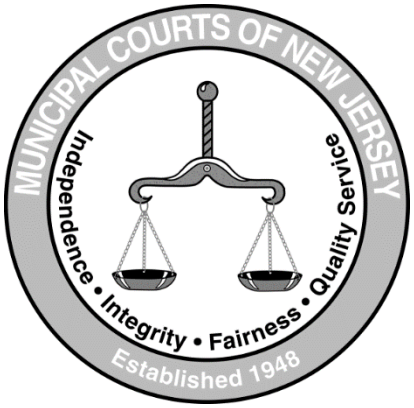
REPORT OF THE

SUPREME COURT COMMITTEE ON

MUNICIPAL COURT PRACTICE

2023 - 2025 TERM



JANUARY 14, 2025

TABLE OF CONTENTS

I. Introduction

The Municipal Court Practice Committee ("Committee") recommends that the Supreme Court adopt the proposed rule amendment contained in this report. The Committee also reports on other issues reviewed in which it concluded no rule change was appropriate. Where rule changes are proposed, deleted text is bracketed **[as such],** and added text is underlined **as such**.

II. Proposed Part VII Rule Amendments Recommended for Adoption

A. Proposed amendments to R. 7:2-2 ("Issuance of Complaint-Warrant (CDR-2) or Summons") adding new paragraphs: (1) where issuance of a Complaint-Warrant (CDR-2) is presumed for contempt (N.J.S.A. 2C:29-9(a)) and (2) setting forth the grounds for overcoming the presumption of issuance of a Complaint-Warrant (CDR-2)

The Committee proposes conforming amendments to R. 7:2-2 to effectuate the Supreme Court's February 26, 2024 Order relaxing R. 3:3-1(f) ("Issuance of a Complaint-Warrant (CDR-2) or a Complaint-Summons (CDR-1); Offenses where Issuance of a Complaint-Warrant (CDR-2) is Presumed") and R. 7:2-2 ("Issuance of Complaint-Warrant (CDR-2) or Summons"). (App., p. 1).

In its rule relaxation Order, the Court relaxed and supplemented R. 3:3-1(f) to include a presumption that a complaint-warrant shall issue upon a finding of probable cause to believe that the defendant committed theft of a motor vehicle (N.J.S.A. 2C:20-10.1) or receiving a stolen motor vehicle (N.J.S.A. 2C:20-10.2).

Additionally, R. 3:3-1(f) and R. 7:2-2 were relaxed and supplemented to include a presumption that a complaint-warrant shall issue upon a finding of probable cause to believe that the defendant committed contempt (N.J.S.A. 2C:2-9-(a)) involving: (a) a violation of a condition of pretrial release to avoid contact with an alleged victim or (b) a violation of a condition of home detention with or without the use of an approved electronic monitoring device ordered pursuant to

N.J.S.A. 2A:162-17. The Court's rule relaxation Order also provides that the R. 7:2-2 presumption that a complaint-warrant shall issue may be overcome using the factors and analysis set forth in R. 3:3-1(g) ("Grounds for Overcoming the Presumption of Issuance of a Complaint-Warrant (CDR-2)").

By way of background, the Court's rule relaxation Order implements two unanimous recommendations of the Reconvened Joint Committee on Criminal Justice (JCCJ). In Recommendation 10 of its Final Report, the JCCJ recommended that the Judiciary review the Rules of Court related to the issuance of summonses and warrants and consider amendments to make contempt of an order for violating a no contact condition, or a condition of home detention or electronic monitoring a presumed warrant charge. In Recommendation 26, the JCCJ recommended that the Judiciary also consider making motor vehicle theft a presumed warrant charge. A short time after the Joint Committee's report was issued, the Legislature passed L. 2023, c. 101 to create new motor vehicle theft-specific crimes: motor vehicle theft (N.J.S.A. 2C:20-10.1) and receiving a stolen motor vehicle (N.J.S.A. 2C:20-10.2).[1]

Therefore, this Committee recommends the following amendments to R. 7:2-2: (1) adding contempt as a presumed warrant offense where this charge

[1] The Supreme Court Committee on Criminal Practice has considered amendments to the Part III Rules to add these offenses as presumed warrant charges.

involves a violation of a condition of pretrial release to avoid contact with an alleged victim or a violation of a condition of home detention with or without the use of an approved electronic monitoring device ordered pursuant to N.J.S.A. 2A:162-17 and (2) setting forth the grounds for overcoming the presumption of issuance of a complaint-warrant (CDR-2). The proposed amendment to R. 7:2-2 follows.

7:2-2. Issuance of Complaint-Warrant (CDR-2) or Summons.

(a) Probable Cause.

(1) Finding of Probable Cause. … no change

(2) Finding of No Probable Cause. … no change

(3) Complaint by Law Enforcement Officer or Other Statutorily Authorized Person. …no change

(4) Complaint by Code Enforcement Officer. … no change

(b) Authorization for Process of Citizen Complaints.

(1) Issuance of a Citizen Complaint Charging Disorderly Persons Offense, Petty Disorderly Persons Offense, or Any Other Matter Within the Jurisdiction of the Municipal Court. … no change

(2) County Prosecutor Review of Citizen Complaints Charging Disorderly Persons Offenses. …no change

(3) Issuance of a Citizen Complaint Charging Indictable Offenses. …no change

(4) County Prosecutor Review of Citizen Complaints Charging Indictable Offenses. … no change

(5) Probable Cause Findings - Citizen Complaints. … no change

(6) Period of Time for County Prosecutor Review of Citizen Complaints Charging Disorderly Persons and Indictable Offenses. … no change

(c) Issuance of a Complaint-Warrant (CDR-2) or Summons.

(1) Issuance of a Summons. … no change

(i) … no change

(ii) … no change

(2) Issuance of a Complaint-Warrant (CDR-2). … no change

(i) … no change

(ii) … no change

(d) Indictable Offenses. … no change

(e) Offenses Where Issuance of a Summons is Presumed. … no change

(f) Grounds for Overcoming the Presumption of Issuance of Summons. … no change

(1) … no change

(2) … no change

(3) … no change

(4) … no change

(5) … no change

(6) … no change

(7) … no change

(g) Offenses Where Issuance of a Complaint-Warrant (CDR-2) is Presumed. Unless issuance of a Complaint-Summons (CDR-1) rather than a Complaint-Warrant (CDR-2) is authorized pursuant to paragraph (h) of this rule, a Complaint-Warrant (CDR-2) shall be issued when a judicial officer finds pursuant to paragraph (c)(2) that there is probable cause to believe that the defendant committed contempt (N.J.S.A. 2C:29-9(a)) involving a violation of a condition of pretrial release to avoid contact with an alleged victim or a violation of a condition of home detention with or without the use of an approved electronic monitoring device ordered pursuant to N.J.S.A. 2A:162-17.

(h) Grounds for Overcoming the Presumption of Issuance of a Complaint-Warrant (CDR-2). Notwithstanding the presumption that a Complaint-Warrant (CDR-2) shall be issued when a defendant is charged with an offense set forth in paragraph (g) of this rule: (1) a judicial officer may authorize issuance of a Complaint-Summons (CDR-1) rather than Complaint-Warrant (CDR-2) if the judicial officer finds that were the defendant to be released without imposing or monitoring any conditions authorized under N.J.S.A. 2A:162-17, there are reasonable assurances that the defendant will appear in court when required, the safety of any other person or the community will be protected, and the defendant will not obstruct or attempt to obstruct the criminal justice process. The judicial officer shall not make such finding without considering the results of a preliminary public safety

assessment using a risk assessment instrument approved by the Administrative Director of the Courts pursuant to N.J.S.A. 2A:162-25, and without also considering whether within the preceding ten years the defendant as a juvenile was adjudicated delinquent for escape, a crime involving a firearm, or a crime that if committed by an adult would be subject to the No Early Release Act (N.J.S.A. 2C:43-7.2), or an attempt to commit any of the foregoing offenses. The judicial officer shall also consider any additional information provided by a law enforcement officer or the prosecutor relevant to the pretrial release decision; or (2) a law enforcement officer may issue a Complaint-Summons (CDR-1) in accordance with guidelines issued by the Attorney General pursuant to N.J.S.A. 2A:162-16.

[(g)] (i) Charges Against Corporations, Partnerships, Unincorporated Associations. A summons rather than a Complaint-Warrant (CDR-2) shall issue if the defendant is a corporation, partnership, or unincorporated association.

[(h)] (j) Failure to Appear After Summons. If a defendant who has been served with a summons fails to appear on the return date, a bench warrant may issue pursuant to law and Rule 7:8-9 (Procedures on Failure to Appear). If a corporation, partnership or unincorporated association has been served with a summons and has failed to appear on the return date, the court shall proceed as if the entity had appeared and entered a plea of not guilty.

[(i)] (k) Additional Complaint-Warrants (CDR-2) or Summonses. More than one Complaint-Warrant (CDR-2) or summons may issue on the same complaint.

[(j)] (l) Identification Procedures. If a summons has been issued or a Complaint-Warrant (CDR-2) executed on a complaint charging either the offense of shoplifting or prostitution or on a complaint charging any non-indictable offense where the identity of the person charged is in question, the defendant shall submit to the identification procedures prescribed by N.J.S.A. 53:1-15. Upon the defendant's refusal to submit to any required identification procedures, the court may issue a Complaint-Warrant (CDR-2).

Note: Source - R. (1969) 7:2, 7:3-1, 3:3-1. Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (b) and (c) amended July 10, 1998 to be effective September 1, 1998; paragraph (a)(1) amended July 5, 2000 to be effective September 5, 2000; paragraph (a)(1) amended, new paragraph (b)(5) added, and former paragraph (b)(5) redesignated as paragraph (b)(6) July 12, 2002 to be effective September 3, 2002; paragraph (a)(1) amended, and paragraph (a)(2) caption and text amended July 28, 2004 to be effective September 1, 2004; paragraph (a)(1) amended and new paragraph (a)(3) adopted July 16, 2009 to be effective September 1, 2009; caption amended, paragraph (a)(1) amended, former paragraph (b) deleted, new paragraphs (b), (c), (d), (e), (f) adopted, former paragraph (c) amended and redesignated as paragraph (g), former paragraph (d) caption and text amended and redesignated as paragraph (h), and former paragraph (e) amended and redesignated as paragraph (i) August 30, 2016 to be effective January 1, 2017; new paragraph (a) caption adopted, new subparagraphs (a)(1) and (a)(2) adopted, former paragraph (a) redesignated as paragraph (b) and caption amended, former subparagraph (a)(1) redesignated as subparagraph (b)(1) and caption and text amended, former subparagraphs (a)(2) and (a)(3) redesignated as subparagraphs (a)(3) and (a)(4), new subparagraphs (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) adopted, former paragraph (b) redesignated as paragraph (c) and amended, former paragraph (c) redesignated as paragraph (d), former paragraphs (d) and (e) redesignated as paragraphs (e) and (f) and amended, former paragraphs (f) and (g) redesignated as paragraphs (g) and (h), former paragraph (h) redesignated as paragraph (i) and caption amended, former paragraph (i) redesignated as paragraph (j) August 2, 2019 to be effective October 1, 2019, effective date extended to January 1, 2020 pursuant to Court order dated September 25, 2019; former paragraphs (g), (h), (i), (j) redesignated as paragraphs (i), (j), (k) and (l), new paragraphs (g) and (h) adopted [insert date] to be effective [insert date].

III. Rule Amendments Considered and Rejected

A. Amending R. 7:6-2 ("Pleas, Plea Agreements") on referral from Appellate Division in State v. Dmitry Pavedaika, 2022 N.J. Super. Unpub. LEXIS 2590 (App. Div. Dec. 22, 2022), cert. denied, 253 N.J. 389 (2023) to include the requirement in R. 3:9-2 ("Pleas") that the court swear in defendants when accepting guilty pleas

On referral from the Appellate Division in its unpublished opinion in State v. Dmitry Pavedaika, 2022 N.J. Super. Unpub. LEXIS 2590 (App. Div. Dec. 22, 2022), cert. denied, 253 N.J. 389 (2023), the Committee was asked to consider an amendment to R. 7:6-2 ("Pleas, Plea Agreements") to include the requirement in R. 3:9-2 ("Pleas") that the court swear in defendants when accepting guilty pleas. (App., p. 4). A majority of the Committee concluded that R. 7:6-2 should not be amended to include a requirement that the defendant be sworn in when accepting a guilty plea, and that a decision to swear in a defendant when accepting guilty pleas should be in the discretion of the judge. In reaching its conclusion, the Committee considered the history of R. 7:6-2 and the opinion of the Conference of Municipal Court Presiding Judges discussed in subsections ii and iii below.

i. Overview of State v. Dmitry Pavedaika

In Pavedaika, the defendant argued that his guilty plea for driving while intoxicated should be vacated because the Municipal Court failed to place him under oath at the plea hearing. Id. at *2. The Appellate Division found the defendant's arguments without merit and affirmed the Law Division order denying his request

to withdraw his guilty plea. Ibid. The Appellate Division acknowledged the significance attendant to the oath requirement, but noted, as did the Law Division judge on appeal, that R. 7:6-2(a)(1) does not require a defendant to swear or affirm to an oath before providing a factual basis supporting a plea, in contrast to R. 3:9-2. Id. at *6-7, *17.

The Appellate Division declined to hold that the Municipal Court's failure to place defendant under oath at the plea hearing entitled the defendant to plea withdrawal. Id. at *17-18. The court explained that in some cases (e.g., use of the plea by mail form), defendants are expressly permitted to enter guilty pleas in Municipal Court where they do need not appear to provide an oath or affirmation before a judge. Id. at *18.

The Appellate Division noted that neither our published case law nor relevant commentary has identified a reason for the discrepancy in R. 3:9-2 and R. 7:6-2 regarding the oath requirement. Id. at *19. Additionally, "[n]othing in the comments on Rule 7:6-2 or the former Rule 7:4-2 suggests the intentional omission of an oath or affirmation requirement for entering a guilty plea in municipal court." Id. at *20.

ii. History of R. 7:6-2

The taking of a plea in Municipal Court pursuant to R. 7:6-2 does not require that the defendant be placed under oath or by affirmation, as is required in Superior

Court under R. 3:9-2[2] ("Pleas") for guilty pleas. In addition to the swearing in/affirmation requirement, the rules also differ in that R. 3:9-2 defines "a plea that is made voluntarily" as a plea that is free from any threats, promises or inducements. In contrast, R. 7:6-2(a)(1) provides:

> 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 7:6-3, 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. (emphasis added).

However, R. 3:9-2 and R. 7:6-2 share similar language with respect to addressing and questioning the defendant personally, determining that there is a factual basis for the plea, and that the plea is made voluntarily with an understanding of the nature of the charge and the consequences of the plea.

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[2] R. 3:9-2 provides:

> A defendant may plead only guilty or not guilty to an offense. The court, in its discretion, may refuse to accept a plea of guilty and *shall not accept such plea without first questioning the defendant personally, under oath or by affirmation,* and determining by inquiry of the defendant and others, in the court's discretion, that there is a factual basis for the plea and that the plea is made voluntarily, not as a result of any threats or of any promises or inducements not disclosed on the record, and with an understanding of the nature of the charge and the consequences of the plea. (emphasis added).

The history of R. 7:6-2 does not provide a clear-cut answer as to why R. 7:6-2 does not mirror R. 3:9-2 with respect to the requirement that the Municipal Court question the defendant personally, under oath or by affirmation, before accepting a guilty plea.

The origins of R. 7:6-2 are discussed in Pressler & Verniero, Current N.J. Court Rules, cmt. 2, History and Analysis of R. 7:6-2, www.gannlaw.com (2024). It provides:

> R. 7:6-2 collects the former Part VII rules dealing with pleas and plea agreements and restates those applicable Part III rules not explicitly referred to in former Part VII. Thus, paragraph (a) defining permissible pleas and the court's obligation in accepting a guilty plea follows former R. 7:4-2(b). Paragraph (a)(1) was amended effective September 2007, to except from the court's authority to refuse a guilty plea such pleas entered pursuant to the mailed guilty plea program authorized by R. 7:6-3 and 7:12-3, then adopted. This paragraph of the rule was also then amended to require the same finding as required in the Law Division with respect to waiver of the right to counsel if the defendant faces a consequence of magnitude.

Former R. 7:4-2(b) ("Proceedings Before Trial") required that the arraignment should be conducted in open court and shall consist of reading the complaint to the defendant and "calling on him" to plead, but it did not have a requirement to swear in the defendant.

On April 24, 2000, then Administrative Director Richard J. Williams, J.A.D. issued a memorandum to all Municipal Court Presiding Judges regarding Municipal Court plea agreements and the implementation of R. 7:6-2. In that

memorandum, Judge Williams advised that he had been asked by the Conference of Assignment Judges to elicit the assistance of the Presiding Judges to eliminate the practice of Municipal Courts accepting pleas without careful adherence to the requirements of R. 7:6-2. Judge Williams reiterated that the rule requires that the terms and factual basis that support a plea agreement be fully set forth on the record and that any sentence recommendations accepted not circumvent minimum sentences required by law. Neither Judge Williams's memo nor the Part VII Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey set forth any requirement to swear in the defendant.

In response to Judge Williams' memorandum, in the 2000-2002 Report of the Municipal Court Practice Committee, that Committee proposed an amendment to R. 7:6-2(d) to make clear that when a plea agreement is reached, its terms and the factual basis that supports the charge be fully set forth on the record pursuant to R. 7:6-2 (a)(l). (App., p. 11). This amendment was adopted and exists in the current rule in the first full paragraph after paragraph (d)(5). That paragraph provides in pertinent part: "Pursuant to paragraph (a)(1) of this rule, when a plea agreement is reached, its terms and the factual basis that supports the charges(s) shall be fully set forth on the record personally by the prosecutor, except as provided in Guideline 3 for Operation of Plea Agreements…."

It is worth noting that the 2000-2002 Committee did not propose an

amendment to R. 7:6-2 requiring the defendant to be sworn in when the Municipal Court accepts a guilty plea.

The current Committee also considered the amendments that were made to R. 7:6-2(a)(1), effective September 1, 2007, the last time this paragraph of the rule was amended. The first amendment permitted the court to accept a guilty plea where such plea is entered pursuant to plea by mail as authorized by R. 7:6-3 and R. 7:12-3. Additionally, in 2007, in response to the Appellate Division's holding in State v. Tutolo, 2005 N.J. Super. Unpub. LEXIS 295, (App. Div. Nov. 3, 2005) the Committee in its 2004-2007 Report (pp. 25-26) proposed an amendment to paragraph (a)(1) to require the judge to make a finding on the record that the court, prior to accepting a guilty plea, is satisfied that the defendant's waiver of the right to counsel is knowing and intelligent where the unrepresented defendant faces a consequence of magnitude. In Tutolo, the Appellate Division found that the Municipal Court had failed to elicit a knowing waiver of counsel from the defendant and thus had violated the defendant's right to counsel. Id. at *9.

In Tutolo, the Appellate Division observed that Municipal Court practice of not providing an advisement of the fundamental rights being waived by a guilty plea is dictated by the large volume of cases handled by those courts. Id. at *5. The Appellate Division explained that advising the defendant of the fundamental rights being waived by a guilty plea (the right to remain silent, to confrontations, to

produce witness in defense and to require proof beyond a reasonable doubt), which is standard practice in the Law Division and is included in the Uniform Plea Form, is not a requirement in the Rules. Id. at *4-5. R. 3:9-2 simply requires that pleas be made "voluntarily" and that is made clear by the rule's language requiring that the plea be made "not as a result of any threats or of any promises or inducements not disclosed on the record…." Id. at *5. The Appellate Division concluded:

> Indeed, it would appear that such advice of fundamental trial rights is not routinely given in municipal courts, a practice no doubt dictated by the large volume of cases handled by those courts. In any event, we find no authority, and defendant has provided none, holding that the advice concerning, and waiver of, those rights attendant to trial is a required component of a voluntary guilty plea. Id. at *5.

The Appellate Division stated further:

> While the threats, promises, inducements language is not found in R. 7:6-2, if anything that omission suggests that even less may have been thought sufficient to deem a plea voluntary in the municipal courts. We assume, however, that 'voluntary' means the same thing in municipal court as it does in the Law Division. Id. at *6.

That said, the Appellate Division disagreed with the Law Division judge that the defendant's plea was not voluntary because the Municipal Court judge did not engage in the type of plea colloquy typical in Law Division pleas. Ibid. Rather, the Appellate Division concluded that defendant's guilty plea did not meet constitutional standards because the Municipal Court failed to accord the defendant the fundamental constitutional right to counsel, by failing to elicit a knowing waiver of that right as the defendant was not apprised of the difficulties of self-

representation. Id. at *9.

In Tutolo, the Appellate Division also recognized that R. 3:9-2 differs from R. 7:6-2 in that R. 3:9-2 also requires that the defendant be sworn before inquiring with the defendant 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, while R. 7:6-2 does not. Ibid.

As explained above, while R. 7:6-2(a)(1) was amended in 2007 to include the same finding as required in the Law Division with respect to waiver of the right to counsel if the defendant faces a consequence of magnitude, no such amendment was made to mirror the Law Division's swearing in requirement.

iii. Probable explanation for the silence in Part VII on swearing in of/affirmation by defendants at plea hearing

The Committee considered that a likely reason for the discrepancy between R. 3:9-2 and R. 7:6-2 with respect to the swearing in/affirmation requirement is that Municipal Court proceedings move far more quickly than Superior Court actions. Additionally, the Committee reasoned that unlike Superior Court, the Municipal Court handles a high volume of matters and swearing in Municipal defendants in every matter would significantly slow down the court proceedings and could disadvantage the many defendants who are waiting for their matters to be heard.

The Committee also discussed another likely reason why R. 7:6-2 does not

require the defendant to be sworn in. Unlike in Superior Court, many Municipal Court matters are permitted by the defendant submitting a paper plea by mail form or by pleading guilty and paying the court directly or online on a matter on the Statewide Violations Bureau Schedule. Municipal matters that are resolved remotely do not involve taking the oath of the defendant. In fact, there is no parallel remote resolution process in Superior Court. The Committee concluded that these reasons support its determination that a requirement to swear in defendants when taking a guilty plea should not be added to R. 7:6-2.

The Committee also considered feedback from the Conference of Municipal Court Presiding Judges as to whether swearing in defendants before accepting guilty pleas should be required in the Part VII rules. While the Committee is not bound by the opinion of the Conference, their feedback helped inform the Committee's discussion and the Committee found the Presiding Judges' concerns persuasive and relevant.

A few Presiding Judges noted that they will exercise their discretion and swear-in defendants for driving while intoxicated pleas or other cases (e.g., speeding) involving consequence of magnitude or significant consequences, but not all judges do so.[3] The majority of Presiding Judges do not administer the oath

[3] There is at least one example where a Municipal Court judge swore in a defendant charged with shoplifting before accepting a guilty plea (see State v. Gale, 226 N.J. Super. 699, 702 (1988)).

for N.J.S.A. 39:3-29 offenses (license, registration certificate and insurance identification).

The Presiding Judges were not in favor of a court rule requirement to swear in defendants before a guilty plea for several reasons. First, the Presiding Judges concluded that a swearing in/affirmation requirement is not necessary in view of the more minor consequences of the plea in Municipal Court.

Second, the Presiding Judges considered that swearing in the defendant would not improve the defendant's candor at the plea stage since the defendant has already agreed to a plea offer or decided not to contest the charge. Additionally, perjury prosecutions arising from misrepresentations made in a Municipal case plea are extremely unlikely.

Third, the Presiding Judges noted that a swearing in/affirmation requirement of Municipal defendants could invite a flood of post-conviction relief motions for any unsworn plea colloquies. They considered that, in light of practical realities, it is likely that any requirement to take an oath pursuant to court rule will be unintentionally omitted from time to time after a rule change and will result in numerous post-conviction relief motions based solely on the failure to comply with the oath requirement when such motions are otherwise meritless.

Fourth, the Presiding Judges indicated that a swearing in/affirmation requirement would not be practical in the Municipal Court due to the high volume

of Municipal Court proceedings and the fact that such proceedings move expeditiously. Municipal Court judges handle many more matters on an average calendar day than the Superior Court does on sentencing days. Some judges posited that the oath requirement likely was intentionally omitted from the Part VII Court Rules because of the high volume of Municipal Court cases and the fast-paced fashion in which these matters are handled in comparison to Superior Court criminal matters.

Thus, the consensus of the Presiding Judges was that swearing in Municipal defendants at the plea hearing should not be made mandatory in the court rules, as long as a knowing and intelligent waiver of the right to counsel is on the record, when the defendant has no attorney. Regarding the instances where a Municipal Court judge may swear in a defendant, the Presiding Judges concluded that a Municipal Court judge should have the discretion to determine whether an oath is necessary for a finding that defendant is knowingly and voluntarily entering the guilty plea.

The Committee agreed with the Presiding Judges that it should be left to the discretion of the judge to swear in defendants in certain cases, such as in those matters that carry consequences of magnitude. Additionally, the Committee shared in the concern that an absolute requirement to swear in a defendant could create a wave of appeals or post-conviction relief motions on that basis alone.

B. Amending R. 7:4-1 ("Right to Pretrial Release") to address issues raised in Pressler & Verniero, Current N.J. Court Rules, cmt. 2, 3, 4 and 9 on R. 7:4-1 (2023)[4]

The Committee considered whether R. 7:4-1 should be amended to address issues raised by the editor of Pressler & Verniero, Current N.J. Court Rules in Comments 2, 3, 4, and 9 of R. 7:4-1. (App., p. 16). The Committee concluded that no amendments to R. 7:4-1 were necessary. The issues in each Comment raised by the editor and considered by the Committee are set forth below.

i. Issue 1 in Comment 2: R. 7:4-1(a) ("Defendants Charged on Complaint-Warrant (CDR-2) with Disorderly Persons Offenses")

In Comment 2, the editor suggests that a clarifying amendment should be expected to address any perceived conflict between R. 7:4-1(a) ("Defendants Charged on Complaint-Warrant (CDR-2) with Disorderly Persons Offenses") and R. 3:26-1(a)(1) ("Persons Charged on a Complaint-Warrant or Warrant on Indictment"). The concern set forth by the editor in Comment 2 is as follows:

> Rule 7:4-1(a) is limited to persons held on an arrest warrant for disorderly persons offenses. As noted in the comment to paragraph (b), infra, this seemingly leaves all other defendants held pending trial subject to the sometimes more restrictive pretrial release conditions that preceded bail reform. Finally, it should be noted that to the extent that R. 3:26-1(a)(1) has somewhat different conditions that may be imposed on pretrial release for both indictable and disorderly persons offenses and, to the extent R. 7:4-1 is in conflict it should be read to conform to

[4] The current 2024 N.J. Court Rules set forth the same issues in the Rules Comments that were discussed by the Committee in 2023.

R. 3:26-1. As noted, infra, these results are likely unintended and as such, clarifying amendments should be expected.

R. 7:4-1(a) provides for the release of criminal justice reform defendants (i.e., those charged on CDR-2 with a disorderly persons offense) and that monetary bail may be set when no other conditions of release will reasonably assure the defendant's appearance. As the editor notes, R. 7:4-1(a) is intended to mirror R. 3:26-1(a)(1), replacing the former right to bail with a right to pretrial release based on the least restrictive non-monetary conditions.

The Committee considered (1) whether an amendment to R. 7:4-1(a) is needed to address those rare instances where an indictable matter is heard in Municipal Court and (2) if a rule amendment is necessary, whether the issue raised in Comment 2 could be resolved by amending the caption and text in R. 7:4-1(a) to address fourth degree offenses within the jurisdiction of the Municipal Court where trial by jury is waived. The Committee concluded that an amendment to R. 7:4-1(a) was unnecessary.

In determining that an amendment to R. 7:4-1(a) was unnecessary, the Committee considered that the rule provides that pretrial release under bail reform is only for defendants charged with disorderly persons offenses. There may be some cases heard in Municipal Court that are indictable (fourth degree cases where the defendant has waived their right to a jury trial with County prosecutor consent and with both the waiver and consent in writing), but this is a very rare occurrence.

See N.J.S.A. 2B:12-18.[5] The Committee noted that the pretrial release process for fourth degree offenses is already captured in R. 3:26.

The Committee recognized that while the language in the Part VII and Part III rules is not identical, the rules do not functionally provide for different conditions on pretrial release. Consequently, the Committee determined that R. 7:4-1(a) does not need to be amended, nor do other subsections of the rule that reference the issue raised by the editor.

It is also worth noting that Part III provides in R. 3:1-1 ("Scope"):

> The rules in Part III govern the practice and procedure in all indictable and non-indictable proceedings in the Superior Court Law Division, and, insofar as they are applicable, the practice and procedure on indictable offenses in all other courts*, including the municipal courts*, and the practice and procedure in juvenile delinquency proceedings in the Chancery Division, Family Part except as otherwise provided for in Part V. (emphasis added).

[5] N.J.S.A. 2B:12-18 ("Jurisdiction of specified offenses where indictment and trial by jury are waived") provides:

> A municipal court has jurisdiction over the following crimes occurring within the territorial jurisdiction of the court, where the person charged waives indictment and trial by jury in writing and the county prosecutor consents in writing:
>
> a. Crimes of the fourth degree enumerated in chapters 17, 18, 20 and 21 of Title 2C of the New Jersey Statutes; or
>
> b. Crimes where the term of imprisonment that may be imposed does not exceed one year.

ii. Issue 2 in Comment 2: R. 7:4-1(b) ("All Other Defendants")

The second issue raised by the N.J. Court Rules editor in Comment 2 concerns R. 7:4-1(b). R. 7:4-1(b) provides that (1) "all other defendants" (i.e., all defendants other than those set forth in paragraph (1)(a) charged on a Complaint-Warrant (CDR-2) with a disorderly persons offense), shall have a right to bail before conviction, and (2) the court has the discretion to order defendant's release on defendant's own recognizance and may impose terms or conditions appropriate to such release.

R. 7:4-1(b)(i) and (ii) provide that "all other defendants" include: (i) those charged on an initial CDR-2 with a petty disorderly persons *or other non-disorderly persons offense within the jurisdiction of the Municipal Court* and (ii) all defendants brought before the court on a bench warrant for failure to appear or other violation. (emphasis added).

The editor suggests that R. 7:4-1(b)(i) might be read to apply a more restrictive standard of monetary conditions for defendants charged on an initial CDR-2 with an *other non-disorderly persons offense* (i.e., what the editor refers to as "those indictable offenses triable in the municipal courts"), and as a result, conflicts with pretrial release standards of R. 3:26-1(a)(1) for indictable offenses. Comment 2 states that a clarifying amendment should be expected and states:

> To the extent that the language in paragraph (b)(i), 'or other non-disorderly persons offenses within the jurisdiction of the municipal court,' might be read as applying this more restrictive standard to those indictable offenses triable in the municipal courts, it must be noted that this is in conflict with the pretrial release standards of R. 3:26-1(a)(1), applicable to all indictable offenses.

The Committee discussed that the concern raised in Comment 2 appears to relate to those defendants charged with fourth degree indictable offenses that can be tried in the Municipal Court and defendants brought before the court on a bench warrant for failure to appear. In particular, the concern raised in Comment 2 is that R. 7:4-1(b) does not appropriately address the fact that Municipal Courts may handle certain indictable matters where the defendant has waived a jury trial and the prosecutor consents in writing. See N.J.S.A. 2B:12-18. The editor suggests that R. 7:4-1(a) should include a reference to "indictable offenses triable in municipal courts." In other words, the concern raised in Comment 2 appears to suggest that fourth degree defendants who waived jury trial should be explicitly listed under paragraph (a) of R. 7:4-1 and not implicitly included in (b) as "all other defendants."

The Committee concluded that an amendment to R. 7:4-1(a), or to R. 7:4-1(b), to address indictable fourth degree matters heard in Municipal Court where the defendant has waived their right to a jury trial, is not necessary given how quickly the pretrial process moves and how rare it would be for the Municipal Courts to receive a fourth degree indictable matter remanded from Superior Court

where the defendant has waived their right to a jury trial and the prosecutor agrees. Several judges on the Committee indicated that they have never had a fourth degree matter remanded to be tried in the Municipal Court. Several legal practitioners on the Committee indicated that they have never handled or seen a fourth degree indictable matter handled in Municipal Court. R. 3:1-1 is also relevant to this issue, providing that indictable matters heard in other courts (including Municipal Courts) are governed by Part III. The Committee concluded that the pretrial release process for fourth degree offenses is adequately captured in R. 3:26.

The Committee also considered the feedback of the Conference of Municipal Court Presiding Judges regarding the Comments to R. 7:4-1. The Conference agreed that a rule change would not be necessary, particularly in light of the fact that none of the Presiding Judges have ever had a defendant waive trial by jury and request a bench trial in Municipal Court for a fourth degree matter.

Given how quickly the pretrial process moves and how rare it would be for the Municipal Courts to handle fourth degree matters where the defendant has waived their right to a jury trial and the prosecutor agrees, a majority of the Committee concluded that an amendment to R. 7:4-1(b) was not necessary.

iii. Comment 3: R. 7:4-2 ("Authority to Set Bail or Conditions of Pretrial Release"); Comment 4: R. 7:4-3 ("Form and Place of Deposit; Location of Real Estate; Record of Recognizances, Discharge and Forfeiture"); and Comment 9: R. 7:4-9 ("Changes in Conditions of Release for Defendants Charged on an Initial Complaint-Warrant (CDR-2) on Disorderly Persons Offenses")

The Committee determined that since the issues raised in Comment 2 did not warrant an amendment to R. 7:4-1, and those same issues are also raised in Comments 3, 4, and 9 with respect to R. 7:4-2, R. 7:4-3 and R. 7:4-9, no amendments were needed to these rules either.

C. Amending R. 7:2-2 ("Issuance of Complaint-Warrant (CDR-2) or Summons") to clarify that Municipal prosecutors must prosecute disorderly persons and petty disorderly persons citizen complaints

During open discussion, a Committee member reported witnessing that certain Municipal prosecutors had at times refused to prosecute private citizen complaints charging a disorderly persons offenses, petty disorderly offense or any other matter within the jurisdiction of the Municipal Court. The Committee discussed whether the issue of certain Municipal prosecutors failing to prosecute charges initiated by private citizens should prompt the Committee to consider amending R. 7:2-2 to clarify the role of the prosecutor.

Committee Chair and Presiding Judge James Newman requested that Committee members gather information from their respective vicinages and municipalities on whether Municipal prosecutors are refusing to prosecute citizen

complaints when probable cause is found, to determine how widespread this issue may be. The Committee members reported that this issue was not widespread and appeared to be isolated.

The Committee considered N.J.S.A. 2B:25-5(a) ("Duties of municipal prosecutor; use of special counsel, private attorneys"), which provides that Municipal prosecutors must prosecute complaints in Municipal Court. As such, the Committee determined that any reports of prosecutors unilaterally refusing to do so may appear to involve a dereliction of statutorily mandated duties and should be addressed and resolved on a local and administrative level on a case-by-case basis and not through a court rule amendment.

For instance, a Committee member suggested that representatives of the Attorney General's Office could contact County Municipal Prosecutor Liaisons to discuss the issue further. Additionally, the Assignment Judge, Presiding Judge, Municipal Division Manager, representatives from the Attorney General's Office and County Prosecutor Association could meet to discuss the issue and/or send a statewide reminder to Municipal prosecutors regarding their statutory prosecutorial obligations. If a particular county is having an issue, the county should contact the County Prosecutors Association who can then coordinate with the Attorney General's Office.

In support of taking an administrative approach to address any instances of Municipal prosecutors refusing to prosecute citizen complaints, the Committee considered that this approach was taken in a similar situation in 2018 with respect to certain Municipal prosecutors declining to prosecute marijuana charges (prior to the effective date of the marijuana decriminalization law). The Committee considered the August 29, 2018, Attorney General Memorandum issued by then-Attorney General Gurbir S. Grewal to all County and Municipal prosecutors reinforcing the distinction between municipal prosecutorial discretion and improper abdication of the duty to enforce the law.

Attorney General Grewal provided additional guidance as to how Municipal prosecutors might appropriately exercise their discretion at different points in the prosecution of marijuana-related offenses. He stated:

> Municipal prosecutors do not have the discretion to decide which cases will be initiated or which offenses will be charged within their jurisdiction. See N.J.S.A. 2B:25-5. The municipal court accepts for filing "every complaint made by any person," R. 7:2-1(b), and the complaining witness—who may be a private citizen, a law enforcement officer, or another official— determines which offenses to charge in the complaint. R. 7:2-1(a). Unlike a county prosecutor, whose exercise of discretion in deciding which charges to pursue is an important part of their prosecutorial duties, the initial charging decision is not the municipal prosecutor's to make.

The Committee also considered the prosecutor's appearance in Municipal Court pursuant to R. 7:8-7(b)("Appearance for the Prosecution"). That rule provides that the "municipal prosecutor, municipal attorney, Attorney General, county

prosecutor, or county counsel, as the case may be, may appear in any municipal court in any action on behalf of the State and conduct the prosecution either on the court's request or on the request of the respective public official." R. 7:8-7(b) further provides that the court may also direct the Municipal prosecutor to represent the State and may permit an attorney to appear as a private prosecutor to represent the State in cases involving cross-complaints. See also N.J.S.A. 2B:25-5 ("Duties of municipal prosecutor; use of special counsel, private attorneys").

The Committee also discussed a member's concern that Municipal prosecutors are sometimes targeted with ethics complaints from citizen complainants when they do not prosecute the citizen complaint because they cannot meet the applicable standard of proof. However, the Committee noted that if a prosecutor cannot meet the relevant standard of proof, they can make a motion to dismiss.

Cross-complaints

A Committee member suggested that perhaps a clarifying rule amendment is needed to indicate that Municipal prosecutors do not have to prosecute cross-complaints in private citizen complaints. The Committee member asserted that defense attorneys should be able to handle such complaints. While the rule as written now seems to indicate prosecutor involvement in cross-complaints, the member suggested removing the prosecutor from the equation compelling the

private citizen to hire a private attorney. The Committee disagreed that removing the prosecutor from the equation would help in decreasing the volume of citizen complaints and that such a change would likely lead to the settling of disputes by litigants in an informal, disruptive manner rather than before a judge.

The Committee member explained that there can be a "backlog and bottleneck" of citizen complaints and that may be a reason why Municipal prosecutors could decide not to handle such cross-complaints. Additionally, some courts would like two prosecutors available to handle citizen cross-complaints. However, the Committee emphasized that a backlog of citizen cross-complaints would not be a valid justification to not prosecute citizen complaints–the role of the Judiciary is to serve the public.

In response to the possibility of a town retaining a second Municipal prosecutor in a cross-complaint scenario, the Committee noted that every town should have a backup, alternate prosecutor. Additionally, in that scenario where the defendant is unrepresented, under State v. Storm, 141 N.J. 245 (1995), the judge could adjourn the matter and bring in the alternate prosecutor at a later date. Another Committee member noted that in some cases, the County prosecutor has stepped in to handle such situations.

In sum, the Committee determined that R. 7:2-2 should be left as is and that no clarifying amendments are needed to set forth the role of the Municipal

prosecutor in prosecuting private citizen complaints or to specify that Municipal prosecutors do not have to prosecute private citizen cross-complaints. The Committee did not find widespread reports of prosecutors refusing to prosecute citizen complaints. The Committee clarified that the Municipal prosecutor could decide to not prosecute if they cannot prove the case, at which point the prosecutor would recommend dismissal of the matter. The judge can list the reasons on the record as to why the citizen complaint will not be prosecuted should the citizen later claim that their rights were violated. Additionally, judges can also refer the matter to mediation.

D. Amending R. 7:5-2 ("Motion to Suppress Evidence") to remove the requirement in R. 7:5-2(a) ("Jurisdiction") for attorneys to provide notice to the County prosecutor on motions to suppress evidence

During open discussion, a Committee member asked the Committee to consider whether R. 7:5-2 (Motion to Suppress Evidence) be amended to remove the requirement for attorneys to provide notice to the County prosecutor when filing a motion to suppress evidence in Municipal Court. The Committee member questioned the necessity of the notice requirement, as the County prosecutor rarely intervenes in the matter, and whether providing notice to the County prosecutor is consistently followed. The Committee member commented that there may be situations where the County prosecutor gets involved, such as matters where a search warrant is issued, but not in a routine motion to suppress evidence. The

Committee member suggested amending R. 7:5-2(a) to require notice to the County prosecutor only where a search warrant is involved. Additionally, the Committee member noted that R. 7:5-2(a) does not distinguish between traffic and criminal motions to suppress evidence but perhaps it should.

A majority of the Committee concluded that R. 7:5-2(a) should not be amended to remove the notice requirement to the County prosecutor when motions to suppress evidence are filed. In making this determination the Committee examined the history of R. 7:5-2(a) with respect to the notice requirement.

History of R. 7:5-2 (formerly R. 7:4-2(f))

Current R. 7:5-2(a) states:

> Jurisdiction. The municipal court shall entertain motions to suppress evidence seized with a warrant issued by a Municipal Court judge or without a warrant in matters within its trial jurisdiction *on notice to the prosecuting attorney and, if the county prosecutor is not the prosecuting attorney, also to the county prosecutor.* (emphasis added).

If the matter is beyond the Municipal Court's jurisdiction and in matters where the evidence is seized pursuant to a warrant issued by a Superior Court judge, then the motion to suppress evidence must be filed and heard in Superior Court. Ibid. Rule 7:5-2(c)(1) also provides that within ten days after its entry, the Municipal Court administrator shall provide a copy of the order granting a motion to suppress evidence to all parties and, if the County prosecutor is not the prosecuting attorney, also to the County prosecutor.

The requirement to notify the County prosecutor when filing a motion to suppress evidence—seized with a warrant issued by a Municipal Court judge or without a warrant in matters within its trial jurisdiction—has existed since at least 1989.[6] The source rules concerning motions to suppress evidence are former R. 7:4-2(f) and current R. 3:5-7 ("Motion to Suppress Evidence and for Return of Property"). Former R. 7:4-2(f) required notice to the prosecutor for motions to suppress evidence in trial matters that were filed and heard in the Municipal Court. Additionally, R. 7:4-2(f) required that when a motion to suppress evidence was granted, the order shall be entered and within ten days the clerk shall send a copy of the order to all parties and to the County prosecutor. These requirements exist in the current rule.

[6] Prior to the June 1989 adoption of former R. 7:4-2(f), now R. 7:5-2, Municipal Courts had no authority to hear suppressions motions on grounds of unlawful search and seizure. Only Superior Court judges could hear motions to suppress evidence from an allegedly unlawful search or seizure even if the offense charged was within the jurisdiction of the Municipal Court. In 1987, the Supreme Court Committee on Municipal Courts agreed with the Criminal Practice Committee's rule recommendation to allow Municipal Court judges to hear motions to suppress in cases in which they have jurisdiction, both those related to warrantless searches and searches made with a warrant, provided the original search warrant was not issued by a Superior Court judge. (p. 4 of 2013-2015 Committee Report of the Municipal Court Practice Committee). In June 1989, the Supreme Court amended the Part III and Part VII rules to permit Municipal Court judges to hear motions to suppress but only when related to warrantless searches. Id. Not until 2015 did the Court approve an amendment to R. 7:5-2 permitting the Municipal Court to hear motions to suppress evidence seized with a search warrant issued by a Municipal Court judge. (pp. 5-7 of 2013-2015 Committee Report).

In the commentary to the report of the May 1, 1996 Comprehensive Revision of Part VII of the Rules Governing the Courts, it was noted that since the June 1989 implementation date of R. 7:4-2(f) which "first brought limited motions to suppress evidence allegedly unlawfully seized into Municipal Court practice, there has been a great deal of confusion among members of the bench and bar over which rule controls this matter in Municipal Court." (App., pp. 21, 26). The report explains that prior to 1989, attorneys relied upon R. 3:5-7 for procedural guidance in cases involving a motion to suppress evidence obtained without a warrant and were not familiar with R. 7:4-2(f), which was applicable to those cases. (App., p. 26).

The Comprehensive Revision included a proposed new R. 7:6-2 for motions to suppress.[7] (App., p. 25-26). At its June 3, 1997, Administrative Conference, the Supreme Court approved the Comprehensive Revision of Part VII subject to certain changes. Effective February 1, 1998, R. 7:4-2(f) was designated as R. 7:5-2(a), not R. 7:6-2 as initially proposed. The language in adopted R. 7:5-2 ("Motion to

[7] Proposed R. 7:6-2 ("Motion to Suppress") of the 1996 Comprehensive Revision report provided in pertinent part:

> Except for cases involving a search pursuant to warrant, motions to suppress evidence in matters subject to trial within the municipal court may be filed and heard therein in any case in which the Attorney General, county prosecutor or municipal prosecutor is prosecuting attorney on behalf of the State and *on notice to said prosecutor*….
> (emphasis added).

Suppress") also varied slightly than the proposed language in R. 7:6-2. R. 7:5-2(a) ("Jurisdiction") provided that "the municipal court shall entertain motions to suppress evidence seized without a warrant in matters within its trial jurisdiction on notice to the prosecuting attorney and, if the county prosecutor is not the prosecuting attorney, also to the county prosecutor." Thus, current R. 7:5-2(a) retained the requirement of former R. 7:4-2(f) to provide notice to the County prosecutor when a motion to suppress evidence is filed.

Rule 3:5-7 ("Motion to Suppress Evidence and for Return of Property")

The requirement to provide notice to the County prosecutor under current R. 7:5-2(a) also exists under Criminal's R. 3:5-7(a) ("Applicability; Notice; Time"). As far back as 1969, R. 3:5-7 required the County prosecutor to be notified by the person filing a motion to suppress evidence.

R. 3:5-7(a) requires a person claiming to be aggrieved by an unlawful search and seizure who files a motion to suppress evidence in Superior Court to provide "notice to the prosecutor of the county in which the matter is pending or threatened, to the applicant for the warrant if the search was with a warrant, and to co-indictees, if any." R. 3:5-7(a) cross-references R. 7:5-2 and provides that for offenses charged within the jurisdiction of the Municipal Court, "a motion to suppress evidence and for the return of property seized resulting from a search warrant issued by a

municipal court judge or seized without a warrant shall be filed pursuant to R. 7:5-2."

A motion to suppress evidence pursuant to R. 3:5-7 can be filed for the return of property seized without a warrant if the matter involves an indictable crime or where the search warrant was issued by a Superior Court judge even though the offense charged or to be charged may be within the jurisdiction Municipal Court.

Rule 7:5-2(a) notice requirement issue raised in the 1998-2000 Report of the Supreme Court Committee on Municipal Courts

The issue of whether to amend R. 7:5-2(a) to remove the requirement to provide notice to the County prosecutor has been before the Committee once previously. In the 1998-2000 Report of the Supreme Court Committee on Municipal Courts, the Committee considered an assistant prosecutor's request that the Committee consider revising R. 7:5-2(a) to eliminate the requirement that the County prosecutor be notified in matters where the court entertains motions to suppress evidence. (App., pp. 28, 31).

The assistant prosecutor indicated that the notifications failed to provide the prosecutors with sufficient information to make a determination whether to oppose the motion. The Committee surveyed the members of the County Prosecutors Association to see if the assistant prosecutor's opinion was prevalent. The Association reported that the concerns expressed by the assistant prosecutor were minor and that the notice requirement was a useful tool to advise prosecutors of

pending motions to suppress. The Association further reported that if the county prosecutor's office is interested in participating in a particular motion to suppress hearing, it will contact the municipal prosecutor or court for additional information. (App., p. 31).

Based on this information, the 1998-2000 Committee concluded that R. 7:5-2(a) should not be revised. Ibid.

2023-2025 Committee's discussion of proposal to amend R. 7:5-2(a) to remove the requirement to provide notice to County prosecutor

As mentioned above, a majority of the 2023-2025 Committee concluded that R. 7:5-2(a) should not be amended to remove the requirement to provide notice to the County prosecutor when motions to suppress evidence are filed as doing so serves a useful purpose.

A majority of the Committee was concerned that removing the notice requirement to R. 7:5-2(a) would result in County prosecutors being unaware of matters where a search warrant was issued, and that certain evidence could be suppressed. The Committee commented that the current rule language ensures that the County prosecutor is fully informed and that there is a path for their involvement. At least one Committee member, a judge, indicated that the County prosecutor is copied on motions to suppress in their county and there have been a few instances where the County prosecutor was substituted to handle the matter.

Additionally, a Committee member noted that County prosecutors will speak with the Municipal prosecutor if they want to be involved in the matter and sometimes the County prosecutor gets pulled into the matter for briefing if a complex issue is involved.

Some Committee members noted that neither in their practice nor on the bench have they observed that the notice requirement was not being followed. In fact, some members indicated that they have seen the County prosecutor copied on motions to suppress evidence.

A majority of the Committee concluded that R. 7:5-2(a) should not be amended as the current language provides a mechanism for the County prosecutor to weigh in on the matter. Additionally, any inconsistent application of the notice requirement is not a strong justification to remove the requirement to notify the County prosecutor.

IV. CONCLUSION

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

Respectfully submitted,

James M. Newman, P.J.M.C., Chair
Christine Heitmann, P.J.M.C, Vice Chair
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Jared B. Weiss, Esq.

AOC Representatives:
Pearl Ann E. Hendrix, Esq.
(Committee Staff)
Julie A. Higgs, Esq., Chief
(Committee Staff)
Rhonda Crimi, Chief

APPENDIX

NOTICE TO THE BAR

CRIMINAL JUSTICE REFORM -- PRESUMPTION OF A COMPLAINT-WARRANT FOR CERTAIN AUTO THEFT OFFENSES AND CERTAIN VIOLATIONS OF PRETRIAL MONITORING CONDITIONS

The Supreme Court has relaxed and supplemented the Court Rules to establish a presumption that a complaint-warrant, not a complaint-summons, would be issued upon a finding of probable cause that a defendant has committed (1) certain auto theft offenses; or (2) certain violations of the conditions of pretrial release.

The Court's action implements two unanimous recommendations of the Reconvened Joint Committee on Criminal Justice. It responds to ongoing public safety concerns about car thefts, as well as the high rate of repeat offenses by defendants charged with such offenses. In addition, the rule relaxation also streamlines the process for law enforcement response to defendants who violate a pretrial release condition of electronic monitoring, home detention, or to avoid all contact with the victim. Further, the Court's adjustment to the criminal justice reform process aligns with legislative efforts to support public safety through tougher enforcement of those offenses.

The Court's February 26, 2024 Order relaxing Rule 3:3-1(f) ("Issuance of a Complaint-Warrant (CDR-2) or a Complaint Summons (CDR-1); Offenses Where Issuance of a Complaint-Warrant is Presumed") and Rule 7:2-2 ("Issuance of a Complaint-Warrant (CDR-2) or Summons") is attached. The relaxation of the Court Rules is effective as of April 1, 2024.

Questions regarding this notice should be directed to the Administrative Office of the Courts Criminal Practice Division at (609) 815-2900 x55300 or Municipal Court Services Division at (609) 815-2900 x54850.

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: February 26, 2024

SUPREME COURT OF NEW JERSEY

IT IS ORDERED, pursuant to N.J. Const., Art. VI, sec. 2, par. 3, that effective April 1, 2024, the provisions of Rule 3:3-1(f) ("Issuance of a Complaint-Warrant (CDR-2) or a Complaint-Summons (CDR-1); Offenses Where Issuance of a Complaint-Warrant (CDR-2) is Presumed") and Rule 7:2-2 ("Issuance of Complaint-Warrant (CDR-2) or Summons") of the Rules Governing the Courts of the State of New Jersey are relaxed and supplemented as follows:

1. Rule 3:3-1(f) shall include a presumption that a complaint-warrant shall issue upon a finding of probable cause to believe that the defendant committed (a) theft of a motor vehicle (N.J.S.A. 2C:20-10.1) or (b) receiving a stolen motor vehicle (N.J.S.A. 2C:20-10.2); and
2. Rules 3:3-1(f) and 7:2-2 shall include a presumption that a complaint-warrant shall issue upon a finding of probable cause to believe that the defendant committed contempt (N.J.S.A. 2C:29-9(a)) involving (a) a violation of a condition of pretrial release to avoid contact with an alleged victim or (b) a violation of a condition of home detention with or without the use of an

approved electronic monitoring device ordered pursuant to N.J.S.A. 2A:162-17; and

3. The Rule 7:2-2 presumption that a complaint-warrant shall issue may be overcome using the factors and analysis set forth in Rule 3:3-1(g) ("Grounds for Overcoming the Presumption of Issuance of a Complaint-warrant [CDR-2]").

These rule relaxations shall remain in effect pending adoption of conforming rule amendments.

For the Court,

Chief Justice

Dated: February 26, 2024

State v. Pavedaika

Superior Court of New Jersey, Appellate Division

October 6, 2022, Submitted; December 22, 2022, Decided

DOCKET NO. A-0795-21

Reporter
2022 N.J. Super. Unpub. LEXIS 2590 *; 2022 WL 17844282

STATE OF NEW JERSEY, Plaintiff-Respondent, v. DMITRY PAVEDAIKA, Defendant-Appellant.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY *RULE 1:36-3* FOR CITATION OF UNPUBLISHED OPINIONS.

Subsequent History: Certification denied by *State v. Pavedaika, 2023 N.J. LEXIS 332 (N.J., Mar. 21, 2023)*

Prior History: **[*1]** On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Municipal Appeal No. 10-02-21.

Core Terms

guilty plea, withdraw, factual basis, municipal court, vacate, underage, fundamental fairness, plea hearing, plea colloquy, innocence, municipal, driving, motor vehicle, circumstances, sentence, alcohol, reasons, intoxicated, eliciting, injustice, impaired, manifest, argues, unfair, novo

Counsel: Frederick P. Sisto, attorney for appellant.

Mark Musella, Bergen County Prosecutor, attorney for respondent (Deepa S.Y. Jacobs, Assistant Prosecutor, of counsel and on the brief).

Judges: Before Judges Accurso and Natali.

Opinion

PER CURIAM

Over five years after pleading guilty to driving while intoxicated (DWI), *N.J.S.A. 39:4-50*, defendant Dmitry Pavedaika was arrested again in 2021 and charged with a second DWI, along with reckless driving, *N.J.S.A. 39:4-96*, charges that are still pending. After his second arrest, defendant sought to withdraw his guilty plea to his first DWI, primarily arguing before the municipal court and the Law Division that he failed to provide a sufficient factual basis for the DWI charge.

After both courts denied his application, plaintiff appealed and argues before us:

> *POINT I*
> DEFENDANT'S CONVICTION FOR [DWI] (*N.J.S.A. 39:4-50*) SHOULD BE VACATED BECAUSE THERE WAS AN INADEQUATE FACTUAL BASIS.
>
> *POINT II*
> DEFENDANT'S CONVICTION SHOULD BE VACATED CONSISTENT WITH FUNDAMENTAL FAIRNESS UNDER THE UNIQUE CIRCUMSTANCES OF THIS UNDERAGE D.W.I. CASE.
>
> *POINT III*
>
> DEFENDANT'S PLEA SHOULD BE VACATED BECAUSE IT WAS NOT PRECEDED BY THE REQUIRED **[*2]** DETERMINATION THAT IT WAS MADE WITH AN UNDERSTANDING OF THE CONSEQUENCES.
>
> *POINT IV*
> DEFENDANT'S PLEA SHOULD BE VACATED BECAUSE HE WAS NOT PLACED UNDER OATH AT THE PLEA HEARING.

We have considered defendant's contentions in light of the record and the applicable law and conclude they are without merit. We accordingly affirm the Law Division order denying defendant's request to withdraw his guilty plea.

I.

On June 27, 2015, Fair Lawn police issued defendant

summonses for: (1) a first-offense DWI; (2) underage operating a motor vehicle while intoxicated, N.J.S.A. 39:4-50.14; (3) operating a motor vehicle in the wrong direction on a one-way road, N.J.S.A. 39:4-85.1; (4) highway littering, N.J.S.A. 39:4-64; and (5) violation of his probationary driver's license, N.J.S.A. 39:3-13.8. On November 18, 2015, defendant appeared in the Fair Lawn Municipal Court, where he pled guilty to the DWI charge in exchange for dismissal of the remaining tickets.

Defendant, who was represented by counsel, was not placed under oath during the plea hearing. In support of his factual basis for the DWI charge, defendant admitted that he was driving on June 27, 2015, after having consumed at least one vodka drink—unsure if he had imbibed more than two—and the alcohol in his system impaired **[*3]** his driving ability. Defendant's colloquy with the court provided the sole basis for his plea, as the BAC reading taken by the police was deemed inadmissible because the police failed to observe defendant for the requisite twenty minutes before administering the blood alcohol test.

Before accepting his plea, the municipal court judge advised defendant that by entering a guilty plea, he would be giving up his right to trial, remain silent, and cross-examine witnesses. Defendant stated he understood those rights, still wished to plead guilty, and informed the court that his counsel had adequately answered all his questions and he was satisfied with her services.

The municipal court concluded there was a sufficient factual basis to sustain the DWI charge, and the parties executed a "Request to Approve Plea Agreement" form. In doing so, defendant acknowledged he "underst[ood] the nature of the amended charge(s) against [him] and the consequences of [the] guilty plea . . . [and he] [u]nderst[ood] and agree[d] voluntarily to the terms of the [plea] agreement . . . ." The court then sentenced defendant to a three-month suspension of his driver's license and required him to attend twelve hours **[*4]** at an Intoxicated Driver's Resource Center. It also imposed fines and penalties and informed defendant of the penalties for future DWI convictions.

As noted, on January 17, 2021, over five years after he pled guilty to his first DWI, the Borough of Point Pleasant Beach charged defendant with a second DWI and reckless driving. On April 7, 2021, defendant moved to vacate his 2015 DWI conviction, which the Fair Lawn Municipal Court denied after argument on May 12, 2021.

At the motion hearing, defendant's counsel sought to vacate his first DWI conviction so that defendant could enter a guilty plea for underage DWI, which he "submit[ted] [was] consistent with the factual basis made back in 2015." As counsel explained, defendant sought such relief because: "[t]he big difference is that with the pending case, he would then be facing a first offense, and could escape with significant penalties, but with an interlock device, as opposed to a one to two-year complete loss of license which would hinder his employment prospects." The court rejected defendant's argument and concluded increased penalties resulting from a second DWI conviction was an insufficient reason to disturb defendant's guilty **[*5]** plea.

Defendant then appealed to the Law Division and argued: (1) the factual basis he provided during his 2015 DWI plea colloquy was inadequate to support that offense; (2) the municipal court judge failed to make the requisite finding that defendant understood the consequences of entering the guilty plea before eliciting the factual basis; and (3) the notions of fundamental fairness required the plea be vacated. On October 4, 2021, the court denied defendant's municipal appeal in a written decision.

Applying de novo review, the court first determined "the factual basis entered into the record at the time of the guilty plea was sufficient to sustain the guilty plea for a DWI," as defendant admitted during his plea colloquy that he operated a vehicle while under the influence of alcohol which impaired his ability to drive. The court rejected defendant's argument that fundamental fairness compelled the court to vacate his guilty plea and noted defendant was neither unduly influenced nor pressured to plead guilty.

The court also considered the four factors established by the New Jersey Supreme Court in State v. Slater, 198 N.J. 145, 157-58, 966 A.2d 461 (2009), when assessing defendant's post-sentencing application. The court determined defendant **[*6]** was not entitled to withdraw his plea under Slater because he did not assert a "colorable claim of innocence," defendant's reasons for withdrawal "[did] not persuade the court," the plea was entered as part of a plea bargain, and vacating the plea would unfairly prejudice the State.

Defendant thereafter filed a supplemental letter asking the court to vacate his 2015 DWI conviction because the municipal court failed to place him under oath during the November 18, 2015 plea hearing. The court denied his

request in an October 19, 2021 order and written decision.

The court initially concluded it lacked jurisdiction to consider an issue raised for the first time after a de novo decision had been rendered. In the alternative, the court determined defendant's factual basis was sufficient to support the DWI conviction despite the municipal court judge's failure to place defendant under oath. The court noted "[t]he New Jersey Court Rules pertaining to guilty pleas in municipal court differ from the rules applicable to the trial court." Specifically, the court explained, although Rule 3:9-2 requires a criminal court to question the defendant under oath or affirmation before accepting a guilty plea, Rule 7:6-2(a)(1), the applicable **[*7]** municipal court *Rule*, lacks such an oath requirement.

II.

As noted, defendant first argues the municipal court failed to elicit an adequate factual basis to support his guilty plea as required by Rule 7:6-2(a)(1). Specifically, defendant claims "nothing in the defendant's plea colloquy . . . can reasonably be interpreted as providing a knowing factual basis to being 'under the influence,'" and "the [c]ourt's recitation of those three words and the accused answering 'yes' is insufficient."[1] We disagree.

When we review a Law Division order following the court's de novo review of an appeal from a municipal court, we "consider only the action of the Law Division and not that of the municipal court." State v. Oliveri, 336 N.J. Super. 244, 251, 764 A.2d 489 (App. Div. 2001). Although we are ordinarily limited to determining whether the Law Division's de novo factual findings "could reasonably have been reached on sufficient credible evidence present in the record[,]" State v. Johnson, 42 N.J. 146, 162, 199 A.2d 809 (1964), we owe no such deference here because the Law Division decided the motion under review on the papers without taking testimony, *see* State v. Harris, 181 N.J. 391, 421, 859 A.2d 364 (2004). Further, our "review of a trial court's denial of a motion to vacate a guilty plea for lack of an adequate factual basis is de novo." State v. Tate, 220 N.J. 393, 403-04, 106 A.3d 1195 (2015) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378, 658 A.2d 1230 (1995)).

To support a guilty plea, "our law requires **[*8]** that each element of the offense be addressed in the plea colloquy." *State v. Campfield, 213 N.J. 218, 231, 61 A.3d 1258 (2013)*. "Simply put, a defendant must acknowledge facts that constitute the essential elements of the crime." State v. Gregory, 220 N.J. 413, 420, 106 A.3d 1207 (2015). "The factual basis for a guilty plea can be established by a defendant's explicit admission of guilt or by a defendant's acknowledgement of the underlying facts constituting essential elements of the crime." Id. at 419 (citing *Campfield, 213 N.J. at 231*).

In *Campfield*, the Court recognized the judge's inquiry of a defendant during the plea hearing "need not follow a 'prescribed or artificial ritual.'" *213 N.J. at 231* (quoting State ex rel. T.M., 166 N.J. 319, 327, 765 A.2d 735 (2001)). "[D]ifferent criminal charges and different defendants require courts to act flexibly to achieve constitutional ends." *Ibid.* (quoting T.M., 166 N.J. at 327). The Court also noted a "defendant's admissions 'should be examined in light of all surrounding circumstances and in the context of an entire plea colloquy.'" *Id. at 231-32* (quoting T.M., 166 N.J. at 327).

A person violates *N.J.S.A. 39:4-50* by "operat[ing] a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug." "Intoxication" includes "not only . . . obvious manifestations of drunkenness but any degree of impairment that affects a person's ability to operate a motor vehicle." State v. Zeikel, 423 N.J. Super. 34, 48, 30 A.3d 339 (App. Div. 2011). "Impairment" refers to any **[*9]** diminution "of a person's physical or mental abilities to operate a motor vehicle." *Ibid.*

During the plea colloquy, the municipal court specifically asked defendant, "[y]ou're admitting to . . . operating a vehicle in the Borough of Fair Lawn on or about . . . June 27th near Hirschklau and Plaza Road northbound. And at that time, you were under the influence of alcohol. Is that correct?" Defendant answered in the affirmative and explained he had consumed multiple vodka drinks prior to driving. The court then asked, "[a]nd you understand you're admitting . . . that the . . . alcohol in your system affected your ability to operate the vehicle on June 27th?" Defendant again answered in the affirmative.

[1] Defendant further argues the Law Division improperly relied on unproven allegations in the 2015 Fair Lawn police reports, which were not provided in the record, to cure the inadequate factual basis provided by the plea colloquy. Although the court recited facts contained within the police report in its statement of the case, we do not read the court's analysis as relying in any way on those facts. Rather, the court relied solely on defendant's plea colloquy in determining whether a factual basis existed. Because we also conclude the plea colloquy established a proper factual basis, we do not address further the court's alleged reliance on the police reports.

We are satisfied defendant's explicit statement that he drove his vehicle while under the influence of alcohol and impaired satisfied each element of the DWI offense. That unequivocal acknowledgement satisfied the standards set forth in *Gregory* and provided an adequate factual basis to support defendant's guilty plea.

III.

Defendant next argues the Law Division erred in denying his request to withdraw his guilty plea, again contending: (1) fundamental fairness mandates such relief; (2) the municipal **[*10]** court failed to advise him of the consequences of his plea until after it elicited a factual basis; and (3) defendant was not placed under oath at the plea hearing. We have considered all of these arguments in the context of the four-part *Slater* test and reject them.

Where a defendant's plea is supported by an adequate factual basis, we review a court's decision denying a request to withdraw that plea for an abuse of discretion, *Tate, 220 N.J. at 404* (citing *State v. Lipa, 219 N.J. 323, 332, 98 A.3d 574 (2014)*), and will reverse only if the abuse of discretion "render[ed] the lower court's decision clearly erroneous," *Lipa, 219 N.J. at 332* (quoting *State v. Simon, 161 N.J. 416, 444, 737 A.2d 1 (1999)*).

In *Slater, 198 N.J. at 157-58*, our Supreme Court set forth the following four factors courts are to "consider and balance" in evaluating motions to withdraw a guilty plea supported by an adequate factual basis: "(1) whether the defendant has asserted a colorable claim of innocence; (2) the nature and strength of defendant's reasons for withdrawal; (3) the existence of a plea bargain; and (4) whether withdrawal would result in unfair prejudice to the State or unfair advantage to the accused." "No factor is mandatory; if one is missing, that does not automatically disqualify or dictate relief." *Id. at 162*.

This four-factor analysis applies to motions filed either before or **[*11]** after sentencing, but presentence motions will be granted in the "interests of justice," *Id. at 156* (quoting *R. 3:9-3(e)*), while "post-sentencing motions must meet a higher standard of 'manifest injustice' to succeed," *Ibid.* (quoting *R. 3:21-1*). Accordingly, as defendant moved to withdraw his plea over five years after sentencing, he must satisfy the higher manifest injustice standard. Further, defendant bears "the burden . . . to present some plausible basis for his request, and his good faith in asserting a defense on the merits." *Ibid.* (quoting *State v. Smullen, 118 N.J. 408, 416, 571 A.2d 1305 (1990)*).

Under the first *Slater* factor, we address whether "defendant has asserted a colorable claim of innocence." *Id. at 157*. As the Court noted, "[a] core concern underlying motions to withdraw guilty pleas is to correct the injustice of depriving innocent people of their liberty." *Id. at 158*.

This factor clearly weighs in favor of the State as defendant fails to advance any colorable claim of innocence. Instead, during the May 12, 2021 motion hearing defendant admitted his conduct was "consistent with the factual basis made back in 2015." And, before us, rather than arguing we should permit him to withdraw his plea because he was innocent of his initial DWI charge, defendant concedes he seeks to vacate **[*12]** his original plea only so he can immediately enter a guilty plea for underage DWI based on the same set of facts, and, thus, face lesser penalties for his second DWI conviction.

Under the second *Slater* factor, we address the "nature and strength of defendant's reasons for withdrawal." *Id. at 159*. In doing so, we "focus[] on the basic fairness of enforcing a guilty plea by asking whether defendant has presented fair and just reasons for withdrawal, and whether those reasons have any force." *Ibid.* This factor also weighs in favor of the State.

Defendant contends it was fundamentally unfair to preclude him from withdrawing his guilty plea because of the unique circumstances surrounding that plea. Defendant explains the underage drinking statute applies to "[a]ny person under the legal age . . . who operates a motor vehicle with a [BAC] of 0.01 [percent] or more, but less than 0.08 [percent] . . . ." *N.J.S.A. 39:4-50.14*. Defendant claims he was unfairly precluded from pleading guilty to that offense because his BAC reading was inadmissible. Additionally, he reasons, under the "legal age" DWI statute, "a DWI conviction exposes defendants to second offense DWI charges and their significantly greater penalties, whereas an [u]nderage **[*13]** DWI does not."

Defendant argues the doctrine of fundamental fairness therefore mandates withdrawal of his guilty plea because the State's errors rendered the BAC results inadmissible, thus depriving him of evidence that would potentially have placed his actions within the scope of the underage DWI statute and subjected him to lesser penalties for his second DWI. To cure this "anomaly"—

that underage defendants are prejudiced by breath test inadmissibility—defendant seeks to stipulate to a BAC between .01 and .07 percent and plead guilty to underage DWI.

"The doctrine of fundamental fairness 'is an integral part of due process, and is often extrapolated from or implied in other constitutional guarantees.'" State v. Miller, 216 N.J. 40, 71, 76 A.3d 1250 (2013) (quoting Oberhand v. Dir., Div. of Taxation, 193 N.J. 558, 578, 940 A.2d 1202 (2008)). "The doctrine effectuates imperat ives that government minimize arbitrary action, and is often employed when narrowed constitutional standards fall short of protecting individual defendants against unjustified harassment, anxiety, or expense." *Ibid.* (quoting Doe v. Poritz, 142 N.J. 1, 109, 662 A.2d 367 (1995)). "'Fundamental fairness is a doctrine to be sparingly applied.' The doctrine is 'applied in those rare cases where not to do so will subject the defendant to oppression, harassment, or egregious deprivation.'" Id. at 71-72 (citations **[*14]** omitted) (quoting Doe, 142 N.J. at 108).

We are satisfied this is not the "rare" case where the doctrine of fundamental fairness mandates withdrawal of defendant's guilty plea. As noted, defendant elected to plead guilty to DWI in exchange for the dismissal of fou r additional charges, including underage DWI, and, as far as we can discern from the record, he did so without undue pressure or harassment. Additionally, nothing in the record suggests defendant was precluded from stipulating to a lower BAC and pleading guilty to underage DWI during the plea hearing, and defendant does not argue as such. That defendant's counsel may have overlooked this solution does not constitute the "oppression, harassment, or egregious deprivation," *ibid.* (quoting Doe, 142 N.J. at 108), necessary to invoke the doctrine of fundamental fairness, nor does it constitute a "manifest injustice" as required under Slater to grant defendant's post-sentencing application.

Next, relying on Maida v. Kuskin, 221 N.J. 112, 123, 110 A.3d 867 (2015), defendant contends his plea was not entered knowingly because the court did not advise him of the consequences of pleading guilty to DWI until after eliciting a factual basis for that charge, contrary to Rule 7:6-2(a)(1).

Rule 7:6-2(a)(1) provides in relevant part:

> the court shall not . . . accept a guilty **[*15]** 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.
>
> [R. 7:6-2(a)(1).]

"The *Rule* thus contemplates that the plea be made in open court, that the municipal court judge make a sufficient inquiry to conclude that any plea is knowing and voluntary, and that there be a factual basis for the plea." Maida, 221 N.J. at 123. "For a plea to be knowing, intelligent, and voluntary, the defendant must understand the nature of the charge and the consequences of the plea." State v. Johnson, 182 N.J. 232, 236, 864 A.2d 400 (2005).

In performing the inquiry into whether a defendant understands the consequences of a plea, "a court is not responsible for informing a defendant of all consequences flowing from a guilty plea, [but] at a minimum the court must ensure that the defendant is made fully aware of those consequences that are 'direct' or 'penal.'" Id. at 237 (quoting State v. Howard, 110 N.J. 113, 122, 539 A.2d 1203 (1988)). "Even misinformation about a collateral consequence may vitiate a guilty plea if the consequence is a material element of the plea." State v. Jamgochian, 363 N.J. Super. 220, 225, 832 A.2d 360 (App. Div. 2003).

Having considered the record in light of these legal **[*16]** principles, we reject defendant's contention that his plea should be vacated because he allegedly did not understand the consequences of his plea prior to his plea colloquy. Although defendant correctly notes the municipal court judge did not specifically advise defendant of the range of penalties before accepting his guilty plea, defendant does not submit a certification or any other evidence substantiating that he did not know or understand either the direct or collateral consequences of his plea including any component of the sentence he received, and he has not alleged his sentence was excessive.

Further, defendant was sentenced immediately following his plea and therefore knew the direct consequences for almost six years before he moved to withdraw the plea. In addition, his three-month license suspension was undoubtedly completed well before he moved to withdraw his plea years later in 2021. We find defendant's long delay in moving to withdraw his plea significantly undermines any argument that he pleaded guilty without knowledge of the consequences he faced.

See Slater, 198 N.J. at 160 ("In general, the longer the delay in raising a reason for withdrawal, or asserting one's innocence, the greater the **[*17]** level of scrutiny needed to evaluate the claim.").

Finally, relying on Rule 3:9-2, defendant argues his guilty plea should be vacated because the municipal court failed to place him under oath during the plea hearing. Although we acknowledge prejudice might result from a municipal court's failure to place a defendant under oath prior t o eliciting a factual basis, the second Slater factor generally "requires trial courts to ascertain not only the existence of a valid defense but to determine whether a defendant has 'credibly demonstrated' why a 'defense was "forgotten or missed" at the t ime of the plea.'" State v. McDonald, 211 N.J. 4, 23, 47 A.3d 669 (2012) (quoting Slater, 198 N.J. at 160). Here, defendant never asserted any uncertainty about the veracity of the statement he provided during the unsworn plea colloquy, nor advanced any explanation for his delay in raising this defense.

Additionally, although we acknowledge the significance attendant to the oath requirement, *see infra* pp. 20, as the Law Division judge explained Rule 7:6-2(a)(1) does not require a defendant swear or affirm to an oath before providing a factual basis supporting a plea, contrary to Rule 3:9-2. We therefore decline to hold the municipal court's failure to place defendant under oath at the plea hearing entitles him to plea **[*18]** withdrawal.

While we are satisfied the failure to administer an oath to defendant does not warrant relief under Slater in the circumstances here, we refer the matter to the Municipal Court Practice Committee for its consideration of an amendment of Rule 7:6-2 to include the swearing-in requirement embedded in Rule 3:9-2. The Committee may also wish to address whether any proposed amendment of Rule 7:6-2 may have to include or accommodate a different inconsistency.

For example, defendants are expressly permitted to enter guilty pleas in municipal court in certain cases for which they need not appear to provide an oath or affirmation before a judge. *Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey*, Pressler & Verniero, *Current N.J. Court Rules* (2023). In those circumstances, the plea by mail form provides the following language at the bottom: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment." Richmond & Burns, *New Jersey Municipal Court Practice*, Appendix, Form 12, at 1304 (2022). Similarly, as a result of the COVID-19 pandemic, our Supreme Court has permitted defendants **[*19]** to plead guilty to DWI by mail and, consequently, a form with nearly identical language is in use. Ramsey, *New Jersey Drunk Driving Law*, "PLEA BY MAIL" § 1.5 (2021).

Neither our published case law nor relevant commentary has identified a reason for the discrepancy in the oath requirement between Rules 3:9-2 and 7:6-2.[2] Our Supreme Court noted in Maida, however, that Rule 7:6-2(a)(1) "is intended to mirror the protections of Rule 3:9-2." 221 N.J. at 123 (citing Pressler & Verniero, *Current N.J. Court Rules*, cmt. 2.1 on R. 7:6-3(a)(1) (2014)); *see also* State v. Gale, 226 N.J. Super. 699, 545 A.2d 279 (Law Div. 1988); State v. Martin, 335 N.J. Super. 447, 450, 762 A.2d 707 (App. Div. 2000); State v. Colon, 374 N.J. Super. 199, 212, 863 A.2d 1108 (App. Div. 2005).

In addition, we recognize an individual's sworn or affirmed testimony is not a mere formality and the oath requirement "constitutes a strong reminder that [a witness] has a special obligation to testify truthfully and that he is subject to punishment should he fabricate." State v. Caraballo, 330 N.J. Super. 545, 555, 750 A.2d 177 (App. Div. 2000). Consequently, "N.J.R.E. 603 requires that all prospective witnesses be sworn or affirmed." Id. at 554. "If the proposed witness refuses either to take an oath or make an affirmation or declaration, the witness should not be allowed to testify." *Ibid.* While N.J.R.E. 603 covers all prospective "witnesses" in evidentiary proceedings, it presumably applies with equal force to defendants pleading guilty.

Under the third Slater factor, we address whether the plea was entered as part of a plea bargain. As noted, **[*20]** defendant pled guilty for DWI in exchange for the dismissal of four other offenses arising out of the same incident. According to the Slater Court, "defendants have a heavier burden in seeking to withdraw pleas entered as part of a plea bargain." 198 N.J. at 160. This is because "[t]he system rests on the advantages both sides receive from it." Id. at 161.

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[2] The present version of Rule 7:6-2, which was adopted between the issuance of the 1991 Rules of Court and the 1992 Rules of Court, incorporated and expanded on the provisions in the former Rule 7:4-2(b). Pressler & Verniero, *Current N.J. Court Rules,* R. 7:6-2 note (2022). Nothing in the comments on Rule 7:6-2 or the former Rule 7:4-2 suggests the intentional omission of an oath or affirmation requirement for entering a guilty plea in municipal court. *Ibid.*

Accordingly, this factor clearly weighs in favor of the State.

Under the fourth *Slater* factor, we address whether withdrawal would result in any unfair prejudice or advantage. "There is no fixed formula to analyze the degree of unfair prejudice or advantage that should override withdrawal of a plea." *Ibid.* Relevant factors, however, include:

> the loss of or inability to locate a needed witness, a witness's faded memory on a contested point, . . . the loss or deterioration of key evidence . . . . whether the passage of time has hampered the State's ability to present important evidence . . . . [and] the State's efforts leading up to the plea and whether it is fair to require the State to repeat them.
>
> [*Ibid.*]

Here, over seven years have passed since the incident giving rise to the plea agreement. As noted, the State's case was entirely dependent upon the officer's observations **[*21]** at the time of the offense as the State failed to satisfy conditions precedent to introduce defendant's BAC results. Under these circumstances, to permit defendant to withdraw his plea would unfairly place the State at a disadvantage as it would require the State to prosecute an undisputedly stale claim. We therefore conclude the fourth *Slater* factor also weighs in favor of the State.

After considering the *Slater* factors in totality, we agree with the court that defendant failed to meet his burden of proving denial of his motion to vacate constituted manifest injustice. In this regard, we find most consequential defendant's multiple admissions to having driven under the influence and that he seeks only to avoid the consequences of having pled guilty to DWI. To the extent we have not specifically addressed any of the parties' arguments, it is because we have concluded they lack sufficient merit to warrant discussion in a written opinion. *R. 2:11-3(e)(2)*.

Affirmed.

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2000 - 2002 REPORT

OF

THE MUNICIPAL COURT PRACTICE

COMMITTEE

Submitted January 15, 2002

Table of Contents

I. PROPOSED RULE AMENDMENTS RECOMMENDED

A. Proposed Amendments to R. 7:6-2 - Pleas, Plea Agreements

On April 24, 2000, Acting Director Richard J. Williams issued a memorandum to all Presiding Judges-Municipal Courts regarding municipal court plea agreements and the implementation of R. 7:6-2. In that memorandum, Judge Williams advised that he had been asked by the Conference of Assignment Judges to elicit the assistance of the Presiding Judges to eliminate the practice of municipal courts accepting pleas without careful adherence to the requirements of R. 7:6-2. He reiterated that the rule requires that the terms and factual basis that support a plea agreement be fully set forth on the record and that any sentence recommendation accepted not circumvent the minimum sentence required by law.

In response to Judge Williams' memorandum, the Municipal Court Practice Committee recommended that R. 7:6-2(d)(5) be amended to make clear that when a plea agreement is reached the terms and factual basis that support the charges be fully set forth on the record pursuant to R. 7:6-2(a)(1). The proposed amendments to R. 7:6-2(d)(5) provide as follows:

7:6-2 Pleas, Plea Agreements

(a) No change.

(b) No change.

(c) No change.

(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, have 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. When a plea agreement is reached, its terms and the factual basis that supports [it] the charge(s) shall be fully set forth on the record pursuant to section(a)(1) of this Rule. If the judge determines that the interest 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) 7:4-2(b); 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)(5) revised _____, 2002 to be effective _____, 2002.

(d) Motions for Pretrial Detention. All prosecutor motions for pretrial detention must be made in Superior Court, in accordance with Rule 3:4A.

Page#2041-¶8

Note: Adopted August 30, 2016 to be effective January 1, 2017; caption amended and paragraphs (b) and (c) amended November 14, 2016 effective January 1, 2017.

Rule History

History and Analysis of Rule Amendments

Page#2041-¶9 Start Discussion

COMMENT

Page#2041-¶10 Start Discussion

1. Overview. The scheme of R. 7:4 is to restate all the bail provisions of Part III and former Part VII, applicable to the municipal court.

Page#2041-¶11 Start Discussion

2. R. 7:4-1; Right to Pretrial Release. Paragraph (a) of this rule is intended to mirror R. 3:26-1(a)(1), replacing the former right to bail with a right to pretrial release based on least restrictive non-monetary conditions. See further Comment to that rule. Rule 7:4-1(a) is limited to persons held on an arrest warrant for disorderly persons offenses. As noted in the comment to paragraph (b), infra, this seemingly leaves all other defendants held pending trial subject to the sometimes more restrictive pretrial release conditions that preceded bail reform. Finally it should be noted that to the extent R. 3:26-1(a)(1) has somewhat different conditions that may be imposed on pretrial release for both indictable and disorderly persons offenses and, to the extent R. 7:4-1 is in conflict it should be read to conform to R. 3:26-1. As noted, infra, these results are likely unintened and as such, clarifying amendment should be expected.

Page#2041-¶12 Start Discussion

Paragraph (b) provides primarily for the treatment of defendants arrested on a bench warrant and details the pretrial conditions of release and/or bail that applies to them. With respect to law enforcement encounters with defendants on outstanding municipal court bench warrants, Administrative Directive #04-22 established a uniform, statewide process for the immediate release on recognizance of certain defendants with outstanding municipal court bench warrants, subject to procedures promulgated by the Administrative Director of the Courts. This paragraph was amended effective September 2023 to codify that directive. If taken into custody the rule provides for bail with an emphasis on monetary conditions for these defendants rather than the formula for pretrial release on the "least restrictive non-monetary conditions ...," as in paragraph (a) because the assumptions of that paragraph do not apply as such defendants have already shown

Page#2042-¶1 Start Discussion

their inability to appear or have otherwise violated their pretrial release. To the extent that the language in paragraph (b)(i), "or other non-disorderly persons offenses within the jurisdiction of the municipal court," might be read as applying this more restrictive standard to those indictable offenses triable in the municipal courts, it must be noted that this is in conflict with the pretrial release standards of R. 3:26-1(a)(1), applicable to all indictable offenses. These consequences are likely to have been unintended and as a result, clarifying amendment should be expected.

Page#2042-¶2 Start Discussion

Paragraph (c) provides for the issuance of restraining orders as a condition of release when the defendant has been charged with a crime or offense involving domestic violence. Subparagraph (d)(1) provides a cross reference to R. 5:7A(d) for the procedure to be followed in issuing those restraining orders. Subparagraph (d)(2) provides for the electronic issuance of restraining orders as conditions of release pursuant to N.J.S. 2C:14-12 (Nicole's Law) and N.J.S. 2C:35-5.7 (Drug Offender Restraining Order Act of 1999). Subparagraph (d)(3) provides for the oral statement and the written certification of offense location that are required for the issuance of the drug offender restraining order.

Page#2042-¶3 Start Discussion

3. R. 7:4-2; Authority to Set Bail or Condition of Pretrial Release. R. 7:4-2 incorporates the relevant provisions of R. 3:26-2. Paragraph (a) provides for the setting of initial conditions of pretrial release pursuant to R. 3:4-2 and R. 3:26. See further Comments to Rules 3:4-2 and 3:26-2. To the extent R. 7:4-2 shares in the issues identified with R. 7:4-1, they should probably be seen as inadvertent and subject to future clarification. See further Comment 2., supra.

Page#2042-¶4 Start Discussion

Paragraph (b) limits its application to bench warrants and only provides for the setting of bail, not other conditions of release.

Page#2042-¶5 Start Discussion

Note, with respect to paragraph (c), that a recognizance is not required of a defendant released on conditions but not bail. See newly revised R. 7:4-3.

Page#2042-¶6 Start Discussion

Paragraph (d) applies to conditions of release in addition to bail and makes clear that such revisions must be made consistent with R. 7:4-9 except as provided by law.

Page#2042-¶7 Start Discussion

4. R. 7:4-3; Form and Place of Deposit, Location of Real Estate, Record of Recognizances, Discharge and Forfeiture Thereof. This rule restates the provisions of R. 3:26-4, adding, however, the references to the municipal court administrator and deputy administrator in conformance with N.J.S. 2B:12-10. Note that R. 3:26-3 (bail for material witness) has not been included in the Part VII rule

because the practice of arresting material witnesses has no applicability to the municipal court. The second paragraph to paragraph (a) of this rule provides that no recognizance is required of defendants released, pursuant to the release Order prepared by the Judge, on non-monetary conditions. The second paragraph of R. 7:4-3(a) is limited to disorderly persons offenses. To the extent the paragraph is silent with respect to all other offenses triable in municipal court, the silence should probably be seen as inadvertent and subject to future clarification. See further Comment 2., supra.

Page#2042-¶8 Start Discussion

5. R. 7:4-4; Justification of Sureties. This rule follows R. 3:26-5.

Page#2042-¶9 Start Discussion

6. R. 7:4-5; Forfeiture. R. 7:4-5 follows R. 3:26-6, providing, however, that whether or not to move for forfeiture is a matter within the prosecutor's discretion. The exercise of that discretion will be based upon, among other factors, the availability of the court's resources for the handling of an inordinate number of forfeiture applications.

Page#2042-¶10 Start Discussion

The rule makes clear that judgments forfeiting bail are subject to the bail registry established by R. 1:13-3 and requires both any notice of forfeiture and any forfeiture judgment to be served by the municipal court administrator or deputy court administrator on the corporate surety and its designated agents by ordinary mail to advise them of the consequence, namely removal from the registry, of failure to pay the bail or enter a timely written objection. Upon receipt of a judgment entered under R. 7:4-5(c), the Clerk of the Superior Court is required to serve an additional notice on the corporate surety by certified mail advising that unless payment is made within 15 days of the date of the notice, removal from the registry will ensue. Finally, the rule requires the court to consider timely objections and provides that it may, in its discretion, afford a hearing.

Page#2042-¶11 Start Discussion

7. R. 7:4-6; Exoneration. This rule follows R. 3:26-7.

Page#2042-¶12 Start Discussion

8. R. 7:4-8; Bail After Conviction. R. 7:4-8 makes clear that once an appeal to the Superior Court, Law Division, has been taken, any bail taken in the municipal court is to be forwarded, within 20 days, to the Criminal division Manager. This time period conforms to R. 3:23-2.

Page#2042-¶13 Start Discussion

The rule makes clear that the 20-day waiting period specified by the rule is not the time during which defendant may be placed on bail but rather the time within which the judge must decide the bail application. It also makes clear that bail pending appeal should only be required if the court has significant reservations regarding defendant's appearance on appeal.

Page#2042-¶14 Start Discussion

9. R. 7:4-9; Changes in Conditions of Release for Defendants Charged on an Initial Complaint-Warrant (CDR-2). This rule is largely self-explanatory. See

further Comments to R. 3:26-2 and R. 3:4A. To

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254 N.J. 98; 475 N.J. Super. 492; L. 2023 c. 75
The "What's New" feature brings the database current through:
N.J. cases app'd for pub. on September 15, 2023; U.S. Sup Ct cases through 216 L.Ed.2d 1178; N.J. Chap. Laws through L. 2023 c. 96
Cite this Volume
PRESSLER & VERNIERO, Current N.J. COURT RULES, (GANN) followed by a reference to authors' comment on specific rule, e.g., PRESSLER & VERNIERO, Current N.J. COURT RULES, Comment R. 4:4-4, (GANN)

Page#2043-¶1 Start Discussion

the extent the rule is is limited to disorderly persons offenses and is silent with respect to all other offenses triable in municipal court, this silence should probably be seen as inadvertent and subject to future clarification. See further Comment 2., supra.

Page#2043-¶2 Start Discussion

RULE 7:5. SEARCH WARRANTS; SUPPRESSION

Rule History

Page#2043-¶3 Start Discussion

7:5-1. Filing

Page#2043-¶4

(a) By Whom; Documents to be Filed. The judge issuing a search warrant shall attach to it the return, inventory, and all other papers related to the warrant, including affidavits and a transcript or summary of any oral testimony and, if applicable, a duplicate original search warrant. The judge shall promptly deliver these documents to the municipal court administrator, who shall file them with the vicinage Criminal Division Manager of the county in which the property was seized. The municipal court administrator shall retain in a confidential file copies of all papers filed with the Criminal Division Manager. If a tape or transmitted recording has been made, the municipal court administrator shall also send them to the Criminal Division Manager, but shall not retain a copy.

Page#2043-¶5

(b) Providing to Defendant; Inspection. All completely executed warrants, together with the supporting papers and recordings described in paragraph (a) of this rule, shall be provided to the defendant in discovery pursuant to R. 7:7-7 and, upon notice to the county prosecutor and for good cause shown, available for inspection and copying by any other person claiming to be aggrieved by the search and seizure.

Page#2043-¶6

Note: Source-R. (1969) 3:5-6(a),(c). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (b) caption and text amended December 4, 2012 to be effective January 1, 2013.

Rule History

Page#2043-¶7 Start Discussion

7:5-2. Motion to Suppress Evidence

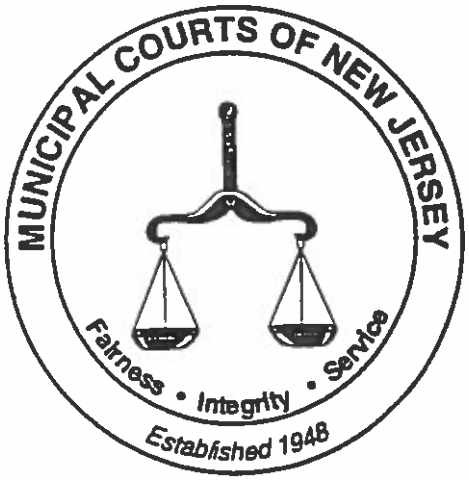
Page#2043-¶8

May 1, 1996

COMPREHENSIVE REVISION

OF

PART VII OF THE RULES GOVERNING THE COURTS



INTRODUCTION

In 1985, Chief Justice Robert N. Wilentz noted that, for far too long, the Municipal Courts have operated at the periphery of the judicial system. Since then, great strides have been made in achieving the goals of the 1985 Supreme Court Task Force on the Improvement of Municipal Courts to bring those courts into the mainstream of the modern judiciary. One key to the success of that effort will be the completion of the statewide installation of the Automated Traffic System (ATS) and its Criminal Component (ACS). Automation has already produced standardized case management, bookkeeping and recordkeeping practices in 460 of the 535 Municipal Courts. The remaining obstacle to be addressed and overcome is the persistent lack of statewide standardization, especially certain rules contained in Part III (Rules governing Criminal Practice) applicable to the Municipal Courts, which lack utility in the Municipal Court environment and foster disparate practices.

Criminal procedure rules designed for use in full-time court settings with full-time support staff over the years have become increasingly less relevant to the specialized needs of part-time Municipal Court systems in a modern, highly automated and technological environment. There is a particular concern with being able to more effectively accommodate the needs of *pro se* participants in the judicial process at the Municipal Court level. To the extent that the cross-referencing in the current rules has not been minimized, the complexity of Municipal Court practice and the irrelevancy of Superior Court oriented procedures have significantly increased, not only for *pro se* litigants, but also for the members of the legal community, especially those needing to quickly "come up to speed" to meet *pro bono* counsel obligations. Thus, it is now particularly timely that cross-referencing be minimized in each part of the Rules where emerging specialized practice needs can best be furthered by rules that are focused on meeting those needs.

In the Municipal Courts, the wide availability of automation, including terminals on the bench, has contributed significantly to standardizing administrative practices and reducing reliance on local rules of practice that have traditionally stood in the way of giving the Municipal Court system the same statewide look and feel to litigants. The extent to which the relatively few rules in Part III that are applicable to Municipal Courts do not or cannot be made to further that standardization initiative reflects an avoidable and unnecessary failure by the Judiciary to provide the best possible public service to the largest segment of the public that comes into contact with the court system.

Over the years, the expansion of the rights of criminal defendants has necessarily resulted in increased complexity in the criminal practice rules, which have made them, in many respects, less relevant and difficult to apply to the Municipal Courts in the non-

criminal areas of their jurisdiction. For example, the rules in Part III governing discovery are extremely difficult, if not impossible, to implement in a part-time Municipal Court setting. For one example, Rule 3:13-3 (b) provides for automatic discovery in every case. While this rule makes for good practice in processing criminal cases in the Superior Court, it has no utility in the Municipal Courts where there are generally no full-time prosecutors, court staff or judges. The alternatives are to modify that rule to contain a separate subsection applicable solely to the processing of disorderly persons and other cases in the Municipal Courts, develop a distinct Municipal Court rule in Part VII or continue the current practice of permitting local rules that are responsive to the practical day to day, real world practice needs in the Municipal Court system. It is the existence of those local rule relaxations or the simple honoring of Part III rules in the breach because of their practical inapplicability, that confirms that to the greatest extent possible all of the rules that govern Municipal Court practice should be located in Part VII. The collective expertise, in current Municipal Court practices, possessed by the members of the Supreme Court Committee on Municipal Courts parallels that found among the membership of the other Rules committees who properly focus their efforts on improving and advancing the judicial system.

With regard to Part III, whenever it would be appropriate to develop a subparagraph or separate section that requires a qualifying clause advising that "in the municipal courts . . . ," it is offered that the better practice would be to include that information in Part VII for simplicity, consistency, and ease of reference, since those provisions would have no applicability to Superior Court practice and would not be utilized by Superior Court Judges, unless they are exercising their concurrent Municipal Court jurisdiction. In that regard, just as the criminal practice scope rule (R 3 1-1) currently makes clear that they govern practice and procedure in all criminal proceedings in Superior Court and indictable offenses in all other courts, the Municipal Court scope rule (R. 7:1) should reflect that they govern all non-indictable quasi-criminal offenses in the Municipal Courts and all other courts. If it makes sense to cover the same topic in both rules to fully exploit the practice requirements and efficiencies in the Superior and Municipal Courts, then the same topic could and should be covered in both Parts III and VII. In that event, at the outset, the rules should be identical in both parts of the rule While that is clearly duplication, it is being minimized in the interest of practicality and administrative efficiency. Nevertheless it is also proposed that there be a standing joint subcommittee of the Municipal and Criminal Practice Committees to consult on future revisions of the rules to ensure consistency and continue to foster standardized practice In that latter regard, R. 7:10-1 (Local Rules) would also be repealed, because it would no longer serve any useful, practical purpose.

It is important to note that the proposed revisions will also have no appreciable impact on the size of the current rule book which contains 2,111 pages. Indeed, a mock print up of the present and proposed Part VII, reveals that all of the present Part VII rules (deleting the Pressler comments) total 8 pages, printed double sided. The proposed revision to Part VII (not including the Committee's commentary which will not be printed

in the Rules) will only be, at most, an additional 7 pages, printed on both sides, increasing the size of the GANN publication to 2,125 pages.

In sum, the purposes of the proposed comprehensive revision to Part VII of the rules are to: (1) promote, maintain and enforce standardized practices and procedures in all the Municipal Courts to better achieve the improvement goals the 1985 Supreme Court Task Force on the Improvement of Municipal Courts; (2) make the rules more readily accessible to *pro se* and *pro bono* practitioners; and (3) minimize cross-referencing between other parts of the Rules of Court to the greatest extent possible. This revision is crucial to a mature, efficient and fully developed Municipal Court System - one where local custom is subordinated to statewide standardized practice - to better insure that justice is evenhanded and perceived as being so by those who practice in or are served by those courts.

* * *

COMMENTARY

The source rule for this rule was R. 3:5-6. Subsection (a) of the source rule was amended to reflect filing procedures as they apply to Municipal, not Superior Court, practice.

Subsection (b) of the source rule has been deleted as that rule has no applicability to Municipal Court practice. In light of the deletion of subsection (b) of the source rule, subsection (c) has been redesignated as subsection (b).

This rule deals only with the procedure for transferring a search warrant issued by a Municipal Court Judge from Municipal to Superior Court. The authority for a Municipal Court Judge to issue a written search warrant properly remains in Part III since the subject matter of a search warrant deals exclusively with potentially indictable actions. See Commentary to scope rule, R. 7:1.

[7:6-7. Notice to Defendant on Guilty Plea

Before accepting a plea of guilty to a traffic offense other than a parking offense, the court shall inform the defendant that a record of the conviction will be sent to the Director of the Division of Motor Vehicles of this State or the Commissioner of Motor Vehicles of the state where defendant received his license to drive, to become a part of his driving record.

Note: Source – R.R. 8:10-9(a).]

RULE 7:6-2. MOTIONS TO SUPPRESS

Except for cases involving a search pursuant to warrant, motions to suppress evidence in matters subject to trial within the Municipal Court may be filed and heard therein in any case in which the Attorney General, county prosecutor or municipal prosecutor is prosecuting attorney on behalf of the State and on notice to said prosecutor. Written letter briefs shall be filed by the prosecutor and defense attorney. The briefing schedule shall reside in the discretion of the judge. All motions to suppress evidence shall be heard prior to the start of the trial.

When a motion to suppress evidence is granted, the order shall be entered forthwith and the municipal court administrator shall within ten days thereafter dispatch a copy

thereof to all parties and to the county prosecutor. All further proceedings in the Municipal Court shall be stayed pending a timely appeal by the State pursuant to R. 3:24. Property, the use of which is suppressed pursuant to an order entered under this rule, and which is not otherwise subject to a lawful detention, shall be delivered to the person entitled thereto only after a decision on any appeal by the State. Denial of a motion to suppress heard in the Municipal Court may be reviewed on appeal from a judgment of conviction pursuant to R. 3:23, notwithstanding that such judgment is entered following a guilty plea or the entry of a conditional discharge without a guilty plea, pursuant to N.J.S.A. 2C:36A-1. If a pretrial motion is not made in accordance with this rule, the defendant shall be deemed to have waived any objection during trial to the admission of evidence on the ground that such evidence was unlawfully obtained.

Source – R.R. 7:4-2(f) and 3:5-7(f).

COMMENTARY

The source rules for this rule are a combination of R. 7:4-2(f) and R. 3:5-7(f). Since June, 1989, the implementation date for R. 7:4-2(f), that first brought limited motions to suppress evidence allegedly unlawfully seized into Municipal Court practice, there has been a great deal of confusion among members of the bench and bar over which rule controls this matter in Municipal Courts. In the past, attorneys relied upon R. 3:5-7 for procedural guidance in cases involving motions to suppress evidence obtained without a warrant. This rule makes it clear that the source rule, R. 7:4-2(f), was applicable to those cases. It appears that the primary reasons for confusion were attorneys' reliance upon R. 3:5-7 in years prior to 1989 in Superior Court, an unfamiliarity with R. 7:4-2(f) and general confusion over the cross-referencing of Part III to Part VII Rules.

It should be noted that the rule states any motion to suppress must be heard pre-trial. In exceptional cases, the court may apply R. 1:1-2 in the interest of justice.

The rule, as revised, borrows from both of the source rules. The revised rule makes the filing of briefs mandatory by both the State and defense. The reasons for that are as follows: (1) Municipal Court Judges function without law clerks; (2) the law with regard to warrantless seizures of evidence from motor vehicles after a stop is constantly changing;

and (3) the judges need some reference point to decide these important motions. Yet the rule leaves the briefing schedule in the discretion of the judge. These changes recognize the importance of the issues to be decided, but take into account the necessary flexibility which has to be accorded a system with only part-time prosecutors, part-time public defenders or assigned counsel.

In addition, the revised rule reserves the defendant's right to appeal an adverse determination of a motion to suppress, notwithstanding the entry of a conditional discharge without a guilty plea, pursuant to N.J.S.A. 2C:36A-1. The rule also provides that if a pre-trial motion is not made in accordance with the rule, the defendant shall have waived any objection during the trial to the admission of evidence on the grounds that such evidence was unlawfully obtained. Under the current practice in Municipal Courts litigants will often fail to make the court aware of the unlawfully obtained evidence until the pendency of the trial. Hopefully, this rule revision will put an end to that practice.

RULE 7:6-3. SEARCH AND SEIZURE WITHOUT SEARCH WARRANT

R. 7:6 shall not be construed to make illegal a lawful search and seizure without a search warrant.

Source - R.R. 3:5-8.

[RULE 7:7. VIOLATIONS BUREAU

7:7.1. Designation; Functions

If the court determines that the efficient disposition of its business and the convenience of defendants so requires, it may establish a violations bureau and designate as the violations clerk the clerk or deputy clerk of the court or, with the prior approval of the Supreme Court pursuant to R. 1:17-1 any other appropriate official or employee (except an elected official or officer or employee of a police department) of the municipality in which the court is held, or if none is available, any other suitable and responsible person. The judge designated to preside over the Special Civil Part of the Superior Court may designate the clerk, deputy clerk or other employee of the court as violations clerk. The violations clerk shall accept appearances, waiver of trial, pleas of guilty and payments of fine and

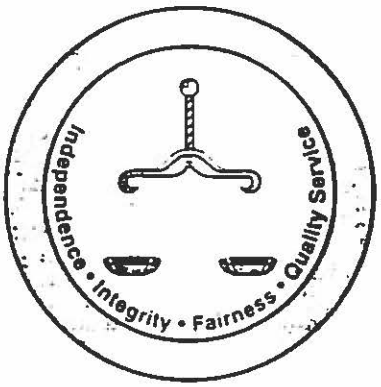
1998-2000 REPORT

OF

THE SUPREME COURT COMMITTEE

ON

MUNICIPAL COURTS



Submitted January 18, 2000

Table of Contents

II. PROPOSED RULE AMENDMENTS CONSIDERED AND REJECTED

A. Proposed Rule Amendment to R. 7:5-2(a) - Motion to Suppress Evidence - Jurisdiction

An assistant prosecutor in Union County asked the Committee to consider revising R. 7:5-2(a) to eliminate the requirement that the county prosecutor be notified in matters where the court entertains motions to suppress evidence. He indicated that the notifications failed to provide the prosecutors with sufficient information to make a determination whether to oppose the motion. The Committee surveyed the members of the County Prosecutors Association to ascertain if the opinion expressed by the assistant prosecutor was prevalent. The County Prosecutors Association reported that the concerns expressed by the assistant prosecutor were minor. Further, as written, R. 7:5-2(a) serves as a useful tool to advise prosecutors of pending motions to suppress. If the county prosecutor's office is interested in participating in a particular motion to suppress hearing, it will contact the municipal prosecutor or court for additional information. Based upon this information, the Committee concluded that R. 7:5-2(a) should not be revised.

B. Proposed New Rule Permitting Municipal Court Diversions

The Committee considered a proposed new rule that would permit municipal court judges to hold in abeyance certain cases involving first time offenders. In such cases, in lieu of a trial, the court would direct the defendant to participate in certain programs or require the defendant to fulfill certain conditions set by the court. It was suggested that this alternative to sentencing or "diversion," would ease court congestion caused by trying first time offenders. It would also permit such offenders to rehabilitate themselves without incurring a criminal record.

After discussing the proposed new rule, the Committee determined that there was no expressed legislative authority enabling municipal court judges to *sua sponte* suspend cases brought before the court, conditioned on the defendant successfully completing certain set terms. Additionally, because municipal courts do not have access to probation officers, it would be difficult to track the progress of a defendant. Based upon these factors, the Committee declined to recommend endorsing the proposed rule to the Supreme Court.