

**RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY  
RULES 3:26 BAIL**

**Rule 3:26-1. Right to Pretrial Release Before Conviction**

**(a) Persons Entitled; Standards for Fixing.**

(1) Persons Charged on a Complaint-Warrant or Warrant on Indictment. Except when the prosecutor files a motion for pretrial detention pursuant to N.J.S.A. 2A:162-18 and 19 and R. 3:4A, all persons for whom a complaint-warrant or a warrant on indictment is issued for an initial charge involving an indictable offense or disorderly persons offense shall be released before conviction on either personal recognizance, the execution of an unsecured appearance bond, or the least restrictive non-monetary conditions that, in the judgment of the court, will reasonably assure their presence in court when required, the protection of the safety of any other person or the community, and that the defendant will not obstruct or attempt to obstruct the criminal justice process. A defendant who is the subject of a warrant on indictment is an eligible defendant pursuant to N.J.S.A. 2A:162-15 et seq. In addition to these non-monetary conditions, monetary conditions may be set for a defendant but only when it is determined that no other conditions of release will reasonably assure the defendant's appearance in court when required. The court shall consider all the circumstances, the Pretrial Services Program's risk assessment and recommendations and any information that may have been provided by a prosecutor or the defendant on conditions of release before making any pretrial release decision. If the court enters a release order containing conditions contrary to those recommended by the Pretrial Services Program obtained using a risk assessment instrument then the court shall set forth its reasons for not accepting those recommendations. The court shall make a pretrial release determination no later than 48 hours after a defendant's commitment to the county jail.

When a defendant is charged with a crime or offense involving domestic violence, the court authorizing the release may, as a condition of release, prohibit the defendant from having any contact with the victim. The court may impose any additional limitations upon contact as otherwise authorized by N.J.S.A. 2C:25-26.

(2) Persons Charged on a Complaint-Summons or Summons on Indictment. A defendant who is charged on a complaint-summons or summons on indictment shall be released from custody. If the defendant later fails to appear in court when required and the court issues a bench warrant for the defendant's arrest, the court shall at that time either (A) order that the defendant be released on personal recognizance upon arrest or (B) set monetary bail.

**(b) Restrictions on Contact.** If the court imposes conditions of pretrial release that include restrictions on contact between the defendant and defendant's minor child, (1) a copy of the order imposing the restrictions shall be transmitted to the Family Part, and (2) such restrictions shall not affect contact authorized by an order of the Family Part in a child abuse/neglect case entered after any restriction on contact was imposed as part of a bail order.

**(c) Crimes with Bail Restrictions Defined in N.J.S.A. 2A:162-12.** If a defendant is charged with a crime with bail restrictions as defined in N.J.S.A. 2A:162-12, and the court has set a monetary bail or a combination of a monetary bail and non-monetary conditions of pretrial release, no later than the time of posting monetary bail or proffering the surety or bail bond, the defendant shall provide to the prosecutor, on the Bail Source Inquiry Questionnaire promulgated by the Attorney General, relevant information about the obligor, indemnifier or person posting cash bail, the security offered, and the source of any money or property used to post the cash bail or secure the surety or bail bond.

**(d) Extradition Proceedings.** Where a person has been arrested in any extradition proceeding pursuant to the Uniform Criminal Extradition Law, N.J.S.A. 2A:160-6 et seq., the court may set monetary bail or bond except where that person is charged with a crime punishable by death or life imprisonment. The court may also commit the person to the county jail as provided by the Uniform Criminal Extradition Law, N.J.S.A. 2A:160-6 et seq.

**(e) Issuance of Restraining Orders By Electronic Communication.**

(1) Temporary Domestic Violence Restraining Orders. Procedures authorizing the issuance of temporary domestic violence restraining orders by electronic communication are governed by R. 5:7A(b).

(2) N.J.S.A. 2C:35-5.7 and N.J.S.A. 2C:14-12 Restraining Orders. A judge may as a condition of release issue a restraining order pursuant to N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") and N.J.S.A. 2C:14-12 ("Nicole's Law") upon sworn oral testimony of a law enforcement officer or prosecuting attorney who is not physically present. Such sworn oral testimony may be communicated to the judge by telephone, radio or other means of electronic communication. The judge shall contemporaneously record such sworn oral testimony by means of a recording device if available; otherwise, adequate notes summarizing what is said shall be made by the judge. Subsequent to taking the oath, the law enforcement officer or prosecuting attorney must identify himself or herself, specify the purpose of the request and disclose the basis of the application. This sworn testimony shall be deemed to be an affidavit for the purposes of issuance of a restraining order. Upon issuance of the restraining order, the judge shall memorialize the specific terms of the order. That memorialization shall be either by means of a recording device, or by adequate notes. Thereafter, the judge shall direct the law enforcement officer or prosecuting attorney to memorialize the specific terms authorized by the judge on a form, or other appropriate paper, designated as the restraining order. This order shall be deemed a restraining order for the purpose of N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") and N.J.S.A. 2C:14-12 ("Nicole's Law"). The judge shall direct the law enforcement officer or prosecuting attorney to print the judge's name on the restraining order. A copy of the restraining order shall be served upon the defendant by any officer authorized by law. Within 48 hours, the law enforcement officer or prosecuting attorney shall deliver to the judge, either in person, by facsimile transmission or by other means of electronic communication, the signed restraining order along with a certification of service upon the defendant. The certification of

service shall include the date and time that service upon the defendant was made or attempted to be made in a form approved by the Administrative Director of the Courts. The judge shall verify the accuracy of these documents by affixing his or her signature to the restraining order.

(3) Certification of Offense Location for Drug Offender Restraining Orders. When a restraining order is issued by electronic communication pursuant to N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") where the law enforcement officer or prosecuting attorney is not physically present at the same location as the court, the law enforcement officer or prosecuting attorney must provide an oral statement describing the location of the offense. Within 48 hours the law enforcement officer or prosecuting attorney shall deliver to the judge, either in person, by facsimile transmission or by other means of electronic communication, a certification describing the location of the offense.

**Note:** Source -- R.R. 3:9-1(a) (b) (c) (d); paragraph (a) amended September 28, 1982 to be effective immediately; paragraphs (a), (b), (c) and (d) amended July 13, 1994 to be effective January 1, 1995; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; new paragraph (b) adopted, and former paragraphs (b), (c), and (d) redesignated as paragraphs (c), (d), and (e) June 15, 2007 to be effective September 1, 2007; new paragraph (c) adopted and former paragraphs (c), (d), and (e) redesignated as paragraphs (d), (e), and (f) July 9, 2008 to be effective September 1, 2008; paragraph (a) amended and new paragraph (g) adopted July 9, 2013 to be effective September 1, 2013; caption amended, text of paragraph (a) amended and redesignated as paragraph (a)(1) with caption added, new paragraph (a)(2) adopted, paragraphs (b) and (c) amended, former paragraphs (d) and (e) deleted; former paragraph (f) amended and redesignated as paragraph (d), former paragraph (g) amended and redesignated as paragraph (e) August 30, 2016 to be effective January 1, 2017; paragraph (a)(1) amended November 14, 2016 to be effective January 1, 2017; paragraphs (a)(1), (a)(2), and (d) amended December 6, 2016 to be effective January 1, 2017; captions and text of paragraphs (a)(1) and (a)(2) amended July 28, 2017 to be effective September 1, 2017.

### **Rule 3:26-2. Authority to Set Conditions of Pretrial Release**

**(a) Authority to Set Conditions of Pretrial Release.** A Superior Court judge may set conditions of pretrial release for a person charged with any offense and may set monetary bail or take any action in accordance with the Uniform Criminal Extradition Law, N.J.S.A. 2A:160-6 et seq., for any person arrested in any extradition proceeding. Conditions of pretrial release for any offense except homicide or a person arrested in any extradition proceeding may be set by any other judge provided that judge is setting conditions of pretrial release as part of a first appearance pursuant to Rule 3:4-2(b).

**(b) Conditions of Release.** Conditions of pretrial release shall be set pursuant to R. 3:4-2 (c) or (d) for persons for whom a complaint-warrant or a warrant on indictment is issued for an initial charge involving an indictable offense or a disorderly persons offense. A defendant who is the subject of a warrant on indictment is an eligible defendant pursuant to N.J.S.A. 2A:162-15 et seq.

(1) The court shall order the pretrial release of a defendant on personal recognizance or on the execution of an unsecured appearance bond when, after considering all the circumstances, the Pretrial Services Program's risk assessment and

recommendations on conditions of release prepared pursuant to N.J.S.A. 2A:162-25, and any information that may be provided by a prosecutor or the defendant, the court finds that the release would reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the defendant will not obstruct or attempt to obstruct the criminal justice process. When the court orders pretrial release pursuant to this subparagraph, the court shall, in the document authorizing the release, notify the defendant that the defendant must appear in court when required and that a failure to appear may result in the issuance of a warrant for the defendant's arrest.

(2) If the court does not find, after consideration, that the release described in subparagraph (1) of this paragraph will reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or the community, and that defendant will not obstruct or attempt to obstruct the criminal justice process, the court may order the pretrial release of the defendant subject to the following:

- (A) the defendant shall appear in court as required;
- (B) the defendant shall not commit any offense during the period of release;
- (C) the defendant shall avoid all contact with an alleged victim of the crime; and
- (D) the defendant shall avoid all contact with all witnesses who may testify concerning the offense that are named in the document authorizing the defendant's release or in a subsequent court order.

The court may impose other non-monetary conditions of release as set forth in subparagraph (3).

(3) The non-monetary condition or conditions of a pretrial release ordered by the court pursuant to this paragraph shall be the least restrictive condition, or combination of conditions, that the court determines will reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or community, and that the defendant will not obstruct or attempt to obstruct the criminal justice process, which may include that the defendant:

- (A) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able to reasonably assure the court that the defendant will appear in court when required, will not pose a danger to the safety of any other person or the community, and will not obstruct or attempt to obstruct the criminal justice process;
- (B) will maintain employment, or, if unemployed, actively seek employment;
- (C) maintain or commence an educational program;

(D) abide by specified restrictions on personal associations, place of abode or travel;

(E) report on a regular basis to a designated law enforcement agency, or other agency, or Pretrial Services Program;

(F) comply with a specified curfew;

(G) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(H) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance without a prescription by a licensed medical practitioner;

(I) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(J) return to custody for specified hours following release for employment, schooling, or other limited purposes;

(K) be placed in a pretrial home supervision capacity with or without the use of an approved electronic monitoring device. The court may order the defendant to pay all or a portion of the costs of the electronic monitoring, but the court may waive the payment for a defendant who is indigent and who has demonstrated to the court an inability to pay all or a portion of the costs; or

(L) satisfy any other condition that is necessary to reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the defendant will not obstruct or attempt to obstruct the criminal justice process.

If the court enters a release order that is contrary to the release recommendations, including release conditions, of the Pretrial Services Program obtained by using a risk assessment instrument, then the court shall set forth in the document authorizing the release its reasons for not accepting the release recommendations.

**(c) Modification of Release Conditions.**

(1) Monetary Bail Reductions. If a defendant is unable to post monetary bail, the defendant shall have that monetary bail reviewed promptly and may file an application with the court seeking a monetary bail reduction which shall be heard in an expedited manner.

(2) Review of Conditions of Release. Except as provided in paragraphs (d) or (e) a Superior Court judge may review the conditions of pretrial release set pursuant to Rule 3:26-1 on its own motion, or upon motion by the prosecutor or the defendant alleging that there has been a material change in circumstance that justifies a change in conditions. Any review of conditions pursuant to this rule shall be decided within 30 days of the filing of the motion. Upon a finding that there has been a material

change in circumstance, the judge may set new conditions of release but may not order the defendant detained except as provided in Rule 3:4A.

**(d) Violations of Conditions of Release.**

(1) Violation of Condition of Release When Defendant Released from Jail. Upon the motion of the prosecutor, when a defendant for whom a complaint-warrant or warrant on indictment was issued is released from custody, the court, upon a finding, by a preponderance of the evidence, that the defendant while on release violated a restraining order or condition of release, or upon a finding of probable cause to believe that the defendant has committed a new crime while on release, may revoke the defendant's release and order that the defendant be detained pending trial where the court, after considering all relevant circumstances including but not limited to the nature and seriousness of the violation or criminal act committed, finds clear and convincing evidence that no monetary bail, non-monetary conditions of release or combination of monetary bail and conditions would reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or the community, or that the defendant will not obstruct or attempt to obstruct the criminal justice process.

(2) Hearing on Violations of Conditions of Release. The defendant shall have a right to be represented by counsel and, if indigent, to have counsel appointed if he or she cannot afford counsel. The defendant shall be provided all available discovery. The defendant shall be afforded the right to testify, to present witnesses, to cross-examine witnesses who appear at the hearing and to present information by proffer or otherwise. Testimony of the defendant given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, but the testimony shall be admissible in proceedings related to the defendant's subsequent failure to appear, proceedings related to any subsequent offenses committed during the defendant's release, proceedings related to the defendant's subsequent violation of any conditions of release, any subsequent perjury proceedings, and for the purpose of impeachment in any subsequent proceedings. The defendant shall have the right to be present at the hearing. The rules governing admissibility of evidence in criminal trials shall not apply to the presentation and consideration of information at the hearing.

**(e) Person Released on a Complaint-Summons or Summons on Indictment Who is Thereafter Arrested on a Warrant for a Failure to Appear.** If a defendant charged on a complaint-summons or a summons on indictment is subsequently arrested on a warrant for a failure to appear in court when required, that defendant shall be eligible for release on personal recognizance or release on monetary bail by sufficient sureties at the discretion of the court. If monetary bail was not set when an arrest warrant for the defendant was issued, the court shall set monetary bail without unnecessary delay, but in no case later than 12 hours after arrest.

**Note:** Source -- R.R. 3:9-3(a) (b) (c); amended July 24, 1978 to be effective September 11, 1978; amended May 21, 1979 to be effective June 1, 1979; amended August 28, 1979 to be effective September 1, 1979; amended July 26, 1984 to be effective September 10, 1984; caption amended, former text amended and redesignated paragraph (a) and new paragraphs (b), (c) and (d) adopted July 13, 1994 to be effective January 1, 1995; paragraph (b) amended January 5, 1998 to be effective February 1, 1998; paragraph (d) amended July 9, 2013 to be effective September 1, 2013; paragraph (a)

amended July 27, 2015 to be effective September 1, 2015; caption amended, paragraphs (a) and (b) caption and text amended, former paragraphs (c) and (d) deleted, and new paragraphs (c), (d), and (e) adopted August 30, 2016 to be effective January 1, 2017; paragraphs (b) and (d)(1) amended November 14, 2016 to be effective January 1, 2017; paragraph (a) amended December 6, 2016 to be effective January 1, 2017; paragraphs (b) and (d)(1) amended, and caption and text of paragraph (e) amended July 28, 2017 to be effective September 1, 2017.

### **Rule 3:26-3. Bail for Witness**

**(a) Authority to Issue.** A Superior Court judge may, on application, conduct proceedings under N.J.S.A. 2C:104-1 et seq. as to any person who can give testimony relevant to the prosecution or defense of a pending indictment, accusation, or complaint for a crime or a criminal investigation before a grand jury.

**(b) Application.** The application shall be captioned in Superior Court and titled "In the Matter of (name of person alleged to be a material witness)". The application shall include a copy of the pending indictment, complaint, or accusation and an affidavit containing: (1) the name and address of the person alleged to be a material witness, (2) a summary of the facts believed to be known by the alleged material witness and the relevance to the criminal action or investigation, (3) the grounds for belief that the person has material and necessary information concerning the pending criminal action or investigation, and (4) the reasons why the alleged material witness is unlikely to respond to a subpoena. If the application requests an arrest warrant, the affidavit shall set forth why immediate arrest is necessary.

**(c) Order to Appear.** If there is probable cause to support issuance of a material-witness order against the person named in the application, the court may order the person to appear at a hearing to determine whether the person should be adjudged a material witness. The order and a copy of the application shall be served personally on the alleged material witness at least 48 hours before the hearing, unless the judge adjusts the time period for good cause, and shall advise the person of: (1) the time and place of the hearing, and (2) the right to be represented by an attorney and to have an attorney appointed if the person cannot afford one.

**(d) Warrant for Immediate Detention.** If there is clear and convincing evidence that the person will not be available as a witness unless immediately detained, the court may issue an order requiring that the person be brought before the court immediately. If the detention does not take place during regular court hours, the person shall be brought to the emergency-duty Superior Court judge. The judge shall inform the person: (1) the reason for detention, (2) the time and place of the hearing to determine whether the person is a material witness, and (3) that the person has a right to an attorney and to have an attorney appointed if the person cannot afford one. The judge shall set conditions for release, or, if there is clear and convincing evidence that the person will not be available as a witness unless detention is continued, the judge may order the person held until the material-witness hearing, which shall take place as soon as practicable but no later than 48 hours after detention.

**(e) Detention Without Prior Court Authorization.** Where a law enforcement officer has detained an alleged material witness without prior court authorization, the law enforcement officer shall immediately bring the person before a Superior Court

judge. If the detention does not take place during regular court hours, the person shall be brought to the emergent duty Superior Court judge. The judge shall determine whether there is probable cause to believe that the person is a material witness of a crime and, if an indictment, accusation, or complaint for that crime has not issued or if a grand jury has not commenced a criminal investigation of that crime, the judge shall determine whether there is probable cause to believe that, within 48 hours of the detention, an indictment, accusation, or complaint will issue or a grand jury investigation will commence. The judge will then proceed as if an application for an order had been made under paragraph (b).

**(f) Material Witness Hearing.** At the material-witness hearing, the person shall have the rights: (1) to be represented by an attorney and to have an attorney appointed if the person cannot afford one, (2) to be heard and to present witnesses and evidence, and (3) unless otherwise sealed by the court for exceptional circumstances, to have all of the evidence in support of the application, and (4) to confront and cross-examine witnesses. If there is probable cause to believe that the person possesses information material to the prosecution of a pending criminal action and is unlikely to respond to subpoena, the judge shall: (1) set forth findings of facts on the record, and (2) set the conditions of release of the material witness.

**(g) Conditions of Release or Detention.** Conditions of release for a material-witness or for a person held on an application for a material-witness order shall be the least restrictive to effect the order of the court including but not limited to: (1) placing the witness in the custody of a designated person or organization agreeing to supervise the person; (2) restricting the travel, association, or place of abode of the person during the period of detention; (3) requiring the person to report; (4) setting bail, or (5) imposing other reasonable restrictions on the material witness. No person may be detained unless the judge finds, by clear and convincing evidence, that detention is the only method that will secure the appearance of the material witness. A person detained as a material witness or pending a material-witness hearing shall be lodged in appropriate quarters and shall not be held in a jail or prison.

**(h) Deposition.** The prosecutor, defendant, or material witness may apply to the Superior Court for an order directing that a deposition be taken to preserve the witness's testimony, for use at trial if the witness becomes unavailable, as provided by Rule 3:13-2. After a deposition has been taken, the judge shall vacate the material-witness order and impose the least restrictive conditions to secure the appearance of the material witness.

**(i) Reconsideration of Material Witness Order.** On motion of the material witness, prosecutor, or defendant, a material witness order may be reconsidered at any time by the court that entered the order.

**Note:** Source -- R.R. 3:9-4. First paragraph re-designated paragraph (a) and paragraphs (b), (c), (d), (e), (f) and (g) added July 14, 1992 to be effective September 1, 1992; paragraph (g) amended July 13, 1994 and December 9, 1994, to be effective January 1, 1995; paragraphs (a), (b), (c) and (d) amended, former paragraphs (e), (f), and (g) amended and redesignated as paragraphs (f), (g), and (h), and new paragraphs (e) and (i) adopted July 10, 1998 to be effective September 1, 1998.



**Rule 3:26-4. Form and Place of Deposit; Location of Real Estate; Record of Recognizances, Discharge and Forfeiture Thereof**

**(a) Deposit of Monetary Bail.** A person admitted to monetary bail or a combination of monetary bail and non-monetary conditions of pretrial release shall, together with that person's sureties, sign and execute a recognizance before the person authorized to take monetary bail or, if the defendant is in custody, the person in charge of the place of confinement. The recognizance shall contain the terms set forth in R. 1:13-3(b) and shall be conditioned upon the defendant's appearance at all stages of the proceedings until final determination of the matter, unless otherwise ordered by the court. One or more sureties may be required. Cash may be accepted and in proper cases no security need be required. A corporate surety shall be one approved by the Commissioner of Insurance and shall execute the recognizance under its corporate seal, cause the same to be duly acknowledged and shall annex thereto proof of authority of the officers or agents executing the same and of corporate authority and qualification. Monetary bail given in the Superior Court shall be deposited with the Finance Division Manager in the county in which the offense was committed, provided that upon order of the court monetary bail shall be transferred from the county of deposit to the county in which defendant is to be tried. Real estate offered as monetary bail for indictable and non-indictable offenses shall be approved by and deposited with the clerk of the county in which the offense occurred and not with the Municipal Court clerk. In any county, with the approval of the Assignment Judge, a program may be instituted for the deposit in court of cash in the amount of 10 percent of the amount of monetary bail fixed.

**(b) Limitation on Individual Surety.** Unless the court for good cause otherwise permits, no surety, other than an approved corporate surety, shall enter into a recognizance or undertaking for monetary bail if there remains undischarged any previous recognizance or monetary bail undertaken by that surety.

**(c) Real Estate in Other Counties.** Real estate owned by a surety located in a county other than the one in which the monetary bail is taken may be accepted, in which case the clerk of the court in which the monetary bail is taken shall forthwith transmit a copy of the recognizance certified by that clerk to the clerk of the county in which the real estate is situated, who shall record it in the same manner as if the recognizance had been taken in that clerk's county.

**(d) Record of Recognizance.** The clerk of every court, except the municipal court, before which any recognizance shall be entered into shall record immediately into the Central Automated Bail System (CABS), the names of the persons entering into the recognizance, the amount thereof and the date of its acknowledgment. The Central Automated Bail System shall be kept in the clerk's office of the county in which such court shall be held, and be open for public inspection. In municipal court proceedings the record of the recognizance shall be entered in the docket book maintained by the clerk.

**(e) Record of Discharge; Forfeiture.** When any recognizance shall be discharged by court order upon proof of compliance with the conditions thereof or by reason of the judgment in any matter, the clerk of the court shall enter the word "discharged" and the date of discharge at the end of the record of such recognizance. When any recognizance is forfeited, the Finance Division Manager shall enter the word "forfeited", and the date of forfeiture at the end of the record of such recognizance, and shall give notice of such forfeiture to the county counsel. When real estate of the surety located in a county other than the one in which the bail was taken is affected, the clerk of the court in which such recognizance is given shall forthwith send notice of the discharge or forfeiture and the date thereof to the clerk of the county where such real estate is situated, who shall make the appropriate entry at the end of the record of such recognizance.

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

**(g) Ten Percent Cash Bail.** Except in first or second degree cases and certain crimes or offenses involving domestic violence as set forth in N.J.S.A. 2A:162-12 and unless the order setting monetary bail specifies to the contrary for good cause shown, whenever monetary bail is set pursuant to Rule 3:26-1, monetary bail may be satisfied by the deposit in court of cash in the amount of ten-percent of the amount of monetary bail fixed and defendant's execution of a recognizance for the remaining ninety percent. No surety shall be required unless the court fixing monetary bail specifically so orders. When cash equal to ten-percent of the monetary bail fixed is deposited pursuant to this Rule, if the cash is owned by someone other than the defendant, the owner shall charge no fee for the deposit other than lawful interest and shall submit an affidavit or certification with the deposit so stating and also listing the names of any other persons for whom the owner has deposited monetary bail. The person making the deposit authorized by this subsection shall file an affidavit or certification concerning the lawful ownership thereof, and on discharge such cash may be returned to the owner named in the affidavit or certification.

**Note:** Source-R.R. 3:9-5(a)(b)(c)(d)(e)(f)(g). Paragraph (a) amended June 29, 1973 to be effective September 10, 1973; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (g) adopted November 5, 1986 to be effective January 1, 1987; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraphs (f) and (g) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a), (b) and (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (g) amended February 27, 1995 to be effective immediately; paragraphs (a), (d), (e), (f) and (g) amended June 15, 2007 to be effective September 1, 2007; paragraph (g) amended July 9, 2013 to be effective September 1, 2013; paragraph (a) caption and text amended, paragraphs (b), (c) and (g) amended August 30, 2016 to be effective January 1, 2017.

### **Rule 3:26-5. Justification of Sureties**

Every surety, except an approved corporate surety, shall justify by affidavit and be required to describe therein the property by which the surety proposes to justify and the encumbrances thereon, the number and amount of other recognizances and undertakings for monetary bail entered into by the surety and remaining undischarged, if any, and all the surety's other liabilities. No recognizance shall be approved unless the surety thereon shall be qualified.

**Note:** Source-R.R. 3:9-6; amended July 13, 1994 to be effective September 1, 1994; amended August 30, 2016 to be effective January 1, 2017.

### **Rule 3:26-6. Forfeiture**

**(a) Declaration; Notice.** Declaration; Notice. Upon breach of a condition of a recognizance, the court on its own motion shall order forfeiture of the monetary bail, and the finance division manager shall forthwith send notice of the forfeiture, by ordinary mail, to county counsel, the defendant, and any surety or insurer, bail agent or agency whose names appear on the bail recognizance. Notice to any insurer, bail agent or agency shall be sent to the address recorded in the Bail Registry maintained by the Clerk of the Superior Court pursuant to R. 1:13-3. The notice shall direct that judgment will be entered as to any outstanding monetary bail absent a written objection seeking to set aside the forfeiture, which must be filed within 75 days of the date of the notice. The notice shall also advise the insurer that if it fails to satisfy a judgment entered pursuant to paragraph (c), and until satisfaction is made, it shall be removed from the Bail Registry and its bail agents and agencies, guarantors, and other persons or entities authorized to administer or manage its bail bond business in this State will have no further authority to act for it, and their names, as acting for the insurer, will be removed from the Bail Registry. In addition the bail agent or agency, guarantor or other person or entity authorized by the insurer to administer or manage its bail bond business in this State who acted in such capacity with respect to the forfeited bond will be precluded, by removal from the Bail Registry, from so acting for any other insurer until the judgment has been satisfied. The court shall not enter judgment until the merits of any objection are determined either on the papers filed or, if the court so orders for good cause, at a hearing. In the absence of objection, judgment shall be entered as provided in paragraph (c), but the court may thereafter remit it, in whole or in part, pursuant to the court rules and/or administrative directives, including but not limited to the Revised Remission Guidelines.

**(b) Setting Aside.** The court may, either before or after the entry of judgment, direct that an order of forfeiture or judgment be set aside, in whole or in part, pursuant to the court rules and/or administrative directives, including but not limited to the Revised Remission Guidelines, upon such conditions as it imposes.

**(c) Enforcement; Remission.** In the absence of a motion, when a forfeiture is not set aside or satisfied, the court shall, upon expiration of the 75 days provided for in paragraph (a), summarily enter a judgment of default for any outstanding bail and execution may issue thereon.

The time period of 75 days may be extended by the court to permit one stay by consent order of no more than 30 days. Entry of judgment shall follow, unless upon motion to the court a longer period is permitted based upon a finding of exceptional circumstances.

After entry of such judgment, the court may remit it in whole or in part, pursuant to the court rules and/or administrative directives, including but not limited to the Revised Remission Guidelines. If, following the court's decision on an objection pursuant to paragraph (a) of this rule, the forfeiture is not set aside or satisfied in whole or in part, the court shall enter judgment for any outstanding bail and, in the absence of satisfaction thereof, execution may issue thereon.

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

**Note:** Source -- R.R. 3:9-7(a) (b) (c) (first sentence) (d); paragraphs (a) and (c) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a), (b) and (c) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) amended August 30, 2016 to be effective January 1, 2017; paragraphs (a), (b) and (c) amended July 28, 2017 to be effective September 1, 2017.

### **Rule 3:26-7. Exoneration**

When the condition of the recognizance has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any monetary bail. A surety may be exonerated by a deposit of cash in the amount of the recognizance or by a timely surrender of the defendant into custody.

**Note:** Source-R.R. 3:9-8; amended August 30, 2016 to be effective January 1, 2017.

### **Rule 3:26-8. Bail Sufficiency; Source Hearing**

**(a) Time and Notice.** Where a defendant has posted monetary bail the State may request either orally or in writing, at any time prior to the commencement of trial, a hearing pursuant to N.J.S.A. 2A:162-13. The request shall be made on notice to the

defendant's counsel, or on notice to the defendant if he or she is unrepresented at the time the request is made.

**(b) Request for Hearing.** If the State requests a hearing pursuant to N.J.S.A. 2A:162-13 and the defendant is charged with a crime enumerated in paragraph (a) of N.J.S.A. 2A:162-12, the court shall conduct a hearing within the time prescribed by section (c) hereof. If the State requests a hearing pursuant to N.J.S.A. 2A:162-13 and the defendant is not charged with a crime enumerated in paragraph (a) of N.J.S.A. 2A:162-12, the State must demonstrate a reasonable and well grounded basis to warrant an inquiry by the court regarding:

(1) the reliability of the obligor or person posting cash bail, the value and sufficiency of any security offered, the relationship of the obligor or person posting cash bail to the defendant, and the defendant's interest in ensuring that the bail is not forfeited, or

(2) whether the funds used to post the cash bail or secure the bail bond were acquired as a result of criminal or unlawful conduct.

If the court grants the State's request for a hearing as to a defendant who is not charged with a crime enumerated in paragraph (a) of N.J.S.A. 2A:162-12, the court shall set forth on the record and in the bail order the reasons for granting the request.

**(c) Time of Hearing.** The court shall conduct a hearing required or authorized pursuant to N.J.S.A. 2A:162-13 within three (3) business days after monetary bail is posted or proffered if defendant is incarcerated, or within a reasonable period of time after granting the request if the defendant has been released on bail.

**(d) Release of Defendant; Failure to Appear.** If the defendant has not yet been released when the State requests a hearing for a person charged with a crime enumerated in N.J.S.A. 2A:162-12 or when the court grants a request for a hearing for any other offense, the defendant shall remain in custody until further order of the court. If the defendant has already been released after posting monetary bail, the conditions of the defendant's pretrial release status shall be maintained until the completion of the hearing and the defendant will be notified when to appear in court for the hearing. Should the defendant fail to appear for the hearing the monetary bail shall be forfeited and a warrant shall issue for the arrest of the defendant.

**(e) Hearing.** At the hearing pursuant to N.J.S.A. 2A:162-13, the court may order the examination, under oath or otherwise, of any person who may possess relevant information, and may inquire into any matter appropriate to its determination, including, but not limited to, the following:

(1) The character, background and reputation of the person posting cash bail;

(2) The relationship of the person posting cash bail or securing a bail bond to the defendant;

(3) The source of any money posted as cash bail and whether any such money constitutes the fruits of criminal or unlawful conduct;

(4) The character, background and reputation of any person who has indemnified or agreed to indemnify an obligor on the bond;

(5) The character, background, and reputation of any obligor, or, in the case of a surety bond, the qualifications of the surety and its executing agent;

(6) The source of any money or property deposited by any obligor as security and whether such money or property constitutes the fruits of criminal or unlawful conduct; and

(7) The source of any money or property delivered or agreed to be delivered by any obligor as indemnification on the bond and whether such money or property constitutes the fruits of criminal or unlawful conduct.

**(f) Order.** At the conclusion of the hearing, the court shall make specific findings of fact and issue an order complying with N.J.S.A. 2A:162-13(b) regarding the person posting or proffering cash bail or serving as obligor on any bond, the sufficiency and value of the security for monetary bail posted or proffered by the defendant, the source of funds used to post cash bail or secure a bail bond and identifying the approved source(s) of monetary bail. The defendant shall not be released from custody unless he or she complies with the conditions of the court's order. If the defendant has already been released, he or she shall be returned to custody, immediately, and not be released until the conditions of the court order regarding the bail are satisfied.

**(g)** Nothing herein shall prevent the court from otherwise setting monetary bail, or altering monetary bail on motion therefor, in accordance with the rules of court.

**Note:** Adopted July 9, 2008 to be effective September 1, 2008; paragraphs (a), (c), (d), (f), and (g) amended August 30, 2016 to be effective January 1, 2017.

### **Rule 3:26-9. Disclosures to Pretrial Services Program: Confidentiality**

(a) No statement or other disclosure, written or otherwise, made by a defendant to the Pretrial Services Program may be used by the prosecution to prove any crime or offense alleged in the pending case.

(b) Except as provided in paragraph (c) or (d), all statements or other disclosures, written or otherwise, made by a defendant to the Pretrial Services Program shall be used only for the purposes of (1) making recommendations to the court concerning the release or detention of the defendant, (2) monitoring or enforcing any nonmonetary release conditions, or (3) determining the defendant's eligibility for the services of the Office of the Public Defender, and shall otherwise remain confidential.

(c) Nothing in paragraphs (a) or (b) shall be construed to limit the use of any such disclosure in any subsequent prosecution for:

(1) Fraudulently obtaining pretrial release, or

(2) Fraudulently obtaining the services of the public defender.

(d) Nothing in paragraphs (a) or (b) shall be construed to limit the use of any such disclosure:

(1) In pretrial release modification or revocation proceedings, or

(2) For the purpose of compiling presentence reports.

(e) To the extent that paragraphs (b), (c), or (d) authorize the use of a disclosure, such disclosure shall be limited to the minimum information necessary to facilitate the authorized use and shall not be used if the information is available from another source.

(f) At the defendant's initial interview by the Pretrial Services Program, the defendant shall be advised of the permissible uses of any statements or disclosures made to the Pretrial Services Program.

**Note:** Adopted July 28, 2017 to be effective September 1, 2017.