

Procedure Governing Requests for Counsel by Criminal Defendants (Pursuant to *State v. Tucker*, 137 N.J. 259 (1994))

Directive #3-96
Issued by:

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Administrative Director

The Supreme Court has directed that the procedure set forth below is to be followed in all indictable and non-indictable criminal cases.

At defendant's first trial court appearance following the filing of a criminal complaint, the court is to ask defendant specifically whether he or she seeks counsel. Defendant's response is to be recorded on the complaint in one of three ways, as follows: (1) A defendant requested counsel be furnished@, or (2) A defendant wishes to retain counsel@, or (3) A defendant waives the right to be represented by counsel@. After the complaint is filed, the court is to proceed in accordance with the provisions of *Rule 3:4-2*.

In *State v. Tucker*, 137 N.J. 259 (1994), the Court requested the Criminal Practice Committee consider whether *Rule 3:4-2* should be amended so as to require all defendants, after being advised of their Sixth Amendment rights, to state whether they desire counsel. A joint subcommittee of the Criminal Practice Committee and the Committee on Municipal Courts recommended rule changes that would require (1) judges to ask defendant specifically whether he or she seeks counsel and (2) the response by defendant to be memorialized on the complaint itself. The Criminal Practice Committee endorsed the joint committee's recommendations. Those recommendations were then presented to the Supreme Court for expedited review and possible action. The Court determined not to adopt an immediate rule change but rather to implement the above procedures through this Directive. Consideration of and action on rule amendments will take place as part of the regular 1994-96 rules cycle.

Your efforts in ensuring adherence to the provisions of this Directive are, as always, very much appreciated.

R.D.L.

EDITOR'S NOTE

No change has been made to the original text.