

#040



## NEW JERSEY STATE BAR ASSOCIATION

ROBERT B HILLE, PRESIDENT  
McElroy, Deutsch, Mulvaney & Carpenter, LLP  
1300 Mt. Kemble Avenue  
P.O. Box 2075  
Morristown, NJ 07962-2075  
973-348-5234 • FAX: 973 425-0161  
rhille@mdmc-law.com

June 9, 2017

Honorable Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts  
Rules Comments  
Hughes Justice Complex  
P.O. Box 037  
Trenton, NJ 08625-0037

Re: Supplemental Report of the Supreme Court Committee on Municipal Court Practice

Dear Judge Grant:

Thank you for the opportunity to review and provide comments on the Supplemental Report of the Supreme Committee on Municipal Court Practice. As always, the New Jersey State Bar Association (NJSBA) commends the work of the Court committee and appreciates the Court's willingness to consider its views on the committee's proposal.

The NJSBA has long advocated for a uniform adjournment policy among municipal courts, especially in connection with first appearances. Many municipal court practitioners are solo or small-firm attorneys who handle several appearances scheduled for the same day. Requiring attendance at a first appearance with a client where little is actually accomplished is often not a good use of the litigant's, attorney's or court's time. In light of this, the NJSBA wholeheartedly agrees with directing the waiver of a first appearance for defendants represented by counsel who provide certain information to the court.

The NJSBA has some concerns, though, about the type of information that would be required to be shared with the court, as well as the additional obligations the proposed amendments to R. 7:6-1 places on attorneys. Under the proposal, to obtain a waiver, an attorney is required to send a letter to the court stating that he/she will request discovery in three days, and that he/she has advised defendant of potential immigration consequences, the range of potential penalties, and the right to remain silent and that any statement may be used against the defendant. These statements place an attorney in a potentially precarious position.

The affirmation that discovery will be requested within three days of the notice to the Court conflicts with the requirement of R. 7:7-7(g) that a request for discovery be made contemporaneously with the entry of appearance. As a result, the three-day language will generate confusion about when a request for discovery must be made.

The affirmation of the fact that a defendant was advised about immigration consequences and other constitutional rights could potentially put attorneys and clients in an adversarial position with attorneys being required to report on potentially privileged conversations with clients. While any competent attorney will review this information with a client, there is still significant value in the court conducting an inquiry or advisement of same at the time of the actual first appearance.

For these reasons, the NJSBA recommends that the only change the Court adopts in connection with R. 7:6-1(b) is to excise "unless the court otherwise orders" from the first sentence of that provision. The remainder of the provision should remain as is. The Supreme Court Committee recommended the additional statements be required of attorneys because of concerns about defendants receiving full and proper notice of their rights if their first appearance is waived. However, the NJSBA notes that when first appearances are waived now, at the discretion of the court, defendants are advised of those rights when they finally appear in court for the first time, at a later date. The NJSBA is unaware of any problems arising from this practice and recommends that it continue.

Consistent with the above comments, the NJSBA recommends that R. 7:6-1(b) be amended in a limited fashion, as follows:

7:6-1. Arraignment

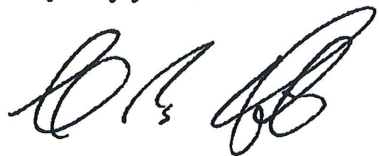
(a) No change.

(b) Written Statement. A defendant who is represented by an attorney and desires to plead not guilty may do so [, unless the court otherwise orders,] by the filing, at or before the time fixed for first appearance, of a written statement, signed by the attorney, certifying the defendant has received a copy of the complaint and has read it or the attorney has read it and explained it to the defendant, that the defendant understands the substance of the charge, and that the defendant pleads not guilty to the charge.

Finally, the NJSBA recommends that the Court create a form waiver similar to those used in Superior Court to ensure uniformity throughout the state and to better facilitate the waiver process. The NJSBA stands ready to assist in that process, if appropriate.

Once again, I thank you for the opportunity to participate in the rule-making process. If you have any questions regarding these recommendations, please do not hesitate to contact me.

Very truly yours.



Robert B. Hille, Esq.  
President

/sab

c: John E. Keefe, Jr., Esq., NJSBA President-Elect  
Angela C. Scheck, NJSBA Executive Director