

NOTICE TO THE BAR

PROPOSED AMENDMENTS TO COURT RULE 3:4-2 – TIME UNTIL FIRST APPEARANCE FOR DEFENDANTS SUBJECT TO A PRETRIAL DETENTION MOTION – PUBLICATION FOR COMMENT

The Supreme Court invites written comments on amendments to Court Rule 3:4-2 (“First Appearance After Filing Complaint”) proposed by the Supreme Court Criminal Practice Committee. The Court had asked the Practice Committee to undertake an expedited review of that rule based on concerns about the length of time a defendant subject to a pretrial detention motion waits to appear before a judge for a first appearance following the July 27, 2018 amendments to the rule that became effective September 1, 2018.

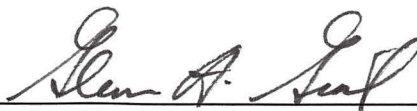
The Practice Committee completed its expedited review and submitted a detailed analysis and recommendation to the Court, proposing a number of revisions to Rule 3:4-2, including the creation of a new proceeding entitled “Prehearing Rights Advisement” to address the concerns. That analysis and recommendation are published with this notice. As described by the Practice Committee, “[w]hen a motion for pretrial detention has been filed prior to the first appearance, the defendant would be brought before the court for the prehearing rights advisement, within 48 hours of confinement in the county jail, to receive the appropriate advisories. While the prehearing rights advisement is similar to a first appearance, this proceeding would not trigger the statutory requirement to conduct a pretrial detention hearing immediately following its conclusion.”

Please send any comments on the attached proposed amendments to Rule 3:4-2 in writing by February 7, 2020 to:

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Proposed Amendments to Rule 3:4-2 (“First
Appearance After Filing Complaint”)
Hughes Justice Complex, P.O. Box 037
Trenton, New Jersey 08625-0037

Comments may also be submitted by email to: 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 email should include their name and email address. Comments submitted in response to this notice are subject to public disclosure.



Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: December 30, 2019

**REPORT AND RECOMMENDATION TO THE SUPREME COURT
FROM THE CRIMINAL PRACTICE COMMITTEE REGARDING RULE 3:4-2**

The Criminal Practice Committee is proposing amendments to R. 3:4-2 [(“First Appearance After Filing Complaint”)] to address concerns about the length of time a defendant subject to a pretrial detention motion waits to appear before a judge for a first appearance since this rule was amended on September 1, 2018. The Committee was asked to provide a recommendation to the Supreme Court on an expedited basis.

1. Background on R. 3:4-2

Prior to the September 1, 2018 amendments, first appearances for defendants in custody were conducted within 48 hours of a defendant’s commitment to the county jail, even if a motion for pretrial detention had been filed prior to the first appearance. A detention hearing would then be scheduled to be heard by a Superior Court judge within three business days of the filing of the motion.

During the 2017-2019 Committee term, concerns were raised that the scheduling for the detention hearing in the court rule was not consistent with N.J.S.A. 2A:162-19(d)(1), which provides in relevant part:

[T]he pretrial detention hearing shall be held no later than the eligible defendant’s first appearance unless the eligible defendant, or the prosecutor, seeks a continuance. If a prosecutor files a motion for pretrial detention after the eligible defendant’s first appearance has taken place or if no first appearance is required, the court shall

schedule the pretrial detention hearing to take place within three working days of the date on which the prosecutor's motions was filed, unless the prosecutor or the eligible defendant seeks a continuance. [Emphasis added.]

To harmonize the rule with the statute, the Committee proposed, and the Court adopted, amendments to R. 3:4-2(a)(1) and R. 3:4A, which essentially connected the first appearance with the detention hearing. See Supplemental Report of the Criminal Practice Committee 2017-2019 term (January 26, 2018).

2. Discussion

At the outset, the Committee recognized the practices that have evolved since the rule amendment; first appearances are often adjourned by consent of the parties when the detention motion is adjourned. Data on the timing of first appearances prepared by the Administrative Office of the Courts shows that in the three months after the rule amendment the majority of first appearances for defendants subject to a detention motion were conducted five or more calendar days from commitment, far beyond the 48-hour timeframe that was the norm for defendants committed to the county jail before the rule amendment.

To address this problem, the Committee recommends the creation of a new proceeding entitled "Prehearing Rights Advisement" to restore the prior practices, whereby all defendants, including those subject to a detention motion, were seen by a judge within 48 hours of confinement, while also ensuring that the court rules remain consistent with the statutory requirement for the timing of detention hearings. When a

motion for pretrial detention has been filed prior to the first appearance, the defendant would be brought before the court for the prehearing rights advisement, within 48 hours of confinement in the county jail, to receive the appropriate advisories. While the prehearing rights advisement is similar to a first appearance, this proceeding would not trigger the statutory requirement to conduct a pretrial detention hearing immediately following its conclusion.

3. Proposed Amendments to R. 3:4-2

The Committee proposes adding the name of the new proceeding “Prehearing Rights Advisement” to the title of this rule.

[New] Paragraph (h) “Prehearing Rights Advisement”

As set forth above, the primary amendment to this rule is the creation of the new proceeding set forth in proposed paragraph (h), entitled the “Prehearing Rights Advisement,” for defendants to be brought before the court within 48 hours of commitment to the county jail when a motion for pretrial detention is filed prior to the first appearance. At the prehearing rights advisement, the judge would provide the defendant with the information currently given at first appearances for indictable charges in paragraph (d)(1) through (5), or paragraph (e)(1) through (4) for non-indictable charges. The judge would also advise the defendant of the scheduled date for the pretrial detention hearing, which is required to be within three working days of the date of the filing of the motion.

Similar to first appearances, this proceeding could be conducted by a Superior Court judge or a Municipal Court judge designated by the Chief Justice.

[Amendments to] Paragraph (a) “Time of First Appearance”

Proposed paragraph (a)(1) removes the current requirement for the first appearance to occur within three working days of the filing of the pretrial detention motion because defendants who are the subject of such a motion will have already received those same advisories at the prehearing rights advisement. Thus, there would be no need for the first appearance to be held on a date prior to the pretrial detention hearing. Rather, the first appearance would be held “in conjunction with the pretrial detention hearing.” As such, the timing of the first appearance follows the statutory requirements for the timing of the pretrial detention hearing.

[Amendments to] Paragraph (d) “Procedures in Indictable Offenses”

Paragraph (d) sets forth the procedures for first appearances for defendants charged with indictable offenses. To account for the information provided to the defendant at the prehearing rights advisement, conforming amendments are proposed that permit the judge not to reiterate those same advisories at the first appearance. Specifically, the first sentence permits the omission of subparagraphs (1) through (5) when that information was provided at a prehearing rights advisement as required pursuant to paragraph (h).

[Amendments to] Paragraph (e) “Procedures in Non-Indictable Offenses”

Paragraph (e) sets forth the procedures for first appearances for defendants charged with non-indictable offenses. Consistent with the proposed amendments to

paragraph (d), the first sentence permits the judge at the first appearance to omit subparagraphs (1) through (4) when that information has been provided at the prehearing rights advisement pursuant to paragraph (h).

The proposed revisions to R. 3:4-2 follow.

* * *

Rule 3:4-2. First Appearance After Filing Complaint; Prehearing Rights Advisement

(a) Time of First Appearance. Following the filing of a complaint the defendant shall be brought before a judge for a first appearance as provided in this Rule.

(1) If the defendant remains in custody and the prosecutor has not filed a motion for pretrial detention, the first appearance shall occur within 48 hours of a defendant's commitment to the county jail, and shall be before a judge with authority to set conditions of release for the offenses charged. However, if a motion for pretrial detention is filed prior to the first appearance, the first appearance shall occur in conjunction with the pretrial detention hearing [within three working days of the date of the filing of the motion] and shall be before a Superior Court judge. If the motion for pretrial detention is withdrawn prior to the first appearance, then the first appearance shall occur no later than the next business day after the withdrawal of the motion and shall be before a Superior Court judge or a judge designated by the Chief Justice.

(2) 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) ... no change.

(c) ... no change.

(d) 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 provide the following information but may omit the information in subparagraphs (1) through (5) when that information has been provided at a prehearing rights advisement conducted pursuant to paragraph (h) of this Rule:

(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 the defendant who asserts indigence with an application for public defender services, which the defendant 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) 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) set conditions of pretrial release, when appropriate as provided in Rule 3:26, unless a motion for pretrial detention has been filed or granted; and,

(10) schedule a pre-indictment disposition conference to occur no later than 45 days after the date of the first appearance.

(e) Procedure in Non-Indictable Offenses. At the defendant's first appearance before a judge, if the defendant is charged with an non-indictable offense, the judge shall provide the following information but may omit the information in subparagraphs (1) through (4) when that information has been provided at a prehearing rights advisement conducted pursuant to paragraph (h) of this Rule:

(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;

(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; and

(5) set conditions of pretrial release as provided in Rule 3:26 if the defendant has been committed to the county jail, unless a motion for pretrial detention has been filed or granted.

(f) ... no change.

(g) ... no change.

(h) Prehearing Rights Advisement. If a motion for pretrial detention is filed prior to the first appearance, the defendant shall be brought before the court within 48 hours of the defendant's confinement to the county jail for a proceeding before a Superior Court judge or a judge designated by the Chief Justice at which the court shall provide to the defendant the information set forth in paragraph (d)(1) through (5) of this Rule or, in the case of a defendant charged with a non-indictable offense, paragraph (e)(1) through (4) of this Rule and advise the defendant of the date when the pretrial detention hearing is scheduled to be held, which shall be on a date within three working days of the date of the filing of the motion for pretrial detention.

Note: 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 Rule 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; paragraphs (a) and (b) amended, subparagraph (c)(1) amended, new subparagraphs (c)(1)(A) and (c)(1)(B) adopted, subparagraphs (c)(9) and (c)(10) amended, new subparagraph (c)(11) adopted, subparagraphs (d)(3) and (d)(4) amended, and new subparagraph (d)(5) adopted August 30, 2016 to be effective January 1, 2017; paragraph (a) amended December 6, 2016 to be effective January 1, 2017; subparagraph (c)(1) amended May 10, 2017 to be effective immediately; paragraph (f) amended July 28, 2017 to be effective September 1, 2017, subparagraph (a)(1) amended, paragraph (b) amended, new paragraph (c) adopted, former paragraph (c) amended and redesignated as paragraph (d), former paragraph (d) amended and redesignated as paragraph (e), former paragraph (e) redesignated as paragraph (f), and former paragraph (f) redesignated as paragraph (g) July 27, 2018, to be effective September 1, 2018; caption amended, paragraphs (a)(1), (d), (e) amended, and new paragraph (h) adopted _____ to be effective _____.