CRIMINAL PRACTICE COMMITTEE REPORT ON IMPLEMENTING THE RECOMMENDATIONS OF THE JOINT COMMITTEE ON CRIMINAL JUSTICE

November 19, 2015

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I. Background

A. Supreme Court Action on the Report of the Joint Committee on Criminal Justice

The Joint Committee on Criminal Justice (hereinafter JCCJ), chaired by Chief Justice Stuart Rabner and comprised of judges, prosecutors, public defenders, private counsel, court administrators, and staff from the Legislature and the Governor's office, was established in June 2013 and charged with examining issues related to bail and delays in bringing criminal cases to trial. On March 10, 2014, the JCCJ filed a report containing a series of recommendations regarding bail reform, pretrial detention, the time frames in which defendants must be indicted and brought to trial, and procedures for the processing and management of criminal cases. The entire JCCJ report can be found on the Judiciary's internet website at:

http://www.judiciary.state.nj.us/pressrel/2014/FinalReport_3_20_2014.pdf

On August 11, 2014, Governor Chris Christie signed S-946 into law as L. 2014, c. 31. That law, which is commonly known as the Bail Reform Law, is codified at N.J.S.A. 2A:162-15 to -26 and is effective on January 1, 2017. It contains provisions regarding pretrial release, pretrial detention and speedy trial. See N.J.S.A. 2A:162-15 to -26 (bail reform); N.J.S.A. 2A:162-22 (speedy trial for eligible defendants). As such, the Bail Reform Law addresses Recommendations 1 through 15 of the JCCJ report.

The Supreme Court subsequently considered JCCJ Recommendations 16-21 from the JCCJ Pre-Indictment report (JCCJ Report at pages 74-84), and Recommendations 22-27 from the JCCJ Post-Indictment report (JCCJ Report at pages 88-95). (A complete list of JCCJ recommendations is set forth in Appendix B of this report). The Court approved JCCJ Recommendations 16 – 23 and Recommendation 27,

and later referred them to the Criminal Practice Committee (hereinafter the Committee) for development of rule amendments or other steps necessary to implement the recommendations. The Court did not approve JCCJ Recommendation 24 and did not act upon JCCJ Recommendations 25 and 26. The Court's Administrative Determinations regarding the JCCJ recommendations are included as Appendix C of this report.

B. Proposed Rules to Implement JCCJ Recommendations

The rules proposed in this report address JCCJ Recommendations 16-23 and Recommendation 27. These proposals will require significant adjustments to pre- and post-indictment case processing and management. The JCCJ recognized that due to longstanding practices, its recommendations, if adopted and implemented, would require a change in culture on the part of the Judiciary, prosecutors and defense counsel. Consequently, the Committee envisions that these proposed rules will become effective early in 2016 to allow for an adequate transition to these new practices before the Bail Reform Law (L. 2014, c. 31) becomes effective on January 1, 2017.

Rule 3:4-2. First Appearance After Filing Complaint

(a) Time of First Appearance. [Without unnecessary delay, f]Following the filing of a complaint the defendant shall be brought before a judge for a first appearance as provided in this Rule. If the defendant remains in custody, the first appearance shall occur within 72 hours after arrest, excluding holidays, and shall be before a judge with authority to set bail for the offenses charged. If a defendant is released on a complaint-summons, the first appearance shall be held no more than 60 days after the issuance of the complaint-summons or the defendant's arrest.

(b) First Appearance; Where Held. All first appearances for indictable offenses shall occur at a centralized location and before a judge designated by the Assignment Judge. If the defendant is unrepresented at the first appearance, the court may assign the Office of the Public Defender to represent the defendant for purposes of the first appearance.

[(b)] (c) Procedure in Indictable Offenses. At the defendant's first appearance before a judge, if the defendant is charged with an indictable offense, the judge shall:

(1) give the defendant a copy of the complaint and inform the defendant of the charge:

(2) inform the defendant of the right to remain silent and that any statement may be used against the defendant;

(3) inform the defendant of the right to retain counsel and, if indigent, the right to be represented by the public defender;

(4) ask the defendant specifically whether he or she wants counsel and record the defendant's answer on the complaint;

(5) if the defendant asserts indigence, and does not affirmatively, and with understanding, waive the right to counsel, provide the defendant with a 5A application

form for public defender services, which [assure that] the defendant shall complete[s the appropriate application form for public defender services] and submit at that time for immediate processing by the court [files it with the criminal division manager's office];

(6) inform the defendant that there is a pretrial intervention program and where and how an application to it may be made;

(7) inform the defendant that there is a drug court program and where and how an application to it may be made;

(8) [7] inform the defendant of his or her right to have a hearing as to probable cause and of his or her right to indictment by the grand jury and trial by jury, and if the offense charged may be tried by the court upon waiver of indictment and trial by jury, the court shall so inform the defendant. All such waivers shall be in writing, signed by the defendant, and shall be filed and entered on the docket. If the complaint charges an indictable offense which cannot be tried by the court on waiver, it shall not ask for or accept a plea to the offense;

(9) [8] admit the defendant to bail as provided in Rule 3:26; and

(10) schedule a pre-indictment disposition conference no later than 45 days from the time of the first appearance.

[(c)] (d) Procedure in Non-Indictable Offenses. At the defendant's first appearance before a judge, if the defendant is charged with a[n] non-indictable offense, the judge shall:

(1) give the defendant a copy of the complaint and inform the defendant of the charge;

(2) inform the defendant of the right to remain silent and that any statement may be used against the defendant;

(3) inform the defendant of the right to retain counsel and, if indigent and entitled by law to the appointment of counsel, the right to be represented by a public defender or assigned counsel; and

(4) assign counsel, if the defendant is indigent and entitled by law to the appointment of counsel, and does not affirmatively, and with understanding, waive the right to counsel.

[(d)] (e) Trial of Indictable Offenses in Municipal Court. If a defendant who is charged with an indictable offense that may be tried in Municipal Court is brought before a Municipal Court, that court may try the matter provided that the defendant waives the rights to indictment and trial by jury. The waivers shall be in writing, signed by the defendant, and approved by the county prosecutor, and retained by the Municipal Court.

[(e)] (f) Waiver of First Appearance by Written Statement. Unless otherwise ordered by the court, a defendant who is represented by an attorney and is not incarcerated may waive the first appearance by filing, at or before the time fixed for the first appearance, a written statement in a form prescribed by the Administrative Director of the Courts, signed by the attorney, certifying that the defendant has:

(1) received a copy of the complaint and has read it or the attorney has read it and explained it to the defendant;

(2) understands the substance of the charge;

(3) been informed of the right to remain silent and that any statement may be used against the defendant;

(4) been informed that there is a pretrial intervention program and where and how an application to it may be made; and

(5) been informed of the right to have a hearing as to probable cause, the right to indictment by the grand jury and trial by jury, and if applicable, that the offense charged may be tried by the court upon waiver of indictment and trial by jury, if in writing and signed by the defendant.

At the time the written statement waiving the first appearance is filed with the court, a copy of that written statement shall be provided to the Criminal Division Manager's office and to the County Prosecutor or the Attorney General, if the Attorney General is the prosecuting attorney. The court shall also notify counsel of the date of the pre-indictment disposition conference, which shall occur no later than 45 days from the time of the first appearance.

Source – R.R. 3:2-3(b), 8:4-2 (second sentence). Amended July 7, 1971 effective September 13, 1971; amended April 1, 1974 effective immediately; text of former Rule 3:4-2 amended and redesignated paragraphs (a) and (b) and text of former Rules 3:27-1 and -2 amended and incorporated into Rule 3:4-2, July 13, 1994 to be effective January 1, 1995; paragraphs (a) and (b) amended June 28, 1996 to be effective September 1, 1996; paragraph (b) amended January 5, 1998 to be effective February 1, 1998; caption amended, paragraphs (a) and (b) deleted, new paragraphs (a), (b), (c), and (d) adopted July 5, 2000 to be effective September 5, 2000; new paragraph (e) adopted July 21, 2011 to be effective September 1, 2011[.]; paragraph (a) amended, new paragraph (b) added, former paragraph (b) redesignated as paragraph (c), paragraph (c)(5) amended, new paragraph (c)(7) added, former paragraphs (c)(7) and (c)(8) redesignated as paragraphs (c)(8) and (c)(9), respectively, new paragraph (c)(10) added, former paragraph (c) redesignated as paragraph (d) and amended, former paragraphs (d) and (e) redesignated as paragraphs (e) and (f), respectively, adopted to be effective .

COMMENTARY

The revisions to R. 3:4-2 are intended to implement JCCJ Recommendations 16-18 and Recommendation 20. Those recommendations are as follows:

RECOMMENDATION 16. All first appearances for indictable offenses should be made at a Superior Court building or other centralized location, before a judge designated by the Assignment Judge.

RECOMMENDATION 17. The first appearance should be held (1) within 72 hours of arrest for incarcerated defendants, and (2) after the prosecutor has screened the case, but no more than 60 days after arrest or issuance of a summons, for non-incarcerated defendants.

RECOMMENDATION 18. At the first appearance, the court shall provide to the defendant a 5A form, which the defendant (if then unrepresented) shall complete and submit at that time, and which the court shall process immediately.

RECOMMENDATION 20. At the first appearance, the judge must inform the defendant about the PTI program and the Drug Court program.

Paragraph (a)

The Committee recommends that Paragraph (a) be amended to implement JCCJ Recommendation 17 regarding the timing of first appearances. Paragraph (a) currently requires that when the defendant remains incarcerated after his or her arrest, the first appearance must be held within 72 hours of arrest. The proposed amendment would not change that requirement.[1] For non-incarcerated defendants, i.e., those arrested on a complaint-summons, R. 3:4-2 currently requires that first appearances be held "[w]ithout unnecessary delay." Consistent with JCCJ Recommendation 17, the proposed amendment would require that first appearances for these defendants, who generally face

[1] Note that after the Bail Reform Law becomes effective on January 1, 2017, this paragraph will need to be revised to reduce the 72 hours to 48 hours for defendants who remain in custody.

less serious changes and are therefore more likely to have their initial charges downgraded or dismissed, be held within 60 days after arrest or the issuance of a complaint-summons. Given that more specific timeframe, the phrase "[w]ithout unnecessary delay" is superfluous and should be deleted.

The Committee rejected language that required first appearances for defendants arrested on a complaint-summons to be held "after the prosecutor has notified the court that he or she has screened the case and will seek an indictment," but within 60 days of the issuance of the summons or the defendant's arrest. That language was intended to implement the provision in JCCJ Recommendation 17 that first appearances in summons cases should be held after the prosecutor has screened the case. The JCCJ believed that by allowing prosecutors ample time to screen these cases, the overwhelming majority would be screened out before the defendant's first appearance, thus precluding the need to devote judicial staff and resources to reviewing and processing 5A applications in those cases. JCCJ Report at page 82. The Committee, however, felt that the proposed language unnecessarily required the prosecutor to notify the court that the case had been screened and that an indictment would be sought. The Committee therefore voted to delete that provision.

Paragraph (b)

New paragraph (b) codifies JCCJ Recommendation 16. That recommendation was based, in part, on assurances from the Public Defender that, upon completion of a 5A application, his staff would provisionally represent defendants at their first appearances if they do not have an attorney at that time. The JCCJ recommended that

provisional representation by the public defender's office[2] should be reflected in the court rules to ensure that this newly-developed process and the timing for first appearances will not be interrupted by personnel changes that occur over time. See JCCJ Report at page 89. In accordance with this recommendation, the last sentence of paragraph (b) provides that "[i]f the defendant is unrepresented at the first appearance, the court may assign the Office of the Public Defender to represent the defendant for purposes of the first appearance." This language is similar to language in R. 3:21-10(c) governing when the court may assign the Public Defender to represent a defendant for purposes of a motion to change or reduce a sentence.

Paragraph (c)

Former paragraph (b) (Procedure in Indictable Offenses) is being redesignated as paragraph (c).

Paragraph (c)(5)

Redesignated paragraph (c)(5) is being amended to add language that the court shall provide the defendant with a 5A application for public defender services, which is to be completed at that time for immediate processing by the court. This amendment codifies JCCJ Recommendation 18, which was intended to streamline the process for the appointment of counsel and jumpstart pre-indictment plea negotiations.

Paragraph (c)(7)

New paragraph (c)(7) codifies JCCJ Recommendation 20. The JCCJ felt that defendants should be informed about diversionary programs like PTI and Drug Court as early as possible. The earlier a defendant applies for and is accepted into such programs,

[2] See N.J.S.A. 2A:158A-14 (provisional representation by the Office of the Public Defender).

the less systemic waste of time and resources. Redesignated paragraph (c)(6) already requires judges to notify defendants about PTI at the first appearance. New paragraph (c)(7) will require that judges also inform defendants about drug court at that time. This amendment will also require current paragraphs (c)(7) and (c)(8) to be redesignated as paragraphs (c)(8) and (c)(9), respectively.

Paragraph (c)(10)

New paragraph (c)(10) is intended to aid in the implementation of JCCJ Recommendation 21, which would require every county to develop a pre-indictment program to enable the parties to discuss and finalize any pre-indictment dispositions. This paragraph would require the court to schedule a date for the pre-indictment disposition conference at the defendant's first appearance. The date for that conference would be no later than 45 days from the time of the first appearance.

Paragraph (d)

Former paragraph (c) (Procedure in Non-Indictable Offenses) is being redesignated as paragraph (d). It is also being amended to fix a minor grammatical error.

Paragraph (e)

Former paragraph (d) (Trial of Indictable Offenses in Municipal Court) is being redesignated as paragraph (e).

Paragraph (f)

Former paragraph (e) (Waiver of First Appearance by Written Statement) is being redesignated as paragraph (f).

Redesignated paragraph (f) is being amended to require that when the written statement waiving the first appearance is filed with the court, the court is to notify defense counsel of the date of the pre-indictment disposition conference, which shall occur no

later than 45 days from the originally scheduled date of the defendant's first appearance. This provision is intended to ensure that defendants receive notice of the date of the pre-indictment disposition conference even if they waive their first appearance.

The Committee rejected a proposed paragraph (g), which would have codified JCCJ Recommendation 19. That recommendation reads as follows:

RECOMMENDATION 19. At the first appearance, the prosecutor must inform the court of a screening decision.

Proposed paragraph (g) read as follows:

> (g) Prosecutor Screening Decision. At the first appearance, the prosecutor must inform the court and the defendant, and if represented, defendant's attorney, of a screening decision regarding the prosecution of the case.

Recommendation 19 was designed to promote prompt case review and, where appropriate, facilitate earlier downgrades and dismissals. Under paragraph (a), first appearances for incarcerated defendants must occur within 72 hours of the defendant's arrest. For non-incarcerated defendants, first appearances must occur no later than 60 days after arrest or the issuance of a summons. Proposed paragraph (g) would have required prosecutors to inform the court and the defendant of their screening decisions within those time frames.

The Committee felt that it was simply unrealistic to expect prosecutors to screen cases involving incarcerated defendants within 72 hours of arrest. In the vast majority of cases, prosecutors will not yet have received the police reports regarding the crime or, in drug cases, the lab reports that will enable them to make an informed screening decision

within that time frame.[3] It was also noted that in many cases the investigation was ongoing even after the defendant's arrest. While prosecutors would be able to announce a screening decision within 72 hours in some cases, that was said to be the exception, rather than the rule. Consequently, even though it was aware that proposed paragraph (g) was the codification of JCCJ Recommendation 19, which the Court had already approved, the Committee voted to delete that provision.

[3] This will be more of a problem when the Bail Reform Law becomes effective on January 1, 2017, when the time frame is reduced to within 48 hours.

Rule 3:4-6. Pre-Indictment Disposition Conference

The court shall conduct a conference for the purpose of discussing and/or finalizing any pre-indictment dispositions. The conference shall be conducted on the record, in open court in the presence of the prosecutor, the defendant and defense counsel.

NOTE: Adopted to be effective .

COMMENTARY

New R. 3:4-6 is intended to implement JCCJ Recommendation 21, which reads as follows:

RECOMMENDATION 21. **In order to facilitate early case management and disposition, every county must develop a pre-indictment program approved by the Supreme Court. The purpose of this program shall be for the parties to discuss and/or finalize any pre-indictment dispositions.**

AOC staff conducted an informal survey of the Vicinage Criminal Division Managers about existing pre-indictment court events. Appendix A of this report contains a chart listing each county and indicating whether that county currently has a pre-indictment court event. For those counties that have a pre-indictment court event, the chart also lists: (1) whether the prosecutor screens cases prior to the pre-indictment court event; (2) whether the Public Defender represents defendants at the pre-indictment court event; and (3) the types of cases that are normally scheduled for the pre-indictment court event. The chart reflects that currently 16 of the 21 counties have a pre-indictment court event that allows for early disposition of certain cases. Presently, 5 counties do not have a pre-indictment court event in place.

The Committee initially considered whether JCCJ Recommendation 21 should be codified in a court rule or implemented by an Administrative Directive issued by the Administrative Director of the Courts. The Committee unanimously agreed that the recommendation should be implemented by court rule. The proposed rule requires the court to hold a pre-indictment disposition conference, on the record and in open court, to discuss and/or finalize pre-indictment dispositions. Under proposed R. 3:4-2(c)(10), that conference must be held no later than 45 days after the date of the defendant's first appearance.

Rule 3:6-2. Objections to grand jury and grand jurors

The prosecuting attorney or a defendant, after being held to answer a complaint charging an indictable offense or after indictment, may, in writing, challenge the array of the grand jury which has returned or is expected to return the indictment on the ground that it was not selected, drawn or summoned according to law, and may challenge an individual juror on the ground that the juror is not legally qualified. All such challenges shall be made within 30 days of the service of the complaint or no later than at the Initial Case Disposition Conference (ICDC) that is scheduled pursuant to R. 3:9-1(e) [arraignment status conference]. For good cause shown, the court may allow the motion to be brought at any time. Such challenges shall be tried by a judge designated by the Assignment Judge. If a defendant has already been indicted, such challenges may be the basis of a motion to dismiss the indictment.

NOTE: Source-R.R. 3:3-2(a) (b); amended July 13, 1994 to be effective January 1, 1995[.]; amended to be effective .

COMMENTARY

R. 3:6-2 addresses objections to the grand jury or grand jurors. Pursuant to the rule, the prosecutor or defendant may, on certain grounds, challenge the array of the grand jury, which has returned or is expected to return an indictment. Currently, "[a]ll such challenges shall be made within 30 days of the service of the complaint or no later than at the arraignment status conference."

Pursuant to proposed revisions to R. 3:9-1(b)(1), the arraignment will occur no later than 14 days after the return or unsealing of the indictment. Additionally, new paragraph (e) of R. 3:9-1 provides for a sequence of status conferences; in particular the scheduling of two post-indictment status conferences; the Initial Case Disposition Conference (ICDC) and the Final Case Disposition Conference (FCDC). The rule also provides for a third discretionary status conference, the Discretionary Case Disposition Conference (DCDC), to be scheduled only if necessary.

In light of the proposed revisions to R. 3:9-1(b)(1) and (e), the Committee proposes that R. 3:6-2 be amended to require that an objection to the grand jury or grand jurors must be filed no later than the Initial Case Disposition Conference (ICDC). In practice, the proposed amendment to R. 3:6-2 will require that an objection to the grand jury or grand jurors must be filed no later than the first status conference that occurs after arraignment. The rule would, however, retain the "good cause" provision that allows the court to permit such motions to be brought at any time.

Rule 3:8-2. Joint representation

No attorney or law firm shall be permitted to enter an appearance for or represent more than one defendant in a multi-defendant indictment without securing permission of the court.

Such motion shall be made in the presence of the defendants sought to be represented as early as practicable in the proceedings but no later than the arraignment[/status conference] so as to avoid delay of the trial. For good cause shown, the court may allow the motion to be brought at any time.

NOTE: Source-R.R. 3:5-4(b). Adopted July 16, 1979 to be effective September 10, 1979; amended July 13, 1994 to be effective January 1, 1995[.]; amended to be effective .

COMMENTARY

R. 3:8-2 addresses motions filed by an attorney or law firm to represent more than one defendant in a multi-defendant indictment. Currently, R. 3:8-2 provides that such motions shall be filed as early as practicable, but no later than the arraignment/status conference. Under proposed revisions to R. 3:9-1(b)(1), the arraignment will occur no later than 14 days after the return or unsealing of the indictment. In light of those revisions, the Committee recommends that the second paragraph of R. 3:8-2 be revised to refer to the "arraignment," rather than the "arraignment/status conference." In practice, the proposed amendment to R. 3:8-2 will require that a motion for joint representation shall be made no later than the arraignment (e.g., no later than 14 days after indictment). The rule would retain, however, the "good cause" provision that allows the court to permit such motions to be brought at any time.

Rule 3:8-3. Representation by public defender

The criminal division manager's office shall receive applications for services of the Public Defender and shall determine indigence. A defendant who qualifies for service shall be referred to the Office of the Public Defender no later than the [pre-]arraignment [interview]. The defense counsel appointed by the Office of the Public Defender shall promptly file an appearance. Representation of a defendant by the Office of the Public Defender shall continue through direct appeal from conviction, post-conviction proceedings for which the Rules of Court provide assigned counsel, and appeals from those proceedings.

Adopted July 5, 2000 to be effective September 5, 2000[.]; amended to be effective .

COMMENTARY

Currently, R. 3:8-3 provides that an indigent defendant shall be referred to the Office of the Public Defender no later than the prearraignment interview. Under the current language of R. 3:9-1(a), the prearraignment conference and prearraignment interview occur within 21 days of indictment. Consistent with JCCJ Recommendation 22, R. 3:9-1(a) is being revised to merge the prearraignment conference with the arraignment. As such, a "prearraignment interview" will no longer be scheduled by the court. Instead, under R. 3:9-1(b)(1), the arraignment will occur no later than 14 days after the return or unsealing of an indictment.

The Committee therefore proposes that Rule 3:8-3 be revised to provide that an indigent defendant be referred to the Office of the Public Defender no later than the arraignment. In practice, the proposed amendment to R. 3:8-3 will require that an indigent defendant shall be referred to the Office of the Public defender no later than 14 days after indictment (e.g., at the arraignment). It should be noted, however, that with the new procedures for bail reform, centralized first appearances and pre-indictment disposition programs, it is likely that an indigent defendant will be referred to the Office of the Public Defender well before the arraignment, i.e., at the first appearance or the pre-indictment disposition conference.

Rule 3:9-1. [Prearraignment Conference;] Post-Indictment Procedure; Arraignment; Meet and Confer; Plea Offer; [Arraignment/Status Conference;]Conferences; Pretrial Hearings; Pretrial Conference

(a) [Prearraignment Conference.] Post-Indictment Procedure. [After] When an indictment is [has been] returned, or an indictment sealed pursuant to *R. 3:6-8* is [has been] unsealed, a copy of the indictment, together with all available [the] 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[, within seven days of the return or unsealing of the indictment]. If a plea offer is tendered, it must be in writing and should be included in the discovery package. [After] 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 [a prearraignment conference] arraignment which shall occur within [21] 14 days of the return or unsealing of the indictment. [At the prearraignment conference the defendant shall be: informed of the charges; notified in writing of the date, place and time for the arraignment/status conference; and, if the defendant so requests, be allowed to apply for pretrial intervention. The criminal division manager's office shall not otherwise advise the defendant regarding the case.] 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 electronically notified 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.[if not, whether the defendant can afford counsel. If indicated

that the defendant cannot afford counsel, the defendant shall be required to fill out the Uniform Defendant Intake Report. If a defendant does not appear for a prearraignment conference, the criminal division manager shall notify the criminal presiding judge who may issue a bench warrant. No prearraignment conference shall be required where the defendant has counsel and the criminal division manager's office has established to its satisfaction: (1) that an appearance has been filed under *Rule 3:8-1*; (2) 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, and (3) that defendant and counsel have obtained a date, place and time for the arraignment/status conference.]

[(b) Meet and Confer Requirement; Plea Offer. Prior to the arraignment/status 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 arraignment/status conference. 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 forwarded to the defendant's attorney.]

[(c)] (b) Arraignment[/Status Conference]; In Open Court.

(1) The arraignment[/status conference] shall be conducted in open court no later than 14 [50] days after the return or unsealing of the indictment. [, unless the defendant did not appear at the prearraignment conference or was unrepresented at the prearraignment conference. If the defendant did not appear at the prearraignment

conference or was unrepresented at the prearraignment conference, the arraignment/status conference shall be held within 28 days of indictment, unless the defendant is a fugitive].

(2) At the arraignment, [T]the judge shall (i) advise the defendant of the substance of the charge; [and] (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 [The judge shall] (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 [pursuant to *R. 3:9-1(b)*,] which shall promote a fair and expeditious disposition of the case. Absent good cause, all motions shall be filed with the court by the scheduled Initial Case Disposition Conference (ICDC). [the dates for hearing of motions and a further status conference, if necessary, shall be scheduled according to the differentiated needs of each case.] The parties shall meet and confer on motions, and other matters, as instructed by the court. Each status conference shall be held in open court with the defendant present. 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.

[(b)] (c) Meet and Confer Requirement; Plea Offer. Prior to the Initial Case Disposition Conference (ICDC), [arraignment/status 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 (ICDC)[arraignment/status conference]. 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.[forwarded to the defendant's attorney.]

(d) 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, [otherwise ordered by] the court orders that the motion be reserved for the time of trial.[, be held prior to the pretrial conference and, u]Upon a showing of good cause, hearings as to admissibility of other evidence may also be held pretrial.

(e) Conferences. After arraignment, the court shall conduct the Initial Case Disposition Conference (ICDC), the Final Case Disposition Conference (FCDC) and the Pretrial Conference, as described in paragraph (f) of this rule. At the Initial Case Disposition Conference (ICDC), the court shall set a date by when all pretrial motions must be filed with the court, and schedule a status 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 (DCDC). In

advance of the scheduled status 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 status 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 the status conference, the court may in its discretion set a trial date, schedule any necessary pretrial hearings, or schedule another status conference. Each status conference shall be held in open court with the defendant present.

[e] (f) Pretrial Conference. If the court determines that discovery is complete; that all motions have been decided or scheduled in accordance with paragraph (d); and that all reasonable efforts to dispose of the case without trial have been made and it appears that further negotiations or an additional status 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 [will] may 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 [will] 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, paragraph (b) amended and redesignated as paragraph (c), paragraph (c) redesignated as paragraph (b) and caption and text amended; paragraph (d) amended, new paragraph (e) added, and former paragraph (e) redesignated as paragraph (f) to be effective .

COMMENTARY

The proposed amendments to R. 3:9-1, with the exception of the change to paragraph (f), are intended to implement the following JCCJ Recommendations:

RECOMMENDATION 22. **The Prearraignment Conference (PAC) should be merged with the Arraignment/Status Conference (AS) and the AS should be held 14 days after indictment.**

RECOMMENDATION 23. **The number of status conferences should be limited to two absent good cause, in which case, a third conference would be allowed at the judge's discretion. The first status conference should be called the Initial Case Disposition Conference (ICDC), the second, the Final Case Disposition Conference (FCDC), and the third, the Discretionary Case Disposition Conference (DCDC).**

RECOMMENDATION 27. **All available discovery should be made available at the time of indictment with some caveat for extraordinary cases. If a plea offer is tendered, it must be in writing and should be part of the discovery package available at the time of indictment.**

Paragraph (a)

The caption for paragraph (a) is being revised to replace the reference to the prearraignment conference with "Post-Indictment Procedure." The text of paragraph (a) is also being revised to reflect the elimination of the prearraignment conference. The procedures for the prearraignment conference are therefore being deleted from paragraph (a) and are being incorporated into paragraph (b) (formerly paragraph (c)), which governs the procedures for the arraignment.

Paragraph (a) of R. 3:9-1 is also being revised to incorporate JCCJ Recommendation 27. These amendments are designed to make clear that all available discovery should be made available to the defendant when an indictment is returned or unsealed, and that if the prosecutor is tendering a plea offer, it must be in writing and included in the discovery package. While JCCJ Recommendation 27 allows for a caveat

with respect to discovery being available in extraordinary cases, that language is not included in this rule. Rather, R. 3:9-1(a) is being amended to include a cross-reference to R. 3:13-3(b)(1), which presently includes a "good cause" exception for the availability of discovery by a defendant. Specifically, pursuant to R. 3:13-3(b)(1), "[g]ood cause shall include, but is not limited to, circumstances in which the nature, format, manner of collation or volume of discoverable materials would involve an extraordinary expenditure of time and effort to copy."

Paragraph (a) is also being amended to provide that when an indictment is returned or unsealed, the criminal division manager's office shall notify the defendant, in writing, of the date, time and location to appear for the arraignment. Consistent with JCCJ Recommendation 22, the arraignment shall occur within 14 days of the return or unsealing of the indictment, so it is important that the criminal division manager's office promptly notify the defendant and defense counsel of the date, time and location of the arraignment.

In addition to the amendments noted above, R. 3:9-1(a) is also being amended to require that the criminal division manager's office ascertain whether the defendant is represented by counsel and if an appearance has been filed pursuant to R. 3:8-1. If the defendant is unrepresented, the criminal division manager's office shall ascertain whether the defendant has completed a 5A application form for Public Defender services and, if so, the status of that application. This language is designed to ensure that if the defendant is eligible for representation by the Office of the Public Defender, the appropriate paperwork has been completed and processed before the arraignment.[4]

[4] It is anticipated that public defender eligibility will be determined pre-indictment in the overwhelming majority of cases.

In the event that the defendant has not yet completed a 5A application and is unrepresented at arraignment, proposed language in paragraph (b)(3) provides the court with discretion to assign the Office of the Public Defender to represent the defendant for purposes of the arraignment. See N.J.S.A. 2A:158A-14 (provisional representation by the Office of the Public Defender).[5]

Paragraph (b) (formerly paragraph (c))

The Committee felt that because former paragraph (b) was being amended to require the prosecutor and defense attorney to meet and discuss the case prior to the Initial Case Disposition Conference (ICDC), rather than the arraignment/status conference, it should be placed after former paragraph (c), which will govern arraignment procedures. Consequently, former paragraph (b) is now paragraph (c), and former paragraph (c) is now paragraph (b). In addition, in order to incorporate certain procedures from the former prearraignment conference into the arraignment, paragraph (b) is being separated into three subsections.

Paragraph (b)(1)

Consistent with JCCJ Recommendation 22, the Committee recommends that paragraph (b)(1) be amended to require that the arraignment be held no later than 14 days after the return or unsealing of the indictment. Currently, the arraignment is to be scheduled no later than 50 days after indictment, or in certain situations, within 28 days

[5] N.J.S.A. 2A:158A-14 provides for provisional representation by the Public Defender, as follows:

> In the event that a determination of eligibility cannot be made before the time when the first services are to be rendered, or if an initial determination is found to be erroneous, the office shall undertake the same provisionally, and if it shall subsequently be determined that the defendant is ineligible it shall so inform the defendant, and the defendant shall thereupon be obliged to engage his own counsel and to reimburse the office for the cost of the services rendered to that time.

of indictment. Moving up the date of the arraignment, in conjunction with a proposed change to the discovery rule in accordance with JCCJ Recommendation 27, will ensure that a defendant has counsel and discovery within 14 days of indictment. It will also allow the court to address any discovery issues earlier in the process.

Paragraph (b)(2)

As JCCJ Recommendation 22 merges the prearraignment conference with the arraignment, paragraph (b)(2) incorporates certain procedures from the former prearraignment conference into the procedures for the arraignment. Paragraph (b)(2) requires that the court shall advise the defendant at the arraignment of the substance of the charge, confirm that the defendant has reviewed the indictment and discovery with counsel, and inform the parties of the obligation to redact confidential personal identifiers from documents submitted to the court in accordance with R. 1:38-7(b). The paragraph also requires that the judge 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," and allow the defendant to apply for pretrial intervention.

Paragraph (b)(3)

Paragraph (b)(3) is also being amended to require that, absent good cause, all motions shall be filed with the court by the scheduled Initial Case Disposition Conference (ICDC), and that the parties "shall meet and confer on motions, or other matters, as instructed by the court."

The JCCJ recommendation to move the arraignment to occur 14 days after indictment was based upon assurances from the Public Defender that, upon completion

of a 5A application, his staff would provisionally represent defendants who appear at the arraignment without an attorney. The JCCJ recommended that provisional representation by the public defender's office[6] should be reflected in the court rules, to ensure that this newly-developed process and timing for the arraignment will not be interrupted by personnel changes that occur over time. See JCCJ Report at page 89. In accordance with this recommendation, the Committee is recommending that the last sentence of subsection (b)(3) be amended to provide that "[i]f 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." This language is similar to language in R. 3:21-10(c), which governs when the court may assign the Public Defender to represent a defendant for purposes of a motion to change or reduce a sentence.

Paragraph (c) (formerly paragraph (b))

As noted above, the Committee switched paragraphs (b) and (c) of R. 3:9-1 so that former paragraph (c) is now paragraph (b) and vice versa. The Committee also recommends that paragraph (c) be amended to provide that prior to the Initial Case Disposition Conference (ICDC), the prosecutor and defense attorney shall discuss the case, including any plea offer and any outstanding and anticipated motions; attempt to reach an agreement on any discovery issues; and be prepared to report thereon at the Initial Case Disposition Conference (ICDC). The last sentence of paragraph (c) is also being amended, consistent with JCCJ Recommendation 27, to provide that if a plea offer is made, it shall be in writing and included in the post-indictment discovery package.

[6] See N.J.S.A. 2A:158A-14 (provisional representation by the Office of the Public Defender).

Paragraph (d)

The Committee recommends that paragraph (d) be amended to require that certain pretrial motions and hearings be held prior to the pretrial conference. The Committee also recommends that the paragraph be further revised to clarify that, upon the request of the moving party, the court may order motions to be reserved for the time of trial. Under N.J.S.A. 2A:162-22a(2)(b)(i), which becomes effective on January 1, 2017, a trial is deemed to commence when the court directs the parties "to proceed to …. the hearing of any motions that had been reserved for the time of trial." Thus, motions reserved for the time of trial would not be considered excludable time for speedy trial purposes.

Paragraph (e)

New paragraph (e) implements JCCJ Recommendation 23, which provides that "[t]he number of status conferences should be limited to two absent good cause, in which case, a third conference would be allowed at the judge's discretion." Consistent with that recommendation, paragraph (e) lists those three status conferences as the Initial Case Disposition Conference (ICDC), the Final Case Disposition Conference (FCDC), and the Discretionary Case Disposition Conference (DCDC). Paragraph (e) also requires that at the Initial Case Disposition Conference (ICDC), the court is to set a date by when all pretrial motions must be filed with the court, and schedule another status conference, if necessary. In addition, the parties are required to discuss the case before each conference, including any plea offer and any outstanding or anticipated motions, and report on those items at the conference. The parties must also confer and attempt to reach an agreement on any discovery issues. At the conclusion of the status conference, the court may in its discretion set a trial date, schedule any necessary pretrial hearings,

or schedule another status conference. The paragraph also requires that each status conference shall be held in open court with the defendant present.

The JCCJ felt that the time frames between the ICDC, FCDC and if necessary, the DCDC, should be brief, but left to the discretion of the court. Consequently, paragraph (e) does not provide for any specific time frames between conferences. Nonetheless, the scheduling of the ICDC, FCDC, DCDC and the pretrial conference will eventually need to be aligned with the speedy trial time frames contained in N.J.S.A. 2A:162-22 and the court rules for defendants who are detained pursuant to a court order or due to an inability to post monetary bail. See N.J.S.A. 2A:162-22.

Paragraph (f)

The JCCJ Report recommended that the Plea Cutoff Rule be changed from a mandatory to a permissive requirement. The Supreme Court rejected that recommendation. Nevertheless, the Committee recommended amending paragraph (f) to specify that the court is to inform the defendant at the pretrial conference, and determine that he or she understands, that a negotiated plea *may* not be accepted after the pretrial conference and a trial date has been set; and 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. Currently, those provisions contain the word "will," rather than "may." The Committee initially considered, after an extensive debate on the efficacy of what is commonly known as "The Plea Cutoff Rule," a motion to delete those provisions. That motion was defeated by a 13-10 vote. The Committee then approved the above amendments by a 14-10 vote. The Committee felt that "may" better reflected the reality that negotiated pleas are, in fact, accepted after a

trial date has been set at the pretrial conference. A dissent to this recommended change has been written by Joseph J. Barraco, Esq.

DISSENT

I dissent from the Committee's recommendation to change R. 3:9-1f. I believe it is inconsistent with R. 3:9-3 which requires a plea cutoff. I also continue to believe that a tighter enforcement of the plea cutoff rule is necessary to establish trial date certainty which will become critical once the Speedy Trial provisions of the Bail Reform Law becomes effective January 1, 2017. See N.J.S.A. 2A:162-22.

Respectfully submitted,
Joseph J. Barraco, Esq.

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, pre-indictment 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, pre-indictment motions shall be made to the judge to whom the indictment has been assigned. Unless otherwise instructed by the court, [A]at the Initial Case Disposition Conference (ICDC) scheduled pursuant to R. 3:9-1(c)(3) and (e),[arraignment/status conference] counsel shall advise the court of their intention to make motions. The dates for filing, briefing and for the hearing of such motions shall be set by the court either before or at the Initial Case Disposition Conference (ICDC) [arraignment/status conference]. Unless otherwise ordered by the court, motions and status 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 to be effective .

COMMENTARY

As previously noted, the Committee is recommending that R. 3:9-1(b)(1) be amended so that the arraignment will be held no later than 14 days after the return or unsealing of an indictment. Thereafter, the court may schedule two status conferences, the Initial Case Disposition Conference (ICDC) and the Final Case Disposition Conference (FCDC). For good cause, a third status conference, the Discretionary Case Disposition Conference (DCDC) may be scheduled at the court's discretion. The presumption is that in most cases, after the ICDC and the FCDC, the case should be scheduled for a pretrial conference.

In order to meet these scheduling parameters, the Committee is also recommending that R. 3:10-2 be amended to provide that, unless otherwise instructed by the court, at the Initial Case Disposition Conference (ICDC) counsel shall advise the court of their intention to make motions. The rule is also being revised to provide that the court shall set the dates for filing, briefing and hearing of such motions either before or at the Initial Case Disposition Conference (ICDC).

Rule 3:12-1. Notice Under Specific Criminal Code Provisions

A defendant shall serve written notice on the prosecutor if the defendant intends to rely on any of the following sections of the Code of Criminal Justice: Ignorance or Mistake, 2C:2-4(c); Accomplice: Renunciation Terminating Complicity, 2C:2-6(e)(3); Intoxication, 2C:2-8(d); Duress, 2C:2-9(a); Entrapment, 2C:2-12(b); General Principles of Justification, 2C:3-1 to 2C:3-11; Insanity, 2C:4-1; Lack of Requisite State of Mind, 2C:4-2; Criminal Attempt (renunciation of criminal purpose), 2C:5-1(d); Conspiracy (renunciation of criminal purpose), 2C:5-2(e); Murder (affirmative defense, felony murder), 2C:11-3(a)(3); Criminal Restraint, 2C:13-2(b); Theft by Extortion, 2C:20-5; Perjury (retraction), 2C:28-1(d); False Swearing (retraction), 2C:28-2(b); Controlled Dangerous Substances Near or On School Property, 2C:35-7; and Distributing, Dispensing or Possessing Controlled Substances Within 500 Feet of Public Housing Facilities, Parks or Buildings, 2C:35-7.1.

No later than seven days before the Initial Case Disposition Conference (ICDC) that is scheduled pursuant to R. 3:9-1(e) [arraignment/status conference] the defendant shall serve on the prosecutor a notice of intention to claim any of the defenses listed herein; and if the defendant requests or has received discovery pursuant to *R. 3:13-3(b)(1)*, the defendant shall, pursuant to *R. 3:13-3(b)(2)*, furnish the prosecutor with discovery pertaining to such defenses at the time the notice is served. [If, however, the arraignment/status conference was held within 28 days of indictment pursuant to *R. 3:9-1(c)*, the defendant shall serve such notice on the prosecutor, along with the pertinent discovery, by a date to be determined by the trial judge, except in no event later than 14 days after the date of the arraignment/status conference.] The prosecutor shall, within 14

days after receipt of such discovery, comply with *R. 3:13-3(b)(1)* and (f) with respect to any defense for which the prosecutor has received notice.

For good cause shown the court may extend the time of service of any of the foregoing, or make such other orders as the interest of justice requires. If a party fails to comply with this Rule, the court may take such action as the interest of justice requires. The action taken may include refusing to allow the party in default to present witnesses in support or in opposition of that defense at the trial or to allow the granting of an adjournment or delay during trial as the interest of justice demands.

NOTE: Source-R.R. 3:5-9A. Former Rule 3:12 amended August 28, 1979 to be effective September 1, 1979; main caption amended and former Rules 3:12 and 3:12A amended, combined and redesignated as *Rule 3:12-1*, July 13, 1994, second paragraph amended December 9, 1994, to be effective January 1, 1995; amended July 12, 2002 to be effective September 3, 2002; amended December 4, 2012 to be effective January 1 2013[.]; amended to be effective .

COMMENTARY

As previously noted, the Committee is recommending that R. 3:9-1(b)(1) be amended to provide that the arraignment will be held no later than 14 days after the return or unsealing of the indictment. In light of that amendment, the Committee also proposes that the second paragraph of R. 3:12-1 be amended to provide that no later than seven days before the Initial Case Disposition Conference (ICDC), the defendant shall serve the prosecutor with notice of intent to claim a defense listed in the rule.

The Committee also proposes deleting the sentence that references situations where the arraignment/status conference is held within 28 days of indictment. The "good cause" provision in the last paragraph of the rule would be retained. That "good cause" language allows the court to extend the time of service of any notice or make such other orders as the interest of justice requires.

Rule 3:13-3. Discovery and Inspection

(a) Pre-Indictment Discovery. Unless the defendant agrees to more limited discovery, where the prosecutor has made a pre-indictment plea offer, the prosecutor shall, at the time the plea offer is made, provide defense counsel with all available relevant material that would be discoverable at the time of indictment pursuant to paragraph (b)(1) of this rule, except that:

(1) where the prosecutor determines that pre-indictment delivery of all discoverable material would hinder or jeopardize a prosecution or investigation, the prosecutor, consistent with the intent of this rule, shall provide to defense counsel at the time the plea offer is made such relevant material as would not hinder or jeopardize the prosecution or investigation and shall advise defense counsel that complete discovery has not been provided; or

(2) where the prosecutor determines that physical or electronic delivery of the discoverable material would impose an unreasonable administrative burden on the prosecutor's office given the nature, format, manner of collation or volume of discoverable material, the prosecutor may in his or her discretion make discovery available by permitting defense counsel to inspect and copy or photograph such material at the prosecutor's office.

Notwithstanding the exceptions contained in paragraphs (a)(1) and (a)(2) of this rule, the prosecutor shall provide defense counsel with any exculpatory information or material.

(b) Post-Indictment Discovery.

(1) Discovery by the Defendant. Except for good cause shown, the prosecutor's discovery for each defendant named in the indictment shall be delivered to

the criminal division manager's office, or shall be available through the prosecutor's office, [within seven days of] upon the return or unsealing of the indictment. Good cause shall include, but is not limited to, circumstances in which the nature, format, manner of collation or volume of discoverable materials would involve an extraordinary expenditure of time and effort to copy. In such circumstances, the prosecutor may make discovery available by permitting defense counsel to inspect and copy or photograph discoverable materials at the prosecutor's office, rather than by copying and delivering such materials. The prosecutor shall also provide defense counsel with a listing of the materials that have been supplied in discovery. If any discoverable materials known to the prosecutor have not been supplied, the prosecutor shall also provide defense counsel with a listing of the materials that are missing and explain why they have not been supplied.

If the defendant is represented by the public defender, defendant's attorney shall obtain a copy of the discovery from the prosecutor's office or the criminal division manager's office prior to[, or at,] the [pre-]arraignment [conference]. However, if the defendant has retained private counsel, upon written request of counsel submitted along with a copy of counsel's entry of appearance and received by the prosecutor's office prior to the date of the [pre-]arraignment [conference], the prosecutor shall, within three business days, send the discovery to defense counsel either by U.S. mail at the defendant's cost or by e-mail without charge, with the manner of transmittal at the prosecutor's discretion. Defense counsel shall simultaneously send a copy of the request for mail or e-mail discovery[, along with any request for waiver of the pre-arraignment conference under *R. 3:9-1(a)*,] to the criminal division manager's office.

[If the defendant is unrepresented at the prearraignment conference, a copy of the discovery shall be provided to defense counsel upon request as provided for in the

preceding paragraph, or at the arraignment/status conference, which shall occur no later than 28 days after the return or unsealing of the indictment.]

A defendant who does not seek discovery from the State shall so notify the criminal division manager's office and the prosecutor, and the defendant need not provide discovery to the State pursuant to sections (b)(2) or (f), except as required by *Rule 3:12-1* or otherwise required by law.

Discovery shall include exculpatory information or material. It shall also include, but is not limited to, the following relevant material:

(A) books, tangible objects, papers or documents obtained from or belonging to the defendant, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(B) records of statements or confessions, signed or unsigned, by the defendant or copies thereof, and a summary of any admissions or declarations against penal interest made by the defendant that are known to the prosecution but not recorded. The prosecutor also shall provide the defendant with transcripts of all electronically recorded statements or confessions by a date to be determined by the trial judge, except in no event later than 30 days before the trial date set at the pretrial conference.

(C) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies thereof, which are within the possession, custody or control of the prosecutor;

(D) reports or records of prior convictions of the defendant;

(E) books, papers, documents, or copies thereof, or tangible objects, buildings or places which are within the possession, custody or control of the prosecutor, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(F) names, addresses, and birthdates of any persons whom the prosecutor knows to have relevant evidence or information including a designation by the prosecutor as to which of those persons may be called as witnesses;

(G) record of statements, signed or unsigned, by such persons or by co-defendants which are within the possession, custody or control of the prosecutor and any relevant record of prior conviction of such persons. The prosecutor also shall provide the defendant with transcripts of all electronically recorded co-defendant and witness statements by a date to be determined by the trial judge, except in no event later than 30 days before the trial date set at the pretrial conference, but only if the prosecutor intends to call that co-defendant or witness as a witness at trial.

(H) police reports that are within the possession, custody, or control of the prosecutor;

(I) names and addresses of each person whom the prosecutor expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, a copy of the report, if any, of such expert witness, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is

not furnished 30 days in advance of trial, the expert witness may, upon application by the defendant, be barred from testifying at trial.

(J) all records, including notes, reports and electronic recordings relating to an identification procedure, as well as identifications made or attempted to be made.

(2) Discovery by the State. [Defense counsel shall forward a copy of the discovery materials to the prosecuting attorney no later than seven days before the arraignment/status conference. If, however, the arraignment/status conference was held within 28 days of indictment pursuant to *R. 3:9-1(c)*, d] Defense counsel shall provide a copy of the discovery materials to the prosecuting attorney by a date to be determined by the trial judge, except in no event later than 14 days after the date of the arraignment[/status conference.] Defense counsel shall also provide the prosecuting attorney with a listing of the materials that have been supplied in discovery. If any discoverable materials known to defense counsel have not been supplied, defense counsel also shall provide the prosecuting attorney with a listing of the materials that are missing and explain why they have not been supplied. A defendant shall provide the State with all relevant material, including, but not limited to, the following:

(A) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies thereof, which are within the possession, custody or control of defense counsel;

(B) any relevant books, papers, documents or tangible objects, buildings or places or copies thereof, which are within the possession, custody or control of defense counsel, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data

or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(C) the names, addresses, and birthdates of those persons known to defendant who may be called as witnesses at trial and their written statements, if any, including memoranda reporting or summarizing their oral statements;

(D) written statements, if any, including any memoranda reporting or summarizing the oral statements, made by any witnesses whom the State may call as a witness at trial. The defendant also shall provide the State with transcripts of all electronically recorded witness statements by a date to be determined by the trial judge, except in no event later than 30 days before the trial date set at the pretrial conference.

(E) names and address of each person whom the defense expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, and a copy of the report, if any, of such expert witness, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is not furnished 30 days in advance of trial the expert may, upon application by the prosecutor, be barred from testifying at trial.

(3) Discovery Provided through Electronic Means. Unless otherwise ordered by the court, the parties may provide discovery pursuant to paragraphs (a) and (b) of this rule through the use of CD, DVD, e-mail, internet or other electronic means. Documents provided through electronic means shall be in PDF format. All other discovery shall be provided in an open, publicly available (non-proprietary) format that is compatible with any standard operating computer. If discovery is not provided in a PDF or open, publicly available format, the transmitting party shall include a self-extracting computer program

that will enable the recipient to access and view the files that have been provided. Upon motion of the recipient, and for good cause shown, the court shall order that discovery be provided in the format in which the transmitting party originally received it. In all cases in which an Alcotest device is used, any Alcotest data shall, upon request, be provided for any Alcotest 7110 relevant to a particular defendant's case in a readable digital database format generally available to consumers in the open market. In all cases in which discovery is provided through electronic means, the transmitting party shall also include a list of the materials that were provided and, in the case of multiple disks, the specific disk on which they can be located.

(c) Motions for Discovery. No motion for discovery shall be filed unless the moving party certifies that the prosecutor and defense counsel have satisfied the discovery meet and confer requirements of *R. 3:9-1(b)*.

(d) Documents Not Subject to Discovery. This rule does not require discovery of a party's work product consisting of internal reports, memoranda or documents made by that party or the party's attorney or agents, in connection with the investigation, prosecution or defense of the matter nor does it require discovery by the State of records or statements, signed or unsigned, of defendant made to defendant's attorney or agents.

(e) Protective Orders.

(1) Grounds. Upon motion and for good cause shown the court may at any time order that the discovery sought pursuant to this rule be denied, restricted, or deferred or make such other order as is appropriate. In determining the motion, the court may consider the following: protection of witnesses and others from physical harm, threats of harm, bribes, economic reprisals and other intimidation; maintenance of such secrecy regarding informants as is required for effective investigation of criminal activity;

confidential information recognized by law, including protection of confidential relationships and privileges; or any other relevant considerations.

(2) Procedure. The court may permit the showing of good cause to be made, in whole or in part, in the form of a written statement to be inspected by the court alone, and if the court thereafter enters a protective order, the entire text of the statement shall be sealed and preserved in the records of the court, to be made available only to the appellate court in the event of an appeal.

(f) Continuing Duty to Disclose; Failure to Comply. There shall be a continuing duty to provide discovery pursuant to this rule. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, it may order such party to permit the discovery of materials not previously disclosed, grant a continuance or delay during trial, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems appropriate.

NOTE: Source-R.R. 3:5-11(a)(b)(c)(d)(e)(f)(g)(h). Paragraphs (b)(c)(f) and (h) deleted; paragraph (a) amended and paragraphs (d)(e)(g) and (i) amended and redesignated June 29, 1973 to be effective September 10, 1973. Paragraph (b) amended July 17, 1975 to be effective September 8, 1975; paragraph (a) amended July 15, 1982 to be effective September 13, 1982; paragraphs (a) and (b) amended July 22, 1983 to be effective September 12, 1983; new paragraphs (a) and (b) added, former paragraphs (a), (b), (c), (d) and (f) amended and redesignated paragraphs (c), (d), (e), (f) and (g) respectively and former paragraph (e) deleted July 13, 1994 to be effective January 1, 1995; Rule redesignation of July 13, 1994 eliminated December 9, 1994, to be effective January 1, 1995; paragraphs (c)(6) and (d)(3) amended June 15, 2007 to be effective September 1, 2007; subparagraph (f)(1) amended July 21, 2011 to be effective September 1, 2011; new subparagraph (c)(10) adopted July 19, 2012 to be effective September 4, 2012; paragraph (a) amended, paragraph (b) text deleted, paragraph (c) amended and renumbered as paragraph (b)(1), paragraph (d) amended and renumbered as paragraph (b)(2), new paragraphs (b)(3) and (c) adopted, paragraphs (e) and (f) renumbered as paragraphs (d) and (e), paragraph (g) amended and renumbered as paragraph (f) December 4, 2012 to be effective January 1, 2013[.]; paragraph (b) amended to be effective .

COMMENTARY

The proposed amendments to R. 3:13-3 are intended to implement JCCJ Recommendation 27, which reads as follows:

> **RECOMMENDATION 27. All available discovery should be made available at the time of indictment with some caveat for extraordinary cases. If a plea offer is tendered, it must be in writing and should be part of the discovery package available at the time of indictment.**

In making this recommendation, the JCCJ recognized that:

> The timely preparation and receipt of both discovery and reciprocal discovery continues to be a problem in many counties across the state. Incomplete discovery affects the status conference(s) and is the most often-cited reason for needing additional status conference events. Data for the month of October 2013 demonstrates this. Of 11,400 status conference events held during that month, 6,943 were postponed and of those postponed, 4,058 or 58.5% were postponed for incomplete discovery. Specifically, 47.8% were adjourned due to incomplete discovery from the State and 10.7% from the defense.
>
> [See JCCJ Report at 93.]

As envisioned in the JCCJ report, a pre-indictment event will be held in each case, and the prosecutor will have already provided discovery at that court event. See JCCJ Report at 84 (JCCJ Recommendation 21). When an indictment is returned or unsealed, the prosecutor would provide any additional discovery that was not previously provided to the defendant and defense counsel. Thus, the JCCJ recognized that in the average case, the prosecutor's office should be able to provide discovery at indictment. See JCCJ Report at 93.

Paragraph (b)(1)

Paragraph (b)(1) governs post-indictment discovery by the defendant. Currently, the first sentence of R. 3:13-3(b)(1) provides that "[e]xcept for good cause shown, the

prosecutor's discovery for each defendant named in the indictment shall be delivered to the criminal division manager's office, or shall be available through the prosecutor's office, within seven days of the return or unsealing of the indictment." The Committee is proposing that this sentence be revised to require, consistent with JCCJ Recommendation 27, that at the return or unsealing of the indictment, the state provide or make available to the defendant all available discovery.

The Committee also recommends that the second paragraph of subsection (b)(1) be revised to replace the reference to the prearraignment conference with the arraignment. This revision will therefore require that if the defendant is represented by the public defender, the attorney "shall obtain a copy of the discovery from the prosecutor's office or the criminal division manager's office prior to the arraignment." If the defendant is represented by private counsel, the rule retains the current procedure for the private attorney to submit a written request for discovery, except that, as proposed, the request must be received by the prosecutor's office prior to the date of the arraignment.

Finally, the Committee proposes that this paragraph be revised to remove the references to waiver of the prearraignment conference.

Paragraph (b)(2)

Paragraph (b)(2) governs discovery by the state. The JCCJ Report did not address the time parameters in which defense counsel must provide discovery to the state. The rule therefore retains the current time parameters, in which "defense counsel shall provide a copy of the discovery materials to the prosecuting attorney by a date to be determined by the trial judge, except in no event later than 14 days after the date of the arraignment." The Committee is recommending, however, that both the first sentence of paragraph

(b)(2), and the beginning of the second sentence, which references situations where the arraignment/status conference is held within 28 days of indictment, be deleted.

APPENDIX A

CHART

Pre-Indictment Programs

(Informal Survey of Vicinage Criminal Division Managers)

County	Pre-Indictment Program Yes/No	Cases Screened by Prosecutor before the pre-indictment event	Public Defender Representation	Types of Cases
Atlantic	Yes (ADP) Accelerated Disposition Program	Yes	Yes, if a 5A is completed	Only certain cases (3rd and 4th degree charges, victimless, non-complex cases)
Bergen	Yes	Yes	Yes, if a 5A is completed	Cases are screened by the prosecutor then sent to the Criminal Division for calendaring
Burlington	Yes	Yes	Yes, if a 5A is completed	Cases are screened by the prosecutor. Defense attorneys who want to have a matter placed on the schedule reach out to the prosecutor first.
Camden	Yes	Yes	Yes, if a 5A is completed. 5A applications are normally completed at CJP (first appearance event)	The defendant must have an attorney. The prosecutor's office selects the cases that are scheduled for the pre-indictment event

County	Pre-Indictment Program Yes/No	Cases Screened by Prosecutor before the pre-indictment event	Public Defender Representation	Types of Cases
Cape May	Yes (ADP) Accelerated Disposition Program	Yes. If an individual in the jail seems to have an appropriate case, or an individual requests participation, the court can schedule the case and provide notice to the parties	Yes, if a 5A is completed	Certain cases selected by the prosecutor or the court
Cumberland Gloucester Salem	No. The PIP was suspended in all 3 counties. Cumberland is pursuing a plan to re-establish the program.	Yes. (when the program was operational)	Yes, if a 5A was completed (when the program was operational)	When the program was operational, the cases were selected by the prosecutor
Essex	Yes	Yes	Yes, if a 5A is completed	Cases are screened by the prosecutor or staff
Hudson	Yes	Yes. Cases are screened by the prosecutor prior to being referred to the PIC (Pre-Indictment Court). This screening takes place at CJP.	Yes, if a 5A is completed. 5A applications are normally completed at CJP (first appearance event).	Only the screened cases are sent to PIC
Hunterdon	Yes	Yes	Yes, if a 5A is completed. 5A applications are normally completed at	Virtually all cases

			the first appearance	
County	**Pre-Indictment Program Yes/No**	**Cases Screened by Prosecutor before the pre-indictment event**	**Public Defender Representation**	**Types of Cases**
Mercer	Yes	Yes	Yes, if a 5A is completed	3rd & 4th degree charges
Middlesex	No	n/a	n/a	n/a
Monmouth	Yes	Yes	Yes, if a 5A is completed	Cases are screened by the prosecutor
Morris	Yes. Early Disposition Conference (EDC) pre-indictment program	The Prosecutor's Intake Unit screens cases before the pre-indictment event. Appropriate cases are "Remanded to Municipal Court or "Administratively Dismissed".	Yes, if a 5A is completed	All (remaining) cases are scheduled for EDC. 1st & 2nd Degree cases are often "marked" Grand Jury by the Assistant Prosecutor prior to the scheduled EDC date.
Ocean	Yes	Yes	Yes, if a 5A is completed	Only certain cases
Passaic	Yes	Yes	Yes, if a 5A is completed	Cases not sent to PIC: Murder, Manslaughter, Aggravated Sexual Assault, Kidnapping, unless approved by PIC prosecutor
Somerset	No	Somerset has direct filing where the prosecutor screens all complaints	n/a	n/a

County	Pre-Indictment Program Yes/No	Cases Screened by Prosecutor before the pre-indictment event	Public Defender Representation	Types of Cases
Sussex	Yes. Early Disposition Conference (EDC) pre-indictment program	Yes	Yes, if a 5A is completed	All cases, except that 1st degree charges usually go straight to the grand jury.
Union	Yes (PDC)	Yes	Yes, if a 5A is completed. The 5A is completed at the first appearance	1st and 2nd degree charges are automatically sent to the Grand Jury. All other charges are scheduled for the PDC approximately 6 weeks after the first appearance.
Warren	Yes	No	Yes, if a 5A is completed	All

APPENDIX B

Joint Committee on Criminal Justice Recommendations

BAIL RECOMMENDATIONS

RECOMMENDATION 1. **New Jersey should move from a largely "resource-based" system of pretrial release to a "risk-based" system of pretrial release.**

RECOMMENDATION 2. **A statute should be enacted requiring that an objective risk assessment be performed for defendants housed in jail pretrial, using an assessment instrument that determines the level of risk of a defendant.**

RECOMMENDATION 3. **Nonmonetary conditions of release that correspond to the level of risk should be established.**

RECOMMENDATION 4. **A supervision mechanism should be developed to ensure compliance with release conditions.**

RECOMMENDATION 5. **A mechanism for effective enforcement of noncompliance should be established.**

RECOMMENDATION 6. **The Constitution should be amended and a preventive detention statute should be enacted as a component of recommendations 1-5.**

RECOMMENDATION 7. **Recommendations 1-6 should not be considered individually but rather as an interdependent proposal for change to New Jersey's system of pretrial release.**

RECOMMENDATION 8. **Recommendations 1-6 should not be enacted without sufficient funding to ensure their success and community safety.**

RECOMMENDATION 9. **Resources for technological applications to assist in both determining risk and providing supervision must also be provided.**

SPEEDY TRIAL RECOMMENDATIONS

RECOMMENDATION 10. **A speedy indictment proposal should provide time limits that state when a defendant must be indicted: (1) defendants held in custody must be indicted within 90 days of arrest; and (2) defendants not in custody must be indicted within 180 days of the issuance of a complaint or arrest. The maximum time from complaint to indictment shall not exceed 180 days.**

RECOMMENDATION 11. **A speedy indictment or trial proposal should provide for exclusion of time in appropriate circumstances.**

RECOMMENDATION 12. **Speedy indictment and trial provisions should apply to all defendants.**

RECOMMENDATION 13. **The remedy for failure to indict within the required time frames should be: (1) release from confinement for incarcerated defendants held for a total of 90 days; and (2) dismissal of the complaint without prejudice for all defendants if not indicted within 180 days of issuance of a complaint.**

RECOMMENDATION 14. **A speedy trial provision with specific time frames within which a defendant must be tried that includes excludable time with appropriate remedies for noncompliance should be enacted. Specifically, defendants cannot be held in custody for more than a total of 180 days after indictment without a trial. The remedy for noncompliance shall be release from custody. Defendants not in custody must be tried within 365 days of indictment. The remedy for noncompliance shall be dismissal with prejudice. Any speedy trial provision must recognize that there will be cases that may require additional time; however, any provision allowing additional time must be limited to the extraordinary case and a significant showing that an injustice would follow from strict compliance with the relevant remedy.**

RECOMMENDATION 15. **Any speedy indictment and trial proposal should be implemented and adopted by legislation.**

PRE-INDICTMENT RECOMMENDATIONS

RECOMMENDATION 16. **All first appearances for indictable offenses should be made at a Superior Court building or other centralized location, before a judge designated by the Assignment Judge.**

RECOMMENDATION 17. **The first appearance should be held (1) within 72 hours of arrest for incarcerated defendants, and (2) after the prosecutor has screened the case, but no more than 60 days after arrest or issuance of a summons, for non-incarcerated defendants.**

RECOMMENDATION 18. **At the first appearance, the court shall provide to the defendant a 5A form, which the defendant (if then unrepresented) shall complete and submit at that time,**

and which the court shall process immediately.

RECOMMENDATION 19. **At the first appearance, the prosecutor must inform the court of a screening decision.**

RECOMMENDATION 20. **At the first appearance, the judge must inform the defendant about the PTI program and the Drug Court program.**

RECOMMENDATION 21. **In order to facilitate early case management and disposition, every county must develop a pre-indictment program approved by the Supreme Court. The purpose of this program shall be for the parties to discuss and/or finalize any pre-indictment disposition.**

POST-INDICTMENT RECOMMENDATIONS

RECOMMENDATION 22. **The Prearraignment Conference (PAC) should be merged with the Arraignment/Status Conference (AS) and the AS should be held 14 days after indictment.**

RECOMMENDATION 23. **The number of status conferences should be limited to two absent good cause, in which case, a third conference would be allowed at the judge's discretion. The first status conference should be called the Initial Case Disposition Conference (ICDC), the second, the Final Case Disposition Conference (FCDC), and the third, the Discretionary Case Disposition Conference (DCDC).**

RECOMMENDATION 24. **Rule 3:9-3g (Plea Cutoff) should be changed from a mandatory requirement to a permissive requirement at the Pretrial Conference (PTC). The PTC court event should be maintained as the mechanism to set a trial date, including completion of the pretrial memorandum, with a warning to the defendant that the plea *may not* be available at the time of trial.**

RECOMMENDATION 25. **The recommendation of the Supreme Court's Special Committee on Peremptory Challenges and Jury Voir Dire should be endorsed. There should be a reduction of the number of peremptory challenges in criminal trials to eight challenges for a defendant being tried alone, with six challenges permitted to the State. Where there are multiple defendants, each defendant should be permitted four peremptory challenges, with the State permitted three challenges for each defendant.**

RECOMMENDATION 26. **Additional resources should be allocated to the Criminal Division.**

RECOMMENDATION 27. **All available discovery should be made available at the time of indictment with some caveat for extraordinary cases. If a plea offer is tendered, it must be in writing and should be part of the discovery package available at the time of indictment.**

APPENDIX C

Supreme Court's Administrative Determinations Regarding Joint Committee on Criminal Justice Recommendations

Administrative Determinations by the Supreme Court
on the Pre-Indictment/Post-Indictment Recommendations of the
Joint Committee on Criminal Justice (JCCJ)

October 21, 2015

The Joint Committee on Criminal Justice (JCCJ), chaired by Chief Justice Stuart Rabner, was established in June 2013 and charged with examining issues related to bail and delays in bringing criminal cases to trial. In March 2014, the Joint Committee, comprised of judges, prosecutors, public defenders, private counsel, court administrators, staff from the Legislature and staff from the Governor's office issued its report setting out a number of recommendations regarding bail reform, pretrial detention, time frames in which defendants must be indicted and brought to trial, and the processing and management of criminal cases.

Recommendations 1 through 15 of the JCCJ report, addressing pretrial release, preventive detention, and speedy trial, were incorporated into legislation (S-946), which the Legislature enacted and the Governor signed into law as L. 2014, c. 31 on August 11, 2014. Those statutory provisions, which are codified at N.J.S.A. 2A:162-15 to -26, will be effective on January 1, 2017, the same date as the constitutional amendment to N.J. Const. art. I, ¶ 11.

The remaining JCCJ recommendations – Recommendations 16 through 27 – which were not addressed by the statutory amendments, cover various pre-indictment and post-indictment aspects of criminal case processing and management. The Supreme Court reviewed Recommendations 16 through 27 and made the determinations set forth below. As reflected in the balance of this administrative determinations document, the Court approved the majority of those recommendations for substantially the reasons expressed by the Joint Committee in its report. The Court thereafter referred the approved recommendations for development of any necessary rule amendments or other implementing steps.

Joint Committee on Criminal Justice Recommendations and Supreme Court Determinations

Pre-Indictment Recommendations

Recommendation 16.
All first appearances for indictable offenses should be made at a Superior Court building or other centralized location, before a judge designated by the Assignment Judge.
Determination: Approved.

Recommendation 17.
The first appearance should be held (1) within 72 hours of arrest for incarcerated defendants, and (2) after the prosecutor has screened the case, but no more than 60 days after arrest or issuance of a summons, for non-incarcerated defendants.
Determination: Approved.

Recommendation 18.
At the first appearance, the court shall provide to the defendant a 5A form, which the defendant (if then unrepresented) shall complete and submit at that time, and which the court shall process immediately.
Determination: Approved.

Recommendation 19.
At the first appearance, the prosecutor must inform the court of a screening decision.
Determination: Approved.

Recommendation 20.
At the first appearance, the judge must inform the defendant about the PTI program and the Drug Court program.
Determination: Approved.

Recommendation 21.
In order to facilitate early case management and disposition, every county must develop a pre-indictment program approved by the Supreme Court. The purpose of this program shall be for the parties to discuss and/or finalize any pre-indictment disposition.
Determination: Approved.

Post-Indictment Recommendations

Recommendation 22.
The Prearraignment Conference (PAC) should be merged with the Arraignment/Status Conference (AS) and the AS should be held 14 days after indictment.
Determination: Approved.

Recommendation 23.
The number of status conferences should be limited to two absent good cause, in which case, a third conference would be allowed at the judge's discretion. The first status conference should be called the Initial Case Disposition Conference (ICDC), the second, the Final Case Disposition Conference (FCDC), and the third, the Discretionary Case Disposition Conference (DCDC).
Determination: Approved.

Recommendation 24.
Rule 3:9-3g (Plea Cutoff) should be changed from a mandatory requirement to a permissive requirement at the Pretrial Conference (PTC). The PTC court event should be maintained as the mechanism to set a trial date, including completion of the pretrial memorandum, with a warning to the defendant that the plea *may not* be available at the time of trial.
Determination: Not Approved.

Recommendation 25.
The recommendation of the Supreme Court's Special Committee on Peremptory Challenges and Jury Voir Dire should be endorsed. There should be a reduction of the number of peremptory challenges in criminal trials to eight challenges for a defendant being tried alone, with six challenges permitted to the State. Where there are multiple defendants, each defendant should be permitted four peremptory challenges, with the State permitted three challenges for each defendant.
Determination: No Action.

Recommendation 26.
Additional resources should be allocated to the Criminal Division.
Determination: No Action.

Recommendation 27.
All available discovery should be made available at the time of indictment with some caveat for extraordinary cases. If a plea offer is tendered, it must be in writing and should be part of the discovery package available at the time of indictment.
Determination: Approved.

The Supreme Court wishes to extend its thanks and appreciation to all of the members of the Joint Committee on Criminal Justice. Its report and recommendations reflect the results of an extraordinary effort by all concerned.

Dated: October 21, 2015