

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 3:9. PRETRIAL PROCEDURE

3:9-1. Post-Indictment Procedure; Arraignment; Meet and Confer; Plea Offer; Conferences; Pretrial Hearings; Pretrial Conference

(a) Post-Indictment Procedure. When an indictment is returned, or an indictment sealed pursuant to R. 3:6-8 is unsealed, a copy of the indictment, together with all available discovery as provided for in R. 3:13-3(b)(1) for each defendant named therein, shall be either delivered to the criminal division manager's office, or be available through the prosecutor's office. If a plea offer is tendered, it must be in writing and should be included in the discovery package. Upon the return or unsealing of the indictment the defendant shall be notified in writing by the criminal division manager's office of the date, time and location to appear for arraignment which shall occur within 14 days of the return or unsealing of the indictment. The criminal division manager's office shall ascertain whether the defendant is represented by counsel and that an appearance has been filed pursuant to Rule 3:8-1. Upon receipt of the indictment by the criminal division manager's office, counsel for the defendant shall immediately be notified electronically of the return or unsealing of the indictment and the date, time and location of the arraignment. If the defendant is unrepresented, the criminal division manager's office shall ascertain whether the defendant has completed an application form for public defender services and the status of that application.

(b) Arraignment; In Open Court.

(1) The arraignment shall be conducted in open court no later than 14 days after the return or unsealing of the indictment. If the defendant is unrepresented at arraignment, upon completion of an application for services of the Public Defender, the court may assign the Office of the Public Defender to represent the defendant for purposes of the arraignment.

(2) At the arraignment, the judge shall (i) advise the defendant of the substance of the charge; (ii) confirm that if the defendant is represented by the public defender, discovery has been obtained, or if the defendant has retained private counsel, discovery has been requested pursuant to R. 3:13-3(b)(1), or counsel has affirmatively stated that discovery will not be requested; (iii) confirm that the defendant has reviewed with counsel the indictment and, if obtained, the discovery; (iv) if so requested, allow the defendant to apply for pretrial intervention; and (v) inform all parties of their obligation to redact confidential personal identifiers from any documents submitted to the court in accordance with Rule 1:38-7(b).

(3) The defendant shall enter a plea to the charges. If the plea is not guilty, counsel shall report on the results of plea negotiations and such other matters discussed by the parties which shall promote a fair and expeditious disposition of the case. Unless otherwise instructed by the court, at the arraignment counsel shall advise the court of their intention to make motions pursuant to R. 3:10-2(a).

(c) Meet and Confer Requirement; Plea Offer. Prior to the Initial Case Disposition Conference, the prosecutor and the defense attorney shall discuss the case, including any plea offer and any outstanding or anticipated motions, and shall report thereon at the Initial Case Disposition Conference. The parties shall discuss any other matters as instructed by the court. The prosecutor and defense counsel shall also confer and attempt to reach agreement on any discovery issues, including any issues pertaining to discovery provided through the use of CD, DVD, e-mail, internet or other electronic means. Any plea offer to be made by the prosecutor shall be in writing and shall be included in the post-indictment discovery package.

(d) Disposition Conferences. After arraignment, the court shall conduct the Initial Case Disposition Conference, the Final Case Disposition Conference and the Pretrial Conference, as described in paragraph (f) of this rule. At the Initial Case Disposition Conference, if not filed consistent with R. 3:10-2(a), the court shall set date(s) for submission of briefs, the hearing of pretrial motions, and schedule a Final Case Disposition Conference, if necessary, according to the differentiated needs of each case. For good cause, prior to the Pretrial Conference, the court may schedule a Discretionary Case Disposition Conference. In advance of any scheduled disposition conference, the prosecutor and the defense attorney shall discuss the case, including any plea offer and any outstanding or anticipated motions, and shall report thereon at the conference. The prosecutor and defense counsel shall also confer and attempt to reach an agreement as to any discovery issues, including any issues pertaining to discovery provided through the use of CD, DVD, email, internet or other electronic means. Any plea offer to be made by the prosecutor shall be in writing and forwarded to the defendant's attorney. At the conclusion of either the Final Case Disposition Conference or the granted Discretionary Case Disposition Conference, the court may in its discretion set a trial date, schedule any necessary pretrial hearings, or schedule another conference. Each of these conferences shall be held in open court with the defendant present.

(e) Pretrial Hearings. Hearings to resolve issues relating to the admissibility of statements by defendant, pretrial identifications of defendant, sound recordings, and motions to suppress shall be held prior to the Pretrial Conference, unless upon request of the movant at the time the motion is filed, the court orders that the motion be reserved for the time of trial. Upon a showing of good cause, hearings as to admissibility of other evidence may also be held pretrial.

(f) Pretrial Conference. If the court determines that discovery is complete; that all motions have been decided or scheduled in accordance with paragraph (e); and that all reasonable efforts to dispose of the case without trial have been made and it appears that further negotiations or an additional conference will not result in disposition of the case, or progress toward disposition of the case, the judge shall conduct a pretrial conference. The conference shall be conducted in open court with the prosecutor, defense counsel and the defendant present. Unless objected to by a party, the court shall ask the prosecutor to describe, without prejudice, the case including the salient facts and anticipated proofs and shall address the defendant to determine that the defendant understands: (1) the State's final plea offer, if one exists; (2) the sentencing exposure for the offenses charged, if

convicted; (3) that ordinarily a negotiated plea should not be accepted after the pretrial conference and a trial date has been set; (4) the nature, meaning and consequences of the fact that a negotiated plea may not be accepted after the pretrial conference has been conducted and a trial date has been set; and (5) that the defendant has a right to reject the plea offer and go to trial and that if the defendant goes to trial the State must prove the case beyond a reasonable doubt. If the case is not otherwise disposed of, a pretrial memorandum shall be prepared in a form prescribed by the Administrative Director of the Courts. The pretrial memorandum shall be reviewed on the record with counsel and the defendant present and shall be signed by the judge who, in consultation with counsel, shall fix the trial date. No admissions made by the defendant or defendant's attorney at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and defendant's attorney. The court shall also inform the defendant of the right to be present at trial, the trial date set, and the consequences of a failure to appear for trial, including the possibility that the trial will take place in defendant's absence.

Note: Source-R.R. 3:5-1. Paragraph (b) deleted and new paragraph (b) adopted July 7, 1971 to be effective September 13, 1971; paragraph (b) amended July 29, 1977 to be effective September 6, 1977; paragraph (a) amended and paragraph (b) deleted July 21, 1980 to be effective September 8, 1980; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; first three sentences of former paragraph (a) amended and redesignated paragraph (c), last sentence of former paragraph (a) amended and moved to new paragraph (e), new paragraphs (a), (b), (d) and (e) adopted July 13, 1994 to be effective January 1, 1995; paragraph (e) amended July 12, 2002 to be effective September 3, 2002; paragraph (c) amended July 16, 2009 to be effective September 1, 2009; caption, paragraph (a), paragraph (b) caption and text, and paragraph (c) amended December 4, 2012 to be effective January 1, 2013; caption amended, paragraph (a) caption and text amended, former paragraph (b) amended and redesignated as paragraph (c), former paragraph (c) caption and text amended and redesignated as paragraph (b), paragraph (d) amended, new paragraph (e) added, and former paragraph (e) amended and redesignated as paragraph (f) April 12, 2016 to be effective May 20, 2016; paragraphs (b) and (c) amended, former paragraph (d) amended and redesignated as paragraph (e), former paragraph (e) caption and text amended and redesignated as paragraph (d), and paragraph (f) amended August 1, 2016 to be effective September 1, 2016.

3:9-2. Pleas

A defendant may plead only guilty or not guilty to an offense. The court, in its discretion, may refuse to accept a plea of guilty and shall not accept such plea without first questioning the defendant personally, under oath or by affirmation, and determining by inquiry of the defendant and others, in the court's discretion, that there is a factual basis for the plea and that the plea is made voluntarily, not as a result of any threats or of any promises or inducements not disclosed on the record, and with an understanding of the nature of the charge and the consequences of the plea. In addition to its inquiry of the defendant, the court may accept a written stipulation of facts, opinion, or state of mind that the defendant admits to be true, provided the stipulation is signed by the defendant, defense counsel, and the prosecutor. When the defendant is charged with a crime punishable by death, no factual basis shall be required from the defendant before entry of a plea of guilty to a capital offense or to a lesser included offense, provided the court is satisfied from the proofs presented that there is a factual basis for the plea. For good

cause shown the court may, in accepting a plea of guilty, order that such plea not be evidential in any civil proceeding. If a plea of guilty is refused, no admission made by the defendant shall be admissible in evidence against the defendant at trial. If a defendant refuses to plead or stands mute, or if the court refuses to accept a plea of guilty, a plea of not guilty shall be entered. Before accepting a plea of guilty, the court shall require the defendant to complete, insofar as applicable, and sign the appropriate form prescribed by the Administrative Director of the Courts, which shall then be filed with the criminal division manager's office.

Note: Amended July 14, 1972 to be effective September 5, 1972. Amended July 17, 1975 to be effective September 8, 1975; amended September 28, 1982 to be effective immediately; amended July 13, 1994 to be effective January 1, 1995; amended July 28, 2004 to be effective September 1, 2004.

3:9-3. Plea discussion; Agreements; Withdrawals

(a) Plea Discussions Generally. The prosecutor and defense attorney may engage in discussions relating to pleas and sentences and shall engage in discussions about such matters as will promote a fair and expeditious disposition of the case, but except as hereinafter authorized the judge shall take no part in such discussions.

(b) Entry of Plea. When the prosecutor and defense counsel reach an agreement concerning the offense or offenses to which a defendant will plead on condition that other charges pending against the defendant will be dismissed or an agreement concerning the sentence that the prosecutor will recommend, or when pursuant to paragraph (c) the defendant pleads guilty based on indications by the court of the maximum sentence to be imposed, such agreement and such indications shall be placed on the record in open court at the time the plea is entered.

(c) Disclosure to Court. On request of the prosecutor and defense counsel, the court in the presence of both counsel may permit the disclosure to it of the tentative agreement and the reasons therefor in advance of the time for tender of the plea or, if no tentative agreement has been reached, the status of negotiations toward a plea agreement. The court may then indicate to the prosecutor and defense counsel whether it will concur in the tentative agreement or, if no tentative agreement has been reached and with the consent of both counsel, the maximum sentence it would impose in the event the defendant enters a plea of guilty, assuming, however, in both cases that the information in the presentence report at the time of sentence is as has been represented to the court at the time of the disclosure and supports its determination that the interests of justice would be served thereby. If the agreement is reached without such disclosure or if the court agrees conditionally to accept the plea agreement as set forth above, or if the plea is to be based on the court's conditional indication about the sentence, all the terms of the plea, including the court's concurrence or its indication concerning sentence, shall be placed on the record in open court at the time the plea is entered. Nothing in this Rule shall be construed to authorize the court to dismiss or downgrade any charge without the consent of the prosecutor.

(d) Agreements Involving the Right to Appeal. Whenever a plea agreement includes a provision that defendant will not appeal, the court shall advise the defendant that notwithstanding the inclusion of this provision, the defendant has the right to take a timely appeal if the plea agreement is accepted, but that if the defendant does so, the plea agreement may be annulled at the option of the prosecutor, in which event all charges shall be restored to the same status as immediately before the entry of the plea. In the event the defendant files an appeal in a case in which the plea agreement included a provision that the defendant will not appeal, the State must exercise its right to annul the plea agreement no later than seven days prior to the date scheduled for oral argument or submission without argument.

(e) Withdrawal of Plea. If at the time of sentencing the court determines that the interests of justice would not be served by effectuating the agreement reached by the prosecutor and defense counsel or by imposing sentence in accordance with the court's previous indications of sentence, the court may vacate the plea or the defendant shall be permitted to withdraw the plea.

(f) Conditional Pleas. With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty reserving on the record the right to appeal from the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant shall be afforded the opportunity to withdraw his or her plea. Nothing in this rule shall be construed as limiting the right of appeal provided for in R. 3:5-7(d).

(g) Plea Cut Off. After the pretrial conference has been conducted and a trial date set, the court shall not accept negotiated pleas absent the approval of the Criminal Presiding Judge based on a material change of circumstance, or the need to avoid a protracted trial or a manifest injustice.

Note: Adopted July 17, 1975 to be effective September 8, 1975. Paragraph (d) adopted July 29, 1977 to be effective September 6, 1977; paragraph (d) redesignated as (e); paragraph (f) adopted July 21, 1980 to be effective September 8, 1980; paragraphs (b), (c) and (e) and captions for paragraphs (b) and (c) amended May 23, 1989 to be effective June 15, 1989; paragraph (d) amended June 29, 1990 to be effective September 4, 1990; paragraphs (a) and (f) amended, paragraphs (g) adopted July 13, 1994 to be effective January 1, 1995; caption to paragraph (g) amended July 5, 2000 to be effective September 5, 2000.