

**SUPPLEMENTAL REPORT OF THE
SUPREME COURT COMMITTEE ON
MUNICIPAL COURT PRACTICE**

2017 - 2019 TERM



JULY 8, 2019

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I. Introduction

The Municipal Court Practice Committee ("Committee") recommends that the Supreme Court adopt the proposed rule amendments contained in this report.

Where rule changes are proposed, added text is underlined as such.

II. Proposed Rule Amendments Recommended for Adoption – R. 7:8-5 (Dismissal) and Suggested Administrative Guidance

A. Background

The Committee is proposing modifications to R. 7:8-5 to provide for the periodic dismissal of older, unresolved Municipal Court complaints that involve minor matters, in accordance with the Supreme Court's request that the Committee consider such a protocol, as set forth in the Chief Justice's January 17, 2019 Dismissal Order. The Committee also developed consensus on additional components of such a protocol, which the members respectfully suggest may be more appropriate for administrative guidance, rather than in a Court Rule. Those additional components are set forth herein and will be conveyed to Acting Administrative Director Glenn A. Grant, via memorandum from Committee Chair Robert T. Zane, III, P.J.M.C.

On July 19, 2018, the Court issued an Order seeking guidance as to the appropriate way to address older, unresolved Municipal Court complaints that involve minor matters. The Court found that such matters raise questions of fairness, the appropriate use of limited public resources by law enforcement and the courts, the ability of the State to prosecute cases successfully in light of how long matters have been pending and the availability of witnesses, and administrative efficiency. By that Order, the Court appointed three Assignment Judges to conduct a series of hearings as to why older, minor Municipal Court

complaints pending for more than 15 years should not be dismissed. In October 2018, those hearings were conducted and the panel submitted a report to the Court.

The panel report included three recommendations, one of which was the development of a process for the annual dismissal of open Municipal Court matters that are more than 15 years old, to be considered by the Committee. The panel also suggested that the Committee consider the following in the development of any Court Rule: 1) The establishment of a definite dismissal date for eligible matters, on notice to the municipal prosecutor; and 2) The broad categories of cases that should be excluded from dismissal. The dismissal panel also suggested that any proposed dismissal rule should be expanded to also include cases where a license suspension was ordered due to the person's failure to appear. Finally the dismissal panel suggested that the rule also specify that the Administrative Director issue a Directive identifying the exact offenses to be excluded.

On January 17, 2019, the Chief Justice issued an Order dismissing minor, unresolved municipal cases for which there was an arrest warrant in place prior to January 1, 2003. By this Order, 787,764 unresolved complaints were dismissed.

The Order also charged the Committee with the following:

- (a) to examine whether dismissal of offenses more than 10 years old should be considered and whether the types of matters eligible for dismissal should be expanded; and

(b) to develop a process for the periodic review and dismissal of open, dated Municipal Court matters, which would include notice to municipal prosecutors and potential revisions to the court rules.

Currently, R. 7:8-5 addresses the dismissal of Municipal Court cases; additionally, a procedure set forth in R. 7:8-9 provides for the dismissal of parking matters over three years old where there has not been a warrant or driver's license suspension issued. Lastly, Administrative Directive #02-08 addresses procedures for the dismissal and voiding of Municipal Court complaints.

B. Proposed Court Rule Amendments and Suggested Administrative Guidance

The Committee considered the direction from the Court, as well as the suggestions from the panel report, in the development of a periodic dismissal protocol.

Initially, the members noted that the creation of a periodic process for the dismissal of unresolved Municipal Court cases would in no way limit a Municipal Court judge's existing authority under R. 7:8-5 to dismiss a complaint for good cause at any time on its own motion, on the motion of the State, county or municipality, or on a defendant's motion.

In evaluating the components of a periodic dismissal protocol, the members first considered the timeframe for complaints that would be subject to such a protocol. Several options were evaluated, including cases 10 years and older, as suggested by the referral section of the Supreme Court's January 17, 2019

Dismissal Order. Members also considered both a shorter time period (such as seven years and older) and a longer one (such as 15 years and older).

The members ultimately agreed that including cases 10 years and older would be most appropriate.

The members next considered whether in order to be eligible for the dismissal protocol, complaints would need to have an active warrant or driver's license suspension attached. It was noted that the Dismissal Order applied to unresolved complaints in which the defendant failed to appear in court, an arrest warrant was issued before January 1, 2003, the arrest warrant was still in effect as of January 17, 2019, and the complaint did not involve and was not related to any charges on a list of more serious charges.

Several members said that there are many old, unresolved, minor Municipal Court complaints that have license suspensions (but no warrant) for failure to appear attached, such as parking matters. It was noted that including this complaint type in the dismissal protocol could benefit many people, including individuals who have been incarcerated and who may have minor charges they could not resolve while confined, and who then reenter society with a suspended license for an old, municipal matter.

Recently, 15 Assignment Judge Orders have been issued that limit the use of bench warrants for failure to appear. Consequently, as time goes on, many unresolved complaints will not have bench warrants attached. Therefore,

including in a dismissal protocol those old complaints with license suspensions (but not warrants) would significantly expand the number of complaints on minor matters eligible for dismissal.

Ultimately, the members agreed that complaints with license suspensions or warrants for failure to appear that have been in effect for 10 years or more should be eligible for dismissal (while also considering additional criteria, as indicated below).

The Committee then discussed which charges – if any – should be excluded from a dismissal protocol. The members first reviewed the list of charges exempted from the Dismissal Order:

1. Indictable charges
2. Disorderly persons charges
3. Petty disorderly persons charges
4. The following motor vehicle charges:
 - N.J.S.A. 39:3-10 Driving without a license
 - N.J.S.A. 39:3-10.13 Operating a commercial vehicle while intoxicated
 - N.J.S.A. 39:3-10.24 Refusal to submit to a breath test while operating a commercial vehicle
 - N.J.S.A. 39:3-10.18(b) Operating a commercial vehicle while commercial license suspended or revoked
 - N.J.S.A. 39:3-40 Driving while license suspended or revoked
 - N.J.S.A. 39:4-49.1 Drugs in a motor vehicle
 - N.J.S.A. 39:4-50 Driving while intoxicated
 - N.J.S.A. 39:4-50.4a Refusal to submit to a chemical test
 - N.J.S.A. 39:4-50.14 Underage driving while intoxicated
 - N.J.S.A. 39:4-50.19 Failure to install an interlock device
 - N.J.S.A. 39:4-96 Reckless driving
 - N.J.S.A. 39:4-98 Speeding (only those complaints in which the speed was alleged to be in excess of 35 mph over the posted speed limit)
 - N.J.S.A. 39:4-128.1 Passing a stopped school bus

- N.J.S.A. 39:4-129(a), (b) Leaving the scene of an accident with personal injury or property damage
 - N.J.S.A. 39:6B-2 Driving without insurance
 - N.J.S.A. 12:7-46 Boating while intoxicated
5. Or cases associated with a matter in any of the above categories.

The members debated whether disorderly persons and petty disorderly persons offenses should be included in the list of cases that may be dismissed as part of a periodic dismissal protocol. If this were to occur, some members questioned whether an alleged victim of such an offense should be first notified of the pending dismissal.

A prosecutor on the Committee suggested that it may not be feasible for a municipal prosecutor to conduct an in-depth review of 10-15 year old minor disorderly persons and petty disorderly persons cases. However, concern was expressed as to providing defendants the benefit of dismissal when they have been arrested numerous times on other matters and have failed to appear on those charges.

The members also examined the issue of old disorderly persons and petty disorderly persons complaints that involve domestic violence. Some members suggested that keeping a pending complaint active could provide some security to an alleged victim, even if 10 or more years has passed since issuance. Others asserted that defendants should not have unresolved charges, arrest warrants, and/or license suspensions hanging over them. Most members agreed that after 10

or more years the likelihood of the State reasonably being able to prosecute a case would be quite low.

Ultimately, the members agreed to keep disorderly persons and petty disorderly persons offenses out of cases that would be subject to the periodic dismissal. They also agreed that the protocol should mirror the list of excluded charges set forth in the Dismissal Order. Complaints associated with any charges on the list would also be excluded from the periodic dismissal.

The Committee members also addressed the fact that some Municipal Courts have old, paper complaints from decades ago, before the advent of the centralized, Municipal Court computer system (ATS/ACS) in the mid-1990s. Most often, these complaints have not been entered in the ATS/ACS computer system. Representatives from the Administrative Office of the Courts explained that if Municipal Courts were required to dismiss all of these old, paper complaints as part of a standard dismissal protocol, it would create a heavy administrative burden. Staff would need to comb through hundreds of boxes of complaints, evaluate each for eligibility, and then manually enter each dismissal in the computer system.

Members agreed that while Municipal Courts can – and should – address these old, paper complaints on an ongoing basis, it would be most efficient and effective for the dismissal protocol to address only those complaints that are already loaded in the ATS/ACS computer system. This would allow these

electronically stored complaints to be easily and centrally dismissed in the computer system.

The members agreed that the Administrative Office of the Courts should make reports available for the Municipal Courts to use at any time, listing cases eligible for dismissal as per the protocol. They also all agreed that the prosecutor should be given notice and the opportunity to review the list of complaints subject to dismissal. The municipal prosecutor would then have an opportunity to object to the dismissal of individual complaints. The time period that the municipal prosecutor will have to review and potentially make an objection should be determined locally, by vicinage or Municipal Court practice, to provide greater flexibility for larger courts with high volume.

Following the prosecutor's opportunity to review the list of complaints, the Municipal Court judge would make the final determination on dismissal; which should be conducted in open court, on the record. They members also agreed that for efficiency, large numbers of complaints could be compiled in a report and dismissed by the judge via reference to that report, similar to the process that is set forth in Administrative Directive #02-08 for the dismissal of parking tickets.

The Committee discussed how frequently a dismissal process should be conducted by a court (for instance, annually, twice a year, or more frequently). It was noted that different courts have different needs in terms of dismissals of old complaints. For instance, a large court may need to dismiss monthly (or even

more frequently), whereas a very small court that meets a few times a month may need to dismiss only once or twice a year. Ultimately, the members agreed that courts should determine the frequency of a periodic dismissal process, based on local need.

Finally, the Committee considered to what extent the procedures for the ongoing dismissal of old, unresolved, minor municipal complaints should be included in the existing Court Rule on dismissal (R. 7:8-5) and to what extent those procedures should be included in an Administrative Directive – taking into account ease of modification. The members agreed that a reference to the periodic dismissal protocol in the Court Rule would be appropriate, with the details conveyed via an Administrative Directive. This would provide greater flexibility, should procedures need to be modified later. They also agreed that the Committee’s recommended dismissal protocol details would be conveyed to Acting Administrative Director Glenn A. Grant, J.A.D., for consideration as part of an Administrative Directive or other guidance.

The proposed amendments to R. 7:8-5 follow.

7:8-5. Dismissal

(a) Dismissal of Complaint Not Moved. If the complaint is not moved on the day for trial, the court may direct that it be heard on a specified return date and a notice thereof be served on the complaining witness, all defendants and all other known witnesses. If the complaint is not moved on that date, the court may order the complaint dismissed.

(b) Dismissal of Complaint by Motion, Recall Warrant. A complaint may also be dismissed by the court for good cause at any time on its own motion, on the motion of the State, county or municipality or on defendant's motion. On dismissal, any warrant issued shall be recalled, and the matter shall not be reopened on the same complaint except to correct a manifest injustice.

(c) Periodic Dismissal of Certain Municipal Complaints: After notice to the prosecutor and pursuant to procedures promulgated by the Administrative Director of the Courts, the court shall dismiss all eligible complaints that are more than ten years old, unless the court determines that, in the interests of justice, the complaint should not be dismissed.

Note: Source-R. (1969) 7:4-2(i). Adopted October 6, 1997 to be effective February 1, 1998; amended July 28, 2004 to be effective September 1, 2004, amended September _____, 2019 and redesignated as paragraph (a) and (b) and new captions added, new paragraph (c) added to be effective September _____, 2019.

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

Respectfully submitted,

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