

NOTICE TO THE BAR

Publication of Proposed Rule Amendments Recommended by the Municipal Court Practice Committee -- Service of Process

Published herewith are proposed amendments to Rules 7:2-3, 7:2-4, and 7:2-5 of the Rules Governing the Courts of the State New Jersey as recommended to the Supreme Court by the Municipal Court Practice Committee. As set forth in the accompanying narrative from the Committee, the proposed amendments relate to service of process in those Municipal Court matters in which service of process is by mail, e.g., private citizen complaints, code enforcement matters. The Committee has asked that these proposed amendments be considered and acted on outside the regular two-year rules cycle.

The Supreme Court invites written comments on these proposed rule amendments. Please send any such comments by Friday, September 21, 2001 to Hon. Richard J. Williams, Administrative Director of the Courts, R.J. Hughes Justice Complex, P.O. Box 037, Trenton, NJ 08625-0037. Comments on the proposed amendments also may be submitted via Internet e-mail to the following address: Comments Mailbox@judiciary.state.nj.us. All comments must include the author's name and address or e-mail address.

Comments submitted in response to this notice will be maintained in confidence if the author specifically requests confidentiality; in the absence of such a request, the author's identity and comments may be subject to public disclosure.

Richard J. Williams, J.A.D.
Administrative Director of the Courts
Dated: July 30, 2001

MUNICIPAL COURT PRACTICE COMMITTEE

PROPOSED AMENDMENTS TO RULES 7:2-3, 7:2-4 AND 7:2-5

The Municipal Court Practice Committee (Committee) recommends amendments to Rules 7:2-3, 7:2-4 and 7:2-5 to streamline and enhance service of process procedures in the municipal courts. R. 7:2-3, governing service of process of a Complaint-Summons, requires service to be effected in accordance with R. 4:4-4. R. 4:4-4 provides that “. . . service, in lieu of personal service, may be made by registered, certified or ordinary mail, provided, however, that such service shall be effective for obtaining in personam jurisdiction only if the defendant answers the complaint or otherwise appears in response thereto. If defendant does not answer or appear within 60 days following mailed service, service shall be made as is otherwise prescribed by this rule, and the time prescribed by R. 4:4-1 for issuance of the summons shall then begin to run anew.”

Currently, the overwhelming majority of the approximately six million cases filed in the municipal courts each year are served personally by law enforcement officers. However, there are some cases, such as private citizen complaints and code enforcement matters, where service is normally attempted by mail pursuant to R. 4:4-4(b) & (c). Within this latter category, there are many instances when a defendant can avoid prosecution by not filing an answer or appearing in response to the complaint within 60 days of the mailed service.

To remedy this problem, the Committee proposes the adoption of amendments to Rules 7:2-3, 7:2-4 and 7:2-5. These revisions are designed to ensure that the defendant receives actual notice of a Complaint-Summons served by mail. It will effectively enable the court to gain *in personam* jurisdiction over the defendant and concomitantly ensure that the defendant's due process rights are not abrogated.

Proposed R. 7:2-4 permits the court to mail a citizen's Complaint-Summons to the last known mailing address of the defendant. If the defendant appears in court or acknowledges receipt of the Complaint-Summons, orally or in writing¹, service will be deemed to be effective. If the defendant fails to respond to the complaint, the court may re-attempt service if it is provided with a different, updated address for the defendant, along with a postal verification or other, satisfactory proof that the defendant receives mail at that address.

If service is attempted by ordinary mail and the defendant does not appear in court on the first appearance date or does not contact the court orally or in writing by that date, the court may send the Complaint-Summons simultaneously by ordinary mail and certified

¹ R. 4:4-4 contemplates either the filing of a written answer or a personal appearance in court by the defendant. In municipal court practice, answers are not permitted. Frequently, in those instances where service is attempted by mail, the defendant will contact the court telephonically to determine the nature and status of the case. Oral contact with the court does not rise to the level of an answer or appearance.

mail with return receipt requested to the defendant's last known mailing address². Service by simultaneous mailing will be deemed effective service, unless the mail is returned to the court by the postal service and is marked, "Not Deliverable As Addressed, Unable to Forward", "Insufficient Address", "Moved, Left No Address", "Attempted - Not Known", "No Such Street, Number", "Vacant", "Illegible", "No Mail Receptacle", "Box Closed - No Order", "Returned for Better Address" or the court has other reason to believe that service was not effected³.

If the defendant fails or refuses to claim or to accept delivery of the certified mail with return receipt requested, the simultaneous, ordinary mailing shall be deemed to constitute effective service.

The proposed rule amendments also provide a detailed procedure for the municipal courts to follow when *in personam* jurisdiction has not been obtained. If the municipal court cannot obtain effective service over the defendant after attempting service by simultaneous mailing, the court shall provide written notice of that fact to the prosecuting attorney and the complaining witness. The case will be eligible for dismissal unless, within 45 days of the receipt of the written notice, the prosecuting attorney or the complaining witness can provide the court with a different, updated address for the defendant, along with a postal verification or other satisfactory proof that the defendant receives mail at that address. It should be noted that the provisions of this proposed revision do not preclude the prosecuting attorney or other authorized person from attempting service in any other lawful manner.

If the prosecuting attorney and complaining witness do not respond to the court's written notice within 45 days or if the defendant is not otherwise served, the court may dismiss the case.

The proposed amendments to R. 7:2-3 serve merely to limit the scope of this rule to the: (1) execution and service and (2) return of arrest warrants. Only sections (a) (1), (2) & (3) of R. 7:2-3 would be retained in proposed R. 7:2-3. New procedures for the return, execution and service of summonses, currently contained in R. 7:2-3(b), would be set forth in the proposed revisions to R. 7:2-4. Finally, current R. 7:2-4, which is retained in its entirety, would be renumbered as R. 7:2-5.

The Committee requests the Supreme Court take action on these rules outside of the two-year committee cycle because of their significance in municipal court practice. the recommended rule amendments would enable the municipal courts to obtain in personam jurisdiction over defendants in all cases, not only those brought and served by law enforcement officers. These proposed rule amendments will also serve to protect the due

² The Committee was guided, in large part, by the provisions for simultaneous service set forth in R. 6:2-3(d) (Service by Mail Program).

³ These postal markings vary somewhat from those in R. 6:2-3(d)(4), because they were based on the most recent postal markings provided to the Committee by the postal service.

process rights of defendants by requiring an alternative form of notice in the event the defendant does not respond to the initial complaint.

Therefore, the Committee recommends at this time that the Court authorize the publication of these three proposed rules for public comment. All comments received will be presented to the Court at an Administrative Conference in the fall. At that time, the Court will be asked to make the rules, if adopted, effective January 1, 2002 in order to allow sufficient programming time to incorporate the provisions of these rules into ATS/ACS.

Attached for the Supreme Court's consideration are the proposed revisions to Rules 7:2-3, 7:2-4 and 7:2-5.

7:2-3. Arrest Warrant: Execution and Service; Return

[(a) Arrest Warrant.]

(a) [(1)] By Whom Executed; Territorial Limits. An arrest warrant shall be executed by any officer authorized by law. The arrest warrant may be executed at any place within this State. A law enforcement officer arresting a defendant outside the territorial jurisdiction of the court that issued the warrant shall take the defendant, without unnecessary delay, before the nearest committing judge authorized to admit to bail in accordance with R. 7:4-2(a) and any other applicable rule of court.

(b) [(2)] How Executed. The arrest warrant shall be executed by the arrest of the defendant. The law enforcement officer need not possess the warrant at the time of the arrest, but upon request, the officer shall show the warrant or a copy of an Automated Traffic System/Automated Complaint System (ATS/ACS) electronic record evidencing its issuance to the defendant as soon as possible. If the law enforcement officer does not have the actual warrant to show or does not have access to an ATS/ACS printer to produce a copy of the electronic record at the time of the arrest, the officer shall inform the defendant of the offense charged and that an arrest warrant has been issued.

(c) [(3)] Return. The law enforcement officer executing an arrest warrant shall make prompt return of the arrest warrant to the court that issued the warrant. If the arrested defendant is not admitted to bail, the arresting officer shall notify the court issuing the arrest warrant by telephone or other electronic means of communication of the date and time of the arrest and the place of the defendant's incarceration.

[(b) Summons.]

(1) Generally. The summons shall be served in accordance with R. 4:4-4. Service of the complaint by mail in accordance with R. 4:4-4 may be attempted either by the court or the law enforcement agency that prepared the complaint. If the law enforcement agency attempts to serve a defendant not in custody by mail, service shall not be made until an initial court date for the first appearance is fixed by the municipal court administrator, deputy court administrator, or other authorized court employee.

(2) Parking Offenses. A copy of the Uniform Traffic Ticket prepared and issued out of the presence of the defendant charging a parking offense may be served by affixing it to the vehicle involved in the violation.

(3) Corporations, Partnerships and Unincorporated Associations. A copy of the Uniform Traffic Ticket charging a corporation, partnership or unincorporated association with a violation of a statute or ordinance relating to motor vehicles may be served upon the operator of the vehicle.

(4) Return. The law enforcement officer serving a summons shall make return of the summons on or before the return date to the court before whom the summons is returnable.]

Note: Source—Paragraph (a): R. (1969) 7:2; 7:3-1, 3:3-3(a),(b),(c),(e); paragraphs (b)(1), (2), (3); R. (1969) 7:3-1; paragraph (b)(4); R. (1969) 7:2, 7:3-1, 3:3-3(e). Adopted October 6, 1997 to be effective February 1, 1998; caption to rule amended, caption to former paragraph (a) deleted, former paragraph (b) deleted (and relocated in amended form to new R. 7:2-4), subparagraphs (a)(1), (a)(2), (a)(3) redesignated as paragraphs (a), (b), (c), 2001 to be effective _____, 2001.

7:2-4 Summons: Execution and Service; Return

(a) Personal Service Under R. 4:4-4 or By Ordinary Mail.

(1) The Complaint-Summons shall be served personally in accordance with R. 4:4-4(a), by ordinary mail or by simultaneous mailing. Service of the Complaint/Summons by ordinary mail may be attempted by the court, by the law enforcement agency that prepared the complaint, or by an agency or individual authorized by law to serve process.

(2) Service by ordinary mail shall have the same effect as personal service, if the defendant contacts the court orally or in writing in response to or in acknowledgment of the service of the Complaint-Summons. Service by ordinary mail shall not be attempted until a court date for the first appearance has been set by the municipal court administrator, deputy court administrator, or other authorized court employee.

(3) If the court is provided with a different, updated address for the defendant, along with a

postal verification or other proof satisfactory to the court that the defendant receives mail at that address, service of the Complaint-Summons may be re-attempted.

(b) Simultaneous Service by Mail.

(1) If service is attempted by ordinary mail and the defendant does not appear in court on the first appearance date or does not contact the court orally or in writing by that date, the court subsequently shall send the Complaint-Summons simultaneously by ordinary mail and certified mail with return receipt requested to the defendant's last known mailing address. Service by simultaneous mailing shall not be attempted until a new court date for the first appearance has been set by the municipal court administrator, deputy court administrator, or other authorized court employee.

(2) When the Complaint-Summons is addressed and mailed to the defendant at a place of business or employment with postal instructions to deliver to addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the defendant to whom the Complaint-Summons was mailed.

(3) Service by simultaneous mailing, as provided in section (b)(1) of this rule, shall constitute effective service, unless the mail is returned to the court by the postal service marked as "Not Deliverable As Addressed, Unable to Forward", "Insufficient Addressed", "Moved, Left No Address", "Attempted - Not Known", "No Such Street, Number", "Vacant", "Illegible", "No Mail Receptacle", "Box Closed - No Order", "Returned for Better Address" or the court has other reason to believe that service was not effected. If the defendant fails or refuses to claim or to accept delivery of the certified mail with return receipt requested, the simultaneous ordinary mailing shall be deemed to constitute effective service.

(4) Process served by ordinary or certified mail with return receipt requested may be addressed to a post office box.

(c) Notice to Prosecuting Attorney and Complaining Witness; Dismissal of Complaint.

(1) If the court has not obtained effective service over the defendant after attempting service by simultaneous mailing under section (b)(1) of this rule, the court shall provide written notice of that fact to the prosecuting attorney and the complaining witness.

(2) The case shall be eligible for dismissal unless, within 45 days of the receipt of the written notice, the prosecuting attorney or the complaining witness provides the court with a different, updated address for the defendant, along with a postal verification or other proof satisfactory to the court that the defendant receives mail at that address.

(3) Notwithstanding the provisions of this rule, nothing shall preclude the prosecuting attorney

or other authorized person from attempting service in any lawful manner.

(4) If the prosecuting attorney and complaining witness do not respond to the court's written notice within 45 days or if the defendant is not otherwise served, the court may dismiss the case pursuant to R. 7:8-5.

(d) Parking Offenses. A copy of the Uniform Traffic Ticket prepared and issued out of the presence of the defendant charging a parking offense may be served by affixing it to the vehicle involved in the violation.

(e) Corporations, Partnerships and Unincorporated Associations. A copy of the Uniform Traffic Ticket charging a corporation, partnership or unincorporated association with a violation of a statute or ordinance relating to motor vehicles may be served upon the operator of the vehicle.

(f) Return. The law enforcement officer serving a summons shall make return of the summons on or before the return date to the court before whom the summons is returnable.

Note: Source – Paragraphs (a)(1) and (a)(2) adapted from Former Rule 7:2-3 (b)(1); paragraphs (d), (e), and (f) taken from former Rule 7:2-3(b)(2), (b)(3), and (b)(4). Adopted (and former Rule 7:2-4 redesignated as Rule 7:2-5) _____, 2001 to be effective _____, 2001.

7:2-5. [7:2-4] Defective Warrant or Summons; Amendment

No person arrested under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any technical insufficiency or irregularity in the warrant or summons, but the warrant or summons may be amended to remedy any such technical defect.

Note: Source—R. (1969) 7:2, 7:3–1, 3:3–4(a). Adopted October 6, 1997 as Rule 7:2-4 to be effective February 1, 1998; redesignated as Rule 7:2-5 _____, 2001 to be effective _____, 2001.