REPORT OF THE

SUPREME COURT COMMITTEE ON

MUNICIPAL COURT PRACTICE

2013 - 2015 TERM

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I. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

A. Proposed Amendments to R. 7:5-2—Permitting Municipal Court Judges to Hear Motions to Suppress Evidence Seized under Search Warrants

A member of the Supreme Court Municipal Court Practice Committee (Committee) proposed amending R. 7:5-2 to allow municipal court judges to hear motions to suppress evidence seized under a search warrant in matters within the trial jurisdiction of the court, where the original search warrant was issued by a municipal court judge. Currently, municipal court judges are only permitted to hear motions to suppress evidence seized without a warrant.

History

Until June 1989, only Superior Court judges could hear motions to suppress evidence. In its 1987 Report to the Supreme Court, the Criminal Practice Committee recommended amending its rules to allow municipal court judges to hear motions to suppress evidence, within their jurisdiction, both those related to warrantless searches and searches made with a warrant, where the original warrant was not issued by a Superior Court judge. The Criminal Practice Committee reasoned that municipal court judges were competent to hear these motions, because they were no more complex than matters that the municipal court judges handled routinely, such as driving while intoxicated (DWI) cases. The Criminal Practice Committee was also of the opinion that it was impractical and inefficient for suppression motions to be heard in the Superior Court where the case would need to be transferred back to the municipal court for adjudication. The

Criminal Practice Committee recommended, however, that further review should be undertaken to study the practical implications of this rule change, such as the impact it might have on the Superior Court and municipal court calendars.

The Supreme Court Committee on Municipal Courts in its 1987 report agreed with the Criminal Practice Committee's rule recommendation to allow municipal court judges to handle suppression motions stating:

> The Committee was of the view that municipal court judges have the competency to handle such motions. Clearly if municipal court judges are competent to issue search warrants, they are competent to rule on the validity of those warrants. They are certainly capable and do handle motions of a constitutional magnitude currently.
>
> [1987 Report of the Supreme Court Committee on Municipal Courts 16.]

In June 1989, the Supreme Court amended the Part III and Part VII rules to permit municipal court judges to hear motions to suppress but only when related to warrantless searches. It is unclear why the Court did not accept the recommendation of the Committee on Municipal Courts and the Criminal Practice Committee to authorize municipal court judges to hear motions to suppress stemming from search warrants issued by municipal court judges. However, the rule change, limited as it was, received favorable comment in the Appellate Division decision of State v. Mazurek, 237 N.J. Super. 231 (App. Div. 1989). There, the court noted the problem created by an appeal from the motion to suppress heard in the Superior Court, where the guilty plea was accepted in the municipal court. The court said: "We note that the problem may have been ameliorated in part with the recent amendment to R. 7:4-2(f) [now R. 7:5-2(a)] which permits a drunken driving

suppression motion to be heard in the municipal court." State v. Mazurek, 237 N.J. Super. at 279.

Current Proposal

During this term, the Committee returned to a discussion of whether R. 7:5-2 should be amended to permit municipal court judges to hear motions to suppress evidence that was obtained under a search warrant. A member proposed an amendment to R. 7:5-2 that would permit a municipal court to entertain a motion to suppress evidence seized with a warrant, when the warrant was issued by a municipal court judge, in a matter within the municipal court's trial jurisdiction.

Most members supported the amendment. The primary argument in favor was that municipal court judges had thoroughly demonstrated their competence to decide complex search and seizure issues, because they had been deciding these issues with regard to warrantless searches since the 1989 rule change. In addition, municipal court judges in all vicinages had demonstrated their ability to deal with complex legal issues, such as those surrounding New Jersey's DWI laws.

Further, the members thought that municipal court judges deciding motions to suppress might help relieve crowded Superior Court judges' dockets, particularly since the number of warrant-related motions to suppress in DWI cases would increase, because of the recent United States Supreme Court decision in Missouri v. McNeely, ___ U.S. ____, 133 S. Ct. 1552; 185 L. Ed. 2d 696 (2013). In Missouri v. McNeely, the United States Supreme Court held that in some circumstances a warrant was needed to draw blood after an automobile stop for a prosecution for DWI. The Committee also believed that municipal court judges' extensive experience in deciding DWI cases might be helpful in evaluating a motion

to suppress evidence gathered as a result of a blood draw warrant and other warrants related to a DWI prosecution.

The Committee recognized that it would be inappropriate for a municipal court judge to hear a motion to suppress regarding evidence seized with a warrant issued by a Superior Court judge, so the proposed rule was drafted accordingly. It was also recognized that the judge who issued the search warrant could not hear a motion to suppress evidence gathered by that warrant. Therefore, in a municipal court in which only one judge sat, the motion to suppress would need to be decided by an acting judge. Accordingly, the rule contains a provision for such suppression motions to be heard by the Presiding Judge of the vicinage or by another acting judge designated by the Assignment Judge.

The Committee also added subsection (e) to the rule providing that a search and seizure made with a search warrant shall not be deemed unlawful because of technical insufficiencies. This subsection was modeled on R. 3:5-7(g).

After a thorough and thoughtful discussion, the Committee voted in favor of the proposed rule amendment by a vote of 19 in favor to 8 opposed. The full text of the proposed rule is below.

Referral to Criminal Practice Committee

The Committee realized that its recommended amendment to R. 7:5-2 would impact the Part III Court Rule on motions to suppress, R. 3:5-7. As a result, on February 18, 2014 Judge McGeady, Chair of the Committee, forwarded to Judge Lawson, then-Chair of the Criminal Practice Committee, the Committee's rule proposal for its consideration.

Rule 7:5-2. Motion to suppress evidence

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

(b) Procedure. ~~Written briefs in support of and opposition to the motion to suppress shall be filed only in the discretion of the judge, who shall determine the briefing schedule, if briefs are permitted. All motions to suppress shall be heard before the start of the trial.~~ If the search was made with a warrant, a brief stating the facts and arguments in support of the motion shall be submitted with the notice of motion. The State shall submit a brief stating the facts and arguments in support of the search, within a time as determined by the judge, but no less than 10 days after submission of the motion. If the search was made without a warrant, written briefs in support of and in opposition to the motion to suppress shall be filed either voluntarily or in the discretion of the judge, who shall determine the briefing schedule. All motions to suppress shall be heard before the start of the trial. If the municipal court having jurisdiction over the motion to suppress evidence seized with a warrant has more than one municipal court judge, the motion shall be heard by a judge other than the judge who issued the warrant, such judge to be designated by the chief judge for that municipal court. If the municipal court having jurisdiction of the motion to suppress seized with a warrant has only one judge, who issued the warrant, the motion to suppress shall be heard by the Presiding Municipal Court Judge for the vicinage, or such municipal court judge in the vicinage that the Assignment Judge shall designate.

(c) No change.

(d) No change

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

B. Proposed New Rule R. 7:5-4—Motion to Suppress Medical Records Obtained Pursuant to Rule 7:7-8(d)

The member of the Committee who proposed that R. 7:5-2 should be amended to authorize municipal court judges to hear certain motions to suppress evidence obtained from a search warrant also proposed a corresponding new rule, R. 7:5-4. The new rule would provide that the procedures set forth in R. 7:5-2, as proposed (See Section IA of this report, supra), for motions to suppress evidence under a warrant would also apply to the results of certain medical tests relating to intoxication obtained under a subpoena issued pursuant to R. 7:7-8(d), commonly called a Dyal subpoena.

In State v. Dyal, 97 N.J. 229 (1984), the Supreme Court held that in an investigation of a DWI case, a law enforcement officer may obtain the results of a blood alcohol test covered by the patient- physician privilege by applying for a subpoena before a judicial officer, usually a municipal court judge having territorial jurisdiction. In order to obtain the subpoena, the officer must "establish a reasonable basis to believe that the operator was intoxicated, a showing that may be established by objective facts known at the time of the event or discovered within a reasonable time thereafter." State v. Dyal, supra, 97 N.J. at 241. The Court said that such a subpoena should be treated "as the functional equivalent of a search warrant." The Court further stated that the records obtained from such a subpoena would be subject to a motion to suppress, as provided in R. 3:3-7, Motion to Suppress Evidence. Ibid.

Subsequently, the Court amended the Part VII court rule on subpoenas[1] to provide for the issuance of a subpoena for medical records when the operator is suspected of being intoxicated:

> Investigative Subpoenas in Operating While Under the Influence Cases. When the State demonstrates to the court through sworn testimony and/or supporting documentation that there is a reasonable basis to believe that a person has operated a motor vehicle in violation of N.J.S.A. 39:4-50 or N.J.S.A. 39:3-10.13, a vessel in violation of N.J.S.A. 12:7-46, or an aircraft in violation of N.J.S.A. 6:1-18, a municipal court judge with jurisdiction over the municipality where the alleged offense occurred may issue an investigative subpoena directing an authorized agent of a medical facility located in New Jersey to produce medical records related to the presence of alcohol, narcotics, hallucinogens, habit-producing drugs or chemical inhalants in the operator's body. If no case is pending, the subpoena may be captioned "In the Matter" under investigation.
>
> [R. 7:7-8(d).]

This rule, although it provides a procedure for law enforcement to use in applying for a Dyal subpoena, it does not provide for a procedure for suppressing evidence obtained under the subpoena.

The Committee viewed the absence of a court rule that explicitly sets forth a procedure for motion to suppress evidence obtained from a Dyal subpoena as an oversight that could be remedied through adoption of the proposed new rule. The Committee noted that the procedure for suppression of evidence obtained under a Dyal subpoena should mirror the procedure for suppression of evidence obtained through a search warrant, because the Court in Dyal indicated that the processes should be the same. See Dyal, supra, 97 N.J. at 241 (stating that a subpoena for

[1] Formerly R. 7:3-3, now R.7:7-8

medical records was the functional equivalent of a warrant). Hence, the Committee unanimously voted to recommend a new rule, R. 7:5-4, Motion to Suppress Medical Records Obtained Pursuant to Rule 7:7-8(d), which states that the procedures set forth in Rule 7:5-2 (as proposed), shall apply to motions to suppress a Dyal subpoena. The full text of proposed R. 7:5-4 is set forth below.

The Committee realized that its recommended new rule, R. 7:5-4, would impact the Part III Court Rule on motions to suppress, R. 3:5-7. As a result, on February 18, 2014 Judge McGeady, Chair of the Committee, forwarded to Judge Lawson, then-Chair of the Criminal Practice Committee, the Committee's proposal for its consideration.

Rule 7:5-4 (new). Motion to suppress medical records obtained pursuant to Rule 7:7-8(d)

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

C. Proposed Amendments to R. 7:8-8(a)—Lengthening the Retention Period for Recordings of Court Sessions

An attorney who frequently practices in municipal court wrote to the Committee asking for a rule change to R. 7:8-8(a) to extend the retention period for sound recordings of court proceedings for longer than the current five years. The attorney stated that many defendants are hampered in obtaining post-conviction relief (PCR) for matters older than five years because they are unable to obtain transcripts from the trial courts. See 7:10-2. He noted that most municipal courts now record sessions digitally on compact disks instead of bulky audio cassette tapes so that limited storage space in municipal courts was not a significant problem, as it had been in the past.

The Committee recognized that petitions for post-conviction relief (PCR) from convictions that are more than five years old are frequently filed in the municipal courts. Most PCR petitions filed in municipal court for relief from older convictions are filed under State v. Laurick, 120 N.J. 1, cert. denied, 498 U.S. 967 (1990). In Laurick, the Supreme Court held that a conviction resulting from an uncounseled guilty plea to a DWI charge could not be used to enhance the custodial sentence of a subsequent DWI conviction. In a subsequent Appellate Division case, it was held that the five year time limit found in R. 7:10-2(g)(2) and R. 7:10-2(b)(2) for filing Laurick PCR petitions should be liberally relaxed. State v. Bringhurst, 401 N.J. Super. 421, 433 (App. Div. 2008). As a result, it is not unusual to have Laurick PCR petitions filed for relief from convictions that are 15 or 20 years old.

A defendant who is unable to obtain a transcript of a prior DWI proceeding may not be able to successfully obtain relief under Laurick. The procedures for filing a Laurick PCR petition are found in R. 7:10-2(g). That rule states that the moving papers in support of a petition "shall include, if available, records relating to the underlying conviction, including, but not limited to, copies of all . . . transcripts of the defendant's first appearance, entry of guilty pleas and all other municipal court proceedings related to the conviction sought to be challenged." R. 7:10-2(g)(3). A defendant bears the burden of establishing by a preponderance of the evidence entitlement to the relief requested in the PCR. State v. Weil, 421 N.J. Super. 121, 131 (App. Div. 2011). Without a transcript of the earlier proceeding, the defendant may not be able to establish that a plea of guilty to a prior DWI charge was uncounseled. See, generally, State v. Weil, supra, 421 N.J. Super. at 131.

For these reasons, the Committee agreed that it would be a good idea to lengthen the retention period for sound recordings, if it could be done without unduly burdening the municipal courts. The Committee further agreed that the storage of audio tapes for more than five years was unreasonable, because such tapes were bulky and storage of them occupies valuable space in sometimes cramped municipal courts. In contrast, the storage of compact disks for longer periods presents little or no burden. The Committee conducted a survey of the methods by which municipal courts were recording court sessions. According to the survey, only 22 courts, or 4% of municipal courts in the State still use audio cassette tapes to record court proceedings. Of these 22 courts, at least half were in the process of converting to a digital recording system.

The Committee concluded that it was easy and inexpensive for the courts to retain and store compact disks on which court proceedings were recorded for long periods of time. In light of the fact that PCR petitions for relief from 20 year old convictions were regularly brought in the municipal courts, the Committee concluded that it was reasonable to require municipal courts to retain sound recordings for 20 years. Accordingly, the Committee unanimously voted to amend R. 7:8-8(a) to require municipal courts to retain sound recordings of all court proceedings for 20 years. The full text of the recommended rule change follows.

Rule 7:8-8. Record of proceedings; transcripts

(a) Record. If required by order of the Supreme Court, the municipal court shall cause all proceedings to be recorded by sound recording equipment approved by the Administrative Office of the Courts. If not so required, the court may, at its own expense, cause proceedings to be recorded either by sound recording equipment or by a court reporter. If sound recording equipment is used, or if the proceedings are not otherwise recorded, the court shall permit a record of the proceedings to be made by a certified shorthand reporter at the request and expense of any party. Every sound recording and stenographic record of proceedings made pursuant to this rule shall be retained by the municipal court administrator or by the reporter, as the case may be, for 20 [5] years.

(b) No change.

(c) No change.

(d) No change.

(e) No change.

D. Treating Inmates' Letters as Motions

In response to the Committee's 2011-2013 report, in a letter dated July 11, 2013, the Supreme Court asked the Committee "to reconsider its decision not to recommend an amendment to R. 7:7-2 that would treat certain letters from inmates as motions." The Court also asked that "the results of the Committee's consideration of this issue be completed on an expedited basis and submitted to the Court off-cycle." Accordingly, on July 2, 2014, the Committee submitted to Judge Grant an off-cycle report entitled: "Report of the Municipal Practice Committee on Treating Inmates' Letters as Motions." The report recommended that the Court amend R. 7:7-2 to include a new paragraph (d), which provides that a court must respond to the request of an incarcerated, unrepresented defendant within 45 days, if the request was submitted on an Administrative Office of Court approved form.

The off-cycle report was published for comment on July 11, 2014. Six comments were received, some supporting and some opposing the rule change. At its November 12, 2014 Administrative Conference, the Court gave preliminary approval to the Committee's proposal to add paragraph (d) to R. 7:7-2, provided that some alterations are made to the rule amendment and the proposed form. The Committee will consider the Court's request at a future meeting.

II. RULE AMENDMENTS CONSIDERED AND REJECTED

A. Citizen Complaints--Review of Police Reports before a Probable Cause Determination

An attorney representing the New Jersey Principals and Supervisors Association contacted a member of the Committee requesting that the Committee consider a directive or a rule change that would require court administrators to review any relevant police reports before making a probable cause determination on a citizen complaint. The attorney recounted a number of occasions when an unhappy parent had filed a citizen complaint against a principal or vice-principal who had disciplined a child. Court administrators had found probable cause based on the citizen's complaint and certification in support of probable cause and the case had ultimately been taken to trial. The attorney asserted that in his experience once a court administrator finds probable cause, the case usually goes to trial.

The constitutional authority of court administrators and court clerks to issue process is well established. The United States Supreme Court in Shadwick v. City of Tampa, 407 U.S. 345, 346 (1972), held that municipal court clerks (known as court administrators in New Jersey), are qualified to determine the existence of probable cause. Although court clerks are not judges or lawyers, they work within the judicial branch under the supervision of judges. Court administrators are neutral and detached magistrates who may issue warrants or summonses for the purposes of the Fourth Amendment. Ibid. See also State v. Ruotolo, 52 N.J. 508 (1968).

Court Rule 7:2-2(a)(1) governs the issuance of an arrest warrant or a summons on a complaint made by a private citizen. That rule provides that a private citizen complaint "may be issued only by a judge, or if authorized by the judge, by a municipal court administrator or deputy court administrator . . . ." R. 7:2-2 (a)(1). The judicial officer may issue the citizen complaint (emphasis added) "only if it appears . . . from the complaint, affidavit, certification, or testimony that there is probable cause to believe that an offense was committed, the defendant has committed it, and an arrest warrant or summons can be issued." Ibid. If the authorized court administrator or deputy court administrator finds no probable cause, "that finding shall be reviewed by the judge." Ibid. N.J.S.A. 2B:12-21(a) (emphasis added) also provides that a municipal court administrator or a deputy court administrator may issue a warrant or summons, if authorized by the judge: "An administrator or deputy administrator of a municipal court, authorized by a judge of that court, may exercise the power of the municipal court to administer oaths for complaints filed with the municipal court and to issue warrants and summonses."

The Committee believes that it would be improper for a court administrator to review a police report related to an incident that forms the basis of a citizen complaint in order to evaluate the truth of the allegations in that complaint. Such a review would involve the administrator in an investigation of the complaint, a function that is clearly a law enforcement or prosecutorial function. A court administrator or deputy court administrator, as a judicial officer, must maintain strict neutrality and remain independent of the law enforcement or prosecutorial function of investigating a complaint. State v. Ruotolo, supra, 52 N.J. at 511-515; State v.

Perkins, 219 N.J. Super. 121, 125-27 (Law Div. 1987). Moreover, in order for the judiciary to maintain the public's trust in its neutrality, it is vital that a municipal court and its staff not appear to be an arm of law enforcement or the prosecutor. As the court said in Perkins:

> It is important that law enforcement and police tasks be completely separated from those of the judiciary. It is therefore the policy of the Supreme Court that persons who perform any court duties or functions must not perform any duties or functions for the police and vice versa. The municipal court clerk or any deputy court clerk must be a neutral and detached judicial officer. *State v. Ruotolo,* 52 *N.J.* 508 [247 *A.*2d 1] (1968). Thus, each municipal court judge is urged to take the precautions necessary to prevent any false conclusions in the public mind that the court clerk is an adjunct of law enforcement agencies rather than a separate and independent official.
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> [Id. at 126.]

The Chair of the Committee also pointed out R. 7:2-2(a)(1) requires a judicial officer to determine probable cause "from the complaint, affidavit, certification, or testimony . . . . . " A police report is not a complaint, affidavit, certification or testimony and is not a sworn statement like the evidence enumerated in the rule.

Accordingly, the Committee voted unanimously to reject a rule change that would require municipal court administrators or deputy municipal court administrators to review a relevant police report before determining probable cause on a citizen complaint.

B. Trial Scheduling Rule

An attorney who frequently practices in municipal court wrote to the Municipal Practice Committee expressing concern that some municipal courts judges begin trials late at night. He recounted an instance when a municipal court judge directed him to begin a DWI trial after 10:00 p.m. He asked the judge for an adjournment arguing that because of the late hour, he would not be able to provide effective assistance of counsel. The request was denied. The attorney therefore asked the Committee to recommend a rule requiring that DWI trials be scheduled only during the day, if day sessions are held in that court. If, however, no day sessions exist, the trial should not begin after 7:00 p.m. and no testimony should be taken after 10:00 p.m.

The attorney cited to an Administrative Office of the Courts' Municipal Court Services Bulletin Letter, #7-75, which provided the following guidance to municipal courts on holding court sessions late at night:

> This Office has again received critical comment regarding court sessions which extend until midnight and beyond. It is important that each judge consider the inconvenience and hardships that litigants and witnesses for both the State and the defense encounter when a hearing is conducted in the late evening hours. In those courts having only one evening session a week, consideration should be given to special sessions for the hearing of lengthy contested cases which normally might take several hours to hear. Such cases should be set down for hearing during the day or at a special evening session starting at an early hour. Also, if the regularly scheduled court sessions are overcrowded with the result that all cases cannot be reached until late in the evening, additional court sessions should be scheduled to meet the situation. Adjustments should also be made in regular court schedules to meet any seasonal increase in the number of cases.

The attorney argued that since the guidance found in the 1975 Bulletin Letter was not being followed, a court rule might be necessary to prohibit the late start of trials.

The times at which municipal courts sit are generally provided for by court rule. Court Rule 1:30-3 provides that municipal court days and hours for each municipal court shall be "fixed by the judge or presiding judge thereof, subject to the approval of the Administrative Director of the Courts." R. 1:30-3(a) and (b). The court rules, however, do not restrict the start or ending time of court sessions or the times at which trials may be held.

Judge McGeady, Chair of the Committee, formed a subcommittee on late night trials to consider the issue. The subcommittee proposed a new rule, R. 7:8-11, Trial Scheduling, which in its final form provided:

> The court shall ascertain when the parties will be ready for trial, and determine an estimate of the length of the trial from both parties. Trial shall be scheduled on the date and at a time that is reasonable to complete the trial on that date or to try the case substantially on that date. The court shall make every effort to start the trial at the time noticed to defendant. If the matter cannot be tried to conclusion, the court shall make every effort to schedule the continuing trial date on the next court session. In so far as practicable, trial dates should be scheduled for daytime sessions unless the court does not have daytime sessions. Special trial sessions shall be scheduled for trial whenever possible.

The subcommittee explained that the proposed rule was designed to give municipal courts general guidance on scheduling trials, rather than to micro-manage a court's calendar. The subcommittee believed that the rule would promote uniformity and encourage judges to adopt scheduling practices that would benefit all parties.

The Committee's objections to the proposed rule were numerous. Many members thought that the rule did not address the problem of late night trials as originally raised by the attorney's letter. These members thought that a simple rule that placed a strict limit on the time a trial could begin or end would be a more satisfactory solution to the problem.

On the other hand, other members thought that the rule would unreasonably limit the discretion of the municipal court judge to schedule cases and would hamper municipal courts in clearing cases from their calendars. Members pointed out that the calendars of municipal courts varied so widely that the proposed rule would not accommodate all the different situations. New Jersey municipal courts range from large urban courts that have daily sessions, including Saturdays, to tiny rural courts that have sessions only once or twice a month.

Another objection to the proposed rule was that there are no other similar court rules restricting the scheduling of trials in Superior Court trial divisions. Finally, many members who opposed the rule, including a private attorney who has practiced in the municipal courts for many years, thought that the inconvenient scheduling of trials was simply not a problem in the municipal courts. Accordingly, after extensive debate, the Committee rejected the proposed rule by a vote of 14 opposed and 4 in favor.

C. Appearance of an Attorney for a Corporation, Partnership or Unincorporated Association, R. 7:6-2(a)(2) and R. 7:8-7(a)

An attorney wrote to the Committee asking for a rule modification that would "explicitly state whether or not a corporate officer must be present, in addition to an attorney, to enter a plea or participate in a trial" on behalf of a corporation. The attorney recognized that the current court rules permit a corporation to appear by way of an attorney. However, he said that some municipal court judges require a corporate officer to be present when a corporation pleads guilty or stands trial, even though an attorney representing the corporation is appearing.

Court Rule 7:8-7(a) provides that a corporation, partnership or unincorporated association shall appear at a municipal court proceeding through its attorney, unless otherwise permitted by the court:

> Except as otherwise provided by Rules 7:6-1(b), 7:6-3, or 7:12-3, the defendant shall be present, either in person, or by means of a video link as approved by the Administrative Office of the Courts, at every stage of the proceeding and at the imposition of sentence. . . . A corporation, partnership or unincorporated association shall appear by its attorney unless an appearance on its behalf by an officer or agent has been permitted pursuant to R. 7:6-2(a)(2).

This rule is consistent with Court Rule 3:16(b) which states that in an indictable criminal matter: "A corporation shall appear by its attorney for all purposes."

Court Rule 7:6-2(a)(2) permits a corporation, partnership or unincorporated association to plead guilty by an authorized officer, instead of counsel, if the court consents:

> A defendant that is a corporation, partnership or unincorporated association may enter a plea by an authorized officer or agent and may appear by an officer or agent provided the appearance is consented to by the named party defendant and the court finds that the

> interest of justice does not require the appearance of counsel. If a defendant that is a corporation, partnership, or unincorporated association fails to appear or answer, the court, if satisfied that service was duly made, shall enter an appearance and a plea of not guilty for the defendant and thereupon proceed to hear the complaint.

This rule presupposes that counsel will normally enter a plea of guilty or not guilty on behalf of a corporation, partnership or unincorporated association, but that, in the interest of justice, a municipal court may allow an officer or agent to enter such a plea.

After careful consideration of the attorney's letter, the Committee concluded that the court rules as currently written are clear that an attorney may appear on behalf of a corporation for all purposes and that there is no need for a corporate officer to appear also. Hence, the Committee voted unanimously to not recommend a rule amendment as requested.

D. Referral in State v. Amparo, R. 7:8-4--Consolidation of Complaints

In State v. Amparo, 0223-W-2014-000307 et al. (Law Div. 2014), an unpublished opinion, Peter E. Doyne, A.J.S.C., denied a motion to consolidate a number of complaints against Xavier M. Amparo charging various drug offenses, and referred the issues raised by the case to the Criminal and Municipal Practice Committees.

In Amparo, defendant was charged in numerous complaints with various drug offenses, including third-degree possession with intent to distribute a controlled dangerous substance and disorderly persons possession of a controlled dangerous substance. The complaints were filed in four different municipal courts in two counties: Hackensack Municipal Court, Bergen County; Rochelle Park Municipal Court, Bergen County; Bogota Municipal Court, Bergen County, and Springfield Municipal Court, Union County, and arose out of arrests that took place over the course of approximately 10 months: April 4, 2013, September 11, 2013, October 1, 2013, December 4, 2013, December 30, 2013, and February 24, 2014. Some of the indictable charges filed in Rochelle Park Municipal Park had already been downgraded by the Bergen County Prosecutor's Office to disorderly persons offenses. State v. Amparo, supra (slip op. at 2 – 4).

Defendant filed a motion to consolidate all these complaints with Judge Doyne under R. 7:8-4 (emphasis added), which provides:

> The court may order two or more complaints to be tried together if the offenses arose out of the same facts and circumstances, regardless of the number of defendants. In all other matters, the court may consolidate complaints for trial with the consent of the persons charged. Complaints originating in two or more municipalities may be consolidated for trial only with the approval of the appropriate Assignment Judge, who

> shall designate the municipal court in which trial is to proceed. A party seeking consolidation of complaints originating in different municipalities shall file a written motion for that relief directly with the Assignment Judge.

In his eight page comprehensive opinion denying the motion, Judge Doyne reasoned that he did not have the authority to consolidate all the charges because they did not arise out of the "same facts and circumstances." State v. Amparo, supra (slip op. at 6). He rejected defendant's argument that all the offenses were based on the same facts and circumstances because all the arrests were related to defendant's sale of marijuana. Judge Doyne called this argument "incompetent and even if competent, probably insufficient. See R. 1:6-6." Ibid. He also noted that consolidating the charges "would create unnecessary procedural complexities," since the Bergen County Prosecutor's Office would be prosecuting in Superior Court a charge it had already downgraded to a disorderly persons offense and a charge that arose out of a Union County offense. Id. at 6 – 7.

In the conclusion of the opinion, Judge Doyne stated:

> Consolidation is not justified premised on the arguments presented on behalf of Amparo. No authority is referenced which would justify consolidation. Neither the rules governing municipal nor criminal practice provide a foundation to consolidate. As there appears to be little guidance addressing or attempting to rectify these practical questions, this may be an issue ripe for discussion by the Criminal Practice Committee and the Municipal Practice Committee.
>
> [Id. at 7.]

The Committee believed that no change was necessary to R. 7:8-4. The members thought that multiple municipal court cases that have no factual nexus, such as the ones in Amparo, should not be consolidated. A municipal prosecutor

on the Committee spoke out strongly against allowing consolidation of charges where the offenses were unrelated. It was observed that in the Amparo case, if the Assignment Judge had allowed consolidation of all the cases, then defendant may have been eligible for a Pretrial Intervention or Conditional Discharge program, which are intended exclusively for first-time offenders. Such an outcome would have undermined the legislative intent of those programs to give such treatment only to defendants who had no prior convictions.

The Committee considered whether R. 7:8-4 should be changed to detail the factual situations where a motion to consolidate should not be granted. This idea was rejected because it was asserted that the court rules do not generally contain prohibitions on the actions a court may take. The Committee voted unanimously not to recommend an amendment to R. 7:8-4.

E. Plea Cut-Off Date for Driving While Intoxicated Cases

One member of the Committee thought that it might be a good case management technique to institute a plea cut-off date for DWI cases. The member attempted without success to draft such a rule for the Committee's consideration. The Committee, for the most part, did not favor such a rule change. Many members thought that a plea cut-off was impractical because of the difficulty in obtaining discovery in DWI cases. Other members objected because such a rule would take away flexibility from the municipal court judge in handling DWI cases in the way that is best in that court, based on the size of the court, the DWI caseload, and other factors that are unique to the court. A motion to reject the proposed rule change passed by a vote of 24 in favor and 2 opposed.

F. Proposed Amendment to R. 7:7-10, Joint Representation

An experienced municipal court practitioner wrote to the Chair of the Committee suggesting a change to Court Rule 7:7-10, Joint Representation, which provides:

> No attorney or law firm shall enter an appearance for or represent more than one defendant in a multi-defendant trial or enter a plea for any defendant without first securing the court's permission by motion made in the presence of the defendants who seek joint representation. The motion shall be made as early as practicable in the proceedings in order to avoid delay of the trial. For good cause shown, the court may allow the motion to be brought at any time.

The practitioner stated that the rule was problematic because the attorney who wanted to provide joint representation would not receive hearing notices for the co-defendants until he or she had entered an appearance. The practitioner, therefore, proposed the following revision of the rule:

> Following a preliminary entry of appearance on behalf of the defendants, an attorney who seeks to represent more than one person in a multi-defendant case shall promptly move before the court for an order seeking the court's permission to appear on behalf of the defendants. The hearing on the motion shall be conducted in the presence of the defendants who desire joint representation.

This change to the rule would allow an attorney to make a preliminary entry of appearance before the court has given its permission for joint representation; thus enabling the attorney to receive hearing notices for the multiple defendants.

The Committee quickly came to the conclusion that such a rule change was unnecessary. One member pointed out that the Part VII rule was modeled on the Part III rule on joint representation, R. 3:8-2, and that the Superior Court, Criminal

Division, had not had any practical difficulty with the rule. It was also pointed out that when the attorney appears on behalf of the first defendant, the attorney may ask the court's permission to represent co-defendants. A motion to reject the proposed rule change to R. 7:7-10 was passed unanimously.

III. OTHER BUSINESS

A. Expanding Authority to Set Bail in First Appearance Court

In April 2013, the Supreme Court expanded a prior relaxation of R. 3:26-2 to allow any municipal court judge sitting in a first appearance court to set bail in all cases, except homicide and extradition proceedings. Judge Grant asked the Municipal and Criminal Practice Committees to consider amendments to the Court Rules to address this subject and thus obviate the need for a long-term rule relaxation.

Judge McGeady appointed three members to a joint subcommittee to consider the issue with the Criminal Practice Committee. Subsequently, Judge McGeady was advised that the Special Supreme Court Joint Committee on Criminal Justice, which was formed by Chief Justice Rabner to explore issues related to bail, pre-indictment procedures, and post-indictment procedures, was considering this issue and therefore there was no need for the Municipal Practice Committee to take any action. The Special Joint Committee was comprised of individuals representing the Attorney General's Office, County Prosecutors, Public Defender, judiciary (including judges and staff), Governor's Office, legislative staff and the private bar. The Committee therefore tabled the matter.

The Special Joint Subcommittee published its report on March 10, 2014 recommending comprehensive reform of the State's system of bail through an amendment to the State Constitution and enactment of legislation. The report also suggested changes to the criminal justice system to ensure that defendants receive a speedy trial.

On August 11, 2014, Governor Christie signed into law L. 2014, c. 31,

enacting comprehensive bail reform in New Jersey, provided that the Constitution was amended to allow pretrial detention. In November 2014, the voters of New Jersey voted in favor of a Constitutional amendment permitting pretrial detention.

The issue of a rule change to R. 3:26-2 to expand the authority of municipal court judges to set bail in a first appearance court will now initially be considered by the Bail Law Reform Rules and Speedy Trial Working Group formed by Judge Grant to consider possible court rule changes required by the new bail reform legislation.

IV. CONCLUSION

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

Respectfully submitted:

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