

## SUPREME COURT OF NEW JERSEY

It is ORDERED that the attached amendments to the following Rules Governing the Courts of the State of New Jersey are adopted to be effective September 1, 2016: Rules 3:4-2 and 3:4-6 (new); and

It is FURTHER ORDERED that the attached amendments to the following Rules Governing the Courts of the State of New Jersey are adopted to be effective May 20, 2016: Rules 3:6-2, 3:8-2, 3:8-3, 3:9-1, 3:10-2, 3:12-1, and 3:13-3.

For the Court,

A handwritten signature in blue ink, appearing to read "S. R. Guzman", is written over the text "For the Court,".

Chief Justice

Dated: April 12, 2016

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

(a) Time of First Appearance. [Without unnecessary delay, following]

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 is authorized to assign the Office of the Public Defender to represent the defendant for purposes of the first appearance.

(c) [(b)] 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) provide [if] the defendant who asserts indigence [, and does not affirmatively, and with understanding, waive the right to counsel, assure that] with an application for public defender services, which the defendant [completes the appropriate application form for public defender services and files it with the criminal division manager's office] shall complete and submit at that time for immediate processing by the court, unless the defendant affirmatively and knowingly waives the right to counsel;

(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 to make an application to that program;

(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 to occur no later than 45 days after the date of the first appearance.

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

(e) [(d)] 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.

(f) [(e)] 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 after the date 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 paragraphs (b), (c), and (e) amended and redesignated as paragraphs (c), (d), and (f), and former paragraph (d) redesignated as paragraph (e) April 12, 2016 to be effective September 1, 2016.

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 April 12, 2016 to be effective September 1, 2016.

### 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 April 12, 2016 to be effective May 20, 2016.



### 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 [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 April 12, 2016 to be effective May 20, 2016.



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] arraignment. 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.

Note: Adopted July 5, 2000 to be effective September 5, 2000; amended April 12, 2016 to be effective May 20, 2016.

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 notified electronically 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 prearrest conference, the criminal division manager shall notify the criminal presiding judge who may issue a bench warrant. No prearrest 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.]

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

(1) The arraignment [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, the [The] 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 with the brief by the scheduled Initial Case Disposition Conference (ICDC) unless the opposing party bears the burden. [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.

(c) Meet and Confer Requirement; Plea Offer. Prior to the Initial Case Disposition Conference (ICDC), 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). 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.

(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, upon] 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), if not set before, the court shall set date(s) for submission of briefs, the hearing of pretrial motions, 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.

(f) [(e)] 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] should 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, former paragraph (b) amended and redesignated as paragraph (c), former paragraph (c) caption and text amended and redesignated as paragraph (b), paragraph (d) amended, new paragraph (e) added, and former paragraph (e) amended and redesignated as paragraph (f) April 12, 2016 to be effective May 20, 2016.

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, post-indictment motions shall be made to the judge to whom the indictment has been assigned. Unless otherwise instructed by the court, at [At] the arraignment [arraignment/status conference] counsel shall advise the court of their intention to make motions. Absent good cause, all motions shall be filed with the court with the brief by the scheduled Initial Case Disposition Conference (ICDC) unless the opposing party bears the burden. 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) ... no change

(c) ... no change

(d) ... no change

(e) ... no change

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 April 12, 2016 to be effective May 20, 2016.



### 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 April 12, 2016 to be effective May 20, 2016.

### 3:13-3. Discovery and Inspection

(a) Pre-Indictment Discovery. ... no change

(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 arraignment [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 arraignment [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), defense] 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 [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) ... no change

(d) ... no change

(e) ... no change

(f) ... no change

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 April 12, 2016 to be effective May 20, 2016.