

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 7:3. PROCEEDINGS BEFORE THE COMMITTING JUDGE;
PRETRIAL RELEASE

7:3-1. Procedure After Arrest

(a) First Appearance; Time; Defendants Not in Custody. Following the filing of a complaint and service of process upon the defendant, the defendant shall be brought, without unnecessary delay, before the court for a first appearance.

(b) First Appearance; Time; Defendants Committed to Jail. All defendants who are in custody shall have the first appearance conducted within 48 hours of their commitment to jail. For defendants incarcerated on an initial charge, on a Complaint-Warrant (CDR-2) for an indictable or disorderly persons offense, the first appearance shall be conducted at a centralized location and by a judge designated by the Chief Justice, as provided in Rule 3:26. For all other incarcerated defendants within the jurisdiction of the municipal court who require a first appearance, the first appearance shall be conducted by a judge authorized to set bail or other conditions of release; this includes those charged on an initial Complaint-Warrant (CDR-2) for a petty disorderly persons offense.

(c) Custodial Arrest Without Warrant.

(1) Preparation of a Complaint and Summons or Warrant. A law enforcement officer making a custodial arrest without a Complaint-Warrant (CDR-2) shall take the defendant to the police station where a complaint shall be immediately prepared. The complaint shall be prepared on a complaint-summons form (CDR-1 or Special Form of Complaint and Summons), unless the law enforcement officer determines that one or more of the factors in R. 7:2-2(b) applies. Upon such determination, the law enforcement officer may prepare a Complaint-Warrant (CDR-2) rather than a complaint summons.

(2) Probable Cause; Issuance of Process. If a Complaint-Warrant (CDR-2) is prepared, the law enforcement officer shall, without unnecessary delay, but in no event later than 12 hours after arrest, present the matter to a judge, or in the absence of a judge, to a municipal court administrator or deputy court administrator who has been granted authority to determine whether a Complaint-Warrant (CDR-2) or summons will issue. The judicial officer shall determine whether there is probable cause to believe that an offense was committed and that the defendant committed an offense. If probable cause is found, a summons or Complaint-Warrant (CDR-2) may issue. If the judicial officer determines that the defendant will appear in response to a summons, a summons shall be issued consistent with the standard prescribed by R. 7:2-2. If the judicial officer determines that a warrant should issue, consistent with the standards prescribed by R. 7:2-2 after the Complaint-Warrant (CDR-2) is issued, the defendant charged with a disorderly persons offense shall be remanded to the county jail pending

a determination of conditions of pretrial release. If the defendant is charged on a Complaint-Warrant (CDR-2) with a petty disorderly persons offense or any other non-disorderly persons offense within the jurisdiction of the municipal court, bail shall be set without unnecessary delay, but in no event later than 12 hours after arrest. The finding of probable cause shall be noted on the face of the summons or Complaint-Warrant (CDR-2). If no probable cause is found, no process shall issue and the complaint shall be dismissed by the judge.

(3) Summons. If a complaint-summons form (CDR-1 or Special Form of Complaint and Summons) has been prepared, or if a judicial officer has determined that a summons shall issue, the summons shall be served and the defendant shall be released after completion of post-arrest identification procedures required by law and pursuant to R. 7:2-2 (i).

(d) Non-Custodial Arrest. A law enforcement officer charging any offense may personally serve a complaint-summons (Special Form of Complaint and Summons) at the scene of the arrest without taking the defendant into custody.

(e) Arrest Following Bench Warrant. If a defendant is arrested on a bench warrant on an initial summons and monetary bail was not set at warrant issuance, a bail determination or release on personal recognizance must occur without unnecessary delay and no later than 12 hours after arrest. If the defendant is unable to post bail, the court shall review that bail promptly. The defendant may file an application with the court seeking a bail reduction; such bail reduction motion shall be heard in an expedited manner.

Note: Source -- R. (1969) 7:2, 7:3-1, 3:4-1. Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (b)(1) and (b)(2) amended July 12, 2002 to be effective September 3, 2002; paragraph (b) caption amended, paragraphs (b)(1) and (b)(2) amended, and new paragraph (c) adopted July 28, 2004 to be effective September 1, 2004; paragraph (a) caption and text amended, new paragraph (b) adopted, former paragraph (b) amended and redesignated as paragraph (c) , and text amended, former paragraph (c) redesignated as paragraph (d), and new paragraph (e) adopted August 30, 2016 to be effective January 1, 2017; paragraphs (b), (c)(2) and (c)(3) amended November 14, 2016 to be effective January 1, 2017.

7:3-2. Hearing on First Appearance; Right to Counsel

(a) Hearing on First Appearance. At the defendant's first appearance, the judge shall inform the defendant of the charges and shall furnish the defendant with a copy of the complaint or copy of the electronic ATS/ACS record of the complaint, if not previously provided to the defendant. The judge shall also inform the defendant of the range of penal consequences for each offense charged, the right to remain silent and that any statement made may be used against the defendant. The judge shall inform the defendant of the right to retain counsel or, if indigent, to have counsel assigned pursuant to paragraph (b) of this rule. The defendant shall be specifically asked whether legal representation is desired and defendant's response shall be recorded on the complaint. If the defendant is represented at the first appearance or then affirmatively

states the intention to proceed without counsel, the court may, in its discretion, immediately arraign the defendant pursuant to R. 7:6-1.

(b) Assignment of Counsel. If the defendant asserts indigency but does not affirmatively state an intention to proceed without counsel, the court shall order defendant to complete an appropriate application and other forms prescribed by the Administrative Director of the Courts. Pursuant to law, the judge shall either order defendant to pay any application fee or shall waive its payment. If the court is satisfied that the defendant is indigent and that the defendant faces a consequence of magnitude or is otherwise constitutionally or by law entitled to counsel, the court shall assign the municipal public defender to represent the defendant. The "Guidelines for Determining a Consequence of Magnitude" are contained in the Appendix to Part VII of the Rules of Court. The court may, however, excuse the municipal public defender for cause and assign counsel to represent the defendant, without cost to the defendant from, insofar as practicable, a list of attorneys maintained by the Assignment Judge. Assigned counsel shall promptly file an appearance pursuant to R. 7:7-9. The court shall allow the defendant a reasonable time and opportunity to consult trial defense counsel before proceeding further. Assigned counsel shall represent the defendant through trial and, in the event of a conviction, through sentencing, including advising the defendant of the right to appeal. If the defendant elects to appeal, assigned counsel or the municipal public defender shall prepare and file the notice of appeal and an application for the assignment of appellate counsel, but neither assigned counsel nor the municipal public defender shall act as appellate counsel or represent defendant on any subsequent application for post-conviction relief unless specifically so assigned by the court. Assigned counsel shall, however, be responsible for the representation of the defendant on the appeal upon failure to file either the notice of appeal or the application for the assignment of counsel on appeal.

Note: Source-R. (1969) 7:2, 7:3-1, 3:4-2(b). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (b) amended July 10, 1998, to be effective September 1, 1998; paragraph (b) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) amended July 16, 2009 to be effective September 1, 2009.