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TO: Assignment Judges
Criminal Presiding Judges

FROM: Glenn A. Grant, J.A.D.

Directive #23-17
[Supersedes Directive # 5-02]

SUBJ: **Criminal – Pretrial Memorandum and Written Acknowledgment (Notice of Trial)**

DATE: August 21, 2017

This Directive promulgates a revised Criminal Pretrial Memorandum form and reissues the Written Acknowledgment (Notice of Trial) form. Both forms were originally promulgated in 2002 by Directive #5-02 ("Pretrial Memorandum (R. 3:9-1); Written Acknowledgment (R. 3:16)"). The attached forms supersede these earlier versions, and should be used effective immediately.

The forms were initially promulgated in 2002 following the Supreme Court's adoption of amendments to R. 3:9-1 and R. 3:16. The 2002 amendment to R. 3:9-1 required use of a standard pretrial memorandum form during the pretrial conference to ensure the defendant's knowledge of the trial date and the consequences of a non-appearance. The 2002 amendment to R. 3:16 required the defendant's signed acknowledgment of the trial date.

The revisions to the Pretrial Memorandum promulgated here, as recommended by the Conference of Criminal Presiding Judges, are as follows: (1) The acronym for the No Early Release Act (NERA) was added in question 4 on the mandatory period of parole ineligibility; and (2) The defendant's acknowledgment of the consequences for a non-appearance was revised to include the loss of any posted "monetary" bail and a review of "any conditions of pretrial release." (# 2 on page 3).

No changes are being made to the Written Acknowledgment (Notice of Trial) form, which requires the defendant to acknowledge that he or she has been advised of the trial date and that the trial will proceed in the event of his or her absence. This form thus simply is being reissued with a new promulgation date and reference.

Both English and Spanish versions of the revised Pretrial Memorandum form (Attachment A) and the Written Acknowledgment (Notice of Trial) form (Attachment B) are appended to this Directive. Any questions or comments regarding these forms may

be directed to Sue Callaghan, Assistant Director for Criminal Practice at 609-815-2900 extension 55300 or sue.callaghan@njcourts.gov.

G.AG.

Attachments
cc: Chief Justice Stuart Rabner
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Melaney S. Payne, Special Assistant
Ann Marie Fleury, Special Assistant
Trial Court Administrators
Criminal Division Managers and Assistants
Vance D. Hagins, Chief
Maria Pogue, Assistant Chief

ATTACHMENT A

PRETRIAL MEMORANDUM

New Jersey Judiciary

Pretrial Memorandum

County

Defendant's Name: _____

Judge: _____

Indictment No(s): _____

1. . List all indictments, counts, degrees and maximum jail sentence.

Indictment #	Count	Charges	Degree	Max Jail

Please Circle Appropriate Answer

2. Does the defendant qualify for extended term? [Yes] [No]

If yes, discretionary _____

mandatory _____

3. Does the presumption of imprisonment apply? [Yes] [No]

If yes, what counts? _____

4. Does a mandatory period of parole ineligibility apply? [Yes] [No]

If yes, what counts? _____

85% Law (NERA) Term _____ Term _____

Graves Act Term _____ Term _____

School Zone Term _____ Term _____

Other Term _____ Term _____

5. **Maximum sentence** if convicted. _____

(Including extended term, if applicable)

6. **Maximum parole ineligibility** period. _____

7. Do you understand that if you are found guilty, the Court in its discretion could impose a minimum period of confinement to be served before you become eligible for parole, which could be up to one-half of the total sentence imposed? [Yes] [No]

8. Do you understand that if you are found guilty, the Court could order that any sentence imposed be served consecutively to any sentence on a violation of probation, and/or parole, and/or sentence presently being served? [Yes] [No]

a. Are you presently on probation? [Yes] [No]

b. Are you presently on parole? [Yes] [No]

c. Are you presently serving a custodial sentence on another charge? [Yes] [No]

Defendant's Initials _____

9. Plea Offer

Set forth in detail the plea agreement offered including sentencing recommendations.

_____

_____

_____

_____

10. Do you understand that if you reject this plea offer, the Court could impose a more severe sentence than recommended by the plea offer, up to the maximum sentence permitted if you are convicted after trial? [Yes] [No]

11. Do you understand that if you reject this plea offer today, no negotiated plea can be accepted by this Court unless specifically authorized by the Criminal Presiding Judge pursuant to *R.* 3:9-3(g)? [Yes] [No]

12. Additional/Supplemental information.

_____

_____

_____

_____

13. Discovery

☐ **a.** All Pretrial discovery is complete.

☐ **b.** The following Pretrial discovery is required.

_____

_____

_____

☐ **c.** Pretrial discovery to be completed by

_____

14. Motions / Hearings

☐ **a.** There are no further Pretrial Motions/Hearings.

☐ **b.** Trial: The following non-dispositive motions can be made and heard immediately prior to trial.

_____

_____

15. Co-Defendant Status:

_____

_____

16. Unique Evidential Issues:

_____

_____

☐ **a. No brief required**

☐ **b. Brief required by** _____

Defendant's Initials _____

17. Stipulations:

_____

_____

18. Estimated trial time: State's case: _____
Defense case: _____

19. Interpreter needed? [Yes] [No]
If yes, please provide the following information:
If the defendant, what language? _____
If a witness, what language? _____

20. Defendant and all counsel are hereby directed to return to court on the following date at 9:00 AM ready for trial. There will be no further notices required.

Any problems with witness availability must be brought to the Court's attention within ten (10) days of the signing of this Memorandum, or if discovered thereafter, as promptly as known.

Trial Date: _____

Defense Counsel: _____

Assistant Prosecutor: _____

Judge: _____

Date of Memo: _____

1. **I have been advised of my right to be present at the trial of this case. If I fail to appear for trial on the date scheduled for trial, the Court has the right to conduct the trial in my absence. If my case is not reached for trial on that date the judge will schedule a new date for trial. If I am not present on the original trial date, or any rescheduled trial date, the trial will proceed without me and I will be bound by the jury's verdict.**

2. **I further understand that if I do not appear for trial on the date fixed above or any adjourned trial date thereafter, I will lose any monetary bail that has been posted, any conditions of pretrial release may be reviewed, and a bench warrant will be issued for my arrest.**

3. **I understand that except in extraordinary circumstances, the filing of this Memorandum ends all plea negotiations, and no further bargaining will take place. Any subsequent plea of guilty will be without a plea recommendation.**

_____ _____
(Defendant) (Defense Counsel)

Poder Judicial de Nueva Jersey

Memorándum Precedente al Juicio

Condado de

New Jersey Judiciary

Pretrial Memorandum

County

Nombre y apellido del acusado: _____
Defendant's Name:

Juez: _____
Judge:

Nro. de la acusación formal o de las acusaciones formales: _____
Indictment No(s): _____

1. Enumere todas las acusaciones formales, cargos, grados y sentencia máxima de encarcelación.
List all indictments, counts, degrees and maximum jail sentence.

Nro. de la acusación formal Indictment #	Cargo Count	Cargos Charges	Grado Degree	Encarcelación máxima Max Jail

Marque la respuesta apropiada con un círculo
Please Circle Appropriate Answer

2. ¿Reúne el acusado los requisitos para un término extendido? [Sí/Yes] [No/No]
Does the defendant qualify for extended term?

Si es así, discrecional _____
If yes, discretionary

obligatorio _____
mandatory

3. ¿Corresponde la presunción de encarcelamiento? [Sí/Yes] [No/No]
Does the presumption of imprisonment apply?

Si es así, ¿en cuáles cargos? _____
If yes, what counts?

4. ¿Corresponde un período obligatorio de inelegibilidad antes de salir en libertad condicional? [Sí/Yes] [No/No]
Does a mandatory period of parole ineligibility apply?

Si es así, ¿en cuáles cargos? _____
If yes, what counts?

Término de la Ley Contra Excarcelación Prematura (NERA) de 85% 85% Law (NERA) Term	_____	Término Term	_____
Término de la Ley Graves Graves Act Term	_____	Término Term	_____
Término de la Zona Escolar School Zone Term	_____	Término Term	_____
Otro término Other Term	_____	Término Term	_____

Iniciales del acusado/Defendant's Initials _____

5. **Sentencia máxima** si se le condena. _____
(que incluye el término extendido, si corresponde)
Maximum sentence if convicted.
(Including extended term, if applicable)

6. Período **máximo de inelegibilidad antes de salir en libertad condicional.** _____
Maximum parole ineligibility period.

7. ¿Entiende usted que si lo adjudican culpable, el juez, a su discreción podría imponerle un período mínimo de reclusión que tendrá que cumplir antes de ser elegible para salir bajo libertad condicional, y que dicho período podría ser de hasta la mitad de la sentencia total que se le imponga? [Sí/Yes] [No/No]
Do you understand that if you are found guilty, the Court in its discretion could impose a minimum period of confinement to be served before you become eligible for parole, which could be up to one-half of the total sentence imposed?

8. ¿Entiende usted que si lo encuentran culpable, el juez podría ordenar que la sentencia que imponga se cumpla consecutivamente a cualquier sentencia por un incumplimiento de la libertad a prueba, la libertad condicional, o ambas, la sentencia que está cumpliendo actualmente a todas ellas? [Sí/Yes] [No/No]
Do you understand that if you are found guilty, the Court could order that any sentence imposed be served consecutively to any sentence on a violation of probation, and/or parole, and/or sentence presently being served?
   a. ¿Está usted actualmente bajo libertad a prueba? [Sí/Yes] [No/No]
   Are you presently on probation?
   b. ¿Está usted actualmente bajo libertad condicional? [Sí/Yes] [No/No]
   Are you presently on parole?
   c. ¿Está usted actualmente cumpliendo una sentencia con reclusión por otro cargo? [Sí/Yes] [No/No]
   Are you presently serving a custodial sentence on another charge?

9. **Oferta de una sentencia reducida**
Plea Offer
Exponga detalladamente el acuerdo de una reducción de sentencia que se le haya propuesto e incluya las recomendaciones en cuanto a la sentencia.
Set forth in detail the plea agreement offered including sentencing recommendations.

_____
_____
_____
_____

10. ¿Entiende usted que si rechaza esta oferta de una sentencia reducida y se le condenara después de un juicio, el juez podría imponerle una sentencia más dura que la que se recomienda en la oferta de una sentencia reducida hasta la sentencia máxima permitida? [Sí/Yes] [No/No]
Do you understand that if you reject this plea offer, the Court could impose a more severe sentence than recommended by the plea offer, up to the maximum sentence permitted if you are convicted after trial?

11. **¿Entiende que si usted rechaza hoy esta oferta para admitir su culpabilidad, este Juez no puede aceptar un acuerdo negociado con una condena reducida, a menos que sea autorizado específicamente por el Juez Presidente de lo Penal de acuerdo con la *R.* 3:9-3(g)?** [Sí/Yes] [No/No]
Do you understand that if you reject this plea offer today, no negotiated plea can be accepted by this Court unless specifically authorized by the Criminal Presiding Judge pursuant to *R.* 3:9-3(g)?

Iniciales del acusado/Defendant's Initials _____

12. Información adicional/suplementaria.
Additional/Supplemental information.

_____
_____
_____
_____

13. Proposición de pruebas
Discovery

☐ **a.** Se ha completado la proposición de pruebas. .
All Pretrial discovery is complete.

☐ **b.** Se requiere la divulgación de las siguientes pruebas documentales.
The following Pretrial discovery is required.

_____
_____
_____

☐ **c.** La proposición de pruebas se tiene que completar antes del
Pretrial discovery to be completed by

_____

14. Pedimentos/Audiencias
Motions / Hearings

☐ **a.** No hay más pedimentos/audiencias precedentes al juicio.
There are no further Pretrial Motions/Hearings.

☐ **b.** Juicio: Los siguientes pedimentos que no son dispositivos se pueden hacer y ver inmediatamente antes del comienzo del juicio.
Trial: The following non-dispositive motions can be made and heard immediately prior to trial.

_____
_____

15. Status del coacusado:
Co-Defendant Status:

_____
_____

16. Cuestiones probatorias únicas:
Unique Evidential Issues:

_____
_____

☐ **a. No se requiere ningún escrito judicial**
No brief required

☐ **b. Se requiere un escrito judicial para el día** _____
Brief required by

17. Acuerdos probatorios:
Stipulations:

_____
_____

18. Duración estimada del juicio: Causa de la fiscalía: _____
Estimated trial time: State's case:
Causa de la defensa: _____
Defense case:

Iniciales del acusado/Defendant's Initials _____

19. ¿Se requerirá un intérprete? [Sí/Yes] [No/No]
Interpreter needed?
Si es así, por favor suministre la siguiente información:
If yes, please provide the following information:
Si es para el acusado, ¿de qué idioma? _____
If the defendant, what language?
Si es para un testigo, ¿de qué idioma? _____
If a witness, what language?

20. Por la presente se ordena que el acusado y todos los abogados vuelvan al tribunal en la siguiente fecha a las 9:00 de la mañana listos para el juicio. No se requerirá ningún aviso adicional.

Cualquier problema con la disponibilidad de testigos tiene que ser divulgado al juez dentro de los diez (10) días subsiguientes a la firma de este Memorándum, o si se descubre después de dicho período, en cuanto se sepa.

Defendant and all counsel are hereby directed to return to court on the following date at 9:00 AM ready for trial. There will be no further notices required.

Any problems with witness availability must be brought to the Court's attention within ten (10) days of the signing of this Memorandum, or if discovered thereafter, as promptly as known.

Fecha del juicio/Trial Date: _____

Abogado Defensor/Defense Counsel: _____

Fiscal Auxiliar/Assistant Prosecutor: _____

Juez/Judge: _____

Fecha del Memo/Date of Memo: _____

1. **Me han informado sobre mi derecho de estar presente en el juicio de esta causa. Si no comparezco para el juicio en la fecha fijada para el mismo, el juez tendrá derecho a proceder con el juicio sin que yo esté presente. Si mi causa no se enjuicia en esa fecha, el juez fijará otra fecha para el juicio. Si no estoy presente en la fecha original del juicio, o en cualquier fecha en que se vuelva a fijar, el juicio proseguirá sin mí y me veré obligado a atenerme al veredicto del jurado.**
   I have been advised of my right to be present at the trial of this case. If I fail to appear for trial on the date scheduled for trial, the Court has the right to conduct the trial in my absence. If my case is not reached for trial on that date the judge will schedule a new date for trial. If I am not present on the original trial date, or any rescheduled trial date, the trial will proceed without me and I will be bound by the jury's verdict.

2. **Entiendo además que si no comparezco para el juicio en la fecha fijada más arriba o en cualquier otra fecha hasta la cual se aplace el juicio, perderé cualquier fianza monetaria que se haya depositado, se pueden revisar cualquiera de las condiciones de libertad antes del juicio, y el juez emitirá una orden para que se me arreste.**
   I further understand that if I do not appear for trial on the date fixed above or any adjourned trial date thereafter, I will lose any monetary bail that has been posted, any conditions of pretrial release may be reviewed, and a bench warrant will be issued for my arrest.

3. **Entiendo que, salvo en circunstancies extraordinarias, la presentación de este Memorándum pone fin a todas las negociaciones para declararme culpable, y no se realizará ninguna negociación adicional. Cualquier declaración de culpabilidad subsiguiente será sin una recomendación de condena reducida**
   I understand that except in extraordinary circumstances, the filing of this Memorandum ends all plea negotiations, and no further bargaining will take place. Any subsequent plea of guilty will be without a plea recommendation.

_____ _____
(Acusado/Defendant) (Abogado Defensor/Defense Counsel)

ATTACHMENT B

WRITTEN ACKNOWLEDGMENT
(NOTICE OF TRIAL) FORM

State of New Jersey

v.

_____
Defendant

Superior Court of New Jersey
Law Division - _____County
Indictment No. _____

Written Acknowledgment

Notice of Trial

I hereby acknowledge that I have been advised that I am to appear for trial on the _____ day of _____, 20___ at 9:00 a.m. (unless the time is otherwise specified herein to be _____) and if I fail to appear on that date, or any rescheduled trial date, the trial will proceed without me and I will be bound by the jury's verdict.

Dated: _____

_____
Defendant's signature

Tribunal Superior de Nueva Jersey
Superior Court of New Jersey

Estado de Nueva Jersey
State of New Jersey

División de Derecho - Condado de _____
Law Division - County

contra
v.

Nro. de la Acusación Formal _____
Indictment No.

_____
Acusado(a) / Defendant

Confirmación por escrito
Aviso de la fecha del juicio

Written Acknowledgment
Notice of Trial

Por la presente confirmo que se me ha notificado que debo comparecer a un juicio el día _____ de _____, del 20___ a las 9:00 de la mañana (a menos que aquí se especifique que la hora será _____) y que si no comparezco en esa fecha, o en cualquier otra fecha que se señale para el juicio, el juicio procederá sin que esté presente y me veré obligado a cumplir con el veredicto del jurado.

I hereby acknowledge that I have been advised that I am to appear for trial on the _____ day of _____, 20___ at 9:00 a.m. (unless the time is otherwise specified herein to be _____) and if I fail to appear on that date, or any rescheduled trial date, the trial will proceed without me and I will be bound by the jury's verdict.

Fecha / Dated: _____

_____
Firma del acusado(a) / Defendant's signature