

CORRECTED NOTICE TO THE BAR

Proposed Amendments to Guideline 4 of Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey

This corrected Notice supersedes the February 10, 2005 Notice to the Bar and sets out proposed amendments to Guideline 4 ("Limitation") of the Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey. There are no proposed amendments to Guideline 2 ("Definitions").

The Supreme Court has approved the publication for comment of proposed amendments to Guideline 4 of the Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey [Guidelines], as recommended by the Municipal Court Practice Committee and the Conference of Presiding Judges-Municipal Courts. The Guidelines are included in the Rules of Court as an Appendix to Part VII of the Rules. The proposed amendments are published with this Notice. As proposed, Guideline 4 would no longer permit the dismissal by a plea agreement of a refusal to provide a breath sample charge (N.J.S.A. 39:4-50.4a) for first offenders. In addition, it expressly prohibits plea agreements in which a defendant charged with driving while intoxicated (N.J.S.A. 39:4-50) with a blood alcohol concentration [BAC] of 0.10% or higher seeks to plead guilty and be sentenced as if the BAC reading had been .08% or higher, but less than 0.10%.

Comments on the proposed amendments are being sought prior to their consideration by the Court for adoption. Any comments should be sent in writing by April 8, 2005 to:

Philip S. Carchman, J.A.D.
Acting Administrative Director of the Courts
Administrative Office of the Courts
Hughes Justice Complex, P.O. Box 037
Trenton, NJ 08625-0037

Comments also may be submitted via Internet e-mail to the following address: Comments.Mailbox@njcourts.gov.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address (and those submitting comments by e-mail should include their name and e-mail address). However, 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 his or her comments may be subject to public disclosure after the Court has acted on the proposed amendments.

/s/ Philip S. Carchman
Philip S. Carchman, J.A.D.
Acting Administrative Director of the Courts

Dated: February 18, 2005

Proposed Amendments

GUIDELINES FOR OPERATION OF PLEA AGREEMENTS IN THE MUNICIPAL COURTS OF NEW JERSEY

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GUIDELINE 2. DEFINITIONS

[no proposed amendments]

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GUIDELINE 4. LIMITATION

No plea agreements whatsoever will be allowed in drunken driving or certain drug offenses. Those offenses are:

A. Driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50) and,

B. Possession of marijuana or hashish (N.J.S.A. 2C:35-10a(4)); being under the influence of a controlled dangerous substance or its analog (N.J.S.A. 2C:35-10b); and use, possession or intent to use or possess drug paraphernalia, etc. (N.J.S.A. 2C:36-2).

No plea agreements will be allowed in which a defendant charged for a violation of N.J.S.A. 39:4-50 with a blood alcohol concentration of 0.10% or higher seeks to plead guilty and be sentenced under section a(1)(i) of that statute (blood alcohol concentration of .08% or higher, but less than 0.10%) .

If a defendant is charged with a second or subsequent offense of driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50) and refusal to provide a breath sample [(N.J.S.A. 39:4-50.2)] (N.J.S.A. 39:4-50.4a) arising out of the same factual transaction, and the defendant pleads guilty to the N.J.S.A. 39:4-50 offense, the judge, on recommendation of the prosecutor, may dismiss the refusal charge. A refusal charge in connection with a first offense N.J.S.A. 39:4-50 charge shall not be dismissed by a plea agreement, although a plea to a concurrent sentence for such charges is permissible.

If a defendant is charged with more than one violation under Chapter 35 or 36 of the Code of Criminal Justice arising from the same factual transaction and pleads guilty to one charge or seeks a conditional discharge under N.J.S.A. 2C:36A-1, all remaining Chapter 35 or 36 charges arising from the same factual transaction may be dismissed by the judge on the recommendation of the prosecutor.

Nothing contained in these limitations shall prohibit the judge from considering a plea agreement as to the collateral charges arising out of the same factual transaction connected with any of the above enumerated offenses in sections A and B of this Guideline.

The judge may, for certain other offenses subject to minimum mandatory penalties, refuse to accept a plea agreement unless the prosecuting attorney represents that the possibility of conviction is so remote that the interests of justice requires the acceptance of a plea to a lesser offense.

SUPREME COURT COMMENT (1990)

Over the years, various unique practices and procedures have evolved in connection with the disposition of Municipal Court cases. Thus, it is the intent of these Guidelines to define regulated plea agreements as including every common practice that has evolved as a subterfuge for plea agreements. Therefore, for the purpose of these Guidelines, a plea agreement shall include all of those traditional practices, utilized by prosecutors and defense counsel, including "merger", "dismissal", "downgrade" or "amendment." Generally, "mergers" involve the dismissal of lesser-included or related offenses when a defendant pleads to the most serious offense. "Dismissals" involve motions to dismiss a pending charge or plea agreement when the municipal prosecutor determines, for cause (usually for insufficient evidence), that the charge should be dismissed. "Downgrades" or "amendments" involve the taking of a plea to a lesser or included offense to that originally charged.

Plea agreements are to be distinguished from the discretion of a prosecutor to charge or unilaterally move to dismiss, amend or otherwise dispose of a matter. It is recognized that it is not the municipal prosecutor's function merely to seek convictions in all cases. The prosecutor is not an ordinary advocate. Rather, the prosecutor has an obligation to defendants, the State and the public to see that justice is done and truth is revealed in each individual case. The goal should be to achieve individual justice in individual cases.

In discharging the diverse responsibilities of that office, a prosecutor must have some latitude to exercise the prosecutorial discretion demanded of that position. It is well established, for example, that a prosecutor should not prosecute when the evidence does not support the State's charges. Further, the prosecutor should have the ability to amend the charges to conform to the proofs.

Note: Guidelines and Comment adopted June 29, 1990, simultaneously with former Rule 7:4-8 ("Plea Agreements") to be effective immediately; as part of 1997 recodification of Part VII rules, re-adopted without change as Appendix to Part VII and referenced by Rule 7:6-2 ("Pleas, Plea Agreements"), October 6, 1997 to be effective February 1, 1998; Guideline 4 amended July 5, 2000 to be effective September 5, 2000; Guidelines 3 and 4 amended July 28, 2004 to be effective September 1, 2004 ; Guideline 4 amended ----- to be effective -----.

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