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[Questions and/or comments may be directed to 609-292-4638.]

TO: ASSIGNMENT JUDGES

Directive # 01-13

FROM: GLENN A. GRANT, J.A.D.

DATE: MARCH 18, 2013

SUBJ: WAIVER OF FIRST APPEARANCE FOR INDICTABLE OFFENSES – RULE 3:4-2(e) PROTOCOL AND FORM

This Directive promulgates a standard form to be used and a protocol to be followed when a defendant who is facing indictable charge(s) elects to waive his or her first appearance. The form and protocol, which apply to first appearances in Municipal Court and in Superior Court, have been endorsed by the Conference of Criminal Presiding Judges, the Conference of Municipal Court Presiding Judges, the Conference of Criminal Division Managers, and the Conference of Municipal Division Managers.

A. Waiver of First Appearance for Indictable Offenses – Rule 3:4-2

Rule 3:4-2 provides that following the filing of a complaint, the defendant shall be brought before a judge for a first appearance without unnecessary delay, If the defendant remains in custody, the first appearance shall occur within 72 hours after arrest, excluding holidays, and shall be before a judge with authority to set bail for the offenses charged. Paragraph (e) of Rule 3:4-2 provides that a defendant who is represented by an attorney and is not incarcerated may waive the first appearance by filing a written statement signed by the attorney, unless otherwise ordered by the court. More specifically, Rule 3:4-2(e) provides that to waive the first appearance for indictable offenses, the attorney must certify that:

1. 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;

2. the defendant understands the substance of the charge;

3. the defendant has been informed of the right to remain silent and that any statement may be used against the defendant;

4. the defendant has been informed that there is a pretrial intervention program and where and how an application to that program may be made; and

5. the defendant has been informed of the right to have a hearing as to probable cause, the right to indictment by the grand jury and trial by jury, and, if applicable, that the offense charged may be tried by the court upon waiver of indictment and trial by jury, if in writing and signed by the defendant.

B. Procedures for a Defendant to File a Waiver of the First Appearance

1. A defendant who is not incarcerated and is represented by counsel may waive the first appearance by completing the *Waiver of First Appearance for Indictable Offenses Form* (attached). The rule requires the defendant's attorney to certify that the defendant has been advised of the information set forth in Rule 3:4-2(e).

2. The *Waiver of First Appearance for Indictable Offenses Form* must be filed by the attorney with the Superior Court or Municipal Court where the first appearance is scheduled, either at or before the time fixed for the first appearance. The preference is for such filing to be done electronically.

3. The attorney filing the *Waiver of First Appearance for Indictable Offenses Form* must provide a copy to the Criminal Division Manager's office in the vicinage where the complaint has been filed and to the prosecuting attorney (i.e., the County Prosecutor or the Attorney General). The preference is for such copies to be provided electronically.

This Waiver of First Appearance form can be modified for use in the rare instance that a first appearance for a non-indictable offense is held in Superior Court pursuant to Rule 3:4-2(c).

Any questions or comments regarding this Directive may be directed to Joseph J. Barraco, Assistant Director for Criminal Practice at 609-292-4638 or Debra Jenkins, Assistant Director for Municipal Court Services Division at (609) 984-8241.

/mp
Attachment
cc: Chief Justice Stuart Rabner
Attorney General Jeffrey S. Chiesa
Public Defender Joseph E. Krakora
Criminal Division Judges
Municipal Court Judges
Elie Honig, Director, DCJ
County Prosecutors
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Trial Court Administrators
Criminal Division Managers
Municipal Division Managers
Assistant Criminal Division Managers
Municipal Court Directors and Administrators
Gurpreet M. Singh, Special Assistant
Susan Callaghan, Chief, Criminal Practice
Carol A. Welsch, Chief, Mun. Ct. Services
Steven Somogyi, Municipal Ct. Services
Melaney S. Payne, Criminal Practice

ATTACHMENT

Waiver of First Appearance for Indictable Offenses Form

Waiver of First Appearance for Indictable Offenses
For Attorney Use Only

In accordance with *R.* 3:4-2(e), I am requesting a waiver of the first appearance scheduled for my client _____ on _____
(client's name) (date of first appearance)
at _____.
(location)

I certify that as of this date _____, my client is not incarcerated and that I have:

1) Provided my client with a copy of the complaint and have read and explained it to my client;
2) Confirmed that my client understands the substance of the charge(s);
3) Informed my client of the right to remain silent and any statement may be used against him/her;
4) Informed my client of the pretrial intervention program and where and how an application may be made;
5) Informed my client of the right to a probable cause hearing, the right to an indictment and right to a jury trial;
6) Informed my client that, if applicable, the charge may be tried by the court upon waiver of indictment and trial by jury, if in writing and signed by the defendant.

I understand that my client must appear at the Intake unit of the Criminal Division for an intake interview if required by the court.

I understand that my client must appear at the first appearance unless these requirements are established to the satisfaction of the court.

Attorney Name: _____ Complaint#: _____

Attorney Address: _____ Phone Number: _____

_____ Fax Number: _____

_____

Client's current address: _____

_____

_____

_____ _____
Attorney's Signature Date

Original: Court
Copies: County Prosecutor/Attorney General, Criminal Division Manager

Form Promulgated by Directive #01-13 (03/18/2013), CN: 11688