

## RULE 7:6. Arraignment, Pleas

### 7:6-1. Arraignment

- **(a) Conduct of Arraignment.** Except as otherwise provided by paragraph (b) of this rule, the arraignment shall be conducted in open court and shall consist of reading the complaint to the defendant or stating to the defendant the substance of the charge and calling upon the defendant, after being given a copy of the complaint, to plead thereto. The defendant may waive the reading of the complaint.
- **(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.

Note: Source-R.R. (1969) 7:4-2(a). Adopted October 6, 1997 to be effective February 1, 1998.

### 7:6-2. Pleas, Plea Agreements

- **(a) Pleas Allowed, Guilty Plea.**
  - **(1) Generally.** A defendant may plead not guilty or guilty, but the court may, in its discretion, refuse to accept a guilty plea. Except as otherwise provided by Rules 7:6-2, 7:6-3, and 7:12-3, the court shall not, however, accept a guilty plea without first addressing the defendant personally and determining by inquiry of the defendant and, in the court's discretion, of others, that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea and that there is a factual basis for the plea. Prior to accepting a guilty plea when an unrepresented defendant faces a consequence of magnitude, the judge shall make a finding on the record that the court is satisfied that the defendant's waiver of the right to counsel is knowing and intelligent. On the request of the defendant, the court may, at the time of the acceptance of a guilty plea, order that the plea shall not be evidential in any civil proceeding. If a defendant refuses to plead or stands mute or if the court refuses to accept a guilty plea, the court shall enter a plea of not guilty. If a guilty plea is entered, the court may hear the witnesses in support of the complaint prior to judgment and sentence and after such hearing may, in its discretion, refuse to accept the plea.
  - **(2) Corporate Defendants.** A defendant that is a corporation, partnership or unincorporated association may enter a plea by an authorized officer or agent and may appear by an officer or agent provided the appearance is consented to by the named party defendant and the court finds that the interest of justice does not require the appearance of counsel. If a defendant that is a corporation, partnership, or unincorporated association fails to appear or answer, the court, if satisfied that service was duly made, shall enter an appearance and a plea of not guilty for the defendant and thereupon proceed to hear the complaint.
- **(b) Withdrawal of Plea.** A motion to withdraw a plea of guilty shall be made before sentencing, but the court may permit it to be made thereafter to correct a manifest injustice.
- **(c) Conditional Pleas.** With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty, reserving on the record the right to appeal from the adverse determination of any specified pretrial motion. A defendant who prevails on appeal shall be afforded the opportunity to withdraw the guilty plea. Nothing in this rule shall be construed as limiting the right to appeal provided by R. 7:5-2(c)(2).

- **(d) Plea Agreements.** Plea agreements may be entered into only pursuant to the Guidelines and accompanying Comment issued by the Supreme Court, both of which are annexed as an Appendix to Part VII, provided, however, that:
  - **(1)** the complaint is prosecuted by the municipal prosecutor, the county prosecutor, or the Attorney General; and
  - **(2)** the defendant is either represented by counsel or knowingly waives the right to counsel on the record; and
  - **(3)** the prosecuting attorney represents to the court that the [complaining witness and the] victim, if the victim is present at the hearing, has been consulted about the agreement; and
  - **(4)** the plea agreement involves a matter within the jurisdiction of the municipal court and does not result in the downgrade or disposition of indictable offenses without the consent of the county prosecutor, which consent shall be noted on the record; and
  - **(5)** the sentence recommendations, if any, do not circumvent minimum sentences required by law for the offense.

Pursuant to paragraph (a)(1) of this rule, when a plea agreement is reached, its terms and the factual basis that supports the charge(s) shall be fully set forth on the record personally by the prosecutor, except as provided in Guideline 3 for Operation of Plea Agreements. If the judge determines that the interests of justice would not be served by accepting the agreement, the judge shall so state, and the defendant shall be informed of the right to withdraw the plea if already entered.

Note: Source-Paragraph (a): R. (1969) 7:4-2(b); paragraph (b): R. (1969) 3:21-1; paragraph (c): R. (1969) 3:9-3(f); paragraph (d): R. (1969) 7:4-8. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (d) amended July 12, 2002 to be effective September 3, 2002; paragraph (d) amended July 28, 2004 to be effective September 1, 2004; paragraph (a)(1) amended June 15, 2007 to be effective September 1, 2007; paragraph (d)(3) amended July 16, 2009 to be effective September 1, 2009.

### **7:6-3. Guilty Plea by Mail in Non-Traffic Offenses**

- **(a) Entry of Guilty Plea by Mail.** In all non-traffic and non-parking offenses, except as limited below, on consideration of a written application, supported by certification, with notice to the complaining witness and prosecutor, and at the time and place scheduled for trial, the judge may permit the defendant to enter a guilty plea by mail if the court is satisfied that a personal appearance by the defendant would constitute an undue hardship such as illness, physical incapacity, substantial distance to travel, or incarceration. The guilty plea by mail form may also include a statement for the court to consider when determining the appropriate sentence. A guilty plea by mail shall not be available for the following:
  - **(1)** cases involving the imposition of a mandatory term of incarceration on conviction, unless defendant is currently incarcerated and the mandatory term of incarceration would be served concurrently and would not extend the period of incarceration;
  - **(2)** cases involving an issue of the identity of the defendant;
  - **(3)** cases involving acts of domestic violence;
  - **(4)** cases where the prosecution intends to seek the imposition of a custodial term in the event of a conviction, unless defendant is currently incarcerated and the proposed term of incarceration would not extend the period of incarceration and would be served concurrently; and
  - **(5)** any other case where excusing the defendant's appearance in municipal court would not be in the interest of justice.
  - **(b) Plea Form-Certification.** The Guilty Plea by Mail shall be submitted on a form approved by the Administrative Director of the Courts.

- **(c) Judgment.** The court shall send the defendant and complaining witness a copy of its decision by ordinary mail.

**Note: Adopted June 15, 2007 to be effective September 1, 2007.**