

**SUPPLEMENTAL REPORT OF THE  
SUPREME COURT COMMITTEE ON  
MUNICIPAL COURT PRACTICE  
2015 - 2017 TERM**



**May 15, 2017**

**TABLE OF CONTENTS**

	<b><u>PAGE</u></b>
I. <b><u>INTRODUCTION</u></b> .....	1
II. <b><u>RULES AMENDMENTS RECOMMENDED FOR ADOPTION</u></b>	
A. Proposed amendment to Rule 7:3-2 (“Hearing on First Appearance; Right to Counsel”) and Rule 7:6-1 (“Arraignment”) .....	2
III. <b><u>CONCLUSION</u></b> .....	8

## I. INTRODUCTION

The Municipal Court Practice Committee ("Committee") recommends that the Supreme Court adopt the proposed rule amendments contained in this supplemental report. Where rule changes are proposed, deleted text is bracketed **[as such]**, and added text is underlined **as such**. No change to a paragraph of the rule is indicated by ". . . **no change**."

## II. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

### A. Proposed amendment to Rule 7:3-2 (“Hearing on First Appearance; Right to Counsel”) and Rule 7:6-1 (“Arraignment”)

A Committee member requested a Court Rule amendment which would remove discretion from municipal courts in the decision whether to grant a waiver of first appearance and arraignment for a defendant who is represented by counsel. The Committee member, a municipal court practitioner, stated that in his experience certain municipal courts would frequently refuse to grant first appearance or arraignment waivers for represented defendants and instead require defendants to appear in person. He asserted that courts should be required to grant such requests.

The Committee member initially suggested removing the court’s discretion by modifying Rule 7:6-1, “Arraignment,” to delete the phrase “unless the court otherwise orders” from subsection (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 arraignment, of a written statement, signed by the attorney, certifying that 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.

In considering this proposal, several members who are municipal court judges said they believed it is important for a judge to retain the discretion to deny a request for waiver of first appearance/arraignment from a represented defendant. One member explained that such discretion might be exercised if, for instance, a defendant would respond better to an in-person communication from the judge.

However, the majority of Committee members did not agree that the municipal court should retain this discretion and accepted the removal of the phrase “unless the court otherwise orders” from Rule 7:6-1(b).

Following this decision, several Committee members expressed concern that defendants who have waived their right to first appearance/arraignment receive full and proper notice of their rights from their attorneys. In response, the Committee member who proposed the rule change suggested several additional amendments to Rule 7:6-1, setting forth the rights which the attorney should advise the defendant and further details of the procedure by which the waiver may be effectuated.

The Committee members agreed to add the requirement that the attorney’s letter must provide that he/she has requested or will request discovery within three days of the filing of the letter of representation and waiver of first appearance/arraignment, and that the attorney advise the defendant that if the defendant is not a United States citizen, he/she should seek legal advice on the immigration consequences of the matter before the court.

The members further recommended adding to Rule 7:6-1 the requirement that the attorney advise the defendant of the range of penal consequences for each offense charged, of the right to remain silent, and that any statement made may be used against the defendant. These requirements parallel the list of rights set forth in Rule 7:3-2, “First Appearance.”

During the discussions, several Committee members stated that the existing requirement in Rule 7:6-1(b) that attorneys “certify” they have complied with the

rule appeared unnecessary, since attorneys are officers of the court.<sup>1</sup> Therefore, the Committee recommended removing the requirement that the attorney certify and instead permit the attorney to send a letter “stating” that he/she has complied with the rule.

The Committee agreed to include additional details regarding the procedure for submission of the letter of representation and request for waiver. The members determined that the letter of representation and waiver may be submitted to the court by mail, facsimile, or by e-filing or email if the court regularly accepts those methods.

The Committee also agreed to add that upon receipt of the letter of representation and waiver of first appearance/arraignment, the court shall adjourn the defendant’s matter for a reasonable time sufficient for defendant’s receipt of discovery and upon defendant’s actual appearance, and the court shall personally inquire of defendant that all the elements of waiver were knowingly and voluntarily made with defendant’s consent, or if not, the court shall conduct an arraignment at that time.

Several members additionally suggested that it may be appropriate and helpful to also include a reference to waiver of first appearance/arraignment in a Court Rule which governs a defendant’s first appearance -- either Rule 7:3-1 or Rule 7:3-2. The members noted that, in practice, the first appearance and arraignment in municipal court are most often combined into a single court appearance, although the two processes are addressed in separate Court Rules.

---

<sup>1</sup> The parallel Part III rule, Rule 3:4-2(f), sets forth a certification requirement when an attorney sends a letter to court seeking waiver of the defendant’s first appearance.

To ensure greater clarity, the Committee agreed to include a cross-reference to waiver within Rule 7:3-2(a), "Hearing on First Appearance," by adding the phrase "unless waived pursuant to Rule 7:6-1."

The Committee also considered the fact that the Part III Court Rules governing criminal procedure explicitly do not provide incarcerated defendants with the option to waive a first appearance (unless ordered by the court) and evaluated whether the same restriction should apply to municipal cases. Rule 3:4-2(f) states in pertinent part: "...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...." During discussion, one member emphasized that if an individual is incarcerated, he/she has presumably already had a first appearance at some point. The Committee thus determined that a reference to incarcerated defendants was not necessary.

The proposed amendments to Rule 7:3-2 and Rule 7:6-1 follow.

### **7:3-2. Hearing on First Appearance; Right to Counsel**

(a) Hearing on First Appearance. At the defendant's first appearance, unless waived pursuant to Rule 7:6-1, the judge shall inform the defendant of the charges and shall furnish the defendant with a copy of the complaint or copy of the electronic ATS/ACS record of the complaint, if not previously provided to the defendant. The judge shall also inform the defendant of the range of penal consequences for each offense charged, the right to remain silent and that any statement made may be used against the defendant. The judge shall inform the defendant of the right to retain counsel or, if indigent, to have counsel assigned pursuant to paragraph (b) of this rule. The defendant shall be specifically asked whether legal representation is desired and defendant's response shall be recorded on the complaint. If the defendant is represented at the first appearance or then affirmatively states the intention to proceed without counsel, the court may, in its discretion, immediately arraign the defendant pursuant to R. 7:6-1.

(b) No change.



## 7:6-1. Arraignment

(a) No change.

(b) [Written Statement] Waiver of First Appearance and Arraignment. A defendant who is represented by an attorney and desires to plead not guilty may do so[, unless the court otherwise orders,] and waive the first appearance and arraignment, by the filing, by mail or by facsimile, or by e-filing or email if the court regularly accepts those methods, at or before the time fixed for first appearance and arraignment, of a [written statement,] letter of representation and waiver of first appearance and arraignment, signed by the attorney, [certifying] stating that: (1) the attorney represents the defendant and has requested or will request discovery within three days of the filing of the letter of representation and waiver of first appearance and arraignment, (2) 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, (3) [that] the defendant understands the substance of the charge, and that the defendant pleads not guilty to the charge[.], (4) the attorney has advised the defendant that if the defendant is not a United States citizen, defendant should seek legal advice on the immigration consequences of the matter before the court, (5) the attorney has advised the defendant of the range of penal consequences for each offense charged; and (6) the attorney has advised the defendant of the right to remain silent and that any statement may be used against the defendant. Upon receipt of the letter of representation and waiver of first appearance and arraignment, the court shall adjourn the defendant's matter for a reasonable time sufficient for defendant's receipt of discovery. Upon defendant's actual appearance, the Court shall personally inquire of defendant that all the elements of waiver were knowingly and voluntarily made with defendant's consent, or if not, the court shall conduct an arraignment at that time.



### **III. CONCLUSION**

The members of the Municipal Court Practice Committee appreciate the opportunity to serve the Supreme Court in this capacity.

Respectfully submitted:

Robert T. Zane, P.J.M.C., Chair  
Thomas M. North, P.J.M.C., Vice-Chair  
Ma'isha Aziz, J.M.C.  
Scott J. Basen, J.M.C.  
David S. Bunevich, Esq.  
Richard T. Burke, Esq.  
Cataldo Fazio, J.M.C.  
Elaine B. Frick, J.M.C.  
Jeffrey Evan Gold, Esq.  
Roger Haley, P.J.M.C.  
Carol M. Henderson, A.A.G.  
Edward H. Herman, P.J.M.C.  
James Ligouri, P.J.M.C.  
Dominick M. Manco, Esq.  
Marcy M. McMann, Esq.  
Robyn B. Mitchell, D.A.G.  
Michael Mitzner, Esq.  
Richard E.A. Nunes, Esq.  
Anthony C. Nwaneri, Esq.  
Victoria Pratt, C.J.M.C.  
Diene Hernández-Rodríguez, Esq.  
Louis S. Sancinito, Esq.  
Cassandra T. Savoy, J.M.C.  
H. Robert Switzer, J.M.C.  
Michael L. Testa, Jr., Esq.  
Daniella Trancho, C.M.C.A.  
Mary Wiesemann, M.D.M.  
Miles S. Winder, III, Esq.

AOC Staff:

Steven A. Somogyi, Assistant Director  
Julie A. Higgs, Esq., Chief (Committee staff)  
Tina LaLena, C.M.C.A., Chief