

**RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 3:10. PLEADING AND MOTIONS BEFORE TRIAL; DEFENSES AND
OBJECTIONS**

Rule 3:10-1. Pleadings and Motions

Pleadings in criminal actions shall consist only of the complaint, the indictment or accusation, and the plea. Any defense or objection capable of determination without trial of the general issue may be raised before trial by motion to dismiss or for other appropriate relief.

Note: Source-R.R. 3:5-5(a) (b) (1).

Rule 3:10-2. Time and Manner of Making Motion; Hearing on Motion

(a) Time and Manner of Making Motion. Unless otherwise required by law, preindictment motions shall be heard by the judge to whom the case is assigned. If the case has not been assigned to a judge pre-indictment motions shall be made to the Criminal Presiding Judge or designee, except as otherwise provided by law. Unless otherwise required by law, or ordered by the Criminal Presiding Judge, post-indictment motions shall be made to the judge to whom the indictment has been assigned. Unless otherwise instructed by the court, at the arraignment counsel shall advise the court of their intention to make motions. Absent good cause, all motions shall be filed with the court and be accompanied by a brief by the scheduled Initial Case Disposition Conference. If, however, the party opposing the motion bears the burden of proof, the time for submitting the brief is at the discretion of the court. The dates for briefing and for the hearing of such motions shall be set by the court either before or at the Initial Case Disposition Conference. Unless otherwise ordered by the court, motions and conferences shall be scheduled on the same day. The court may for good cause shown and in the interest of justice permit additional motions to be made thereafter. A motion shall include all defenses and objections then available to the defendant.

(b) Hearing on Motion. A motion made before trial shall be determined before the trial memorandum is prepared and the trial date fixed, unless the court, for good cause, orders it deferred for determination at or after trial.

(c) Defenses and Objections Which Must be Raised Before Trial. The defense of double jeopardy and all other defenses and objections based on defects in the institution of the prosecution or in the indictment or accusation, except as otherwise provided by R. 3:10-2(d) (defenses which may be raised only before or after trial) and R. 3:10-2(e) (lack of jurisdiction), must be raised by motion before trial. Failure to so present any such defense constitutes a waiver thereof, but the court for good cause shown may grant relief from the waiver.

(d) Defenses and Objections Which May Only be Raised Before or After Trial. The defense that the indictment or accusation fails to charge an offense and the defense that the charge is based on a statute or regulation promulgated pursuant to statute which is unconstitutional or invalid in whole or in part may only be raised by motion either before trial or within 10 days after a verdict of guilty or within such further time as the court may fix during such 10-day period, or on appeal. Such defenses shall not be considered during trial.

(e) Lack of Jurisdiction. The court shall notice the defense of lack of jurisdiction in the court at any time during the pendency of the proceeding except during trial.

Note: Source-R.R. 3:5-5(b)(2)(3) and (4); caption amended, former Rules 3:10-2, -3, -4, -5 and -6 amended, redesignated and incorporated into R. 3:10-2 as paragraphs (c), (d), (e), (a), and (b) July 13, 1994 to be effective January 1, 1995; paragraph (a) amended April 12, 2016 to be effective May 20, 2016; paragraph (a) amended August 1, 2016 to be effective September 1, 2016.

Rule 3:10-3. Notice by the State – Expert Witness Testimony When Testifying Expert Did Not Participate in Underlying Tests

(a) Notice by the State. Whenever the State intends to call an expert witness to testify at trial and that expert witness did not conduct, supervise, or participate in a scientific or other such test about which he or she will testify, the State shall serve written notice upon the defendant and counsel of intent to call that witness, along with a proffer of such testimony, all reports pertaining to such testimony, and any underlying tests, at least 20 days before the pretrial proceeding begins, or at least 20 days before the pretrial conference. If extenuating circumstances exist, the state may file the notice after this deadline. For purposes of this rule the term “test” shall include any test, demonstration, forensic analysis or other type of expert examination.

(b) Objection by the Defendant. If the defendant intends to object to the expert testimony, the defendant shall serve written notice upon the State of any objection within 10 days of receiving the State’s notice of intent. In the defendant’s notice of objection, he or she must specify the grounds for such objection, including any Confrontation Clause grounds under either the United States or New Jersey State Constitution.

(c) Determination. Whenever a defendant files a notice of objection specifying the grounds for objection, the court shall decide admissibility of the testimony on the grounds alleged no later than seven days before the beginning of trial.

(d) Failure to Comply With Time Limitations. The defendant’s failure to file a notice of objection within the timeframe required by this rule shall constitute a waiver of any objection to the admission of the expert testimony. The defendant’s failure to specify a particular ground for such objection shall constitute a waiver of any ground not specified. The State’s failure to file a notice of intent within the timeframe required by this rule shall for good cause shown extend the time for defendant to object pursuant to paragraph (b)

and for the court to decide admissibility of the testimony pursuant to paragraph (c). In any event, the court may take such action as the interest of justice requires.

(e) Time Limitations. The time limitations set forth in this rule shall not be relaxed except upon a showing of good cause.

Note: Source-R.R. 3:5-5(b)(2) (first sentence); former R. 3:10-3 redesignated 3:10-2(d) July 13, 1994 to be effective January 1, 1995. New Rule adopted July 27, 2015 to be effective September 1, 2015.

Rule 3:10-4. [Reserved]

Note: Source-R.R. 3:5-5(b)(2) (fifth sentence); former R. 3:10-4 redesignated R. 3:10-2(e) July 13, 1994 to be effective January 1, 1995.

Rule 3:10-5. [Reserved]

Note: Source-R.R. 3:5-5(b)(2) (third sentence), 3:5-5(b)(3); former R. 3:10-5 amended and redesignated R. 3:10-2(a) July 13, 1994 to be effective January 1, 1995.

Rule 3:10-6. [Reserved]

Note: Source-R.R. 3:5-5(b)(4); former R. 3:10-6 amended and redesignated 3:10-2(b) July 13, 1994 to be effective January 1, 1995.

Rule 3:10-7. Effect of Determination of Motion

Except as provided in R. 3:9-3(f), if a motion is determined adversely to the defendant, the defendant shall be permitted to plead if the defendant has not previously pleaded but a plea previously entered shall stand. If an objection or defense specified in R. 3:10-2 is sustained and is not otherwise remediable the court shall order the indictment or accusation dismissed. If the court grants a motion to dismiss an indictment or accusation, it may also order that the defendant be held in custody or that bail be continued for a specified time pending the filing of a new indictment or accusation.

Note: Source-R.R. 3:5-5(b)(2) (sixth sentence), 3:5-5(b)(5). Amended July 21, 1980 to be effective September 8, 1980; amended July 13, 1994 to be effective September 1, 1994; amended July 13, 1994 to be effective January 1, 1995.