2002 - 2004 SUPPLEMENTAL REPORT

OF

THE MUNICIPAL COURT PRACTICE

COMMITTEE

Submitted March 23, 2004

TABLE OF CONTENTS

PROPOSED SUPPLEMENTAL RULE AMENDMENTS RECOMMENDED

A. Issuance of Arrest Warrants by Telephone 1

7:2-1. Contents of Complaint, Arrest Warrant and Summons 2

B. Proposed Amendments to R. 7:4-3 (Form and Place of Deposit; Location of Real Estate; Record of Recognizance, Discharge and Forfeiture [Thereof]) and R. 7:4-5 (Forfeiture) 6

7:4-3. Form and Place of Deposit; Location of Real Estate; Record of Recognizances, Discharge and Forfeiture [Thereof] 8

7:4-5. Forfeiture 10

A. Issuance of Arrest Warrants by Telephone

In a memorandum dated August 15, 2001, Director Richard J. Williams advised that the Conference of Assignment Judges determined that the current Rules of Court provide no authorization for issuing arrest warrants over the telephone. The Municipal Court Practice Committee and the Criminal Practice Committee were asked to consider whether the Rules should be amended so as to permit a judicial officer to issue a telephonic arrest warrant. As a result of this request, a joint subcommittee was formed to study the issue.

The primary discussion point was not whether a judge could issue arrest warrants by telephone, but rather whether a judge should be required to take contemporaneous longhand notes, as is required for the issuance of search warrants by telephone. R. 3:5-3(b). As a result of the deliberations of the joint subcommittee, a compromise was reached that offered two options.

Under the first option, contemporaneous longhand notes would not be required. Instead, a law enforcement officer seeking an arrest warrant by telephone would prepare a Complaint-Warrant (CDR-2) and any supplemental affidavit containing the facts on which a judge or other authorized judicial officer would make a determination of probable cause. After being sworn by the judge or judicial officer, the law enforcement officer would read the Complaint-Warrant (CDR-2) and/or supplemental affidavit over the telephone verbatim.

Under the second option, the judge or judicial officer would make a contemporaneous written or electronic record of the sworn oral testimony of the police officer. In either case, the testimony must provide the information that establishes probable cause for the issuance of an arrest warrant.

If the judge or judicial officer determines probable cause, based on the facts presented, and finds that a reason for the issuance of a warrant exists pursuant to R. 7:2-2(b), the judge or other judicial officer would direct the applicant to print his or her name, the date and time of the warrant, followed by the phrase "By Officer ________________, per telephonic authorization by________________" on the Complaint-Warrant (CDR-2) form.

The law enforcement officer is then required to deliver the signed Complaint-Warrant (CDR-2) and supporting affidavit, if any, to the court as soon as possible in person or by FAX transmission. Once received, the judge or authorized judicial officer who authorized the warrant is to verify and sign it, if accurate.

Representatives of the Attorney General's Office have reviewed the proposed procedures described above and have no objections to them.

The proposed amendments to Rule 7:2-1 should be the same as those in R. 3:2-3, except the rule reference to R. 7:2-2(b) should be to R. 3:3-1(c) to make clear that the procedures for telephonic arrest warrants are the same in the Superior and Municipal Courts.

The proposed rule is as follows:

7:2-1. Contents of Complaint, Arrest Warrant and Summons

(a) Non-Traffic Offenses

(1) Complaint: General. The complaint shall be a written statement of the essential facts constituting the offense charged made on a form approved by the Administrative Director of the Courts. Except as otherwise provided by paragraphs (b) (Traffic Offenses), (c) (Penalty Enforcement Proceedings), and (d) (Special Form of Complaint and Summons), all complaints shall be by certification or on oath before a judge or other person so authorized by N.J.S.A. 2B:12-21. The municipal court administrator or deputy court administrator shall accept for filing every complaint made by any person.

(2) Summons: General. The summons shall be on a Complaint-Summons form (CDR-1) or other form prescribed by the Administrative Director of the Courts and shall be signed by the officer issuing it. The summons shall be directed to the defendant named in the complaint, shall require defendant's appearance at a stated time and place before the court in which the complaint is made, and shall inform defendant that an arrest warrant may be issued for a failure to appear.

(3) Arrest Warrant: General. The arrest warrant shall be made on a Complaint-Warrant form (CDR-2) or other form prescribed by the Administrative Director of the Courts and shall be signed by the judge or, when authorized by the judge, by the municipal court administrator or deputy court administrator. The warrant shall contain the defendant's name or, if unknown, any name or description that identifies the defendant with reasonable certainty. It shall be directed to any officer authorized to execute it and shall order that the defendant be arrested and brought before the court issuing the warrant. The judicial officer issuing a warrant may specify therein the amount and conditions of bail, consistent with R. 7:4, required for defendant's release.

(4) Arrest Warrant: By Telephone. A judge or other authorized judicial officer may issue an arrest warrant upon sworn oral testimony of a law enforcement applicant who is not physically present. Such sworn oral testimony may be communicated by the applicant to the judge or other authorized judicial officer by telephone, radio or other means of electronic communication.

The judge or other authorized judicial officer shall administer the oath to the applicant. Subsequent to taking the oath, the applicant must identify himself or herself and read verbatim the Complaint-Warrant (CDR-2) and any supplemental affidavit that establishes probable cause for the issuance of an arrest warrant. If the facts necessary to establish probable cause are contained entirely on the Complaint-Warrant (CDR-2) and/or supplemental affidavit, the judge or authorized judicial officer need not make a contemporaneous written or electronic recordation of the facts in support of probable cause. If the law enforcement officer provides additional sworn oral testimony in support of probable cause, the judge or authorized judicial officer shall contemporaneously record such sworn oral testimony by means of a tape-recording device or stenographic machine, if such are available; otherwise, adequate longhand notes summarizing what is said shall be made by the judge or other authorized judicial officer. This sworn testimony shall be deemed to be an affidavit or a supplemental affidavit for the purposes of issuance of an arrest warrant.

An arrest warrant may issue if the judge or other judicial officer is satisfied that probable cause exists for issuing the warrant. Upon approval, the judge or other authorized judicial officer shall memorialize the time and the specific terms of the authorization and shall direct the applicant to enter this authorization verbatim on the Complaint-Warrant form. The judge or other judicial officer shall direct the applicant to print his or her name, the date and time of the warrant, followed by the phrase "By Officer __________________, per telephonic authorization by_________________" on the Complaint-Warrant (CDR-2) form. Within 48 hours, the applicant shall deliver to the judge or judicial officer who authorized the warrant, either in person or via facsimile transmission, the signed Complaint-Warrant (CDR-2) and supporting affidavit, if any, which, if accurate, shall be verified by the judge or judicial officer who authorized the warrant by affixing his or her signature to the Complaint-Warrant (CDR-2).

(b) Traffic Offenses.

(1) Form of Complaint and Process. The Administrative Director of the Courts shall prescribe the form of Uniform Traffic Ticket to serve as the complaint, summons or other process to be used for all parking and other traffic offenses. On a complaint and summons for a parking or other non-moving traffic offense, the defendant need not be named. It shall be

sufficient to set forth the license plate number of the vehicle, and its owner or operator shall be charged with the violation.

(2) Issuance. The complaint may be made and signed by any person, but the summons shall be signed and issued only by a law enforcement officer or the judge, municipal court administrator or deputy court administrator of the court having territorial jurisdiction.

(3) Records and Reports. Each court shall be responsible for all Uniform Traffic Tickets printed and distributed to law enforcement officers or others in its territorial jurisdiction, for the proper disposition of Uniform Traffic Tickets, and for the preparation of such records and reports as the Administrative Director of the Courts prescribes. The provisions of this subparagraph shall apply to the Director of the Division of Motor Vehicles, the Superintendent of State Police in the Department of Law and Public Safety, and to the responsible official of any other agency authorized by the Administrative Director of the Courts to print and distribute the Uniform Traffic Ticket to its law enforcement personnel.

(c) Penalty Enforcement Proceedings. Unless a special form of complaint and summons is prescribed by the Administrative Director of the Courts for use in the municipal courts, the complaint and summons in a penalty enforcement proceeding shall conform to the form of civil complaint and summons prescribed by Part IV of the Rules of Court or other form approved by the Administrative Director of the Courts.

(d) Special Form of Complaint and Summons. In the event the Administrative Director of the Courts prescribes a special form of complaint and summons for any action or class or classes of actions, that form shall be used in the prescribed manner in place of any other form of complaint and process prescribed by this rule.

Note: Source-Paragraph (a): R. (1969) 7:2, 7:3-1, 3:2-1; Paragraph (b): R. (1969) 7:2, 7:3-1, 7:6-1, 3:2-2; Paragraph (c): R. (1969) 7:2, 7:3-1, 7:6-1, 3:2-3; Paragraph (d): R. (1969) 7:6-1; Paragraph (e): R. (1969) 4:70-3(a); Paragraph (f): new. Adopted October 6, 1997 to be effective February 1, 1998; Paragraph (a) caption added, former Paragraph (a) amended and redesignated as Paragraph (a)(1), former Paragraph (b) amended and redesignated as Paragraph (a)(2), former Paragraph (c) redesignated as Paragraph (a)(3), former Paragraph (d) redesignated as Paragraph (b), former Paragraph (e) caption and text amended and redesignated as Paragraph (c), and former Paragraph (f) redesignated as Paragraph (d) July 12, 2002 to be effective September 3, 2002; new paragraph (a)(4) adopted ____________ to be effective ____________________.

B. Proposed Amendments to R. 7:4-3 (Form and Place of Deposit; Location of Real Estate; Record of Recognizance, Discharge and Forfeiture) and R. 7:4-5 (Forfeiture)

On January 2, 2004, Governor McGreevy signed into law P.L.2003,c.202, which went into effect on that same date. This new law amends certain provisions regarding the issuance of bail bonds and defines new terms, including "bail agent or agency" and "surety company." In order to be consistent with the new terms, amendments are proposed for R. 7:4-3 and R. 7:4-5.

In addition, the Hon. Sylvia B. Pressler, J.A.D., Superior Court Clerk Donald Phelan and the Administrative Director of the Courts have proposed substantial revisions to R. 1:13-3 (Approval and Filing of Surety Bond; Judgment Against Principal and Surety) to ensure that the Clerk of the Superior Court has the authority to remove those from the Bail Registry who do not fulfill their obligations under the law. These proposed revisions to R. 1:13-3 are being submitted to the Court for its consideration on an expedited basis.

These amendments were prompted, *inter alia*, by recent appeals from bail forfeiture judgments brought by various corporate sureties, bail agents and bail agencies. In State v. Simpson, 365 N.J. Super. 444 (App. Div. 2003), the Appellate Division held that the Supreme Court had the constitutional authority to preclude corporate sureties who fail to pay a final judgment of forfeiture from underwriting any further bonds in New Jersey until the judgment has been satisfied.

Subsequently, in In re Preclusion of Brice, 386 N.J. Super. 519 (App. Div. 2004), the Appellate Division determined that "as a matter of contract, statute, and public policy, the agent who wrote the forfeited bond is, contrary to usual agency principles, responsible for the contractual default of his principal, at least to the extent of being precluded from writing any additional bonds until the bail forfeiture judgment is paid."

In response to these Appellate Division cases, proposed revisions to R. 1:13-3 and the new terms introduced by P.L.2003, c.202, the Criminal Practice Committee has proposed major modifications to R. 3:26-6 (Forfeiture). To complete the package of revisions, changes were required for the bail rules in Part VII.

When adopted in 1998, the bail rules in Part VII of the Court Rules were based directly upon R. 3:26 of the Rules Governing Criminal Practice. Although these rules vary somewhat based on the differences in the corresponding practices, they have remained substantially alike. The bail and bail forfeiture procedures and terminology should continue to be the same in both the Superior and Municipal Courts to avoid inconsistency and confusion. Thus, other than the special requirements of each court (e.g., notice is sent to the municipal attorney, not county counsel, in the municipal courts), the Municipal Practice Committee believes that the language of the bail rules should be internally consistent with those in Part III.

It is also significant that the rules in Parts III and VII must be in compliance with the forfeiture procedures and notice provisions set forth in Supreme Court Orders dated November 1, 2000, June 11, 2002 and May 20, 2003, and in Directives #3-02 (superseding Directive #7-00) and #13-03.

Accordingly, the Committee recommends amendments to Rules 7:4-3 and 7:4-5 to conform those rules to the new statutory terminology, to the revisions in R. 1:13-3 and to the language of R. 3:26-6.

As a separate matter, the Committee recommends amending R. 7:4-3 to permit the use of a certification as well as an affidavit of lawful ownership of bail, as currently authorized. An affidavit requires that a person authorized to administer oaths be available, which is not always possible when bail is posted at the jail or during non-business hours. Rule 1:4-4(b) provides for the use of a certification in lieu of an affidavit so long as specific certification language is used. Therefore, the Committee is of the opinion that providing defendants and those non-corporate sureties who post bail on their behalf with an option to certify is not only contemplated by the court rules, but also would serve the best interests of the public. The Criminal Practice Committee will also be considering the use of the certification option in R. 3:26.

As a housekeeping item, the Committee recommends deleting all references to "clerk and deputy clerk" in R. 7:4-3(e), since those titles have viability only in the Superior Court.

Please note that the revisions offered by the Committee in its 2002-2004 Report are included in the additional amendments below. As with the rest of the text, all language to be deleted, even the proposed amendments from the 2002-2004 Report, is indicated by brackets in the Supplemental Report.

The proposed amendments to Rules 7:4-3 and 7:4-5 follow:

7:4-3. Form and Place of Deposit; Location of Real Estate; Record of Recognizances, Discharge and Forfeiture [Thereof]

(a) … no change

(b) … no change

(c) … no change

(d) … no change

(e) Record of Discharge; Forfeiture. When any recognizance shall be discharged by court order [upon] on proof of compliance with the conditions thereof or by reason of the judgment in any matter, the municipal court administrator or deputy court administrator [or clerk or deputy clerk] shall enter the word "discharged" and the date of discharge at the end of the record of such recognizance. When any recognizance is forfeited, the municipal court administrator or deputy court administrator [or clerk or deputy clerk] shall enter the word "forfeited" and the date of forfeiture at the end of the record of such recognizance and shall give notice of such forfeiture by ordinary mail to the municipal attorney, the defendant and any surety or insurer, bail agent or agency [insurer, insurance producer or limited lines insurance producer] whose names appear in the bail recognizance. Notice to any insurer, bail agent or agency [insurance producer or limited lines insurance producer] shall be sent to the address recorded in the Bail Registry maintained by the Clerk of the Superior Court pursuant to R. 1:13-3. When real estate of the surety located in a county other than the one in which the bail was taken is affected, the municipal court administrator or deputy court administrator [or clerk or deputy clerk] in which such recognizance is given shall [forthwith] immediately send notice of the discharge or forfeiture and the date thereof to the clerk of the county where such real estate is situated, who shall make the appropriate entry at the end of the record of such recognizance.

(f) Cash Deposit. When a person other than the defendant deposits cash in lieu of bond, the person making the deposit shall file an affidavit or certification explaining the lawful ownership thereof, and on discharge, such cash shall be returned to the owner named in the affidavit or certification, unless otherwise ordered by the court.

(g) Ten Percent Cash Bail. Unless otherwise specified in the order setting the bail, bail may be satisfied by the deposit in court of cash in the amount of ten percent of the amount of bail fixed together with defendant's executed recognizance for the remaining ninety percent. No surety shall be required, unless specifically ordered by the court. If a ten percent bail is made by cash owned by one other than the defendant, the owner shall charge no fee for the cash deposited, other than lawful interest, and shall submit an affidavit or certification with the deposit detailing the rate of interest, confirming that no other fee is being charged, and listing the names of any other persons for whom the owner has deposited bail. A person making the ten percent deposit who is not the owner, shall file an affidavit or certification identifying the lawful owner of the cash, and, on discharge, the cash deposit shall be returned to the owner [so identified,] named in the affidavit or certification, unless otherwise ordered by the court.

Note: Source-R. (1969) 7:5-1, 3:26-4. Adopted October 6, 1997 to be effective February 1, 1998; subsection (e) amended December 8, 1998 to be effective January 15, 1999; caption and paragraphs (e), (f), (g) amended ____________ to be effective ____________.

7:4-5. Forfeiture

(a) Declaration**; Notice.** Upon breach of [the] a condition of a recognizance, the court may forfeit the bail on its own or on the prosecuting attorney's motion. If the court orders bail [bail is ordered] to be forfeited, the municipal court administrator or deputy court administrator shall [forthwith] immediately forfeit the bail pursuant to R. 7:4-3(e) and shall send notice of the forfeiture by ordinary mail to the municipal attorney, the defendant and any non-corporate surety or insurer, [insurance producer or limited lines insurance producer] bail agent or agency whose names appear on the bail recognizance. Notice to any insurer, [insurance producer or limited lines insurance producer] bail agent or agency shall be sent to the address recorded in the Bail Registry maintained by the Clerk of the Superior Court pursuant to R. 1:13-3. The notice shall direct that judgment will be entered as to any outstanding bail absent a written objection seeking to set aside the forfeiture, which must be filed within 75 days of the date of the notice [or as otherwise mandated by the Supreme Court]. The notice shall also [provide] advise the insurer that if it fails [that failure] to satisfy a judgment entered pursuant to paragraph (c), and until satisfaction is made, it shall be removed from the Bail Registry and its bail agents and agencies, guarantors, and other persons or entities authorized to administer or manage its bail bond business in this State will have no further authority to act for it, and their names, as acting for the insurer, will be removed from the Bail Registry. In addition, the bail agent or agency, guarantor or other person or entity authorized by the insurer to administer or manage its bail bond business in this State, who acted in such capacity with respect to the forfeited bond will be precluded, by removal from the Bail Registry, from so acting for any other insurer until the judgment has been satisfied. [will result in the removal of the names of all of the insurer's insurance producers or limited lines insurance producers from the Bail Registry.] The court shall not enter judgment until the merits of any objection are determined either on the papers filed or, if the court so orders, for good cause, at a hearing. In the absence of a written objection, judgment shall be entered as provided in paragraph (c), but the court may thereafter remit it, in whole or part, in the interest of justice.

(b) Setting Aside. The court may, upon such conditions as it imposes, direct that an order of [a] forfeiture or judgment be set aside in whole or in part, if required in the interest of justice.

(c) Enforcement; Remission. If a forfeiture is not set aside, the court shall, on motion, enter a judgment of default for any outstanding bail, and execution may issue on the judgment. After entry of the judgment, the court may remit the forfeiture in whole or in part in the interest of justice. If, following the court's decision on an objection pursuant to paragraph (a) of this rule, the forfeiture is not set aside or satisfied in whole or in part, the court shall enter judgment for any outstanding bail and, in the absence of satisfaction thereof, execution may issue thereon.

Judgments entered pursuant to this rule shall also advise the insurer that if it fails to satisfy a judgment, and until satisfaction is made, it shall be removed from the Bail Registry and its bail agents and agencies, guarantors, and other persons or entities authorized to administer or manage its bail bond business in this State will have no further authority to act for it, and their names, as acting for the insurer, will be removed from the Bail Registry as provided in paragraph (a). A copy of the judgment entered pursuant to this rule is to be served by ordinary mail on the municipal attorney, and on any surety or any insurer, bail agent or agency named in the judgment. Notice to any surety or insurer, bail agent or agency shall be sent to the address recorded in the Bail Registry. In any contested proceeding, the municipal attorney shall appear on behalf of the government. The municipal attorney shall be responsible for the collection of forfeited amounts. [The judgment shall provide that failure to satisfy a judgment will result in removal of the names of all of the insurer's insurance producers or limited lines insurance producers from the Bail Registry. A copy of the judgment entered pursuant to this rule is to be served by ordinary mail on any insurer, insurance producer or limited lines insurance producer named in the judgment. Notice to any or insurer, insurance producer or limited lines insurance producer shall be sent to the address recorded in the Bail Registry.]

Note: Source-R. (1969) 7:5-1, 3:26-6. Adopted October 6, 1997 to be effective February 1, 1998; caption and text of paragraph (a) and text of paragraphs (b) and (c) amended ________________ to be effective ________________.