

## NOTICE TO THE BAR

### ALCOTEST CASES – PERMISSIBILITY OF PLEA AGREEMENTS IN REMAINING STATE V. CASSIDY DWI CASES – SUPREME COURT ORDER

In the attached June 27, 2023 Order, the Supreme Court confirms the continuance of its [December 18, 2019](#) rule relaxation permitting plea bargaining in post-conviction relief driving while intoxicated (DWI) cases affected by the Court's decision in State v. Eileen Cassidy, 235 N.J. 482 (2018).

As background, plea bargaining DWI cases is prohibited by the Guidelines for Operations of Plea Agreements in the Municipal Courts of New Jersey, (Guidelines), an Appendix to Part VII of the Court Rules.

In State v. Cassidy, 235 N.J. 482 (2018), the Court held Alcotest results from certain breath-test machines that were calibrated without using a thermometer that produces NIST-traceable temperature readings in the calibration process to be inadmissible as evidence in DWI cases. The Court by Order dated [January 29, 2019](#) established a centralized process for the handling of these cases and by Order dated [December 18, 2019](#) relaxed the Guidelines to permit plea agreements in post-conviction relief cases affected by Cassidy. By Order of [May 6, 2022](#) the Court concluded the centralized process for the handling of Cassidy matters, effective June 1, 2022 .

The attached June 27, 2023 Order confirms and clarifies that the Court's May 6, 2022 Order did not terminate the temporary and limited rule relaxation in the

Court's December 18, 2019 Order and that plea agreements in Cassidy affected post-conviction relief proceedings may proceed.

This Order also provides that before a court acts on a proposed plea agreement, the Municipal Court Prosecutor shall submit the proposed plea agreement to the Office of Attorney General or the Attorney General's designee for review.

The Guidelines prohibiting plea bargaining in DWI cases remain in full force and effect for cases not affected by the Court's decision in Cassidy.



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Glenn A. Grant  
Administrative Director of the Courts

Dated: July 19, 2023

## SUPREME COURT OF NEW JERSEY

In its [December 18, 2019](#) Order, the Supreme Court relaxed and supplemented the “Guidelines for Operations of Plea Agreements in the Municipal Courts of New Jersey,” which is an Appendix to Part VII of the Rules Governing the Courts of the State of New Jersey, so as to permit plea agreements in post-conviction relief cases affected by the Supreme Court decision in State v. Eileen Cassidy, 235 N.J. 482 (2018).

The Court in its [May 6, 2022](#) Order prospectively concluded centralized management of new Cassidy post-conviction relief applications effective June 1, 2022. That Court Order provided that such applications shall be filed in the court that had jurisdiction at the time of original sentencing to be handled by that court in accordance with the Rules of Court, not through the centralized process.

This Order confirms and clarifies that the Court’s May 6, 2022 Order did not terminate the temporary and limited rule relaxation provided in the Court’s December 18, 2019 Order. Accordingly, plea agreements may proceed in post-conviction relief proceedings in which evidential breath samples from defendants in driving while intoxicated (DWI) cases were procured using Alcotest machines calibrated without using a NIST-traceable thermometer, namely, those cases affected by the Court’s decision in Cassidy. Prior to the

court acting on a proposed plea agreement, the Municipal Court Prosecutor shall submit such proposed plea agreement in a Cassidy-affected case to the Office of the Attorney General or the Attorney General's designee for review.

For the Court,

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

Chief Justice

Dated: June 27, 2023