

## **RULE 3:15. Joinder And Severance**

### **3:15-1. Trial of Indictments or Accusations Together**

- **(a) Permissible Joinder.** The court may order 2 or more indictments or accusations tried together if the offenses and the defendants, if there are 2 or more, could have been joined in a single indictment or accusation. The procedure shall be the same as if the prosecution were under such single indictment or accusation.
- **(b) Mandatory Joinder.** Except as provided by R. 3:15-2(b), a defendant shall not be subject to separate trials for multiple criminal offenses based on the same conduct or arising from the same episode, if such offenses are known to the appropriate prosecuting officer at the time of the commencement of the first trial and are within the jurisdiction and venue of a single court.

Note: Source-R.R. 3:5-6. Paragraph (a) amended and paragraph (b) adopted July 29, 1977 to be effective September 6, 1977; paragraph (b) revised November 2, 1987 to be effective January 1, 1988.

### **3:15-2. Relief From Prejudicial Joinder**

- **(a) Motion by State Before Trial.** If two or more defendants are to be jointly tried and the prosecuting attorney intends to introduce at trial a statement, confession or admission of one defendant involving any other defendant, the prosecuting attorney shall move before trial on notice to all defendants for a determination by the court as to whether such portion of the statement, confession, or admission involving such other defendant can be effectively deleted therefrom. The court shall direct the specific deletions to be made, or, if it finds that effective deletions cannot practically be made, it shall order separate trials of the defendants. Upon failure of the prosecuting attorney to so move before trial, the court may refuse to admit such statement, confession or admission into evidence at trial, or take such other action as the interest of justice requires.
- **(b) Motion by Defendant and State.** If for any other reason it appears that a defendant or the State is prejudiced by a permissible or mandatory joinder of offenses or of defendants in an indictment or accusation the court may order an election or separate trials of counts, grant a severance of defendants, or direct other appropriate relief.
- **(c) Time.** A motion for separate trial of counts of an indictment or accusation must be made pursuant to R. 3:10-2, unless the court, for good cause shown, enlarges the time.

Note: Source-R.R. 3:5-7. Paragraph (b) amended July 29, 1977 to be effective September 6, 1977; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (c) adopted July 26, 1984 to be effective September 10, 1984; paragraphs (a) and (c) amended July 13, 1994 to be effective January 1, 1995.

### **3:15-3. Trial of Criminal Offenses and Lesser, Related Infractions**

- **(a) Joinder of Criminal Offense and Lesser Related Infraction.**
  - **(1)** Except as provided in paragraph (b), the court shall join any pending non-indictable complaint for trial with a criminal offense based on the same conduct or arising from the same episode.
  - **(2)** Regardless of whether a jury sits as the finder of facts with respect to the criminal offense, and unless the complaint charges a disorderly persons offense or a petty disorderly persons offense that must be submitted to the jury in accordance with the provisions of N.J.S.A.2C:1-8(e), the Superior Court judge shall sit as a municipal court judge on the complaint and shall render the verdict with respect to the complaint on the proofs adduced in the course of trial.
  - **(3)** If evidence is held to be admissible with respect to the trial of the complaint but inadmissible with respect to the trial of the criminal offense, the court shall

hear that evidence outside of the jury's presence and may, in its discretion, postpone such hearing until the jury has retired to deliberate. The court shall not render its verdict on the complaint until the jury has rendered its verdict or until the jury has been dismissed.

- **(b) Relief From Joinder.** If for any reason it appears that a defendant or the State is prejudiced by the joinder required by paragraph (a), the court may decline to join or may grant other appropriate relief. A defendant's request to avoid joinder shall constitute a waiver of any claim against twice being placed in jeopardy that would not have arisen had the defendant's request been denied.
- **(c) Consequence of Failure to Join.** In no event shall failure to join as required in paragraph (a) be deemed to constitute grounds for barring a subsequent prosecution of the complaint except as required by statute or by the Federal or State Constitutions.

**Note:** Adopted January 14, 1991 to be effective September 1, 1992.