (bail bondsman) were repealed. As of January 1, 2004, new terms, "insurance producer" and "limited lines insurance producer" are to be used in their place.

By letter dated August 18, 2003 to Hon. Joan Robinson Gross, P.J.M.C., Chair, Municipal Practice Committee, Judge Richard J. Williams requested that the Committee review the relevant Part VII Rules and recommend, as part of its 2002-04 Rules Report, any necessary rule amendments needed to conform to the new terminology required by the New Jersey Insurance Producer Licensing Act.

Accordingly, the Committee recommends amendments to Rules 7:4-3 and 7:4-5 to conform those rules to the new terminology and to reflect the increased time period within which to file a written objection to vacate or set aside a bail forfeiture.

A revision of Rules 7:4-3 and 7:4-5 follows for the Court's review and consideration.

7:4-3. Form and Place of Deposit; Location of Real Estate; Record of Recognizances, Discharge and Forfeiture [Thereof]

(a) No change.

(b) No change.

(c) No change.

(d) No change.

(e) Record of Discharge; Forfeiture. When any recognizance shall be discharged by court order upon proof of compliance with the conditions thereof or by reason of the judgment in any matter, the municipal court administrator or deputy court administrator [or clerk or deputy clerk] shall enter the word "discharged" and the date of discharge at the end of the record of such recognizance. When any recognizance is forfeited, the municipal court administrator or deputy court administrator [or clerk or deputy clerk] shall enter the word "forfeited" and the date of forfeiture at the end of the record of such recognizance and shall give notice of such forfeiture by ordinary mail to the municipal attorney, the defendant and any insurer, insurance producer or limited lines insurance producer whose names appear in the bail recognizance. Notice to any insurer, insurance producer or limited lines insurance producer shall be sent to the address recorded in the Bail Registry maintained by the Clerk of the Superior Court pursuant to R. 1:13-3. When real estate of the surety located in a county other than the one in which the bail was taken is affected, the municipal court administrator or deputy court administrator [or clerk or deputy clerk] in which such recognizance is given shall [forthwith] immediately send notice of the discharge or forfeiture and the date thereof to the clerk of the county where such real estate is situated, who shall make the appropriate entry at the end of the record of such recognizance.

(f) No change.

(g) No change.

7:4-5. Forfeiture

(a) Declaration; Notice. Upon breach of [the] a condition of a recognizance, the court may forfeit the bail on its own or the prosecuting attorney's motion. If the court orders bail [bail is ordered] to be forfeited, the municipal court administrator or deputy court administrator shall [~~forthwith~~] forfeit immediately the bail pursuant to R. 7:4-3(e) and shall give notice of such forfeiture by ordinary mail to the municipal attorney, the defendant and any insurer, insurance producer or limited lines insurance producer whose names appear in the Bail Recognizance. Notice to any or insurer, insurance producer or limited lines insurance producer shall be sent to the address recorded in the Bail Registry maintained by the Clerk of the Superior Court pursuant to R. 1:13-3. The notice shall direct that judgment will be entered as to any outstanding bail absent the entry of a written objection seeking to set aside the forfeiture within 75 days of the date of the notice or as otherwise mandated by the Supreme Court. The notice shall also provide that failure to satisfy a judgment entered pursuant to paragraph (c) will result in the removal of the names of all of the insurer's insurance producers or limited lines insurance producers from the Bail Registry. The court shall not enter judgment until the merits of any objection are determined either on the papers filed or, if the court so orders for good cause, at a hearing. In the absence of a written objection, judgment shall be entered as provided in paragraph (c).

(b) Setting Aside. The court may, upon such conditions as it imposes, direct that an order of [a] forfeiture or judgment be set aside, if required in the interest of justice.

(c) Enforcement; Remission. If a forfeiture is not set aside, the court shall, on motion, enter a judgment of default for any outstanding bail, and execution may issue on the judgment. The judgment shall provide that failure to satisfy a judgment will result in removal of the names of all of the insurer's insurance producers or limited lines insurance producers from the Bail Registry. A copy of the judgment entered pursuant to this rule is to be served by ordinary mail on any insurer, insurance producer or limited lines insurance producer named in the judgment. Notice to any or insurer, insurance producer or limited lines insurance producer shall be sent to the address recorded in the Bail Registry. After entry of the judgment, the court may remit the forfeiture in whole or in part in the interest of justice.

H. Amendment to R. 7:6-2(d) and Guideline 3.

The County Prosecutors' Association presented a request that municipal prosecutors be permitted to submit plea agreements to the municipal court judge through the use of a plea agreement form, rather than in person. The Committee initially was concerned that by promoting this practice, the importance of the prosecutor's presence in the courtroom to confirm the basis of a plea agreement would be reduced.

After much discussion, the Committee arrived at a consensus that the municipal court judge could permit the municipal prosecutor to use plea agreement forms, but only for offenses listed on the Statewide or local Violations Schedule. Inasmuch as defendants may plead guilty and pay fines by mail, by the Internet or in person to the Violations Bureau for those listed offenses, the Committee was convinced that the use of a form would not denigrate the plea agreement process. Moreover, the flow of cases during court sessions could proceed more smoothly if the prosecutor was not required to appear in person for cases involving the more minor offenses listed on the Violations Schedules. Rule 7:6-2(d) and Guideline 3 of that rule are offered for amendment to allow the use of such a form.

The proposed revision to R. 7:6-2(d) and Guideline 3 are attached for the Court's review and consideration.

7:6-2. Pleas, Plea Agreements

(a) No change.

(b) No change.

(c) No change.

(d) Plea Agreements. Plea agreements may be entered into only pursuant to the Guidelines and accompanying Comment issued by the Supreme Court, both of which are annexed as an Appendix to Part VII, provided, however, that:

(1) the complaint is prosecuted by the municipal prosecutor, the county prosecutor, or the Attorney General; and

(2) the defendant is either represented by counsel or knowingly waives the right to counsel on the record; and

(3) the prosecuting attorney represents to the court that the complaining witness and the victim, if the victim is present at the hearing, have been consulted about the agreement; and

(4) the plea agreement involves a matter within the jurisdiction of the municipal court and does not result in the downgrade or disposition of indictable offenses without the consent of the county prosecutor, which consent shall be noted on the record; and

(5) the sentence recommendations, if any, do not circumvent minimum sentences required by law for the offense.

Pursuant to Section (a) (1) of this rule, [W]when a plea agreement is reached, its terms and the factual basis that support the charge(s) shall be fully set forth on the record personally by the prosecutor, except as provided in Guideline 3 for Operation of Plea Agreements [pursuant to Section (a)(1) of this rule]. If the judge determines that the interests of justice would not be served by accepting the agreement, the judge shall so state and the defendant shall be informed of the right to withdraw the plea if already entered.

Note: Source-Paragraph (a): R. (1969) 7:4-2(b); Paragraph (b): R. (1969) 7:4-2(b); Paragraph (c): R. (1969) 3:9-3(f); Paragraph (d): R. (1969) 7:4-8. Adopted October 6, 1997 to be effective February 1, 1998; Paragraph (d) amended July 12, 2002 to be effective September 3, 2002.

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 appear in person to set forth any proposed plea agreement on the record, except when the original charge is listed on the Statewide or local Violations Bureau Schedule. In that event, with the approval of the municipal court judge, the prosecutor may submit to the court a Request to Approve Plea Agreement, only on a form approved by the Administrative Director of the Courts, signed by the prosecutor and the defendant. Nothing in this Guideline shall be construed to limit the court's ability to order the prosecutor to appear at any time during the proceedings.

I. Amendment to Guideline 4 of R. 7:6-2 and R. 7:8-5

As a part of its responsibility to monitor the application of R.7:6-2 (Plea; Plea Agreements), the Committee considered whether a judge may dismiss the remaining charges in a drug case where the defendant is given a conditional discharge. In order to clarify that the court has that authority, the Committee recommends that Guideline 4 of R. 7:6-2 be revised to provide that if a defendant is charged with more than one violation of Chapter 35 or 36 of the Code of Criminal Justice that arises from the same factual transaction, if the defendant pleads guilty to one charge or seeks a conditional discharge, the court may dismiss the remaining charges on the recommendation of the prosecutor.

The Committee also amended R. 7:8-5 to make clear that under these circumstances, if a charge is dismissed, the matter cannot be reopened on the same complaint.

The proposed amendments to Guideline 4 and R. 7:8-5 follow.

GUIDELINE 4. LIMITATION

No plea agreements whatsoever will be allowed in drunken driving or certain drug offenses. Those offenses are:

(1) Driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50) and

(2) Possession of marijuana or hashish (N.J.S.A. 2C:35-10a(4)), being under the influence of a controlled dangerous substance or its analog (N.J.S.A. 2C:35-10b), and use, possession or intent to use or possess drug paraphernalia, etc. (N.J.S.A. 2C:36-2).

If a defendant is charged with driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50) and refusal to provide a breath sample (N.J.S.A. 39:4-50.2) arising out of the same factual transaction, and the defendant pleads guilty to the N.J.S.A. 39:4-50 offense, the judge, on recommendation of the prosecutor, may dismiss the refusal charge.

If a defendant is charged with more than one violation under Chapter 35 or 36 of the Code of Criminal Justice arising from the same factual transaction and pleads guilty to one charge or seeks a conditional discharge under N.J.S.A. 2C:36A-1, all remaining Chapter 35 or 36 charges arising from the same factual transaction may be dismissed by the judge upon the recommendation of the prosecutor.

Nothing contained in these limitations shall prohibit the judge from considering a plea agreement as to the collateral charges arising out of the same factual transaction connected with any of the above enumerated offenses in Sections A and B of this Guideline.

The judge may, for certain other offenses subject to minimum mandatory penalties, refuse to accept a plea agreement unless the prosecuting attorney represents that the possibility of conviction is so remote that the interests of justice requires the acceptance of a plea to a lesser offense.

7:8-5. Dismissal

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. 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. Upon dismissal, any warrant issued shall be recalled and the matter shall not be reopened on the same complaint except to correct a manifest injustice.

J. Proposed Amendments to R. 7:8-9 – Procedures on Failure to Appear

The Committee recommends an amendment to R. 7:8-9 to provide for the issuance of an arrest warrant for a defendant who has failed to respond to two or more outstanding parking tickets. This recommendation recognizes that errors can be made by the issuing officer in copying a plate number on a ticket or by data entry by the court. Such unintentional errors impact the innocent with the sanction of a bench warrant for that person's arrest for failure to respond. In one tragic example, a warrant was issued to a defendant for one outstanding parking ticket. When the named party was stopped by the police, he suffered a fatal heart attack. That one ticket had not been his.

Proposed R. 7:8-9 was amended as follows:

7:8-9. Procedures on Failure to Appear

(a) Warrant or Notice. [If a defendant in any case before the court fails to appear or answer a complaint, the court may either issue a 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 warrant may be issued in accordance with R. 7:2-2(c).**]**

(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 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 warrant may be issued in accordance with R. 7:2-2(c).

(2) Parking Cases. In all parking cases, an arrest warrant shall only be issued if the defendant has failed to respond to 2 or more pending parking tickets within the jurisdiction. A warrant shall not issue where the pending tickets are issued within the same date/24-hour period.

(b) No change.

(c) No change.

(d) No change.

(e) No change.

(f) No change.

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

K. R. 7:12. - Trial of Traffic Offenses – Defense by Certification

In traffic cases, except the more serious matters enumerated in R. 7:12-3, the court may permit the defendant to present a defense by affidavit instead of appearing in court, if the court determines that the defendant's appearance would be an undue hardship. If the court permits a defense by affidavit, the defendant must find a notary public or other person authorized to administer oaths, since an affidavit is a sworn statement.

In the municipal courts the majority of defendants appear pro se and may be unaware of or confused by the formal requirements of an affidavit. Therefore, the Committee determined that a defense by certification, rather than by affidavit, was more appropriate in the municipal court setting.

R. 1:4-4(b) provides for the use of a certification in lieu of an affidavit. Specific certification language is contained in that rule. Mindful of the need to keep all municipal practice rules within Part VII to avoid constant references to other parts of the Rules, the Committee decided to include the required certification language within R. 7:12-3. The Committee was of the opinion that this language would impress upon laymen the gravity of the certification.

Based on R. 1:4-4 and the current option to use certifications *or* oaths for complaints pursuant to R. 7:2-1 ("all complaints shall be by certification or on oath . . ."), the Committee recommends the following amendment for the Court's consideration.

7:12-3. Statement in Mitigation or Defense by [Affidavit] Certification; Judgment

(a) Statement in Mitigation or Defense by [Affidavit] Certification. In all traffic cases, except those involving indictable offenses, accidents resulting in personal injury, operation of a motor vehicle while under the influence of intoxicating liquor or a narcotic or habit-producing drug or permitting another person who is under such influence to operate a motor vehicle owned by the defendant or in the defendant's custody or control, reckless driving or leaving the scene of an accident, the court may permit the defendant to present a statement in defense or mitigation of penalty imposed upon conviction or enter a guilty plea by [affidavit] certification, provided the court determines that it would be an undue hardship on the defendant to require appearance in person at the time and place set for trial, and the defendant, having been fully informed of his or her right to a reasonable postponement of the trial, waives in writing the right to be present at the trial.

(b) Certification Language. The certification shall include the following language and must be signed by the defendant: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment."

(c) Judgment. If a defendant presents a statement in mitigation or defense by [affidavit] certification, the court shall send the defendant a copy of the judgment by ordinary mail.

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

L. R. 7:13. Appeals – Clarifications of Appeals

R. 7:13-1 provides that Rules 3:23 and 3:24 govern all appeals from judgments of conviction. The rule fails to take into account the State's right to appeal from penalty enforcement matters and from proceedings for the confiscation or forfeiture of a chattel. See R. 4:74-3 and R. 4:74-4. In those cases, the appeal proceeding is governed by R. 4:74-3.

In order to clarify these appeals procedures, the Committee recommends the following amendatory language for the Court's review and consideration.

7:13-1. Appeals

Appeals [from judgments of conviction] shall be taken in accordance with R. 3:23, [and] 3:24, and 4:74-3 regarding penalty enforcement matters, and, in extraordinary cases and in the interest of justice, in accordance with R. 2:2-3(b). Appeals from judgments of conviction and interlocutory orders in municipal court actions heard in the Law Division, Special Civil Part, pursuant to R. 6:1-2(a)(5), shall be taken to the Appellate Division pursuant to Rules 2:2-3(a)(1) and 2:2-4, respectively.

Note: Source -- R. (1969) 7:8-1. Adopted October 6, 1997 to be effective February 1, 1998.

M. Enlargement of Time

The Committee noted that R. 1:3-4(c) currently prohibits the enlargement of time for motions for a reduction or change in sentence pursuant to R. 7:9-4. However, R. 7:9-4 permits the court to reduce or change a sentence at any time during which it retains jurisdiction over the matter. Therefore, the reference to R. 7:9-4 in R. 1:3-4(c) is inconsistent.

Accordingly, the Committee recommended to the Civil Practice Committee that the reference to R. 7:9-4 in R. 1:3-4(c) be deleted. The proposed amendment would eliminate the reference to R. 7:9-4, which, as currently constituted, has no time limitation.

The recommended rule amendment provided to the Civil Practice Committee is attached for the Court's review.

1:3-4. Enlargement of Time

(a) Enlargement by Order or Consent. Unless otherwise expressly provided by rule, a period of time thereby fixed for the doing of an act may be enlarged before or after its expiration by court order on notice or (unless a court has otherwise ordered) by consent of the parties in writing.

(b) Enlargement for Appeal and Review. Enlargement of time for appeal and review shall be governed by the following rules: appeals to the Supreme Court and Superior Court, Appellate Division, by R. 2:4-4; actions in lieu of prerogative writs in the Superior Court, Law Division, by R. 4:69-6(c); appeals to the Superior Court, Law Division, from reports of condemnation commissioners by R. 4:73-6(a); civil appeals to the Superior Court, Law Division, by R. 4:74-2(b); and review of ex parte probate actions by R. 4:85-2.

(c) Enlargements Prohibited. Neither the parties nor the court may, however, enlarge the time specified by R. 1:7-4 (motion for amendment of findings); R. 3:18-2 (motion for judgment of acquittal after discharge of jury), R. 3:20-2, R. 4:49-1(b) and (c) and R. 7:10 –1 (motion for new trial); R. 3:21-9 (motion in arrest of judgment); R. 3:21-10(a) **[**and R.7:9-4 (motion for reduction or change of sentence)**]**; R.3:23-2 (appeals to the Law Division from judgments of conviction in courts of limited criminal jurisdiction); R. 3:24 (appeals to the Law Division from interlocutory orders and orders dismissing the complaint entered by courts of limited criminal jurisdiction); R. 4:40 –2(b) (renewal of motion for judgment); R. 4:49-2 (motion to alter or amend a judgment); and R. 4:50-2 (motion for relief from judgment or order).

Note: Source -- R.R. 1:27-(a) (b) (c) (d) (e), 4:6-1, 8:12-5(a)(b). Paragraph (c) amended July 7, 1971, effective September 13, 1971. Paragraph (b) amended November 27, 1974 to be effective April 1, 1975; paragraph (b) amended July 22, 1983 to be effective September 12, 1983; paragraph (c) amended July 26, 1984 to be effective September 10, 1984; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) amended January 5, 1998 to be effective February 1, 1998; paragraph (c) amended July 10, 1998 to be effective September 1, 1998.

N. Amendment to R. 3:23 - Appeals of Post-Conviction Judgments

Pursuant to R. 7:13-1, appeals from municipal court matters, other than appeals from penalty enforcement actions, must be taken in accordance with R. 3:23 and R. 3:24. The Committee noted that R. 3:23 provides no mechanism for appealing denials of post-conviction applications. In order to rectify this, the Committee recommended that the Criminal Practice Committee amend R. 3:23-2 accordingly. The Criminal Practice agreed with the Committee's recommended amendment and has advised that it will include this change in its 2002–2004 Committee Report.

The recommended rule amendment provided to the Criminal Practice Committee is attached for the Court's review.

3:23-2. Appeal; How Taken; Time

The defendant, a defendant's legal representative or other person aggrieved by a judgment of conviction (including a judgment imposing a suspended sentence) or a post-conviction application entered by a court of limited jurisdiction shall appeal therefrom by filing a notice of appeal with the clerk of the court below within 20 days after the entry of judgment. Within five days after the filing of the notice of appeal, one copy thereof shall be served upon the prosecuting attorney, as hereinafter defined, and one copy thereof shall be filed with the Criminal Division Manager's office together with the filing fee therefore and an affidavit of timely filing of said notice with the clerk of court below and service upon the prosecuting attorney (giving the prosecuting attorney's name and address). On failure to comply with each of the foregoing requirements, the appeal shall be dismissed by the Superior Court, Law Division, without further notice or hearing. However, if the appeal is from a final judgment of the Superior Court arising out of a municipal court matter heard by a Superior Court judge sitting as a municipal court judge, the appeal shall be to the Appellate Division in accordance with R. 2:2-3(a)(1) and the time limits of R. 2:4-1(a) shall apply.

Note: Source--R.R. 1:3-1(c), 1:27B(d), 3:10-2, 3:10-5. Amended November 22, 1978 to be effective December 7, 1978; amended July 11, 1979 to be effective September 10, 1979; amended November 5, 1986 to be effective January 1, 1987; amended July 13, 1994 to be effective September 1, 1994; amended July 5, 2000 to be effective September 5, 2000; amended July 12, 2002 to be effective September 3, 2002.

II. PROPOSED RULE AMENDMENTS CONSIDERED AND REJECTED

A. Proposed Rule Amendment to R. 7:2-1(a)(1) and R. 7:2-2(a)(1) – Age and Mental Capacity of Persons Filing Complaints

A suggestion was made to require the municipal court judge to make all determinations of probable cause for cases brought by minors or persons lacking adequate mental capacity. The Committee studied this issue and, relying on Kavrakis v. Kavrakis, 196 N.J. Super. 385 (Ch. Div. 1984), considered amending R. 7:2-1(a)(1) and R. 7:2-2(a)(1) so that complainants below 14 years of age and persons lacking mental capacity would be entitled to a determination of probable cause by the judge. After further deliberations, the Committee concluded that there were already provisions in the Rules for handling complaints made by minors or persons who lack mental capacity. Therefore, the proposed revisions to these rules were rejected.

B. Proposed Amendment to R. 7:2-2(a)(1) – Probable Cause Hearings in Municipal Court

The Committee considered whether R. 7:2-2(a)(1) should be amended to clarify that probable cause hearings are not required in the municipal courts. After deliberation, the Committee concluded that a revision to the rule was unnecessary.

C. Proposed Amendment to R. 7:7-7(a) Discovery and Inspection - Police Discovery Coordinators

During the 2000-2002 term, the Committee considered a proposal to amend R. 7:7-7(a) to require municipal prosecutors or their designated "police discovery coordinators" to provide discovery in a timely manner. Under this proposal, the county prosecutor could designate and supervise law enforcement officers to respond to discovery requests, instead of placing the burden on municipal prosecutors, who are often employed by the municipality on a part-time basis and lack the staff to respond in a timely manner.

At the end of the 2000-2002 term there was a change in the administration of the Office of the Attorney General. A request was made by that office to hold this proposed amendment for consideration in the next Committee term. During the 2002-2004 term, the Committee considered the matter further. Based on a study of the practices in other states, the Committee found that prosecutors often delegated the task of providing discovery to their local police departments, but not to a specific "police discovery coordinator." After further study, the Committee concluded that the question of who should provide discovery was more properly an Executive Branch determination.

Consequently, the Committee determined that R. 7:7-7(a) should not be amended to provide for "police discovery coordinators."

D. Placing Defendants Under Oath for Plea Colloquy

The Criminal Practice Committee advised that it had proposed a rule that would require that defendants entering a discussion in a plea bargain be placed under oath. The Committee considered revising R. 7:6-2 to impose a similar requirement on defendants engaging in plea negotiations in municipal court. The Committee concluded that this procedure would have no benefit in municipal court and, therefore, declined to endorse a similar provision in the Part VII rules.

III. PREVIOUSLY APPROVED RECOMMENDATIONS

Revisions to the Statewide Violations Bureau Schedule

During the 2002-2004 term, the Committee periodically presented proposed amendments to the Supreme Court to update the Statewide Violations Bureau Schedule. That Schedule is a listing of offenses and corresponding fines in a fixed amount that may be paid directly to the municipal court without the necessity of a court appearance.

These amendments included three regulations promulgated by the Division of Motor Vehicles as part of the 'School Bus Enhanced Safety Inspection Act' (N.J.S.A. 39:3B-18 *et seq.*). Other amendments were required as a result of other legislative changes including: (a) an increase of the maximum penalty for violating N.J.S.A. 39:4-197 (Handicapped Parking) from $100 to $250; (b) the addition of a $2 surcharge on all Title 39 offenses to fund to the "New Jersey Forensic DNA Laboratory Fund" established pursuant to P.L.2003, c. 183; (c) the addition of a $1 assessment for all Title 39 violations, pursuant to P.L. 2003, c. 144; (d) a doubling of fines from violations that occur in a "safe corridor" or a construction zone, pursuant to N.J.S.A. 39:4-203.5; and, (e) the inclusion of "out-of-service" offenses of the "Commercial Vehicle" law. Because the Parkway Authority was transferred to the Turnpike Authority, it was questionable whether a court could still assess the administrative fees associated with "E-Z Pass." Therefore "E-Z Pass" offenses were removed from the Violations Bureau Schedule.

These recommendations were previously approved by the Court during the 2002-2004 Committee term and are reflected in the revised Schedule now in effect.

IV. MATTERS HELD FOR CONSIDERATION

A. Issuance of Arrest Warrants by Telephone

In its 2000-2002 Report to the Supreme Court, the Committee carried for further consideration a proposal to permit municipal court judges to issue arrest warrants by telephone. In a memorandum, dated August 15, 2001, from Acting Director Richard J. Williams to the Assignment Judges, it was reiterated that the Rules of Court do not permit arrest warrants to be issued over the telephone. However, the Conference of Assignment Judges requested that the Criminal Practice Committee and the Municipal Practice Committee review their respective arrest warrant rules to consider whether they should be amended to permit a judicial officer to issue an arrest warrant telephonically. A subcommittee composed of members from the two Committees was formed to study this issue

From the outset, it appeared that the two Committees differed on whether to require a judge to take contemporaneous notes when making a probable cause determination telephonically on a CDR-2 (complaint-warrant).

The Municipal Court Committee felt that such a requirement would be too onerous for municipal court judges, who are the judges who primarily issue arrest warrants. The Criminal Practice Committee likened the issuance of telephonic arrest warrants to the issuance of telephonic search warrants. Relying on the reasoning in State v. Valencia, 93 N.J. 126 (1983) (which required that contemporaneous notes be made by a judge whenever a search warrant is issued telephonically), the Criminal Practice Committee opined that there is a constitutional requirement that a judge issuing an arrest warrant telephonically must make contemporaneous notes. See also R. 3:5-3(b).

As a compromise, the Committee proposed that an officer who desires a telephonic arrest warrant must prepare an affidavit stating the facts of the case upon which the judge can make a probable cause determination. The officer would then read it over the telephone to the issuing judge. If, based on the facts of the affidavit, the judge found that probable cause existed for the issuance of the warrant the judge would authorize the police officer to sign the judge's name. The following day, the police would FAX a copy of the affidavit and signed warrant to the judge for the judge's review. If the judge was satisfied that the affidavit was consistent with the officer's factual recitation, the judge would initial the warrant to confirm that permission was granted for the officer to sign the judge's name.

Because this procedure implicated the Attorney General's Office, the Committee forwarded a copy of the proposed procedure to the Attorney General for review. In response to the proposed procedure, a representative of the Attorney General's Office appeared before the Committee and advised that the Attorney General's Office had no objections to this procedure.

The Criminal Practice Committee has included this topic in its 2002-2004 Report. Nonetheless, both Committees are continuing to work together on this matter. The Municipal Court Practice Committee requests that this matter be presented to the Court in a Supplemental Report.

B. Traffic Warrants

In its 2000-2002 Report to the Supreme Court, the Committee recommended that the Court consider the adoption of several amendments to Part VII of the Rules that would permit arrest warrants to be issued for the most serious of traffic offenses, i.e., driving while intoxicated (DWI) and driving while revoked. In response, the Supreme Court noted that N.J.S.A. 39:5-25 (Arrest without warrant; detention of offender; summons instead of arrest) provides that "Any law enforcement officer may, without a warrant, arrest any person [with a minor exception] violating in his presence any provision of Chapter 3 … or … Chapter 4 of … Title [39]". The Supreme Court was unclear why the Committee recommended limiting the use of traffic warrants.

After further consideration of this matter, the Committee concluded that warrants on traffic offenses should be used only in the most serious case, i.e., DWI. However, the Committee was aware that because such a procedure directly affected the law enforcement community, a perspective from the Attorney General's Office was crucial. Subsequently, it invited a representative from the Attorney General's Office to elicit its opinion.

The Attorney General's Office drew the Committee's attention to State v. Greeley, 354 N.J. Super. 432 (App. Div. 2002). In Greely, the Court urged the Attorney General's Office to develop guidelines on the transportation of defendants charged with DWI for independent "blood-alcohol concentration" test. Given this mandate, the Attorney General indicated that it could not give an opinion on traffic warrants until such guidelines were developed.

The Committee is requesting that this matter be presented to the Court in a Supplemental Report.

C. Proposed Amendments to R. 7:8-1 (Mediation of Minor Disputes; Notice in Lieu of Complaints

The Committee considered amendments to R. 7:8-1 proposed by the Municipal Programs Subcommittee of the Supreme Court Committee on Complementary Dispute Resolution [Subcommittee].

The present rule allows a municipal court to issue a notice for mediation both before and after a complaint is filed. The recommendation was made to permit the court to issue a mediation notice only after a complaint has been filed and process has been issued. Absent the filing of a complaint and a determination of probable cause, the Subcommittee suggested that the municipal court has no authority to order private citizens to mediate their disputes. The Notice in Lieu would be eliminated as both confusing and archaic, and a Mediation Notice, prescribed by the Administrative Director of the Courts for statewide use, would take its place.

In addition, R. 7:8-1 currently prohibits mediation of all Title 39 offenses (motor vehicle matters). The Subcommittee proposed that a referral to mediation could be made for Title 39 matters when a private citizen (not a law enforcement officer) brings a complaint charging a Title 39 offense listed on the Statewide Violations Bureau Schedule when no personal injury is involved. In that way, neighborhood parking disputes or other minor traffic matters could be diverted from the court's caseload.

The Subcommittee also reported that a pilot project for presumptive mediation was being developed. The project, currently proposed for five municipal courts, will be evaluated one year after implementation.

The Committee did not come to an agreement as to the proposed amendments to R. 7:8-1, but, instead, put them on hold pending the completion and evaluation of the presumptive mediation pilot project.

D. Proposal to Recommend Revisions to R. 1:33-2 – Court Managerial Structure and R. 1:34-2 – Clerks of Court

In reviewing the Part I rules, 'Rules of General Application,' the Committee noted that certain rules omitted reference to Presiding Judges – Municipal Court and municipal court administrators. The Committee considered and adopted for recommendation the following amendments:

R. 1:33-2(c)

Within each vicinage, the Chief Justice shall organize the trial court system into [four] five functional units to facilitate the management of the trial court system within that vicinage. These units shall be: Civil, Criminal, Family, [and] General Equity and Municipal.

R. 1:33-2(d)(1)

(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, other than the Municipal Presiding Judge, may supervise more than one functional unit. The Presiding Judge shall report directly and be responsible to the Assignment Judge.

R. 1:34-2. Clerks of Court

The clerk, including municipal court administrators, of every court, except the Supreme Court, the Superior Court and the Tax Court, shall be responsible to and under the supervision of the judge or presiding judge of the court which the clerk serves, the Assignment Judge of the [county] vicinage, and the Administrative Director of the Courts. 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 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(b). All employees serving as deputy clerks of the Superior Court shall be, in that capacity, responsible to the Clerk of the Superior Court.

The Civil Practice Committee pursuant to 'Operational Guidelines' generally undertakes the Rules of General Application in Part I of the Rule. Accordingly, the Committee forwarded its recommendation to the Civil Practice Committee for review and consideration.

The Committee was subsequently informed that R. 1:33-2 and R. 1:34-2 are currently being reviewed in their entirety. During the course of that review, the recommendations of the Committee will be considered.

V. NON-RULE RECOMMENDATION

Recommendation that Legislative Clarification be Sought for N.J.S.A. 2B:12-24 (Imposition of Court Costs in Dismissed Cases) and N.J.S.A. 22A:3-4 (Fees for Criminal Proceedings)

During the 2000-2002 term, the Committee discussed diverse interpretations of N.J.S.A. 2B:12-24 (Imposition of Court Costs in Dismissed Cases) and N.J.S.A. 22A:3-4 (Fees for Criminal Proceedings).

N.J.S.A. 2B:12-24 provides: "In cases where the judge of a municipal court dismisses the complaint or acquits the defendant and finds that the charge was false and not made in good faith, the judge may order that the complaining witness pay the costs of court established by law." Some courts have interpreted this language to mean that the court may charge the complaining witness court costs in all dismissed cases.

N.J.S.A. 22A:3-4 provides: "The fees provided in the following schedule, and no other charges whatsoever, shall be allowed for court costs in any proceedings of a criminal nature in the municipal courts . . . . For violations of Title 39 of the Revised Statutes, or of traffic ordinances, at the discretion of the court, up to but not exceeding $30.00. For all other cases, at the discretion of the court, up to but not exceeding $30.00." A number of courts have construed the statute as being applicable only in criminal and traffic cases. Consequently, in non-criminal and non-traffic cases, such as ordinance violations and civil penalty enforcement actions, courts have charged court costs in excess of $30.

In the 2000–2002 Report of the Municipal Court Practice Committee, the Committee felt that further study was necessary in order to glean the legislative intent of the statutes. After reviewing the statutes, the Committee concluded that they remain unclear and that legislative clarification should be sought. Inasmuch as direct communication with the Legislature is beyond the purview of the Committee's mandate, it recommends that the Supreme Court, through the Administrative Office of the Courts, seek clarification from the Legislature of N.J.S.A. 2B:12-24 and N.J.S.A. 2A:3-4.

VI. MISCELLANEOUS MATTERS

Plea Agreement Form

As part of its proposal to amend R. 7:6-2(d) and Guideline 3 permitting municipal prosecutors to use plea agreement forms, the Committee developed a form appropriate for statewide use. An exemplar of the form is attached for the Court's review.

REQUEST TO APPROVE PLEA AGREEMENT

State of New Jersey
v.
_____

Municipal Court of
_____
Court's Address

Complaint #	**Original Charge**	**Amended To**	**G/D/M ***	**Recommended Sentence, If Any**

***** G= Guilty, D= Dismissed, M= Merged

REPRESENTATIONS OF MUNICIPAL PROSECUTOR

On ____/____/_____, the defendant and I, as the municipal prosecutor in this case, reached the above plea agreement in accordance with R. 7:6-2 and with the Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey.

I represent to the Court that the original charge(s) listed above is/are listed on the State or Local Supplemental Violations Bureau Schedule and that the offense did not involve an accident resulting in personal injury to any person.

I further represent that I do not wish to be heard prior to the Court's final action and request that the Court approve the terms of the recommended plea agreement and enter judgment(s) accordingly.

_____ _____
Date Signature of Municipal Prosecutor

DEFENDANT'S REPRESENTATIONS

I, the defendant in this case, understand the nature of the charge(s) against me and the consequences of the plea. I understand that I am pleading guilty to that charge(s) and there is a factual basis for my guilty plea.

I understand and agree to the terms of the plea agreement set forth above voluntarily and without coercion.

I further understand that if the judge does not accept my guilty plea or agree with the recommended sentence, I can withdraw it and plead not guilty.

_____ _____
Date Signature of Defendant

_____ _____
Date Signature of Defendant's Attorney, if applicable

JUDGE'S STATEMENT AND APPROVAL

I have advised the defendant of his/her rights, including the right to counsel. The defendant has stated that he/she understands and waives those rights.

I have considered any statement submitted by the victim before approving this plea agreement.

Based on the representations of the municipal prosecutor and the defendant named above, I approve the plea agreement as set forth above.

_____ _____
Date Signature of Judge

Logo -- Please Notify Court of Disability Accommodation Needs -- Logo
White – Court Copy Canary – Prosecutor's Copy Pink – Defendant's Copy

VII. CONCLUSION

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

Respectfully submitted:

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